

NATIONAL UNIVERSITY OF LESOTHO
FACULTY OF LAW
LL.B FINAL EXAMINATION

L2303 – CONSTITUTIONAL LAW: SEPARATION OF POWERS

JANUARY 2024

100 MARKS

TIME: 3 HOURS

INSTRUCTIONS:

1. Students are required to answer any **FOUR (4)** of the **SIX (6)** questions – **TWO** questions from Section A and **TWO** from Section B.
2. Section A consists of three short answer questions.
3. Section B consists of three essay and problem-type questions. Answers to the questions in this section should not exceed three (3) pages.
4. Number all answers correspondingly to the questions.
5. Any form of cheating will be penalised.

SECTION A

QUESTION 1

a. Briefly explain the following:

- i. Constitution 5 Marks
- ii. Constitutional law 5 Marks
- iii. Constitutionalism 5 Marks

b. Discuss the principal features that differentiate between a constitutional democracy and a constitutional monarchy. In your answer, illustrate how and to what extent South Africa's constitutional democracy is significantly different from Lesotho's constitutional monarchy. 10 Marks

[25 MARKS]

QUESTION 2

Give concise explanations with vivid practical and/or case law examples to the following constitutional law concepts and principles:

- a. The social contract 5 Marks
- b. The doctrine of separation of powers 5 Marks
- c. Popular sovereignty 5 Marks
- d. Representative democracy 5 Marks
- e. The counter-majoritarian dilemma 5 Marks

[25 MARKS]

QUESTION 3

a. Differentiate between vertical and horizontal separation of powers, using South Africa and Lesotho as case study examples. 10 Marks

- b. Make a critique of the concept of prorogation of Parliament within the Lesotho constitutional order and its constitutional limitations in accordance with the tenets of constitutionalism that oblige observance of the supremacy of the Constitution and the idea of a limited government.

15 Marks

[25 MARKS]

SECTION B

QUESTION 4

Analytically discuss the structure of the state, the political system and the model of separation of powers that is applicable to Lesotho.

[25 MARKS]

QUESTION 5

With reference to relevant provisions of the 1993 Constitution, explain some of the irregularities in the mechanics of separation of powers in Lesotho. In your explanation, say whether the irregularities could be redressed through amendments or whether an entirely new Constitution needs to be adopted to ensure an effective political system that functions on the principles of constitutionalism.

[25 MARKS]

QUESTION 6

The government of Lesotho has decided to regulate the cyberspace with the aim to curb computer crimes. In 2022, the National Assembly enacted the Computer Crimes and Cybersecurity Bill to that effect. The Bill was challenged by Lesotho civil society organisations for having been passed without adequate consultation of the population and that if promulgated into law, the Bill contained several provisions that pose a threat to the human rights and fundamental freedoms guarantee to the citizens of Lesotho in the 1993 Constitution. The Bill has been withdrawn. On 11 December

2023, the Central Bank of Lesotho alerted the general public of a cyberattack that has caused the entire inter-bank payment system to shut down, which has adversely affected businesses as well as personal financial transactions. Worried by the disturbing development, the Prime Minister has issued an Executive Order, obliging the National Assembly to enact the Computer Crimes and Cybersecurity Bill with urgency and sent to the King for promulgation into law. Since the Bill was withdrawn from Parliament in 2022, it has not been amended.

The Director of the Lesotho Council of Civil Society Organisations (LCCSO) approaches you as a Constitutional Lawyer on the question of constitutional legality of the government's action in proceeding to enact and promulgate the Computer Crimes and Cybersecurity Bill.

Advise the Director of LCCSO on the available legal options, taking into account the question of standing and the competent court to entertain any eventual litigation.

[25 MARKS]