



SCHOOL OF LAW

COURSE NAME: Public Law I

COURSE NO: LA 207

TIME ALLOWED: Three Hours

READING TIME: 10 Minutes

NUMBER OF PAGES: 4

NUMBER OF QUESTIONS ON PAPER: 8

NUMBER OF QUESTIONS TO BE ANSWERED: 5

MARK ALLOCATED FOR EACH QUESTION: 20% of total

TOTAL MARKS: 100

MATERIALS PERMITTED IN EXAMINATION ROOM:

SPECIAL INSTRUCTIONS

Answer any five questions

All questions are of equal value

Students are permitted to take into the examination room unannotated copies of any written Constitution, but no other written materials.

1. "..... there is no constitutional document which can form the starting point of a student's instruction in the constitutional law in the United Kingdom, and it is said that there exists no written constitution": Wade and Phillips, Constitutional Law 6th ed, 1962, p2.

Discuss

- (a) to what extent this is an accurate comment with regard to
 - (i) the United Kingdom, and
 - (ii) countries of USP region; and
 - (b) what are the advantages and the disadvantages of a written constitution.
2. "No jurist would maintain that even after a successful revolution the old constitution and the laws based thereupon remain in force, on the ground that they have not been nullified in a manner anticipated by the old order itself. Every jurist will presume that the old order – to which no political reality any longer corresponds – has ceased to be valid, and that all norms, which are valid within the new order, receive their validity exclusively from the new constitution. It follows that, from the juristic point of view, the norms of the old order can no longer be recognized as valid norms". Kelsen, General Theory of Law and State, pp117-8.

To what extent does this statement reflect the law of the Commonwealth today?

3. "In construing the meaning of Article 29 [of the Constitution of Nauru] it is proper generally to apply the principles of construction applicable to Acts and ordinances"
Thompson CJ, In re Ubenide Constituency, [1969-82] Nauru Law Reports, Part A, p8.

To what extent is this statement an accurate description of the approach of courts in the USP region to the interpretation of written Constitutions today?

4. Assume that Article 17 of the written Constitution of your country establishes a National Council of Chiefs composed of six chiefs from the seven provinces of your country, making a total of forty two chiefs, who can appoint a chairman and vice chairman from their number.

The Government of your country is not satisfied with the National Council of Chiefs and considers that it is too expensive and too ineffective. It accordingly wishes to reduce the membership from six to three chiefs from each province, making a total of twenty-one chiefs, and to have the chairman and the vice chairman appointed by the Minister for Culture.

The Constitution provides by article 98 that amendments may be made to the Constitution by a two thirds majority of members of the House of Representatives, "provided that any bill which is introduced for the amendment of provisions relating to institutions established by this Constitution shall, before it has been debated and voted on by the House of Representatives, be submitted to that institution, and comments of that institution shall be received and

considered by the House of Representatives before the bill is debated and voted on by the members of the House of Representatives”

A bill to make the changes sought by the Government has been introduced into the House of Representatives and this has been submitted to the National Council of Chiefs for their comments. The Chairman of the National Council of Chiefs has announced that the Council will not give any comments to the House of Representatives and that therefore it will be unconstitutional for the bill to be passed by the House of Representatives.

Discuss the constitutional issues involved.

5. “The pre-independence discussions on the form and the nature of the head of state were in many cases controversial. Indeed it may be said that, in some respects, there was greater controversy over the head of state than over the more important and substantial question of the system of government” Yash Ghai, Heads of State in the Pacific, 1990, IPS, USP, p2.

Describe and discuss the issues that arise with regard to the form and nature of the head of state, and how they have been resolved in countries of the South Pacific.

6. “With very few exceptions, whatever stage of political progress a country or territory has reached, the constitution establishes an executive body charged with responsibility (complete or otherwise) for the general administration of the government” Roberts-Wray, Commonwealth and Colonial Law, 1966, Stevens, London, p136.

Describe the various kinds of executives bodies that have been established in English speaking countries of the South Pacific, and consider their respective advantages and disadvantages.

7. “.... An essential feature of the Constitution [of Solomon Islands] is that the will of the majority of members [of Parliament] is to prevail over the Executive Government”: Connolly P, delivering the judgment of the Court of Appeal in The Speaker v Danny Philip (unreported 30 August 1991) cc5-90CA, p4.

Describe

- a) how the will of the majority of the members of the legislature is to prevail over the Executive Government in countries of the USP region; and
- b) why this assertion of the will of the majority has become excessive in some countries and what effect that has on the national administration of government; and
- c) what measures can be taken to reduce the excessive exercise of the will of the majority of the legislative over the executive.

8. "The concept of the separation of powers between the legislative, executive and judiciary ... is the basis of our Constitution [of Solomon Islands]" Ward CJ, Danny Philip v The Speaker of National Parliament [1990] SILR 227,239.

To what extent is this statement an accurate comment with regard to the Constitution of your country?