



*“Investing in Africa’s future”*

**COLLEGE OF BUSINESS, PEACE, LEADERSHIP & GOVERNANCE**

**NMPM 113: CONSTITUTIONAL LAW**

**MAY 2021**

**END OF ESEMESTER EXAMINATIONS**

**LECTURER: C. MUNGUMA**

**DURATION: 7 HOURS**

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### **INSTRUCTIONS**

Answer **ONE** question.

Marks allocated to each question are indicated in brackets at the end of the question.

Completed answers must be submitted on Moodle within 7 hours from the commencement time of the paper.

## Question 1

Judge Knowells is well known for being independent. In fact he is one of the activist judges in the Zimbabwean bench. Recently he made a decision to compel the state to pay compensation to a political activist who was arrested and wrongfully detained by the state for three months. Initially the government denied that the activist was in the custody of the state. After those denial the activist was then brought to court on charges of attempting the overthrow the government. The state case dramatically collapsed in court. Thereafter, the activist sued for wrongful arrest, prosecution and detention and was awarded USD\$50 000 in damages.

Soon after the decision the Minister of Justice made a press conference where he was alleged to have uttered the following words:

We are aware that our bench (i.e. judiciary) is infiltrated by enemies of the state. As a government we will not tolerate a situation where those we appoint come back to bite us. We are worried that our courts recently made a blatant political decision. We are bemused by the meaninglessness of the judgment. We call upon those who want to join politics to do so.....after all its open for everyone. We will not and I repeat we will not countenance a situation where people use their judicial robes to score cheap political goals. That we refuse.....

It is our policy as a government to accept the rule of law but in the case where this is abused we will not comply with such rulings. The government will not use tax payer's monies to compensate enemies of the struggle and dissidents...After all dissidents harm the public interest.....

Soon after that Judge Knowells received a letter of misconduct. The basis of the charge is that 10 years ago while he was still a junior judge he took 7 months to pass a decision on a particular case. The allegations facing the judge are that he is incompetent and unfit for his office because he delayed to pass judgement in that old case. One of the parties to that ten year old case was a politician and now the Minister of Justice.

- a) Discuss whether the action by the government against Judge Knowells is justified according to the Constitution of Zimbabwe and related constitutional principles. [40marks]
- b) Does the utterance of the government minister harm any core constitutional values of Zimbabwe? If so in what way? [20marks]
- c) As the legal advisor of the Judge Knowles you discover that other judges have delayed in passing judgments for longer periods. Two judges took two years to decide election petitions made by opposition members of parliament while another judge passed his

decision three years later in a case involving a deceased estate. In one case the Judge President decided a case 4 years after hearing the case. In all these instances nothing was done to the other judges. As the Legal advisor of the Judge discuss the arguments you will raise on behalf of the judge in his disciplinary hearing. [30marks]

- d) In what way does the conduct of the government in the above case affect the rule of law principle? [10marks]

### **Question 2**

- a) In Zimbabwe ministers are appointed by the President from sitting members of parliament. This arrangement has been heavily criticized as unworkable, flawed and contrary to democratic principles. You are required to discuss the challenges that this position pose for ministers in their performance of their dual functions as law makers and members of the executive. [30marks]
- b) Parliament plays an oversight role in the implementation and application of policy in Zimbabwe. Explain how this oversight function is exercised and the weakness that are apparent in the model used in Zimbabwe. [20marks]
- c) The House of Assembly passed the Judicial Laws Amendment Act without the requisite quorum required by the Constitution of Zimbabwe. The President has proceeded to sign the Bill into law. James a member of the opposition party and a councilor for ward 19 in Mutare is aggrieved and believes that the Law in question is invalid. He has now taken his case to court seeking the invalidation of the Judicial Laws Amendment. Discuss his chances of success in the legal suit he has launched. [40marks]
- d) Is the concept of judicial independence followed in Zimbabwe? Briefly discuss. [10marks]

### **Question 3**

- a) 'The constitutional framework grants the executive with a lot more powers than the other arms of government. This executive power is unchecked in any way'. Discuss the veracity of the above allegation [30marks]
- b) 'The Lancaster Constitution of 1979 provided Africans in Zimbabwe with the first real contact with constitutionalism and democracy. For the first time in history, Africans had the opportunity of taking part as participants not victims in mainstream social, economic and political activities in the country'. Discuss. [40marks]
- c) With reference to any one chapter 12 institution of your choice in Zimbabwe, discuss whether the constitutional framework guarantees members of the Commission freedom from political interference and financial autonomy of the institution. [30marks]

**END OF EXAMINATION**