



**SCHOOL OF LAW**

**NLLB104: CONSTITUTIONAL LAW**

**END OF SECOND SEMESTER EXAMINATIONS**

**APRIL 2025**

**LECTURER: DR LK MASEKESA**

**DURATION: 3HRS**

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**GENERAL INSTRUCTIONS TO CANDIDATES**

1. Write legibly.
2. Answer **ALL** questions.
3. Refer to **RELEVANT** authorities to support your answers.
4. You may start with any question.

### **QUESTION 1**

Distinguish between parliamentary and presidential system of government; and indicate which system applies to Zimbabwe. **[15 Marks]**

### **QUESTION 2**

Differentiate between the following concepts:

- (i) Formal and substantive equality. **[6 Marks]**
- (ii) Declaration of invalidity and declaration of rights. **[8 Marks]**
- (iii) Fair and unfair discrimination. **[6 Marks]**

### **QUESTION 3**

Every declaration of invalidity has what is known as 'impact'. This refers to the inevitable legal and other consequences that flow from the declaration of a law as invalid. This is because once declared invalid, the assumption is that the law never existed. It then follows that all decisions made based on the 'law' ought to be reversed. Such a state of affairs would result in an untold burden on the state to contain the impact. Being alive to this possibility, section 175(6) of the Constitution of Zimbabwe empowers courts to manage the impact in any manner that is just and equitable.

Discuss any three ways the court can control the impact of an order of constitutional invalidity. **[20 Marks]**

### **QUESTION 4**

(a) Discuss what you understand by "delegation of legislative authority" and determine whether Parliament may delegate its functions to the executive. **[10 Marks]**

(b) Explain the circumstances under which the seat of a Member of Parliament becomes vacant. **[10 Marks]**

## QUESTION 5

Former President Habakkuk's speaking notes from a closed meeting with the inner-core of his political party on January 18 have been made public and have ignited discussion. These notes provide insight into Habakkuk's perspective, where he argues:

We exist in what is labeled a "constitutional democracy," yet we often fail to examine its true implications. The struggle we endured was for democracy, not the constitutional democracy we experience now. I was involved in that negotiation, but the way it functions has caused me to reconsider it. I believe the Constitution we often commend has become a tool to undermine the people's will.

The majority of people who mandate us at every election to represent them in parliament can no longer see their aspirations being attained by us because the decisions and actions of parliament are permanently arrested by the judiciary through the Constitution. Essentially, we are compelled to follow only what an unelected judiciary approves. This scenario does not reflect genuine democracy; it resembles a false democracy. The judiciary's intended role is to uphold the law, not to dictate the outcomes of democratic processes. What are we doing to address this? How can a mere 7 individuals wield such power over an entire elected legislative body?

Isn't this somewhat ironic? We fought for democracy, where the majority rules. However, what occurs when the 7 individuals make erroneous decisions? That could lead to disastrous consequences. What if they evolve into counter-revolutionary forces against the populace? What if they exceed their powers? What if they dissolve parliament unilaterally and create their own governing body? What will our response be? Could it be too late by then? There is a fundamental flaw in this system. I recognize that I may be entering a debate that seems unjust, but based on my experiences in various positions and my observations, I feel compelled to raise these issues with you. It is our responsibility as a liberation movement to address this, if we can reach a consensus. However, we might not necessarily agree.

As a Law Clerk to the Constitutional Court, you are tasked with preparing a paper that persuades former President Habakkuk that judicial review, central to the 2013 Constitution of the Republic of Zimbabwe, is **not undemocratic**.

Set out the content of your paper to the Justice.

**[25 Marks]**

**End of examination paper**