

# ZIMBABWE EZEKIEL GUTI UNIVERSITY

## CONSTITUTIONAL LAW

LLB 203

3 HOURS

29 NOVEMBER 2018

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### Instructions

- i. Answer four questions.
- ii. Answer two questions from Section A. Question 1 is compulsory.
- iii. Answer two questions from section B
- iv. Students may carry unannotated copies of the Constitution of Zimbabwe, 2013 and the Electoral Act
- v. Write legibly

### Section A: Answer Two Questions

#### Question 1 is compulsory

#### Question 1

Thoroughly discuss the constitutional arguments which were advanced by the Applicants as well as the reasons why the application failed in the matter of *Gabriel Shumba and 2 Others v The Minister of Justice, Legal and Parliamentary Affairs, CCZ 4/18* (25 marks)

#### Question 2

Discuss the concept of separation of powers and how the concept is applied in Zimbabwe's constitutional system. Your answer must include instances of overlaps between the executive, the judiciary and the legislature. (25 marks)

#### Question 3

- (a) Critically discuss and analyse the *Doctrine of Necessity* as expounded in the case of *Madzimbamuto v. Lardner-Burke [1968] 3 All ER 561* (15 marks)
- (b) Discuss the application of this doctrine in light of 'Operation Restore Legacy' that eventually resulted in the resignation of the former President of Zimbabwe, Mr. Mugabe in November 2017. (10 marks)

#### Question 4

- (i) Discuss five major constitutional issues that arose in the Presidential Election Petition heard by the Constitutional Court in the immediate aftermath of the announcement of the 2018 election results. (15 marks)
- (ii) Summarise how the Constitutional Court addressed at least three constitutional issues that were before it (10 marks)

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### SECTION B

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Answer any two questions in this Section

#### Question 5

"A crusade by the Executive to dominate other arms of the State."

Discuss, justifying your answer, whether this statement properly summarises the objectives of all Amendments made to both the Lancaster House Constitution and the current Constitution. (25 marks)

#### Question 6

In the case of *Mudzuru and Another v Minister of Justice, Legal and Parliamentary Affairs and 2 Others, CCZ 12/2015*,

Malaba DCJ (as he then was) noted as follows;

*Four questions arise for determination from the positions taken by the applicants and the respondents. They are:*

- (1) *Whether or not the applicants have, on the facts, locus standi under s 85(1)(a) or s 85(1)(d) of the Constitution to institute the proceedings claiming the relief they seek.*
- (2) *If they are found to have standing before the Court, does s 78(1) of the Constitution set the age of eighteen years as the minimum age for marriage in Zimbabwe.*
- (3) *If the answer to issue No. 2 is in the affirmative; did the coming into force of ss 78(1) and 81(1) of the Constitution on 22 May 2013 render invalid s 22(1) of the Marriage Act [Chapter 5:05] and any other law authorising a girl who has attained the age of sixteen to marry.*
- (4) *If the answer to issue No. 3 is in the affirmative; what is the appropriate relief to be granted by the Court in the exercise of the wide discretion conferred on it under s 85(1) of the Constitution.*

Thoroughly discuss the position adopted by the Constitutional Court bench in the four points raised above. (25 marks)

### **Question 7**

Identify four social and economic rights in the 2013 Constitution of Zimbabwe and justify their inclusion in the Constitution. (15 marks)

Discuss the major problems associated with the enforcement of social-economic rights in Zimbabwe. (10 marks)