

MARKING MEMORANDUM NOVEMBER 2017 CSL2601 EXAMINATION

QUESTION 1

- 1.1 Customary law is a source of law equivalent to the common law. (1)
True
- 1.2 In *Executive Council of the Western Cape Legislature v President of the Republic of South Africa* 1995 (4) SA 877 (CC) it was held that Parliament can delegate its power to make, amend and repeal Acts of Parliament to the executive because it is universally accepted in modern societies that Parliament cannot attend to every single task that it is enjoined to perform. (1)
False
- 1.3 International law is a persuasive source of law which is not binding but may influence decisions. (1)
False
- 1.4 Besides the fact that the National Prosecuting Authority is legally and constitutionally required to report to the Minister of Justice on its activities and decisions, the level of ministerial oversight under which it operates indicates that it forms part of the executive arm of government. (1)
False
- 1.5 The Constitution of the Republic of South Africa, 1996, is an example of an inflexible constitution. (1)
True
- 1.6 Sujit Choudhry, a constitutional law expert, describes South Africa as a one-party dominant democracy. Choudhry states that "one of the pathologies of a dominant party democracy is the "capturing" of independent institutions meant to check the exercise of political power by the dominant party, enmeshing them in webs of patronage." An unfortunate consequence of this is that there is virtually no separation of state and party in the present South African context. It is illustrated by the fact that Parliament was not prepared to deal decisively with the issue of non-security upgrades to President Zuma's private residence in Nkandla. (1)
True
- 1.7 Magistrates' courts have the power to declare the conduct of the President unconstitutional. (1)
False
- 1.8 In the *Judicial Services Commission and Another v Cape Bar Council and Another* 2012 (11) BCLR 1239 (SCA) the Court found that the decisions of the Judicial Services Commission about the appointment of judges could not be reviewed by courts. (1)
False
- 1.9 Cooperative or multi-level government refers to the division of the legislative and executive authorities among three spheres of government, namely the national, provincial and local spheres of government. (1)
True
- 1.10 The need that the judiciary reflects the gender composition of South Africa is more important than the need to reflect the racial composition of South Africa. (1)
False
- 1.11 One of the most important objectives of local government is to meet the basic needs of all inhabitants of South Africa. (1)
True

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Clemens Wendtner



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