1. Critically discuss the principles of interpretation that a Court uses in interpreting the chapters protecting fundamental rights and freedoms in Commonwealth Caribbean constitutions.

(50 marks)

2. The State of Caribelz has a population of 75% black and the remaining 25% is a mixture of all other races. The adoption laws in the State of Caribelz allows only married couples or an unmarried woman the ability to adopt a child. Gary is a white University professor who is unmarried and has no plans of getting married. He wishes to adopt his god son 10 year old Michael with whom he was very close and whose parents died in a car accident. Michael has no other living family and is therefore currently in foster care. All adoptions must go through the Caribelz Child Adoption Board (CCAB), a state entity. The CCAB has a policy that only places a child with parents of the same race as the child. The CCAB advises Gary that even though Gary satisfies all the other requirements to adopt Michael he is not married and since Michael is black and Gary is white he would also not be able to adopt him.

The Caribelz Organisation for Fatherhood (COF) along with Gary wants to bring a constitutional action against the State of Caribelz and the CCAB for discrimination. Gary also wants to get exemplary damages and wishes to rely on the International Convention on the Elimination of All Forms of Racial Discrimination Article 2, which provides that States Parties shall undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms. The State of Caribelz has ratified the Convention but has not incorporated it into its domestic law.

The relevant Constitution provides at section 13(h) the right to equitable and humane treatment by any public authority in the exercise of any function, and at 13(i) the right to freedom from discrimination on the ground of race, place of origin, social class, colour, religion or political opinions. It also provides at section 13(3)(g) “the right to equality before the law”.

Advise Gary and COF.

(50 marks)
3. Bogo is a Commonwealth Caribbean whose Constitution provides at section 14(1) that “A person shall not be subjected to arbitrary or unlawful interference with his privacy…”

Section 14(2) makes provisions for limitations that are “reasonably required in the interest of defence, public safety, public order, public morality or public health.”

The Constitution of Bogo also has a general savings law clause.

The Sexual Offences Act of Bogo was enacted in 1950. Section 68 of the Act makes it an offence for a man to engage in “gross indecency” in private with another man, punishable by 6 months’ imprisonment. The offence of “gross indecency” cannot be committed by a woman. This section is rarely, if ever enforced.

In January 2011 the Sexual Offences Act is amended by the Sexual Offences (Amendment Act, which is passed by a simple majority in Parliament. It increases the penalty for breach of section 68 to 1 year’s imprisonment, and it adds a new sub-section under which a criminal offence is created where a woman engages in “serious indecency” in private with another woman. The explanatory notes of the Act state that these amendments are made to address falling moral standards in Bogo.

Mary a lesbian wishes to challenge the constitutionality of the law as amended and seeks your advise on the following:

(a) Whether the Sexual Offences Act as amended in 2011 would be immune from judicial review because of the existence of the general savings law clause. (15 marks)

(b) Assuming that judicial review of the Act is possible, whether the Civil Rights Association of Bogo can bring a claim and whether the new sub-section added to section 68 whoould be considered to be reasonably required in the interest of one of the specified constitutional goals. (35 marks)

4. Answer BOTH a & b.

(a) With use of decided cases examine whether the opening section of the chapter of the Constitution protecting fundamental rights and freedoms in a Conventional Constitution gives rise to enforceable rights; AND (15 marks)

(b) Critically evaluate whether the courts have generously interpreted the redress clause in the Commonwealth Caribbean Constitutions. (35 marks)

END OF PAPER