1. Answer BOTH (a) and (b).

(a) Critically discuss the judicial approach to the proviso to the redress section in Commonwealth Caribbean bills of rights; (25 marks)

AND

(b) "In their interpretation of the constitutional guarantee of rights, the courts of the Commonwealth Caribbean have paid scant regard to Lord Wilberforce's exhortation of generous interpretation in relation to fundamental rights."

Critically discuss (25 marks)

2. "With only few exceptions, the courts of the Commonwealth Caribbean have failed to interpret the antidiscrimination and/or equality provisions contained in Caribbean constitutions coherently or in accordance with standard principles of constitutional interpretation."

Critically discuss the above statement with reference to decided cases. (25 marks)
3. Marigol is a Commonwealth Caribbean country that protects the right to freedom of conscience, which includes freedom of religion. This right makes provision for limitations “reasonably required in the interest of defence, public safety, public order, public morality or public health.”

The Church of Everlast (COE) fuses elements of Christianity with rituals and deities of traditional African societies. The COE does not believe in one supreme maker but believes that all persons are the Everlast. While there is no formal institutional structure, adherents to the teaching of the Everlast is contained in the Book of the Everlast. The Church of the Everlast has a modest following but growing.

The COE *inter alia* believe that the use of “loving corporal correction” in the upbringing of children is an essential part of their faith. They base this on certain verses in the Book of Everlast, which states “he who loves him is diligent to discipline him” and “the use of the rod would keep the child on the straight and narrow.” It is their belief that this source justifies, and requires, their practices.

The COE reject the general standards of state education available in Marigol as not fitting their religious and moral beliefs so they opened the COE private school for their followers. The school with the consent of the parents practice corporal punishment, which takes the form of administering a thin, broad “paddle” to both buttocks of boys and straps on the hands of the girls. The child is then comforted by a member of the staff and encouraged to pray.

Section 3 of the Prohibition of Corporal Punishment Act states:

“Corporal punishment given by, or on the authority of, a member of staff to a child is prohibited.”

The COE private school and the parents of the children are of the view that this law is an unconstitutional restriction of their right to practice their religion. The Principal of the COE private school and the Maxim a parent of one of the children wishes to challenge the constitutionality of the law and consults you.

Advise the Principal and Maxim (25 marks)

4. St Vincentia is a Commonwealth Caribbean country that protects the right to freedom of expression. The Constitution of St Vincentia also includes a “general savings law clause” and a provision dealing with “special acts” which gives effect to statutes passed by a special procedure, notwithstanding their inconsistency with the provisions of the chapter protecting fundamental rights and freedoms.

The Newspapers Regulation Act was enacted in 1955. Section 15 of this Act provides that newspapers must not publish any article, which tends to bring the government into disrepute, the violation of which is punishable by a fine of $200.

The Act is silent regarding the kinds of articles that can have the prohibited effects. After a prolonged period of political unrest, in January 2013 The Newspapers Regulation Act was repealed and reenacted is repealed and a new Newspapers Regulation Act is passed unanimously by Parliament.
The new Act declares that it has effect despite its inconsistency with the provisions of the chapter protecting fundamental rights and freedoms. Section 15 of the new Act modifies section 15 of the 1955 Act to change the penalty on conviction, by increasing the fine to $1,000 and providing for a term of imprisonment of up to 6 months.

While piloting the new Newspapers Regulation Act through Parliament, the Minister of National Security explains that the legislation is necessary to prevent newspapers from fomenting discontent and endangering the lives of citizens.

Chris is the editor of the Vincentia Graphic, a privately run newspaper. He writes an editorial criticizing the amendment, arguing that it is evidence of the repressive tendencies of the ruling party. Immediately on publication Chris is arrested at work and taken down to the police headquarters in handcuffs by 2 heavily armed policemen. He is charged with an offence under section 15 and released on bail.

Chris is of the view that section 15 is in breach of his right to freedom of expression and wishes to challenge the constitutionality of the section 15.

Advise Chris. (25 marks)