

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION PAPER
YEAR: 2016/2017

TITLE OF PAPER : ADMINISTRATIVE LAW

COURSE CODE : LAW 211

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS:

- (i) ANSWER ANY FOUR (4) QUESTIONS.**
- (ii) EACH QUESTION CARRIES 25 MARKS.**
- (iii) IN ANSWERING ANY QUESTION, NOTE THAT THE QUALITY OF THE CONTENT, CLARITY OF EXPRESSION AND LEGIBILITY OF HANDWRITING ARE ABSOLUTELY ESSENTIAL.**
- (iv) REFER TO LEGAL AUTHORITY TO SUBSTANTIATE YOUR ANSWERS.**

DO NOT OPEN THIS PAPER UNTIL TOLD TO DO SO BY THE INVIGILATOR.

QUESTION ONE

Roro, the special one, is a final year law student from the University of Yale. She is on an educational exchange programme in Swaziland. She is currently writing her dissertation, focusing on the basic areas to which the administrative power of Swaziland owes its origin.

She has conducted research and has spoken to various people who each gave her differing opinions. First, she met an elected Member of Parliament (MP) who told her that Swaziland has a dual system of government. One system of the government is based at Ludzidzini and the other is based in Mbabane - Hospital Hill. The government based at Ludzidzini is more powerful than the one based in Mbabane. The MP also informed Roro that the government at Ludzidzini enacts laws without consulting the government in Mbabane. The MP further stated that there is an emerging government at Lozitha. In supporting this statement, the MP made an example of the recent SADC Summit which took place at Lozitha.

Second, Matsidiso, a political activist, told the special one that the administrative power of Swaziland resides in the Parliament of Swaziland at Lobamba. Other commentators argue that there is no specific institution or foundation to which Swazi administrative power owes its origin. This is because various institutions have the authority to generate their own administrative power. To support this argument, the commentators cited local government structures and the University of Swaziland. Finally, Roro came across a case which the Supreme Court of Swaziland decided in 2007 and in which the Court noted that, before the enactment of the Constitution of the Kingdom of Swaziland Act 1 of 2005 (the Constitution), the country was governed through Decrees and Orders-in-Council. The Court further noted that these enactments posed a challenge because the source of the power to make such instruments and their validity were often unclear. This resulted in legal uncertainty and created tensions and constitutional volatility.

Roro is now confused. Luckily, she finds you at the University of Swaziland. She has heard that you are a student of recognised competence in administrative law. Assist her establish the areas to which Swazi administrative power owes its origin.

[25 Marks]

QUESTION TWO

(a) Describe two offices established under the Constitution of the Kingdom of Swaziland Act 1 of 2005 (the Constitution) that are modelled on the institution of the Ombudsman.

[12 Marks]

(b) Write notes on the following:

(i) acting under dictation; and

[5 Marks]

(ii) the rule of law.

[8 Marks]

[25 Marks]

QUESTION THREE

(a) The Manzini City Council is retrenching some of its employees. The enabling legislation imposes a duty upon the finance department of the municipality to calculate the terminal benefits due to the affected employees and to take into account the considerations laid down by the statute. In 2016, the Matsapha Town Board engaged in a similar exercise and successfully paid its redundant employees. The Manzini City Council has asked the Matsapha Town Board to apply its formula to calculate the terminal benefits of its (Manzini municipality) redundant employees. The affected employees are aggrieved by the exit packages that the Manzini City Council has offered to them and have asked the High Court of Swaziland to review the decision of the municipality. On what grounds do you think the administrative act of the Manzini City Council is reviewable?

[10 Marks]

(b) Write notes on the following:

(i) laying before Parliament; and

[7 Marks]

(ii) prerogative powers.

[8 Marks]

[25 Marks]

QUESTION FOUR

(a) In 2104, the Prime Minister of Swaziland appointed a Commission of Enquiry to investigate a road accident of the 29 April 2014 along MR3 Freeway at

Malagwane Hill. Before the notice that appointed the Commission was promulgated, an official who works at the Prime Minister's Office had informed Mr. Mwaruwaru that he had seen his name in the list of the names of the members of the Commission who were to be appointed. When the notice was published, Mr. Mwaruwaru was not appointed. Mr. Mwaruwaru is challenging the decision of the Prime Minister not to appoint him. He contends that the Prime Minister's act constitutes a breach of the *functus officio* doctrine. Advise Mr. Mwaruwaru. **[12 Marks]**

(b) Discuss the relationship between administrative and constitutional law.

[13 Marks]

[25 Marks]

QUESTION FIVE

Critically discuss the justifications and requirements for delegated or subordinate legislation. **[25 Marks]**

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