

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER (MAIN)
YEAR: 2016/2017

TITLE OF PAPER : ADMINISTRATIVE LAW

COURSE CODE : LAW 212

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 AUTHORITIES TO SUBSTANTIATE YOUR ANSWERS.**

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

QUESTION ONE

(a) Njabuliso is dissatisfied with a decision of the High Court of Swaziland. She contends that the Court misconceived its function and took into account irrelevant considerations or ignored relevant ones. A retired judge of the Supreme Court of Judicature for Swaziland has advised her to apply to the Supreme Court for an order reviewing and setting aside or correcting the decision of the High Court. **Give a legal opinion on the legality or illegality of the advice of the retired judge.**

[10 Marks]

(b) Discuss the legitimate expectation doctrine.

[10 Marks]

(c) Write explanatory notes on limitation clauses.

[5 Marks]

[25 Marks]

QUESTION TWO

Mr Malinga is an umnumzane in a farm situated at Sidvokodvo. The farm-owner has given Mr Malinga and his dependants a one-month notice to vacate the farm because their relationship with him has irretrievably broken down. Having exhausted all available internal remedies, Mr Malinga approached the High Court of Swaziland for relief. The Court stated that it had no jurisdiction to hear or determine the matter. The Court based its reasoning on section 9(1) of the Farm Dwellers Control Act of 1982, which provides that '[n]o court shall have jurisdiction to hear or determine any dispute between an owner and an umnumzane concerning any rights and liabilities under this Act...'

With the aid of locally decided cases, critically discuss whether the decision of the High Court is constitutionally justifiable or not.

[25 Marks]

QUESTION THREE

A prominent feature of the governmental scene is the multitude of special tribunals created by Act of Parliament.

Analyse the strength of statutory tribunals.

[25 Marks]

QUESTION FOUR

(a) List and describe three differences between appeal and review.

[12 Marks]

(b) A law lecturer who was assigned to administer an administrative law test to law students in the second year of the Bachelor of Laws Programme caught five students consulting foreign material. The Head of the Department of Law constituted a 3-member panel to conduct a disciplinary hearing against the offending students. The lecturer who caught the students copying was one of the members of the disciplinary panel. The panel found the students guilty of malpractice and made a recommendation to the Head of the Department of Law. The students are appealing against the verdict of the disciplinary panel on the ground that the panel was biased against them.

Identify the source of bias from this set of facts and refer to two decided cases to substantiate your answer.

[10 Marks]

(c) Write explanatory notes on failure to decide or to consider.

[3 Marks]

[25 Marks]

QUESTION FIVE

Section 33(2) of the Constitution of the Kingdom of Swaziland Act 1 of 2005 (the Constitution) provides as follows: '[a] person appearing before any administrative authority has a right to be given reasons in writing of the decision of that authority.'

Critically discuss the justifications for and the potential disadvantages of the requirement to give reasons.

[25 Marks]

===== END OF EXAMINATION PAPER=====