

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER (MAIN)
YEAR: 2017/2018

TITLE OF PAPER : ADMINISTRATIVE LAW

COURSE CODE : LAW212

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

Mr Motsamai has been a dweller in the farm of Mr Van Wyk for the past 25 years. Mr Van Wyk intends to sell a portion of his farm to a prospective buyer. The portion that Mr Van Wyk intends to sell is occupied by Mr Motsamai and his family and has vast tracts of fertile land which the Motsamai family uses to cultivate crops and rear livestock. The prospective buyer is willing to purchase the portion that is for sale at double the seller's price on condition that, at the time the property is transferred to his name, the Motsamai family or any other person should not be occupying it. Mr Van Wyk gave Mr Motsamai twenty four months to find an alternative place. Mr Motsamai failed to find an alternative place within the given period. Consequently, Mr Van Wyk ejected him and his family from the farm.

Mr Motsamai approached the Hhohho Farm Dwellers Tribunal (District Tribunal) for relief. Unfortunately, the District Tribunal issued a decision against him. He appealed to the Central Farm Dwellers Tribunal (Central Tribunal) against the decision of the District Tribunal. The Central Tribunal upheld the decision of the District Tribunal. Dissatisfied with the decision of the Central Tribunal, Mr Motsamai appealed to the Minister of Home Affairs (the Minister) who affirmed the decision of the Central Tribunal. Mr Motsamai was dissatisfied with the decision of the Minister.

As Mr Motsamai was about to ask the High Court of Swaziland (the High Court) to review and set aside or correct the decision of the Minister, he met a South African expert in administrative law who advised him not to approach the High Court and to accept that the matter had come to an end. The expert based his advice on section 9(1) of the Farm Dwellers Control Act of 1982 which provides as follows:

"[no] court of law has jurisdiction to hear and determine any dispute between an owner and an *umnumzane* concerning any rights and liabilities under this Act or as to who are the dependants of an *umnumzane* or to order the cancellation of an Agreement or removal of an *umnumzane* or his dependants from any farm."

Mr Motsamai is now confused. Advise him on the legal soundness or otherwise of the advice of the South African expert.

[25 Marks]

QUESTION TWO

(a) The Minister of Justice and Constitutional Affairs (the Minister) of the Republic of Raspara (the Republic) has made a public announcement that on Friday, July 27, 2018, the Chief Justice of the Republic shall turn 65 years of age and that, on that date, she will retire as Chief Justice of the Republic. According to the Minister, the Constitution of the Republic states that judges of the superior courts of the Republic shall retire at the age of 65. The Chief Justice disputes the Minister's claim and has asked the High Court of the Republic to issue an order declaring that the retirement age for judges of the superior courts of the Republic, according to the Constitution of the Republic, is 75. The Minister has since filed an application for the recusal of the judges of the High Court. He argues that the judges are disqualified from presiding over this matter because he has reasonable apprehension that they might be biased against him.

With the support of locally-decided cases, discuss the possible source of bias in the circumstances of this case.

[12.5 Marks]

(b) Ms Samantha Yellow-Bone applied to the Road Transportation Board (RTB) for a road transportation permit. The RTB refused to grant her the permit. Aggrieved by the decision of the RTB, she appealed to Road Transportation Appeal Board (Appeal Board). The Appeal Board confirmed the decision of the RTB. Dissatisfied with the decision of the Appeal Board, Ms Yellow-Bone asked the High Court of Swaziland (the High Court) to review and set aside or correct the decision of the Appeal Board. The High Court reviewed the proceedings of the Appeal Board and confirmed its decision. Ms Yellow-Bone is not satisfied with the decision of the High Court. She argues that the proceedings of the High Court were fraught with irregularities. While still pondering on her next move, she met a retired professor of administrative law from one of the Commonwealth countries. The professor stated that, after carefully studying the legal system of Swaziland, he was convinced that best option for Ms Yellow-Bone was to launch an original application in the Supreme Court of Swaziland (Supreme Court) for review of the decision of the High Court.

With the support of two locally-decided cases, critically examine the legal soundness or otherwise of the opinion of the retired professor of administrative law.

[12.5 Marks]

[25 Marks]

QUESTION THREE

(a) Mr Absa has instituted legal proceedings in the High Court of Swaziland (the High Court) against BT Traders for an amount of money which the company is failing to pay to him in respect of a contract of sale which he concluded with it. Mrs Patel-Collier is a judge of the High Court who will preside over this case. At the time when the parties concluded the contract of sale, Mrs Patel-Collier was a legal adviser to BT Traders and she drafted the contract from which the dispute emanates. Mr Absa wants the judge to recuse herself from determining this matter because he has reasonable apprehension that Mrs Patel-Collier might be biased against him because of her (Mrs Patel-Collier) previous association with BT Traders or intimate knowledge of the subject-matter.

With reference to two locally-decided cases advise Mr Absa's attorney on the usual procedure to be followed when making an application for recusal and state the purpose served by this practice.

[15 Marks]

(b) Ms Freshers completed her Bachelor of Commerce at the University of Choice (the University) in 2017. In her final year, the University declined to register her as a student pending her fulfilment of certain requirements. She approached the High Court of Swaziland for an order compelling the University to register her. The High Court ruled in her favour. The University appealed against the decision of the High Court but nevertheless allowed her to attend her final year classes. When the matter was called in the Supreme Court of Swaziland, Ms Freshers had finished her studies and graduated. She indicated that she was no longer interested in the matter. The University insisted that the Supreme Court should determine the matter in order to give guidance on how the University should deal with similar cases in future. The Supreme Court declined to hear the matter or grant a remedy on the basis of one the judicially-imposed obstacles to redress.

With reference to a locally-decided case, identify and discuss the judicially-imposed obstacle on the basis of which the Supreme Court declined to grant a remedy.

[10 Marks]

[25 Marks]

QUESTION FOUR

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

With the aid of locally-decided cases analyse any two strengths of statutory tribunals.

[12.5 Marks]

(b) With the aid of decided cases, discuss the legitimate expectation doctrine.

[12.5 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 examine the justifications for the requirement to give reasons.

[25 Marks]

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