



UNIVERSITY OF SWAZILAND
Faculty of Health Sciences
Department of Environmental Health Science

B.Sc. DEGREE IN: ENVIRONMENTAL MANAGEMENT AND
WATER RESOURCES

MAIN EXAMINATION PAPER 2018

TITLE OF PAPER : WATER LAW AND INSTITUTIONS
COURSE CODE : EHM 422
DURATION : 2 HOURS
MARKS : 100

INSTRUCTIONS :

- : READ THE QUESTIONS & INSTRUCTIONS CAREFULLY
- : ANSWER **ANY FOUR** QUESTIONS
- : EACH QUESTION **CARRIES 25** MARKS.
- : WRITE NEATLY & CLEARLY
- : NO PAPER SHOULD BE BROUGHT INTO THE EXAMINATION ROOM.
- : BEGIN EACH QUESTION ON A SEPARATE SHEET OF PAPER.

DO NOT OPEN THIS QUESTION PAPER UNTIL PERMISSION IS GRANTED BY
THE INVIGILATOR.

QUESTION ONE (25 marks total and each question below carries 5 marks)

- 1A.** Discuss the advantages and disadvantages of incorporating customary laws in modern water legislation. How do you describe the characteristics of customary laws in Africa in relation to private water rights? and those prevailing in the Muslim countries (cite the two important water rights in the Muslim customary law on water)?
- 1B.** State the common legal safe guards against water pollution in the past prior to the enactment of modern water legislation recently. State also three aspects of the difficulty or problems related to pollution control in the developing countries.
- 1C.** Discuss the main features of water ownership and water use right in the Common Law countries. How did this feature relate closely with one particular form of ownership in the Roman law? State also how the natural flow theory is used in the Common Law countries in relation to water use rights.
- 1D.** State the main difficulty that was experienced in applying the ownership of water prevalent in the Civil Law countries in Africa. Discuss also the influence of the form of political governance on administration of water in India and the hierarchy/dominance of domestic water law vis-à-vis international water agreements in the Republic of China.
- 1E.** List the main control instruments that were placed in the modern water law enactments in the continent of Europe.

QUESTION TWO (25 marks total and each question below carries 5 marks)

- 2A.** State how the water legislation should be structured especially in terms specification of the level of detail required during implementation of the water law. In addition, discuss the reason for which the expert drafting a water legislation should have good negotiation skills.
- 2B.** List the issues that the broad policy declaration of water resources management policy must address. What considerations should be given in the course of drafting modern water legislation in relation to existing customary uses of water?
- 2C.** State the three forms of acquiring water use rights. What procedure should be specified in water legislation for the granting of permits for water use? What is the difference between a permit and concession?
- 2D.** Discuss the issue to be taken into account in the course of drafting legislation addressing i) agricultural water uses ii) industrial water uses.
- 2E.** List the events/ condition that may lead to emergency declaration to be included in water legislation and the measures to be taken during this period of emergency.

QUESTION THREE (25 marks total and each question below carries 5 marks)

- 3A.** Discuss the Absolute Territorial Integrity principle as an international principle in relation to sovereignty. State also how this principle affects the use of trans-boundary water resources among riparian countries.
- 3B.** Discuss the principle of community of property in water in relation to the rights over international water resources.
- 3C.** Discuss the main points included in Recommendation 51 of the 1972 Stockholm Declaration as they affect the use of international water resources.
- 3D.** Some of the rules stated in the “Helsinki Rules on the Use of Waters of International Rivers” appear to be vague and self-contradictory. State what these rules are and explain how they can give rise to problems of interpretation.
- 3E.** Discuss the main provision of settling disputes through arbitration provided in 1997 Law on Non-Navigational Uses of International Water Courses adopted by the UN member countries. Focus your answer on:
- i. Formation of the arbitral tribunal,
 - ii. Duties of parties to the dispute,
 - iii. Intervention in the proceedings by parties affected.
 - iv. Covering costs of the tribunal proceedings.
 - v. Mechanism for reaching decisions by the tribunal.

QUESTION FOUR (25 marks total and each question below carries 5 marks)

- 4A. Discuss the need for the formation of national water resources council. At what level should this council be composed? List the functions of such a council
- 4B. Discuss the justification for the establishment of regulatory institution for the management of water resources. List the possible responsibilities of such regulatory institution.
- 4C. Discuss the difference between de-centralization and de-concentration of water resources management activities. What are the respective conditions that favor de-concentration or de-centralization?
- 4D. State and give examples of the different water resources management institutions defined according to their territorial level of jurisdiction
- 4E. State and give examples of the different water resources management institutions defined according to their function.

QUESTION FIVE (25 marks total and each question below carries 5 marks)

- 5A. In a bid to facilitate the settlement of disputes over water rights, the water legislation of a given country stated (as a statutory provision) that disputes over water rights that could not be settled through administrative provisions can be taken to the local court. Discuss the merits of this provision and how and whether this can help in resolving water right disputes.
- 5B. Discuss the role of the presence of legal pluralism and of “forum shopping” related to water rights disputes. State the mechanisms that can be employed in resolving water right disputes in an environment whereby legal pluralism is present that encourages forum shopping.
- 5C. Water use legislation often emphasizes the need for statutory legal provisions and legal support regulating the use of water in the environment where local customs and practices exist. In this regard, it is stated that the local customs should somehow be included into a formal legal enactments. Would this approach solve all the problems related to water right disputes? State what problem can possibly arise where legalism makes its presence heavily felt.
- 5D. The so-called riparian right can exist as a form of customary right or community right to the use of water. This right is somehow akin to exclusive ownership of water, although it is not apparently declared as such. Discuss what can be done to negotiate water reallocation in the presence of such water use right in order to benefit groups that are non-riparian to a water source, yet that may have legitimate need for water.
- 5E. Water rights that exist in the form of common ownership of water (*res communis ominus*) can suffer from what is commonly known as the tragedy of the commons. State and give examples how this may arise and discuss how this prevailing ancient and customary provision of community ownership be managed to minimize the effects caused by the tragedy of the commons.