



UNIVERSITY OF ESWATINI

SEMESTER I MAIN EXAMINATION PAPER, NOV/DEC 2019

INSTITUTE OF POST-GRADUATE STUDIES

Course Code: BIO601

ENVIRONMENTAL LAW (MSC. ERM))

Time allowed: 3 Hours

Instructions:

1. Answer Question 1 which is **compulsory**, plus any (3) three other Questions.
2. Begin each question on a new page.
3. Make sure that you write legibly, that your expression is clear and that you cite legal authority where applicable.

Special Requirements: NONE

Additional Material(s): NONE

Candidates may complete the front cover of their answer book when instructed by the Chief Invigilator and sign their examination attendance card but must NOT write anything else until the start of the examination period is announced.

No electronic devices capable of storing and retrieving text, including electronic dictionaries and any form of foreign material may be used while in the examination room.

DO NOT turn examination paper over until instructed to do so.

QUESTION 1 - CASE STUDY (COMPULSORY)

Roger Daniels owns and operates a small tannery business called Rawhide Tannery which he inherited from his father in 2014. Rawhide Tannery operates from farm premises on the outskirts of Malkerns. The tannery business employs about 20 employees and prepares about 100 hides per week for specialised use in the manufacture of designer handbags. The tanning process involves many different stages and several different toxic chemicals. The chemicals are stored in huge drums and each week there is a delivery of the constituent chemicals. They are delivered in 40 gallon tanks which are then poured into larger chemical storage drums. The tanning process requires a "cocktail" of the chemicals to be siphoned from the storage tanks to tanning preservation tanks via metal pipes. The hides are then dragged through the chemicals contained in the tanning preservation tanks. The exact constituency of the chemicals depends upon the type and colour of leather produced. Detailed records of each tanning batch and the chemicals used should be recorded in a log book. The chemical storage drums are located in the tanning yard at the rear of the premises which backs straight onto the Umfolozi River bordering the farm. The manufacturers of the handbags demand delivery of the hides on time and excellent quality leather. Rawhide Tannery received an order for 200 hides to be ready for delivery no later than 20th September, 2019. The week before, the tannery was running behind schedule and Roger Daniels instructed his employees to work overtime. The usual cocktail of chemicals was mixed and placed in the tanning preservation tanks. However, while siphoning some perchloroethene (PCE) from one tank the metal pipe began to leak. The hole in the pipe let out a very steady drip of PCE. An employee notified Roger Daniels who decided to ignore the leak and instructed his employees to carry on working. Two days later Roger called an engineer to repair the leak but they could not attend until 5 days had elapsed.

About a month later Rawhide Tannery was contacted by the Environment Authority who had been alerted to a serious pollution incident on the Umfolozi River. They had traced the source of the chemical leak back to the tannery premises. During a site visit, an Environment Authority Inspector asked to examine their manufacturing process documents. It transpired that these were extremely out-of-date and contained many inaccuracies. The Environmental Authority also requested the details of waste management records. Rawhide Tannery possesses no waste management licence. Any waste chemicals are stored in the corner of the site in large tanks pending disposal. There are no protective barriers around the waste storage tanks and the business has been using a local company, San-Projects Ltd, to remove the waste as they offered the cheapest prices. Roger Daniels became very angry at the constant questioning and ordered the officer to leave the premises. A week later, Roger received a letter from Muriwa Attorneys representing Eagles Nest Farm who are situated 2 km down the river. The letter alleged that, as a result of the incident, Eagles Nest Farm sustained serious losses from the pollution of their only source of water which they used to water their livestock. They are seeking to recover damages in the region of six million Emalangeni.

Discuss the potential liability of Roger Daniels and the Rawhide Tannery.

[25 Marks]

QUESTION 2

- (a) To what extent is the environment protected in terms of the Constitution of the Kingdom of Eswatini? [15 Marks]
- (b) Write an essay in which you explain how the relationship between the sovereign right of states to exploit their own natural resources and the responsibility of states to ensure that activities within their jurisdiction do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction historically came to form part of the core principles of international environmental law today. [10 Marks]

[TOTAL: 25 MARKS]

QUESTION 3

- (a) define international environmental law. [2]
- (b) State three of the environmental principles set out in section 5 of the Environmental Management Act, 2002. [6]
- (d) Give a brief analysis of the principle of 'common but differentiated environmental responsibility' set out in the Rio Declaration. [4]
- (e) Critically analyse the powers and functions of inspectors bestowed upon them in terms of section 61 of the Swaziland Environment Management Act, 2002. [13]

[TOTAL: 25 MARKS]

QUESTION 4

- (a) Describe the nature of international environmental law, and the increasingly vital purposes it must serve for sustaining the wellbeing of humanity and the Earth itself, and how reconciling economic and environmental goals is a

fundamental challenge for the law.

[15 Marks]

(b) What do you understand by the legal requirement of environmental impact assessment? [10 Marks]

[TOTAL: 25 MARKS]

QUESTION 5

(a) Describe the procedure for domestication of international conventions/treaties in Swaziland. [6 Marks]

(b) What is the value of non-incorporated international agreements in Swazi national law? [4 Marks]

(c) According to article 38 of the ICJ statute, what are the main sources of international law? [5 Marks]

(d) Describe the principle of public participation in environmental governance. [10 Marks]

[TOTAL: 25 MARKS]

QUESTION 6

Describe how the court/tribunal decisions in the *Trail Smelter* case (1938), the *Corfu Channel* case (1946), and the *Lake Lanoux* arbitration (1957) contributed to the development of international environmental law. In each case you are to give the facts, the legal issues and the reasoning behind the decision.

[25 MARKS]

END OF EXAM