



UNIVERSITY OF ESWATINI

SEMESTER I MAIN EXAMINATION PAPER, APRIL 2021

INSTITUTE OF POST-GRADUATE STUDIES

Course Code: **BIO601 / ERM604**

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 refer to legal authority in your answers.

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)

Eric owns a small-holding farm with a few animals, a fish pond and maize plantations. He makes a living from his farming. The small holding lies adjacent to a national road. On a rainy and foggy night, a truck driving on the national road and carrying a load of fertiliser lost control due to the drunkenness of its driver, veered off the national road and overturned into Eric's land spilling the load of fertiliser into the fish pond on his property. As a result, the pond got contaminated and polluted. On that fateful night, Eric was not home. Upon his return the following day, he found all the fish dead and floating. Eric has approached you for legal advice. Construct a detailed legal opinion in which you address the following:

- (a) Identify at least three legal issues that arise from the facts.
- (b) State and explain the statutory law and common law rules that are applicable as regards the legal issues you have identified.
- (c) Apply those rules to the facts by developing legally supported argument(s) as to the rights and liability of each party.
- (d) Explain what penal sanctions may be faced by the truck driver/owner, and, what civil law remedies are available to Eric.

[40 MARKS]

QUESTION 2

- (a) State and briefly explain 5 provisions of the Constitution of the Kingdom of Eswatini that are of specific relevance to environmental protection [5 Marks]
- (b) Write a brief explanatory note on the linkages between human rights and environmental protection. [5 Marks]
- (c) Write a brief explanatory note on the 'no-harm' principle as it relates to the environmental interests of neighbouring states. [5 Marks]
- (d) Define international environmental law. [2 Marks]
- (e) Explain the precautionary principle of international environmental law. [3 Marks]

[TOTAL: 20 MARKS]

QUESTION 3

- (a) Principle 7 of the Rio Declaration explicitly affirms that "In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities." Explain the foundations of this principle. [4 Marks]
- (b) What most important Principle was enunciated in the Stockholm Declaration and repeated in the Rio Declaration? [2 Marks]
- (d) Give an explanation of the concept of 'soft law' as it relates to international environmental law. [4 Marks]
- (e) Distinguish between a multilateral treaty and a bilateral treaty and give one example of each. [3 Marks]
- (f) What are the pre-requisites for state practice and international custom to be accepted as law? [7 Marks]

[TOTAL: 20 MARKS]

QUESTION 4

- (a) State and explain 'the principle' (not the penalty) enshrined in Part V of the Environment Management Act No. 5 of 2002 that deals with:
- (i) Prohibition against discharges [3 Marks]
 - (ii) Reporting of discharges [3 Marks]
- (b) State and explain 'the principles' (not the penalties) enshrined in Part VI of the Environment Management Act No. 5 of 2002 that deal with:
- (i) Waste management [5 Marks]
 - (ii) Waste licences [5 Marks]
 - (iii) Harzadous waste [2 Marks]
- (c) What is the value of international agreements that have been signed and ratified by the government of Eswatini, but have not yet been domesticated? [2 Marks]

[TOTAL: 20 MARKS]

QUESTION 5

(a) What do you understand by the legal requirement of environmental impact assessment? [5 Marks]

(b) The principle of public participation calls for transparency in environmental governance. What principles, platforms and processes are provided for by the Environment Management Act No. 5 of 2002 to ensure the protection and realisation of the right to public participation in environmental matters? [5 Marks]

(c) Some lawyers have argued that the powers of inspectors provided for in section 61 of the Environment Management Act No. 5 of 2002 are too broad and allow for an infringement of the constitutional right to privacy. What is your legal opinion?

[10 Marks]

[TOTAL: 20 MARKS]

END OF EXAM