

UNIVERSITY OF SWAZILAND
INSTITUTE OF DISTANCE EDUCATION
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER, MAY 2005

TITLE OF PAPER : **ADMINISTRATIVE LAW**

COURSE CODE : **DL 033**

TIME ALLOWED : **THREE (3) HOURS**

INSTRUCTIONS :

1. **ATTEMPT ANY FOUR (4) QUESTIONS.**
2. **START EACH QUESTION ON A SEPARATE SHEET.**
3. **EACH QUESTION CARRIES EQUAL MARKS.**

THIS PAPER SHOULD NOT BE OPENED UNTIL PERMISSION HAS BEEN GIVEN BY THE INVIGILATOR.

QUESTION ONE

The following three (3) cases, namely; **Bhekindlela Thomas Ngwenya vs The Deputy Minister and The Immigration Officer 1970-76 SLR 119, Chief Mtfuso II and Others vs The Swaziland Government**, Unreported Appeal Case No. 40/2000 and **Chief Mliba Fakudze and Others vs The Swaziland Government and The Minister of Home Affairs**, Unreported Appeal Case No. 37/200, all have one common distinct feature found in the field of administrative law.

What is the feature? How did it manifest itself in these cases (specifically stating how it had been designed to work in each case?) How have the Courts dealt with this feature in these cases and in general? What are the criticisms against this feature?

[25 marks]

QUESTION TWO

The Senate of the University of Swaziland fails and discontinues Sima Mushala from pursuing a Masters Degree in Environmental Sciences.

There is no specific Regulation providing for a student to repeat once he has failed a Masters Degree. The Under Graduate, Diploma and Certificate programs have a Regulation that a student who fails is allowed to supplement, if he/she fails a supplementary examination he/she repeats the year and is discontinued after failing twice.

Sima Mushala appeals, in writing, against the result. The Senate dismisses the appeal and communicates the decision to Sima Mushala in writing.

Sima Mushala challenges the decision on the grounds that:

- i) there was a legitimate expectation from a violation of the Rule and/or from practice commonly accepted at the University with regard to post graduate studies that in the event a student fails, he/she is allowed to repeat;
- ii) Senate took into account irrelevant Regulations and/or breached Regulations by discontinuing him;
- iii) The decision is not supported by any reason;

- iv) the Senate failed to act fairly and reasonably.

Advise Sima Mushala.

[25 marks]

QUESTION THREE

Outline and briefly discuss the grounds for Judicial Review.

[25 marks]

QUESTION FOUR

Sub-section (1) and (3) of Section 39 of the Civil Service Board (General) Regulations, 1963, read as follows:-

If the Minister considers that the interests of the service require that an officer should cease forthwith to exercise the powers and functions of his/her office, The Minister may interdict the Officer him from the exercise of those powers and functions, if disciplinary proceedings are being taken or are about to be taken or if criminal proceedings are being instituted against such Officer.

(3) An officer who is interdicted shall receive such emoluments, not being less than one half of his normal emoluments as the Minister thinks fit"

Section 2 of these Regulations defines the word "Minister" as follows:

"Minister' means the Prime Minister and includes any Assistant Minister to whom the Prime Minister has delegated any duties or functions under the Civil Service Order, No. 16 of 1973."

The Principal Secretary in the Ministry of Agriculture notifies Simo Dlomo that disciplinary action is contemplated against him on allegations of corruption and that pending the outcome of a Departmental Enquiry, the Prime Minister has authorized the Principal Secretary to suspend Simo Dlomo. The Principal Secretary further informed Simo Dlomo that during the period of suspension he would be paid only half of his salary. Simo Dlomo challenges both the suspension and reduction of his salary as unlawful in that nobody other than the Prime Minister or any member specially delegated by the Prime Minister has the power to suspend and to reduce salaries in terms of Section 39 of the Civil Service Board (General) Regulations, 1963.

Advise Simo Dlomo.

[25 marks]

QUESTION FIVE

Write short notes on any three of the following:

- i) Applying ones mind to a matter
- ii) *Locus standi*
- iii) *Delegatus non potest delegare*
- iv) *Functus officio*
- v) Distinction between Appeal and Review.

[25 marks]

QUESTION SIX

- a) Discuss the Doctrine of Separation of Powers.

[10 marks]

- b) To what extent does the Draft Constitution of Swaziland guarantee or embody the Doctrine of Separation of Powers?

[15 marks]

[Total: 25 marks]

QUESTION SEVEN

Under an enabling Act, the Piggs Peak Town Board, (the Board) has power to grant licences to operate taxis. The Act provides that before a licence can be granted, a number of factors must be taken into account. These are:

the character of the Applicant; the financial standing of the Applicant; the smooth flow of traffic in Piggs Peak and the demand for taxis. The Act also requires the Board to establish a Licensing Committee (the Committee) charged with the responsibility of discharging the licensing functions. The Board has accordingly established the Committee. Lenhle is the chairperson of the Committee. Her husband, Siphon Davidson operates a large fleet of taxis in Piggs Peak. Siphon is also the President of the Taxi Operators Association (the Association) of Piggs Peak. The Association represents the interests of most taxi operators in the town. Ntokozo has applied to the Board for a licence to operate a taxi. The application has been turned down for the following reasons:

- i) That inquiries with the police revealed that Ntokozo had a criminal record of a minor assault for which he was unconditionally discharged by the Magistrates' Court.

- ii) That the Association which represents taxi operators in Piggs Peak had recommended to the Committee that, for the time being, new licences should not be granted as Piggs Peak was becoming over crowded with taxis.

The decision to turn down Ntokozo's application and the reasons thereof have been communicated to her by Lenhle verbally when they met by chance at Piggs Peak Score Supermarket.

Advise Ntokozo on the following:

- a) Whether there are any grounds for challenging the decision to reject the licence application;
- b) The procedure for instituting judicial review proceedings.

[25 marks]