

**INSTITUTE OF DISTANCE EDUCATION**

**LAW DEPARTMENT**

**SUPPLEMENTARY EXAMINATION QUESTION PAPER JULY 2005**

TITLE OF PAPER : ADMINISTRATIVE LAW

COURSE CODE : IDE-DL033

TIME ALLOWED : THREE HOURS

INSTRUCTIONS : ANSWER ANY FOUR QUESTIONS.

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR.

**QUESTION ONE**

- a) "In review proceedings the function of the Court is not to replace the decision of the administrative agency with the court's own decision but merely to determine the legality of administrative actions and decisions."

Discuss this statement, indicating the circumstances under which the court will order specific performance by the administrator.

[10 marks]

- b) The Chief Justice is unhappy about his terms and conditions of employment. He challenges this at the High Court of Swaziland. One of the judges who sits to hear the matter is the Chief Justice's colleague in the same Court. The Government of the Kingdom of Swaziland wants to challenge the judge from hearing the matter. Advise the Government.

[15 marks]

**QUESTION TWO**

Hilton Maseko, who describes himself as a political activist and an outspoken opponent of the present Government, recently graduated from the University of Swaziland. He now wants to become a teacher. To this end he applied to the Teaching Service Commission, the only public authority which can grant him permission to do so. The requirement in terms of the Teaching Service Act, 1981 is that he should apply for membership of the Service by completing a certain application form, which he did as did everyone else in his graduating class. Whereas all his colleagues were admitted to the service and duly posted to various schools, he received no reply to his application and remains unemployed.

There is evidence that in previous years, all applicants for membership of the service were admitted. He decided to approach the Secretary of the Service who advised him to write a letter of application which he did. The Secretary invited him for an interview. Following the interview, Maseko received a letter which expressed the Service's regret that he could not be offered a position. No reasons were given, notwithstanding Maseko's two day sit-in at the Minister's office in protest.

Advise Maseko who wishes to challenge his exclusion from the Teaching Service, indicating in your advice such procedures as he may be required to follow.

[25 marks]

### **QUESTION THREE**

The case of **Elias V. Dlamini vs Principal Secretary in the Ministry of Agriculture and Co-operatives and the Swaziland Government**, unreported Appeal Court Case No: 12/2000 demonstrates the subject of proper delegation of administrative power. In general terms narrate how this was shown in this case.

[25 marks]

### **QUESTION FOUR**

The University of Swaziland in Kwaluseni has disqualified a student, Melusi Dlomo from writing an examination on the basis of a report submitted to it by the Disciplinary Investigative Committee which was commissioned to investigate claims of unfair means used by some students in a previously written paper.

Melusi was never told about the source of the information of his use of the unfair means. He was neither given a chance to cross-examine the informant regarding these allegations. Advise Melusi on any possible remedy he has against the University.

[25 marks]

**QUESTION 5**

Discuss the meaning and purpose of delegated legislation and give an outline of all the main safeguard/s against its abuse.

[25 marks]

**QUESTION 6**

What are the sources of Administrative law.

[25 marks]

**QUESTION 7**

Discuss the content of the rules of Natural Justice with reference to cases decided in Swaziland

[25 marks]