

UNIVERSITY OF SWAZILANDDEPARTMENT OF LAWFINAL EXAMINATION PAPER, 2005 (MAIN)

TITLE OF PAPER : ADMINISTRATIVE LAW

COURSE CODE : L205

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS : ANSWER FOUR (4) QUESTIONS  
ALL QUESTIONS CARRY EQUAL MARKS

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GRANTED BY THE INVIGILATOR.**

### QUESTION ONE

The Immigration and Security Act provides in section 3 that:

1. The Minister may make an order requiring an alien to leave Swaziland if the Minister is satisfied that the presence of the alien constitutes a threat to public order.
2. A deportation order shall be in writing under the hand of the Minister and shall specify the period of days to lapse after service of the order before the order is to take effect.
3. On the expiration of the period specified in the order, the alien shall be deemed a prohibited immigrant.
4. An appeal shall not be made against a notice that a person is a prohibited immigrant by reason of sub-section (3).

Jake is a trade unionist and a citizen of the Republic of South Africa. He arrived in the kingdom two weeks ago to advise unions on how to organize themselves effectively against employers. His visit has coincided with a strike action at one of the timber factories in the Kingdom. Jake has been served with a letter requiring him to leave Swaziland immediately. The letter, which is signed by the Chief Immigration Officer states that Jake's presence in Swaziland is deemed by the Minister to constitute a threat to public order according to section 3 (1) of the Act.

Advise Jake who is now in custody awaiting deportation on the following;

- a) Whether there are any grounds for challenging the deportation order
- b) The remedies, if any, that may be available to him
- c) The procedure for instituting judicial review proceedings.

[25 marks]

## QUESTION TWO

What is the rationale for delegated legislation and to what extent is such legislation subject to effective controls?

[25 marks]

## QUESTION THREE

Under an enabling act the Manzini City Council has the power to grant licenses to operate taxis. The Act provides that before a license is granted, a number of factors must be taken into account. These are:

- a) the character of the applicant;
- b) the financial standing of the applicant;
- c) the sooth flow of traffic in Manzini; and
- d) the demand for taxis.

The Act also requires the Council to establish a Licensing Committee charged with the responsibility of discharging the licensing functions. The Council has established the Committee. Vilane is the chairperson of the Committee. His wife Phumzile operates a fleet of taxis in Manzini. Phumzile is also the President of the Taxi Operator's Association of Manzini. Nathi Dlamini has applied to the Council for a license to operate a taxi. His application is turned down for the following reasons;

- i) That inquiries with the police revealed that Nathi had a criminal record for a minor assault for which he was unconditionally discharged by a Magistrate;
- ii) That the Association which represents taxi operators in Manzini has recommended to the Committee that for the time being no new licenses should be granted as Manzini was being over provided with taxis.

The decision to turn down Nathi's application, and the reasons therefore, have been communicated to him by Vilane verbally when they met by chance at the Spar Supermarket in Manzini.

Advise Nathi on the following;

- a) Whether there are grounds for challenging the decision to reject the licensing application, and
- b) The procedure for instituting judicial review.

[25 marks]

#### QUESTION FOUR

Write a commentary on the sources of administrative law and its (administrative law's) purpose.

[25 marks]

#### QUESTION FIVE

The case of *Elias Dlamini v. The Principal Secretary in the Ministry of Agriculture and Cooperatives, unreported case No. 12/2000* is a good example of improper delegation of administrative power by senior government officials in Swaziland.

Discuss.

[25 marks]

#### QUESTION SIX

“Statutory power must be used only for that purpose for which it was given otherwise the administrative act or decision may be rendered ultra vires.”

Having regard to decided cases, discuss the above statement.

[25 marks]