

Course Code: L103 (M) 2008

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

FINAL EXAMINATION PAPER, MAY 2008

TITLE OF PAPER : CONSTITUTIONAL LAW

COURSE CODE : L103

TIME ALLOWED : THREE (3) HOURS.

INSTRUCTIONS :

- (1) ANSWER FOUR QUESTIONS.**
- (2) ALL QUESTIONS CARRY EQUAL MARKS.**

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INVIGILATOR**

QUESTION 1

In the year 2001 the state of Graceland gained independence from Great Britain. Like all newly independent states, the people of Graceland wanted to have a written constitution reflective of their history, and their aspirations as a nation. After thorough consultation, the people of Graceland were still not agreed about the nature and system of government they wanted for the new state. Constitutional law experts were consulted and they gave very conflicting responses. When the committee entrusted with the work of drafting the constitution was at the end of its tether, they approached you, an expert of constitutional law. They sought your advice on the nature of the constitutions and the pros and cons of same and the systems of government that would be most suitable for a state that wanted to uphold democratic ideals and the well respected principle of constitutionalism. Advise the state of Graceland. In your brief, state what model of constitutionalism would be suitable for this new state. Give reasons for your answer.

[25 MARKS]

QUESTION 2

The United Kingdom is best known for Parliamentary Sovereignty whilst the United States of America is generally known for upholding the supremacy of the constitution. Which of the two doctrines would be suitable for Swaziland and why? Support your answer with authorities.

[25 MARKS]

QUESTION 3

Instead of enshrining the fundamental rights of the people, the Constitution of Swaziland reinforces the status quo and is a far cry from a democratic constitution. Do you agree? Discuss fully, citing relevant authorities.

[25 MARKS]

QUESTION 4

While walking down the bus rank in Manzini, Sly Max was attacked by two thugs who took his bag and disappeared into the thick crowd. A few minutes later, they returned to demand money from a shaken Sly Max. Both of them were brandishing deadly knives. Sly Max tried to run away but was overtaken and beaten viciously. He was already bleeding profusely when he wrenched himself free and attempted another escape. Once again he was overtaken and beaten viciously. At this point he saw a broken bottle lying nearby. In an attempt to ward off one of his assailants, he threw the broken bottle at the neck of the thug inflicting a fatal wound in the process. The thug died on arrival at the RFM hospital, Manzini.

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Sly Max was arrested by the Police. Although he had been in custody for six weeks, he had not been charged. When his lawyer, Elizabeth Roland went to see him at the Police Station, she was refused permission to talk to him. The Police argued that he was not under arrest but detention for purposes of investigation.

In a country without a written constitution guaranteeing fundamental civil liberties how can Elizabeth Roland secure the freedom of her client? Discuss, making reference to decided cases.

[25 MARKS]

QUESTION 5

The law pertaining the conduct of national elections in Swaziland is a sham as it is meant to give a false impression to the unsuspecting international community that Swaziland has a vibrant democracy under the Tinkhundla system of government. Critically assess the validity of this statement, citing relevant authorities.

[25 MARKS]