

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCE**  
**DEPARTMENT OF LAW**  
**FINAL EXAMINATION PAPER, MAY, 2009**

**TITLE OF PAPER: CONSTITUTIONAL LAW**

**COURSE CODE: L 103**

**TIME ALLOWED: THREE HOURS**

**INSTRUCTIONS: 1) ANSWER FOUR (4) QUESTIONS**  
**2) ALL QUESTIONS CARRY EQUAL MARKS**

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GRANTED BY THE INVIGILATOR.**

**QUESTION 1.**

Compare and contrast the Westminster and Republican models of constitutionalism. Which model would you recommend for Swaziland and why?

(25 Marks)

**QUESTION 2.**

When judges interpret open-ended provisions of the Constitution they are engaged in lawmaking of a different kind. The lawmaking function of judges flies in the face of a popular strain of Western political theory, of law being made by the elected representatives of the people. Critically evaluate the validity of this statement. What are the pros and cons of judicial review in Constitutional law?

(25 Marks)

**QUESTION 3.**

Proponents of the *Tinkhundla* system of government argue that the King's Proclamation to the Nation was "repealed" when the Constitution Act became operational and that Swaziland adheres to all the basic tenets of a constitutional state. Critics of the system argue that the Constitution Act/2005 is nothing but the King's Proclamation reincarnate. What is the accurate position of Swaziland's constitutional position? Give reasons for your answer making reference to authorities.

(25 Marks)

**QUESTION 4.**

The Kingdom of Swaziland has largely domesticated the United Nation's Basic Principles on Independence of the Judiciary. Do you agree? Give reasons for your answer making reference to authorities.

(25 Marks)

**QUESTION 5.**

The State of Calakabusha is newly independent. It is in the process of crafting a new constitution and a majority of the people argue that they want a "clean break with the past"—which is to say their new constitution must be autochthonous. The Constitutional Assembly is a body responsible for the drafting of the new constitution. The Constitutional Assembly is divided on whether to adhere to a strict separation of powers or to follow a "fused" system of powers of the Legislative, Executive and Judicial organs of State. You have been hired as an international legal expert on constitutional law to assist the state of Calakabusha. Write a brief for presentation before the Constitutional Assembly. Refer to authorities.

(25 Marks)