

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

FINAL EXAMINATION

MAY 2009

TITLE OF PAPER: ADMINISTRATIVE LAW

COURSE CODE: L205

TIME ALLOWED: THREE (3) HOURS

INSTRUCTIONS:

- (a) ANSWER ANY FOUR (4) QUESTIONS.**
- (b) EACH QUESTION CARRIES A TOTAL MARK OF 25.**
- (c) THE CONTENT OF YOUR ANSWERS, CLARITY OF EXPRESSION AND LEGIBILITY OF YOUR HANDWRITING ARE ALL EXTREMELY ESSENTIAL.**

DO NOT OPEN THIS PAPER UNTIL SO PERMITTED BY THE INVIGILATOR.

Question one:

Parliamentary business can at times be extremely demanding, hence the august house will delegate some of its law making powers to other bodies. These are not, however, given without accompanying checks and balances. These safeguards mirror those used in the creation of statutes. Of note, was the enactment of the Suppression of Terrorism Act in 2008, which was met with a lot of public outcry, with some quarters claiming that the Act was spun without public involvement and promulgation. Critically analyze this contention in light of the checks and balances for subordinate legislation, whilst addressing yourself to the peculiarities of the promulgation of the 2008 Act.

(25 Marks)

Question two:

There are arguments that Swazi customary law is a source of administrative law. Critically analyze this statement.

(25 Marks)

Question three:

Farm 10/38 Hlantambita, which falls under Title Deed Land (TDL), is located next to the Mkhaya Game Reserve (MGR) in the Lubombo Region of Swaziland. The Lubombo Region is a drought stricken, barely arable, poverty riddled area where a majority of the populace rely on food aid, since subsistence farming no longer produces enough food. A majority of the dwellers of Farm 10/38 claimed to have settled there over a long period spanning over 90 years. Most of them were born there, and their ancestors' graves are located within the farm.

The Hlantambita Evictions in 2006 were shrouded in a cloud of controversy in the manner in which they evolved. In November 2004, residents of Farm 10/38 Hlantambita in the Lubombo region were served with letters of eviction by lawyers representing MGR, instructing them to attend a meeting to discuss their looming evictions from the farm. Prior to these letters of eviction, all residents *bona fide* believed the land to be Swazi Nation Land, and not TDL, hence for the duration of their stay on the farm they had paid allegiance to the chief of the area.

The letters inviting the residents to a meeting were written in English, in spite of the community's illiteracy. An NGO, Human Rights Now, stumbled upon the looming evictions in late February 2005. Residents had been barred from ploughing their fields pending their exit from the farm. MGR management offered E5000 (approximately US\$700) as compensation for this arbitrary eviction, plus transport to wherever the residents would wish relocate to. The MGR management also began

erecting new fences and warned residents not to trespass whilst the matter was going through the tribunal system.

The issuance of the eviction letters and erection of fences took place prior to the coming into force of the Constitution of Swaziland, hence resort was only to the Farm Dwellers Control Act as the governing legislation for such issues. (NB: This Act further ousts the jurisdiction of the any court to hear an eviction matter. It establishes a tribunal for deliberating on eviction of farm dwellers, with appeals from decisions of the tribunal lying to the Minister. The Minister's decision is final as per section 9 of the Act). The residents approached the Regional Tribunal in Siteki as provided for under the Act to challenge their eviction. This process was riddled with delays and referrals back to the negotiating table. On their initial appearance before the tribunal, the matter was postponed by a further two months to allow the owners of the MGR to send representatives.

During the second appearance, both parties were represented by lawyers. On commencement of proceedings, the legal representatives for the community of Hlantambita were asked to leave the room, so that the residents would speak on their own. Protests from the lawyers for the residents fell on deaf ears as the Chairman of the Tribunal threatened to abandon the case.

In the absence of legal representation for the community, the Chairman made an order that the eviction should be stayed, while the parties went back to the negotiating table. Subsequent to the order, the MGR management, through its lawyers issued invitation letters to the community to attend the consultative meetings that the Chairman ordered. The letters emphasised the importance of the meeting and stated that residents could also send representatives.

When the meeting was convened on the farm, there was heavy police presence. The legal representative for the MGR accused lawyers who had attended the meeting on behalf of the community of trespassing and told the police to arrest them. The police duly effected the arrest while the community's legal team was parked on the public road that passes through Farm 10/38.

Subsequent communication to the Regional Tribunal by the lawyers for the residents, asking for written particulars of its decision were met with disdain from the Chairman, who retorted by saying the matter had already been transmitted to the Central Tribunal in Mbabane. However, upon enquiry sent to the Central Tribunal, the information officer denied knowledge of such a case.

Meanwhile residents sought redress under Swazi customary law by appealing to the king whilst the matter was simultaneously being pursued through the tribunal system as well. In 2006, after the

Constitution of Swaziland had come into force, this customary route failed. The king sitting with his advisory body, sanctioned the eviction of the more than 20 families residing on Farm 10/38 Hlantambita. No compensation was provided to the more than 200 people affected, save for alternative land to relocate to.

You have been retained by the community to draft a legal opinion using your administrative law knowledge, on what infringements occurred and how they can be addressed.

(25 Marks)

Question four:

There are arguments that the doctrine of unreasonableness (*Wednesbury* unreasonableness) does not form part of our law, but that instead, irrationality is one of the judicial controls over administrative action. Discuss.

(25 Marks)

Question five:

Manuel Shandu is a small businessman in Nyakatfo in the Hhohho region. He is known in the community for his strong political views, which many of the rural dwellers consider to be unpatriotic and unSwazi. He runs a pre-school (based in Mbabane), a piggery, a block yard and a butchery, all of which are based in Nyakatfo. In the beginning of 2008, Shandu decided to venture into the lucrative liquor industry by opening up a bottle store in the area. He followed the necessary channels in terms of making an application to the Liquor Licensing Board.

In the run up to the elections, one of the members of the Board, one Mr Moyo, who has a bottle store in the area already, started giving away free beers to the youth in return for votes in favour of his brother, Mandla, who was running for elections. When Moyo approached Shandu enquiring if he has registered for the elections, Shandu's response was '*I apply a no voting policy*'. Moyo, who had caught wind of the intended application for a licence by Shandu, sarcastically retorted, '*You scratch my back, I scratch yours*,' and zoomed off. The elections came and passed, and Mandla was elected. A week later, a notice came out in the local papers for liquor licences that had been applied for in the Nyakatfo area, and not only Shandu's name was there, but Moyo's brother, Mandla the new Member of Parliament as well.

At the hearing for the application, Shandu appeared before a three man panel, comprising Moyo and two other unknown gentlemen. Moyo's first question to Shandu was 'Can we see your voter registration card please'. Shandu's response was that he had not come to vote, but to motivate his

liquor license application. The other two gentlemen chuckled to each other in hushed tones and said something to the effect that 'oh this is the one Moyo was talking about'.

After hearing Shandu's application, the panel informed him that his application had been declined. When he attempted to find out the reasons behind the unfavourable decision, he was told to try again next time. When he presses on with his questions, one of the panel members blurts out, 'how can you mix a pre-school and selling beers, do you want to kill our children?' His demands for a written response from the board also did not yield fruit.

Shandu subsequently met Moyo's brother Mandla at the local tavern, and in his drunken state began to grill Shandu on his political stance, stating how it will cost him so many business opportunities. Mandla also reiterated his brother's words, 'I scratch your back your scratch mine', and mentioned that these were the repercussions of not voting.

You have been retained by Shandu to render advice in this matter. What advice would you give?

(25 Marks)