

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, MAY, 2010

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

DO NOT OPEN THIS PAPER UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR.

QUESTION 1.

The term "constitution" generally has two meanings. First, it refers to a system of governance in a country. Secondly, the word is used more narrowly to refer to a legal document that defines the structures, powers and capacities of government as well as the relationship between state and citizen. Discuss what in your view, a modern constitution as understood in the latter sense should contain and why, state also what functions such a constitution performs.

(25 Marks)

QUESTION 2.

The essence of the doctrine of constitutionalism is that the power of the State should be defined and limited by law to protect the interests of society. It is a way of ensuring limited government as opposed to the arbitrary rule of an autocracy or a dictatorship. Discuss how the principle of limitation applies in a State that adheres to the doctrine of constitutionalism.

(25 Marks)

QUESTION 3.

At independence, Swaziland was bequeathed with a Westminster export model constitution which was abrogated in 1973 only to be "reborn" in 2005 through the Constitution Act, 2005. Critically evaluate the validity of this statement making reference to authorities.

(25 Marks)

QUESTION 4.

At the official opening of the Second Session of the Ninth Parliament on the 12 February, 2010, the question of the "separation of powers" was raised during the speech by the President of the Senate. The President of

the Senate stated that Parliament is not an arm of government because it does not report nor account to the Head of government. The Head of government subsequently issued a statement in which he stated that Parliament is an arm of government and that "outside the chambers of Parliament, the Prime Minister is answerable for the affairs of Parliament". As an expert in constitutional law you are called upon to give an opinion on the correct position regarding the concept of separation of powers as applicable in the Kingdom of Swaziland. Your opinion should make reference to authorities.

(25 Marks)

QUESTION 5.

Constitutionalism is synonymous with the concept of the Rule of law save for the fact that the latter is an older concept than the former. Discuss the similarities and dissimilarities of both concepts making specific reference to the points where the two concepts converge.

(25 Marks)