

**UNIVERSITY OF SWAZILAND**

**INSTITUTE OF DISTANCE EDUCATION**

**MAIN EXAMINATION MAY 2011.**

**COURSE NAME** : CONSTITUTIONAL LAW

**COURSE CODE** : DL 028

**TIME ALLOWED** : THREE (3) HOURS

**INSTRUCTIONS** ANSWER ANY FOUR (4) QUESTIONS INCLUDING QUESTION ONE.  
QUESTION ONE IS COMPULSORY.

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR.

**Question one**

According to the Commonwealth (Latimer House) Principles on the Three Branches of Government of June 1998, these institutions, whether legislative, judicial or executive, must always have the confidence of their people in that they must be transparent in their deliberations and accountable for their decisions. Each institution has a distinct role to play as well as each being a check or balancing mechanism for another.

With reference to relevant cases, briefly discuss the principles of the independence of the judiciary. (25 marks).

**Question two**

Compare and contrast the Westminster model and the Tinkhundla System of government. Which of the two has a greater democratic appeal? Support your answer. (25 marks).

**Question three**

With reference to relevant cases and the Constitution of the Kingdom of Swaziland of July 2005, briefly discuss the following rights and corresponding limitations.

- a. The right to life. (15 marks).
  - b. Protection from inhuman or degrading treatment. (10 marks).
- (25 marks)

**Question four.**

The provisions of common law also provides for the protection of human rights. Individual rights can effectively be protected by judges under common law and not written constitutions or special courts. This is provided by Dicey in the Rule of Law. For every wrongful encroachment upon one's right, there is a legal remedy accessible by legal suit "*ubi jus, ibi remedium*".

In **Krohn v. The Minister of Defence 1915 AD at 197**, Innes CJ said:

"If any man's right or personal liberty or property are threatened, whether by the government or private individual, the courts are open for his/her protection. And behind the courts is ranged the full power of the state to ensure the enforcement of their decrees".

With reference to relevant cases, discuss and give five remedies available for encroachment upon one's right. (25 marks).

**QUESTION 5**

With reference to relevant cases, briefly discuss how fundamental rights and freedoms are positively and negatively observed in Swaziland since independence to date.

(25 marks).