

UNIVERSITY OF SWAZILAND

138

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

FINAL EXAMINATION

MAY 2011

TITLE OF PAPER: ADMINISTRATIVE LAW

COURSE CODE: L205

TIME ALLOWED: THREE (3) HOURS

- INSTRUCTIONS:**
- (a) ANSWER ANY FOUR QUESTIONS, INCLUDING QUESTION 1 WHICH IS COMPULSORY.**
 - (b) EACH QUESTION CARRIES A TOTAL OF 25 MARKS.**
 - (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 (Compulsory)

The term public power is an elusive concept. However, our courts have attempted to proffer a working definition. With case illustrations, define this term.

(25 Marks)

Question Two

The main purpose of administrative law is to regulate governmental business and the exercise of public power. The complexity and technical nature of the laws administered by public institution is often given as the main reason for the need to regulate their behaviour. However, the case of *Chief Mliba Fakudze* paints a different picture as regards the motivations of certain state behaviour. Critically analyse the above statement.

(25 Marks)

Question Three

In the beginning of 2011, four boys (students) were expelled from Mhlatane High School in the small town of Piggs Peak in the Hhohho region of Swaziland. The four students had been earlier reported to the school authorities for having been found drunk. The act of imbibing in intoxicating substances took place away from school property and on a weekend. When the alleged incident took place, the students were doing their Grade 11 (Form 4) at the school known for institutionalised corporal and hard-labour punishment.

In October 2010, the boys were called to a 'hearing' where their parents were also present. They were verbally informed of the charge preferred against them, but were never advised about the right to legal representation or to appeal. They initially denied ever participating in these alleged acts. After being subjected to 60 strokes of the cane each, they quickly admitted to have been part of the group that got drunk. The panel of teachers that had inflicted corporal punishment on them warned them not to engage in such unbecoming behaviour again, and that the matter was concluded.

However, in December 2010, upon receiving the end of year results, the students found that their result slips contained a statement which read, '*Passed, but try another school for 2011*'. When they tried to pursue this matter with the school's principal, a Mr Makhubu, they were denied audience. The students' attempts to engage the Ministry of Education also proved futile. To date, the reasons for the school's decision have not been communicated to the students, save for media snippets in the Times of Swaziland, where the principal and one of the class teachers refer to one of the students as a smoker who is ill-disciplined. In the media statements, the principal highlighted that the students were economical with the truth, that they should tell their parents why they were expelled, and that these would include smoking, being accused of theft and several run-ins with the law enforcement agency in Piggs Peak.

Advise the students on whether they should appeal the decision or use other methods of controlling this kind of administrative action. Further, advise the students on the grounds on which this case turns.

(25 Marks)

Question Four

Write short notes on the following:

- (a) *Certiorari*. (5)
- (b) Section 33 of the Swaziland Constitution. (5)
- (c) Legitimate expectation. (10)
- (d) *Audi alteram partem*. (5)

(25 Marks)

Question Five

The thin line between politics and administrative law was brought to the fore in the *Merafong Demarcation Forum Case CCT41/07*. Articulate the developments in this case and the administrative law principles applicable.

(25 Marks)

Question Six

The task of law-making is traditionally reserved for parliament. Due to pressures on parliamentary time, the making of several legislative instruments is sometimes delegated to other bodies. What are the control measures in place to prevent the authority to whom such powers have been delegated from exceeding those powers?

(25 Marks)