

UNIVERSITY OF SWAZILAND

63

INSTITUTE OF DISTANCE EDUCATION

MAIN EXAMINATION PAPER MAY 2012

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

The commonwealth constitutions guaranteeing human rights have implemented the common law view that rights are protected not by merely declaring them, but by providing a means for their enforcement; the rule is *ubi jus ibi remedium*. ...any individual whose guaranteed right had been infringed, can apply for redress to the High Court, and the High Court is empowered to make such orders, issue such writs and give such directions as it may consider appropriate for enforcing the right, including a declaratory judgment. (Nwabueze).

With reference to relevant cases, write short notes on five types of judicial review (Rule 53) as one of the remedies available to an individual whose guaranteed right has been infringed. (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? (25 marks).

QUESTION THREE

In terms of section 56 of the Constitution of the Kingdom of Swaziland 2005, the Directive Principles of State Policy shall guide all organs and agencies of the State, citizens, organizations and other bodies and persons in applying or interpreting this Constitution or any other law and in taking and implementing any policy decisions, for the establishment of a just, free and democratic society.

- (a). Briefly discuss the law enforcement objectives and the role of policeman in the protection of human rights. (10 marks).
 - (b). Critically discuss whether these Directive Principles of State Policy are enforceable in terms of section 56(3) and 35 of the Constitution of Swaziland 2005. (10 marks).
 - (c). Outline ten constitutional rights of accused person. (5 marks).
- (25 marks)

QUESTION FOUR

In terms of section 18 of the Constitution of the Kingdom of Swaziland of 2005, the dignity of every person is inviolable and a person shall not be subjected to torture or to inhuman or degrading treatment or punishment.

Briefly discuss the above constitutional rights with reference to relevant cases.

(25 marks)

QUESTION FIVE

The maintenance of the independence of the judiciary is essential if the rule of law is to be respected. In his presidential address to the Holdsworth Club in 1950, Lord Justice Denning, as he then was stated:

“No member of the government, no member of Parliament and no official of any government has any right whatever to direct or influence or to interfere with the decisions of any of the judges. It is the sure knowledge of this that gives the people their confidence in judges... The critical test which they must pass if they are to receive the confidence of the people is that they must be independent of the executive” (M.J. Allen, B. Thompson 1996:197)

With reference to relevant cases, briefly discuss the basic principles of the independence of the judiciary.

(25 marks).