

UNIVERSITY OF SWAZILAND

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INSTITUTE OF DISTANCE EDUCATION

SUPPLEMENTARY EXAMINATION PAPER JULY 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

Briefly discuss the following modes of amending the Constitution of the Kingdom of Swaziland of 2005:

- (a) Mode of amendment of constitution in terms of section 245 of the Constitution of the Kingdom of Swaziland of 2005. (5 marks)
 - (b) Amendment of the specially entrenched provisions in terms of section 246 of the Constitution of the Kingdom of Swaziland of 2005. (5 marks)
 - (c) Amendment of the entrenched provisions in terms of section 247 of the Constitution of the Kingdom of Swaziland of 2005. (5 marks)
 - (d) Certificate of compliance in terms of section 248 of the Constitution of the Kingdom of Swaziland of 2005. (5 marks)
 - (e) Lapsing of a bill in terms of section 249 of the Constitution of the Kingdom of Swaziland of 2005. (5 marks)
- (25 marks).

Question TWO.

The provisions of common law also provides for the protection of human rights. Individual rights can effectively protected by Judges under common law and not written constitutions or special courts. This 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, ubi 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 the following remedies:

- a) Writ of mandamus (5 marks)
 - b) Spoliation order (5 marks)
 - c) Habeas corpus (5 marks)
 - d) Interdict (5 marks)
 - e) Civil action for damages (5 marks)
- (25 marks).

Question THREE

With reference to case law briefly discuss the right to administrative justice in terms of section 33 of the Constitution of the Kingdom of Swaziland of 2005 and the common law elements of this right. (25 marks)

Question FOUR

Write short notes on the functions of the Human Rights Commission in Swaziland.

(25 marks)

QUESTION FIVE

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.

Discuss the principles of the independence of the judiciary with reference to case law in Swaziland under the following topics:

(a) Institutional independence (15 marks).

(b) Individual/decisional independence (10 marks).

(25 marks)