

UNIVERSITY OF SWAZILAND

INSTITUTE OF DISTANCE EDUCATION

MAIN EXAMINATION PAPER MAY 2013

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

In terms of Decree No. 1 of 2013, you have been appointed from the office of the Elections and Boundaries Commission together with three lawyers from The Law Society of Swaziland and a judge of the High Court of Swaziland to serve as one of the panelists on civic education on procedures to be followed in the amendment of the Constitution of the Kingdom of Swaziland 2005, instead of sending petitions to the Parliament of Swaziland and street demonstrations calling for some amendments of the Constitution of the Kingdom of Swaziland 2005. The Chairman of the team has asked you to educate the civic society on the amendment of latter constitution.

Briefly discuss the following procedures and 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 to amend the Constitution 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 be effectively 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 any five (5) of the following remedies:

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

QUESTION THREE

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

QUESTION FOUR

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 1975:50).

With reference to relevant cases, write short notes on:

- (a) Judicial review (in terms Rule 53 of the High Court Rules) as one of the remedies available to an individual whose guaranteed right has been infringed. (15 marks)
 - (b) Outline the grounds of judicial review. (10 marks).
- (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)