

UNIVERSITY OF SWAZILAND

INSTITUTE OF DISTANCE EDUCATION

SUPPLEMENTARY EXAMINATION PAPER JULY 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.

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QUESTION ONE

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).

QUESTION TWO

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 THREE

Write short notes on the functions of the following members of the Executive in terms of section 77 and 78 of the Constitution of the Kingdom of Swaziland 2005 respectively.

(a) The Attorney General (15 marks)

(b) Prerogative of Mercy (10 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

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. (5 marks).
- (b). Outline the constitutional law rights of accused person during police investigations, the trial and post proceedings (10 marks)
- (c). critically discuss whether these Directive Principles of State Policy are enforceable in terms of sections 56(3) and 35 of the Constitution of the Kingdom of Swaziland 2005. (10 marks)

(25 marks)