

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER (MAIN)
YEAR: 2015/2016

TITLE OF PAPER : ADMINISTRATIVE LAW

COURSE CODE : L205

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS:

- (i) ANSWER ANY FOUR (4) QUESTIONS.**
- (ii) EACH QUESTION CARRIES A TOTAL OF 25 MARKS.**
- (iii) IN ANSWERING THE QUESTIONS, NOTE THAT THE QUALITY OF THE CONTENT, CLARITY OF EXPRESSION AND LEGIBILITY OF HANDWRITING ARE ABSOLUTELY ESSENTIAL.**

DO NOT OPEN THIS PAPER UNTIL TOLD TO DO SO BY THE INVIGILATOR.

QUESTION ONE

(a) Sigcemeza is a successful businessman who trades in liquor. Through his liquor business, he has amassed a property portfolio worth E3, 000 000.00 within a period of five years. On 12 January 2016, three months before the expiration of his liquor trading licence, he applied to the Liquor Licencing Board (the Board) for a renewal of his liquor trading licence. The Minister of Home Affairs, who is a very close friend of the Minister of Trade and Commerce under whose portfolio the Board falls, informed his friend (the Minister of Trade and Commerce) that he was interested in taking over the business from Sigcemeza. He then asked the Minister of Trade and Commerce to assist him by instructing the Board not to renew the liquor trading licence. The Minister of Trade and Commerce summoned the Board and gave them the instruction. As a consequence, Sigcemeza's application was unsuccessful. Sigcemeza has asked the High Court of Swaziland for an order reviewing and setting aside the decision of the Board. On what ground is the decision of the Board reviewable?

[10 Marks]

(b) Matshidiso is aggrieved by a decision of the High Court of Swaziland. She argues that the proceedings of the Court were fraught with irregularities. She has approached the Supreme Court of Swaziland for an order reviewing the proceedings and setting aside or correcting them. You are a competent student of administrative law. Advise Matshidiso.

[9 Marks]

(c) Distinguish between appeal and review.

[6 Marks]

[25 marks]

QUESTION TWO

Section 9(1) of the Farm Dwellers Control Act of 1982 provides as follows:

No court shall have jurisdiction to hear or determine any dispute between an owner and an umnumzane concerning any rights and liabilities under this Act or as to who are dependents of an umnumzane or to order the cancellation of an Agreement or removal of an umnumzane or his dependents from any farm.

Section 11 *bis* of the Liquor Licences Act of 1964(as amended) provides that:

An applicant or objector aggrieved by the decision of a Board in respect of the grant of or refusal to grant, renew, remove or transfer a licence or in respect of any conditions or privileges attached to a licence may, within twenty-one days of such decision appeal to the Minister whose decision shall be final and shall not be questioned in any court.

In the democratic era, it is very difficult for such legislative provisions to pass the test of constitutional justifiability. With the aid of locally decided cases, critically discuss the above statement.

[25 Marks]

QUESTION THREE

(a) In 2104, the Prime Minister of Swaziland appointed a Commission of Enquiry to investigate a road accident of the 29 April 2014 along MR3 Freeway at Malagwane Hill. Before the notice that appointed the Commission was promulgated, an official who works at the Prime Minister's Office had informed Mr. Mwaruwaru that he had seen his name among the names of the members of the Commission who were to be appointed. When the notice was published, Mr. Mwaruwaru was not appointed. Mr. Mwaruwaru is challenging the decision of the Prime Minister not to appoint him. He contends that the Prime Minister's act constitutes a breach of the *functus officio* doctrine. Advise Mr. Mwaruwaru.

[12 Marks]

(b) Describe two offices established by the Constitution of the Kingdom of Swaziland Act No. 1 of 2005 that are modelled on the institution of the Ombudsman.

[13 Marks]

[25Marks]

QUESTION FOUR

(a) Section 33(2) of The Constitution of the Kingdom of Swaziland Act No. 1 of 2005 provides as follows: 'A person appearing before any administrative authority has a right to be given reasons in writing of the decision of that authority.' Critically discuss the justifications for giving reasons in writing of the decision of an administrative authority.

[15 Marks]

(b) Critically discuss the common law remedy of correcting or substituting.

[10 Marks]

[25 Marks]

QUESTION FIVE

With the aid of decided cases, critically discuss any four sources of bias.

[25 Marks]

END OF PAPER