

**UNIVERSITY OF SWAZILAND**

**DEPARTMENT OF LAW**

**ADMINISTRATIVE LAW SUPPLEMENTARY EXAM 2016/2017**

**Programme of Study : LLB II**

**Course Code : L205**

**Time Allowed : 3 Hours**

**Examiner : Dr. M.N. Shongwe**

**INSTRUCTIONS:**

1. Answer any four (4) questions.
2. In answering questions, ensure that your expression is clear and that you refer to relevant case law.
3. Begin each question on a new page.

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### **QUESTION 1**

It has been argued that before the Swaziland Constitution of 2005 came into force, judicial review was the most significant means by which the courts could control the exercise of administrative power in Swaziland. Discuss what changes have been brought about by the 2005 constitution within the context of judicial review.

[25 Marks]

### **QUESTION 2**

With reference to authority, analyse the sources of administrative law in Swaziland.

[25 Marks]

### **QUESTION 3**

Section 140(1) of the Swaziland Constitution provides that the judicial power of Swaziland vests in the judiciary. However, in order to provide access to justice, other administrative bodies without judicial power do perform judicial functions. Describe two (2) such bodies that exist in Swaziland referring to their enabling legislation and case law.

[25 Marks]

### **QUESTION 4**

- (a) Give examples of express authority to sub-delegate in Swazi legislation. [5 Marks]
- (b) Explain the requirement of 'legality' of administrative acts? [5 Marks]
- (c) Briefly discuss the meaning of '*delegatus non potest delegare*'? [5 Marks]
- (d) Can the authority to sub-delegate be implied? Discuss briefly. [5 Marks]
- (e) When is an administrative organ or official '*functus officio*'? [5 Marks]

[Total: 25 Marks]

## QUESTION 5

The Immigration and Security Act provides in section 3 that:

1. The Minister may make an order requiring an alien to leave Swaziland if the Minister is satisfied that the presence of the alien constitutes a threat to public order.
2. A deportation order shall be in writing under the hand of the Minister and shall specify the period of days to lapse after service of the order before the order is to take effect.
3. On the expiration of the period specified in the order, the alien shall be deemed a prohibited immigrant.
4. An appeal shall not be made against a notice that a person is a prohibited immigrant by reason of sub-section (3).

Jake is a trade unionist and a citizen of the Republic of South Africa. He arrived in the kingdom two weeks ago to advise unions on how to organize themselves effectively against employers. His visit has coincided with a strike action at one of the timber factories in the Kingdom. Jake has been served with a letter requiring him to leave Swaziland immediately. The letter, which is signed by the Chief Immigration Officer states that Jake's presence in Swaziland is deemed by the Minister to constitute a threat to public order according to section 3 (1) of the Act.

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Jake is now in custody awaiting deportation. He seeks your advise on whether there are any grounds upon which the deportation order can be challenged. Advise him.

[25 Marks]

END OF PAPER