

**UNIVERSITY OF SWAZILAND**  
**FACULTY OF SOCIAL SCIENCES**  
**DEPARTMENT OF LAW**  
**FINAL EXAMINATION PAPER (MAIN)**  
**YEAR: 2016/2017**

**TITLE OF PAPER : ADMINISTRATIVE LAW**

**COURSE CODE : LAW 211**

**TIME ALLOWED : THREE (3) HOURS**

**INSTRUCTIONS:**

- (i) ANSWER ANY FOUR (4) QUESTIONS.**
- (ii) EACH QUESTION CARRIES 25 MARKS.**
- (iii) IN ANSWERING ANY QUESTION, NOTE THAT THE QUALITY OF THE CONTENT, CLARITY OF EXPRESSION AND LEGIBILITY OF HANDWRITING ARE ABSOLUTELY ESSENTIAL.**
- (iv) USE LEGAL AUTHORITIES TO SUBSTANTIATE YOUR ANSWERS.**

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

## **QUESTION ONE**

“In a modern state, detailed provision is often required for the purpose of implementing and regulating laws and Parliament cannot be expected to deal with all such matters itself. It is implicit in the power to make laws for the Kingdom that Parliament can pass legislation delegating such legislative functions to other bodies.” [Per Dunseith JP in *Zikalala v Jomar Investments (Pty) Ltd t/a Shamrock Butchery (672/2206)[2007] SZIC 15 para. 24*]

“While subordinate legislation is inevitable and often desirable it is not without dangers. Much of it is enacted by officials or administrative authorities who are unelected and not directly responsible to the person who are affected by the legislation”

[Baxter, L., *Administrative Law* (1984), at 201.]

Critically discuss the methods of regulating the making of subordinate or delegated legislation.

**[25 Marks]**

## **QUESTION TWO**

(a) On 11 November, 2016, the Prime Minister of the Kingdom of Swaziland appointed a Commission of Enquiry to establish long term strategies or interventions which the country can adopt in order to mitigate the effects of the drought which has ravaged the country in the last 5 years. Before the Prime Minister published in the Gazette the notice which appointed the members of the Commission, the Minister of Agriculture confided to his friend, Sidumza, that the overwhelming majority of Cabinet Ministers, at a recent meeting of the Cabinet, expressed their confidence in him (Sidumza) because of his qualifications and experience. Sidumza holds a Master of Laws in Administrative Law and a Master of Science in Disaster Management. The Minister further told Sidumza that he had seen his name in the list of names that the Prime had forwarded to the Attorney-General's office to facilitate the publication of the notice in the Gazette. When the notice appeared, Sidumza was not appointed. He is now challenging the decision of the Prime Minister not to appoint him. His argument is that the Prime Minister's conduct constitutes a breach of the *functus officio* doctrine. Advise Sidumza.

**[12 Marks]**

(b) An enabling legislation empowers the Civil Service Commission (CSC) to hire, promote, transfer, terminate the appointment of, dismiss and discipline public officers. A Senior Crown Counsel (SC) who works in the Attorney-General's office in the Ministry of Justice and Constitutional Affairs absented himself from work for two months without official permission. When the Attorney-General reported this matter to the CSC, the CSC advised him to institute a disciplinary hearing against the SC because the SC worked under his supervision and because the Attorney-General was an expert in law. The Attorney-General instituted the disciplinary hearing and

one of the findings of the hearing was that the SC's absenteeism constituted a dismissible offence. The Attorney-General forwarded the report to the CSC. The CSC has served the SC with a letter of dismissal. The SC is now challenging the decision of CSC and has asked the High Court to review it and set it aside. On what ground is the decision of CSC reviewable?

**[10 Marks]**

(c) Section 109(4) of the Constitution of the Kingdom of Swaziland Act 1 of 2005 (the Constitution) states as follows: 'Laws made by the King and Parliament in terms of this Constitution shall be styled "Acts of Parliament"...'.

Why are the laws made by the King and Parliament also referred to as original legislation?

**[3 Marks]**

**[25 Marks]**

### **QUESTION THREE**

(a) Recent graduates of the Bachelor of Laws Programme pooled their living allowances which they had saved over the last five years and registered a company. They applied to the Minister of Natural Resources for a license to develop land as a quarry. The Minister of Natural Resources met his counterpart, the Minister of Agriculture and Cooperatives who objected to the application. The Minister of Agriculture and Cooperatives stated that he had earmarked the land that graduates had identified for other projects of his Ministry and that lawyers were too argumentative for his liking. On the basis of the objection of the Minister of Agriculture and Cooperatives, the Minister of Natural Resources turned down the application. The graduates are challenging the decision of the Minister of Natural Resources at the High Court. On what ground is the decision of the Minister reviewable?

**[12 Marks]**

(b) Mr Msweli is a farm-dweller. His relationship with the farm-owner has not been a healthy one. A number of people have tried in vain to broker peace between the two. Seeing that their relationship had become irreconcilable, the farmer owner decided to evict Mr Msweli from the farm. Mr Msweli approached the Manzini District Tribunal (MDT) for redress. The MDT ruled in his favour and ordered the farm-owner to allow him to go back to the farm. A week later, the MDT issued another judgment, which now supports the decision of the farm-owner to evict Mr Msweli from the farm. The MDT acknowledged in its subsequent judgment that it had made a mistake of law when it issued the first judgment. Mr Msweli is now confused. His sugar levels have reached unprecedented heights. Advise Mr Msweli.

**[10Marks]**

(c) The Municipal Council of Manzini has enacted by-laws to regulate the movement of public transport and the allocation of stalls to street vendors in Manzini. When will these by-laws acquire legal force?

**[3Marks]**

**[25 Marks]**

#### **QUESTION FOUR**

“Parliament and judicial controls are often regarded as complementary external checks on administrative power.”

[Hoexter, C., *Administrative Law in South Africa* (2007) at 69]

Critically discuss the ways in which the Parliament of Swaziland performs its oversight role over the administration.

**[25 Marks]**

#### **QUESTION FIVE**

(a) The term ‘public administration’ is commonly understood to refer to the organs of the executive branch of the government that are concerned with the day-to-day business of implementing law and administering policy. These organs and functionaries are capable of performing administrative acts.

Critically discuss the statement that the capability of a functionary to perform an administrative act is not determined by its membership of the public administration. Use illustrations to support your argument.

**[10 Marks]**

(b) Discuss the principle of legality and state how the legal system of Swaziland protects it.

**[15 Marks]**

**[25 Marks]**

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