

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

EXAMINATION PAPER, DECEMBER 2017

TITLE OF PAPER : CONSTITUTIONAL LAW I.
COURSE CODE : LAW103
DURATION : 3 HOURS
MARKS ALLOCATED : 100 MARKS
INSTRUCTIONS : ANSWER ALL QUESTIONS

QUESTION 1

The Kingdom of Kopano And Tugwell (K & T) is a small island state in the Pacific. The country gained independence from the United Kingdom in 1973. At independence the country adopted a written constitution. This constitution was abrogated in 2004 following a military coup *d'état*. In 2014 there was a popular uprising in K & T which resulted in the overthrow of the military government. The new civilian government of K & T has decided to have a new constitution for the country reflective of its history, aspirations and ideals as a nation. To this end the Government has appointed a Constitution Review Commission (CRC).

The CRC engages you as a Constitutional Law expert to advise it on the nature of written Constitutions and the systems of government that would be most suitable for a country that wants to uphold democratic ideals. Advise the CRC, in your brief state which key constitutional concepts would be most suitable for inclusion in the Constitution of K & T. Give reasons for your answer.

[25 marks]

QUESTION 2

Michael Sydney is a global asset management business headquartered in New York. Its assets under management are in excess of one trillion Emalangeni. Michael Stanley wants to invest money, on behalf of its clients, in bonds and treasury bills issued by the Swaziland Government.

The asset managers have retained your firm of attorneys to represent it in Swaziland. Michael Sydney's investment philosophy is that they only invest in countries where the rule of law is venerated and they are unsure about whether Swaziland upholds the rule of law. Use your knowledge of the theory of the rule of law to Advise Michael Sydney on whether the principle of the rule of law is respected in Swaziland. [15marks]

QUESTION 3

With examples write short notes on the following:

- (a) Monarchical and Republican constitutions; (5)
- (b) Presidential and Parliamentary systems; (5)
- (c) Constitutionalism; (5)
- (d) Supremacy of the Constitution ; (5)
- (e) Parliamentary Sovereignty; (5)
- (f) The chief components of a functioning democracy; (5)
- (g) Rigid and flexible constitutions. (5)

Question 4

Swaziland is a small landlocked country in Southern Africa. Beef and dairy are the major export earners for the country. On 24 July 2017 members of the Swaziland National Association of Civil Servants embarked on a nationwide strike as a means to compel the Government to award them an inflation linked pay rise. The strike lasted for 3 months.

Section 45 of Swaziland's Labour Relations Act (LRA) prohibits strikes in essential services. The LRA defines an essential service as "a service, whose interruption would endanger the life, personal safety or health of the whole or part of the population". Section 46 designates the following services as essential:

- (a) water services;
- (b) electricity services;
- (c) fire services;
- (d) health services;
- (e) sanitary services; and

(f) telephone and telegraphic services.

Section 47 of the LRA empowers the Minister of Labour to amend the list of essential services and publish the amendment in the government gazette. The Minister of Labour invoked Section 47 and added veterinary services to the list of essential services. The amendment was published in the government gazette of Friday 27 October 2017. The justification the Minister gave to adding veterinary services to the list of essential services was that “cattle are the lifeblood of the economy, thereby making it imperative to detect at the earliest opportunity disease like foot and mouth which may be detrimental to the cattle industry”.

The Association of Civil Servants instructs you to institute court proceedings challenging the validity of the Minister’s amendment of the LRA. With reference to the relevant constitutional concepts and case law outline the argument that you will advance in court in support of the application to court.

[25 marks]