

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER (MAIN)
YEAR: 2017/2018

TITLE OF PAPER : ADMINISTRATIVE LAW

COURSE CODE : LAW211

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) REFER TO LEGAL AUTHORITY TO SUBSTANTIATE YOUR ANSWERS.**

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

QUESTION ONE

(a) The Manzini Municipal Council recently held its local government elections. Two nominations were received in ward 5, namely for Mr Silaula and for Mr Gadlela. The enabling legislation requires that a nomination paper should have five valid signatures. Upon examination, it was found that Mr Silaula's nomination paper contained only three valid signatures and the other two signatures were invalid. The enabling legislation authorises the Electoral Commissioner, after conducting the election, to publish the outcome of the election. Consequently, Mr Gadlela was declared elected as the only candidate duly nominated and his name was, in terms of the enabling legislation, published in the Government Gazette. Mr Silaula subsequently pointed out that all the signatures contained in his nomination paper were, in fact, valid. Having re-considered and confirmed the validity of the contentious signatures, the Electoral Commissioner notified Mr Gadlela that the notice declaring him elected had been cancelled and that a new election would be held. Mr Gadlela has applied for an order declaring him duly elected. In opposing Mr Gadlela's application, the Electoral Commissioner argues that she made an error and that, in cancelling the notice of Mr Gadlela's election, she had attempted to rectify the error.

You are a judge of the High Court of Swaziland. Give a ruling on this matter and state the legal basis for your reasoning.

[15 Marks]

(b) The Manzini Region Planning Act of 2009 (the enabling Act) empowers Municipal Councils and Town Boards within the Manzini Region to draw up town-planning schemes for areas falling within their jurisdiction. The town-planning schemes designate different areas as residential, commercial and industrial areas. A person who intends to build a structure that is permitted in a designated area must first obtain a written consent of the Municipal Council or Town Board under whose jurisdiction the designated area falls. If a person wishes to construct a building that is not appropriate for a designated area, for example, a filling station in a residential area, that person must obtain a written consent from the Senior Planning Engineer in Ministry of Housing and Urban Development. Mr Qulu applied to the Siphofaneni Town Board for a permit to construct a car-wash in a residential area and was advised to seek authority from the Senior Planning Engineer in the Ministry of Housing and Urban Development. When Mr Qulu approached the Senior Planning Engineer, the Senior Planning Engineer purported to delegate his power to grant the authority to an Assistant Planning Engineer in the same Ministry. The Assistant

Planning Engineer holds the same qualifications as the Senior Planning Engineer and she normally acts in the office of the Senior Planning Engineer when the Senior Planning Engineer is away. The enabling Act is silent on the authority of the Senior Planning Engineer to delegate his powers.

Is this delegation lawful? Refer to relevant legal authority to support your answer. [10 Marks]

[25 Marks]

QUESTION TWO

“Public participation is an important element of democracy and of responsive government. It may be described as the active involvement of members of an informed community in the decision-making processes that affect them.”

[C Hoexter *Administrative law in South Africa* (2012) 80.

Public participation is one method of controlling administrative power. **Critically examine five ways in which the government of Swaziland encourages participation by its citizens in the context of administrative law.**

[25 Marks]

QUESTION THREE

(a) Mr Mbobozehluzo is a tenant at Lot A4.1Ngwane Park Township. His landlord ejected him from the premises because he was a defaulting tenant. Mr Mbobozehluzo successfully applied to the High Court of Swaziland (the Court) for an order re-instating him in the premises. The landlord vehemently refused to comply with the Court order. Mr Mbobozehluzo approached the Court again and asked the Court to find the landlord to be in contempt of its order. The Court transferred the matter to the Rent Evaluation Board. Mr Mbobozehluzo is appealing against the decision of the Court. **On what ground is the Court's decision appealable?**

[10 Marks]

(b) The Constitution of the Kingdom of Swaziland Act 1 of 2005 (the Constitution) has introduced a brand of administrative law that differs in many respects from the administrative law that was in force before its enactment. **Critically examine two changes to the administrative law of Swaziland that have been brought about by the Constitution.**

[15 Marks]

[25 Marks]

QUESTION FOUR

(a) Mr Kamler is an academic researcher from an institution known as "Government under the Law". He has an interest in the administrative law of Commonwealth countries. Currently, he is in Swaziland conducting research on the making of subordinate or delegated legislation in Swaziland. He has been informed that much of Swaziland's subordinate legislation is enacted by administrative authorities who are unelected and not directly responsible to the persons to whom the legislation is addressed. He is worried because he has also been advised that the danger of Swaziland's subordinate legislation is that Parliament which is elected has no oversight role in the making of subordinate legislation.

Advise Mr Kamler whether the statement about Parliament's role reflects the legal position in Swaziland. Refer to relevant legal authority and other relevant examples to substantiate your advice.

[15 Marks]

(b) Two students from the Department of Political Science and Administrative Studies were arguing about the sources of administrative power in Swaziland. In the opinion of one of the students, there are no justifications for delegated legislation.

Is the opinion of the student legally valid? Discuss fully citing relevant legal authority to support your answer.

[10 Marks]

[25 Marks]

QUESTION FIVE

Sasha is an administrative law expert from Australia. In her country, it is widely accepted that the right to complain about the use of governmental power is central to administrative justice. Her government has, in addition to other administrative law bodies and the courts, established the Office of Ombudsman to facilitate the implementation of the right. She is surprised to learn that the Constitution of the Kingdom of Swaziland Act 1 of 2005 (the Constitution) does not provide for the establishment of the Office of Ombudsman. However, she has been informed that there are certain organs and agencies of the government that exhibit some the characteristics of the Office. Sasha is interested in finding more information about what she has been told and has the following questions;

- (i) Does the statement that the Constitution does not provide for the establishment of the Office of Ombudsman reflects the legal position in Swaziland?

[1 Mark]

- (ii) Are there any organs and agencies of the government that exhibit some of the characteristics of the Office of Ombudsman? **[2 Marks]**
- (iii) If so, what are these organs and agencies and what instrument(s) establish them? **[4 Marks]**
- (iv) What are the specific provisions i.e. sections of the instrument(s) that establish these organs and agencies? **[2 Marks]**
- (v) What are the functions of these organs and agencies in the context of administrative law? **[12 Marks]**
- (vi) What are the specific provisions i.e. sections of the instrument(s) that outline the functions you have referred to in (v) above. **[4 Marks]**

You are a student whose interest in the administrative law of Swaziland is unmatched. Write an essay in order to assist Sasha answer her questions. The responses to the above questions should appear in the essay. Do not write in point form. Write full sentences and paragraphs. **[25 Marks]**

=====END OF QUESTION PAPER=====