

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION PAPER
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) With the aid of legal authority write notes on the following:

(i) acting under dictation; **[10 Marks]**

(ii) laying before Parliament; and **[10 Marks]**

(iii) delegation clause **[5 Marks]**

[25 Marks]

QUESTION TWO

(a) 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?

[12.5 Marks]

(b) 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?

[12.5 Marks]

[25 Marks]

QUESTION THREE

Matshidiso is researcher from the University of Global Knowledge. She is interested in the origins of administrative power in Swaziland. She has received differing and conflicting information on the sources of administrative power in Swaziland. Write an essay in which you advise her about the origins of administrative power in Swaziland.

[25 Marks]

QUESTION FOUR

Can a modern democratic state properly function without the rule of law and the principle of legality? Discuss.

[25 Marks]

QUESTION FIVE

"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 in the context of Swaziland.

[25 Marks]

=====END OF EXAMINATION PAPER=====