

UNIVERSITY OF ESWATINI
INSTITUTE OF DISTANCE EDUCATION
BACHELOR OF LAWS/STRENGTHENED DIPLOMA AND DIPLOMA
IN LAW
SUPPLEMENTARY EXAMINATION PAPER
YEAR: 2018/2019

TITLE OF PAPER : ADMINISTRATIVE LAW I

COURSE CODE : DLO41/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) 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]

(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.

[12.5Marks]

[25MARKS]

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

(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 FIVE

(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]

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