

UNIVERSITY OF ESWATINI
INSTITUTE OF DISTANCE EDUCATION
BACHELOR OF LAWS/STRENGTHENED DIPLOMA IN
LAW/DIPLOMA IN LAW
FINAL EXAMINATION PAPER (MAIN)
YEAR: 2018/2019

TITLE OF PAPER : **ADMINISTRATIVE LAW II**

COURSE CODE : **DLO42/LAW212**

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

INSTRUCTIONS:

- (i) **INDICATE ON THE COVER PAGE OF THE ANSWER SCRIPT YOUR PROGRAMME AND COURSE CODE IN THIS FORMAT:**
 - **IDE – LLB (LAW212)**
 - **IDE – DIPLOMA IN LAW (DL042)**
 - **IDE – STRENGTHENED DIPLOMA IN LAW (LAW212).**
- (ii) **ANSWER ANY FOUR (4) QUESTIONS.**
- (iii) **EACH QUESTION CARRIES 25 MARKS.**
- (iv) **IN ANSWERING ANY QUESTION, NOTE THAT THE QUALITY OF THE CONTENT, CLARITY OF EXPRESSION AND LEGIBILITY OF HANDWRITING ARE ABSOLUTELY ESSENTIAL.**
- (v) **REFER TO LEGAL AUTHORITY TO SUPPORT YOUR ANSWERS.**

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

QUESTION ONE

Mr Proverbs applied to the Liquor Licensing Board (the Board) for a liquor licence. The Board declined to grant him the licence. He launched an application for review of the proceedings of the Board in one of the courts of eSwatini. The Court reviewed the proceedings complained of and upheld the decision of the Board. Dissatisfied with the decision of the Court, Mr Proverbs sought advice from an administrative law student at the University of Choice in Africa. The student advised him to launch an original application in the Supreme Court of eSwatini for review of the decision of the Court which had dismissed his application for review of the proceedings of the Board.

Based on the set of facts above, write an essay in which you:

- (i) identify the Court of eSwatini which has review jurisdiction over lower adjudicating authorities and which Mr Proverbs had asked to review the proceedings of the Board;
- (ii) state the legal basis for the review jurisdiction of the Court you have identified; and
- (iii) critically examine the advice that the student gave to Mr Proverbs.

YOUR ESSAY SHOULD NOT EXCEED TWO PAGES.

[25 MARKS]

QUESTION TWO

(a) The Road Transportation Act of 2007 provides as follows:

Appeal against decision of the Board.

11. (1) A person —
- (a) whose application for a permit has been refused;
 - (b) who has opposed the granting of a permit where such permit has been granted;
or
 - (c) who holds a permit whose permit has been suspended or cancelled,
may appeal against the decision of the Board, to the Appeal Board.

The term “Board” as it appears in section 11 means the Road Transportation Board. Appeal Board means the Road Transportation Board of Appeal. Mr Masabalala applied to the Board for a road transportation permit. The Board refused to grant him the permit. Mr Masabalala is now appealing to the High Court of eSwatini against the decision of the Board. He instituted the appeal proceedings within the time limits stipulated in the empowering legislation. However, he met a retired judge of the High Court who advised him that the Court will decline to hear the appeal because there is a procedural requirement which Mr Masabalala has not complied with.

In the context of section 11(1) of the Road Transportation Act of 2007 and on account of the facts stated above, simply state without discussing the procedural requirement which Mr

Masabalala must satisfy before the Court may hear the appeal and then discuss the rationale behind this requirement. There is only one procedural requirement relevant or applicable to section 11. Confine your discussion only to the applicable or relevant requirement.

YOUR ANSWER WHICH SHOULD BE SUPPORTED BY LEGAL AUTHORITY SHOULD NOT EXCEED ONE AND A HALF PAGES.

[15 MARKS]

(b) Discuss the standard of proof, the burden of proof and the burden of rebuttal in the context of review proceedings in administrative law cases.

YOUR ANSWER SHOULD NOT EXCEED ONE PAGE.

[10 MARKS]

[25 MARKS]

QUESTION THREE

(a) Section 4(7) of the Road Transportation Act of 2007 reads thus:

“[a] member who has material interest in a matter brought before the Board shall recuse himself during consideration of that matter by the Board.”

Mrs Bluetooth is chairperson of the Road Transportation Board (the Board). She also owns a fleet of Noah mini buses which service the Mbabane-Manzini highway. Mr Skyway applied to the Board for a road transportation permit to service the Mbabane-Manzini highway. Mrs Bluetooth chaired the deliberations of the Board when it decided that Mr Skyway should not be granted the permit. Mr Skyway is aggrieved by the decision of the Board. He argues that Mrs Bluetooth should not have sat as a member of the Board because she had an interest in the matter which disqualified her as a decision-maker.

With the aid of decided cases, identify and discuss Mrs Bluetooth’s interest, real or apparent which induced a reasonable apprehension of bias in Mr Skyway.

YOUR ANSWER SHOULD NOT EXCEED ONE PAGE

[12.5 MARKS]

(b) Edblo is a respondent in an administrative law case before the High Court of eSwatini. The presiding judge is a biological brother to the applicant. On account of the relationship between the judge and the applicant, Edblo has reasonable apprehension that the judge might be biased against her.

You are her attorney of record. With the aid of locally decided cases advise her on the procedure for moving applications for judicial recusal and on the purpose served by this practice.

YOUR ANSWER SHOULD NOT EXCEED ONE PAGE

[12.5 MARKS]

[25 MARKS]

QUESTION FOUR

Sec 11 *bis* of the Liquor licences Act of 1964 provides as follows:

“[a]n applicant or objector aggrieved by the decision of a Board in respect of the grant of, or refusal to grant, renew, remove or transfer a licence or in respect of any conditions or privileges attached to a licence may, within twenty-one days of such decision, appeal to the Minister whose decision ... shall not be questioned in any court.”

Critically examine the statement that today any statutory regime of this kind would have to pass the test of constitutional justifiability.

YOUR ANSWER SHOULD NOT EXCEED TWO PAGES.

[25 MARKS]

QUESTION FIVE

Critically examine the review jurisdiction of the Supreme Court of eSwatini in the light of the doctrine of *functus officio* and the principle of *res judicata*.

YOUR ANSWER SHOULD NOT EXCEED TWO PAGES.

[25 MARKS]

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