



UNIVERSITY OF ESWATINI

SEMESTER II MAIN EXAMINATION PAPER, MAY/JUNE 2019

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

Course Code: **LAW104**

CONSTITUTIONAL LAW II (LLB N/P)

Time allowed: 3 Hours

Instructions:

1. Answer any **FOUR** Questions.
2. Each Question Carries 25 Marks.
3. Begin each question on a new page.
4. Make sure that you write legibly, that your expression is clear and that you refer to authority.

Special Requirements: NONE

Additional Material(s): NONE

Candidates may complete the front cover of their answer book when instructed by the Chief Invigilator and sign their examination attendance card but must NOT write anything else until the start of the examination period is announced.

No electronic devices capable of storing and retrieving text, including electronic dictionaries and any form of foreign material may be used while in the examination room.

DO NOT turn examination paper over until instructed to do so.

QUESTION 1

Africa is renowned for perverting processes and institutions of constitutional governance. Do you agree? In what ways, if at all does the process of perversion occur? Illustrate your answer with examples.

[25 Marks]

QUESTION 2

In the year 2014, Eswatini made international headlines in the manner the High court handled the case of *Thulani Maseko & Others v Rex*. The High court sentenced the accused to two years imprisonment without the option of a fine for contempt of court.

The manner the trial was conducted, the sentence handed down and the reasons for the sentence were in line with the provisions of the Bill of Rights chapter of the Constitution Act 1 of 2005.

Do you agree with this statement? Critically assess its validity, citing authority in support of your answer.

[25 Marks]

QUESTION 3

The Constitution Act 1 of 2005 provides for an independent judiciary and judicial review. The kingdom of Eswatini is the epitome of an independent judiciary that is respected by the Legislature and the Executive organs of State. Do you agree? Critically evaluate the validity of this statement. Cite authority in support of your answer.

[25 Marks]

QUESTION 4

The Human Rights Commission of Eswatini was established and enabled to execute its mandate in accordance with the Constitution Act, 2005. Discuss how the Human Rights Commission is constituted, its powers and functions and whether or not it has, to date been able to effectively execute its mandate. Illustrate your answer with examples.

[25 Marks]

QUESTION 5

Explain the following:

- (a) The limitation of rights [5 Marks]
- (b) Derogation of rights during an emergency [5 Marks]
- (c) Non-derogation of rights [5 Marks]
- (d) The independence and impartiality of judges [5 Marks]
- (e) Citizenship by operation of law [5 Marks]

[25 Marks]

QUESTION 6

"Constitutionalism is....the principle that the exercise of political power shall be founded by rules, rules which determine the validity of legislative and executive action by prescribing the procedure according to which it must be performed or by delimiting its permissible content....Constitutionalism becomes a living reality to the extent that these rules curb the arbitrariness of discretion and are in fact observed by the wielders of political power, and to the extent that within the forbidden zones upon which authority may not trespass there is significant room for the enjoyment of individual liberty."

- De Smith, S A, 'Constitutionalism in the Commonwealth Today', *Malaya Law Review*, vol. 4 (2) @ 205.

Using relevant examples assess Eswatini's constitutional history in the light of De Smith's minimalist definition of constitutionalism above. In your opinion, does Eswatini's new Constitution offer hope for achieving the standards set out by De Smith? Explain your answer citing relevant provisions of the new constitution.

[25 Marks]

END OF EXAM