

UNIVERSITY OF ESWATINI
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER (MAIN)
YEAR: 2018/2019

TITLE OF PAPER : ADMINISTRATIVE LAW

COURSE CODE : 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

Andy Moore is a doctoral candidate in the University of Cape Town. His research interests are in administrative and constitutional law. Currently, he is in the Kingdom of eSwatini conducting research for a journal article focusing on the sources of administrative power in Swaziland.

In the course of his research, he came across a case that was decided by the Supreme Court of eSwatini in 2007. In that case the Court noted that, in the period between the abrogation of the Independence Order of 1968 and the enactment of the Constitution of the Kingdom of Swaziland Act 1 of 2005 (the Constitution), eSwatini was governed through Decrees and Orders-in-Council. The Court further noted that these enactments posed a challenge in the sense that the source of the power to make the instruments and their validity was often unclear. This, the Court remarked, often resulted in legal uncertainty and created tensions and constitutional volatility.

He also met some members of Parliament who informed him that there are two systems of government in eSwatini. There is a government which has its seat in Mbabane and another one that has its offices at Lozitha. The government at Lozitha can override decisions that have been taken by the government in Mbabane and can also summon members of Parliament and Cabinet Ministers to appear before it.

Mr Moore also met a group of students who are studying political science at the University of Choice in Africa who advised him that various organs exercise administrative power in Swaziland and most of them such as the University of Choice in Africa originate their administrative power.

Mr Moore is now confused about the situation in eSwatini. You are a student of administrative law. **Assist Mr Moore to establish the sources of administrative power in eSwatini.**

[25 Marks]

QUESTION TWO

(a) Section 9 of the Roads Construction Act 12 of 2018 provides as follows:

- (1) There is hereby established a Kwaluseni Roads Construction Board.
- (2) The Board shall serve as an independent body with the responsibility for policy, regulation, oversight, professional development and information management and dissemination in the field of road construction in Kwaluseni.
- (3) The functions of the Board are to:
 - (a) prepare invitation documents for tenders for road construction;

(b) advertise tenders; and

(c) shortlist tenderers.

(4) The Board shall have authority to grant tenders for road construction to applicants who qualify in terms of the Act.

In May 2018, the Kwaluseni Roads Construction Board (the Board) invited contractors to apply for a tender to construct the road between the University of eSwatini and the Matsapha traffic circle. Two companies applied for the tender. These are Silver Woods Consulting Engineers and Young Heroes Building Contractors, a company owned by recent graduates of eSwatini College of Technology. The Minister responsible for Education in eSwatini met the Minister responsible for construction during the King's Golf Cup at Nkonyeni Golf Course and asked her (the Minister responsible for construction) to persuade the Board to empower young people in eSwatini by awarding the tender to Young Heroes Building Contractors. Silver Woods Consulting Engineers is a seasoned construction company and has constructed almost all the major roads in eSwatini and has also won tenders for road construction in the neighbouring countries.

The Minister responsible for construction asked the Board to award the tender to Young Heroes Building Contractors. The Board considered the applications and made its decision. Young Heroes Building Contractors won the tender. Silver Woods Consulting Engineers later found out that Young Heroes Building Contractors' quote for the length of the road was E2, 500, 000 while its quote was E 950,000. When Silver Woods Consulting Engineers asked the Board why its bid was unsuccessful, citing possible favouritism because of the involvement of the politicians, the Board informed the company that it used its discretion to award the tender to Young Heroes Building Contractors' and that Silver Woods Consulting Engineers should not be concerned about this because since the beginning of the year it had won six tenders for road construction from the Board. Silver Woods Consulting Engineers has asked the High Court of Swaziland to review the decision of the Board.

Is the decision of the Board reviewable? Fully discuss, citing relevant authority to support your answer.

[15 Marks]

(b) A lecturer at the University of Choice in Africa who was administering an administrative law test caught a student consulting foreign material. The offending student appeared before the University Disciplinary Panel (the DP) and was found not guilty of breaching the University Regulations. A week later, the DP issued another decision altering its earlier decision. The DP admitted in its subsequent decision that it had made an error when it issued the first decision because it had misread the University Regulations governing the writing of tests. The student is now challenging the second decision at the High Court of eSwatini because it is unfavourable to her. **Identify and discuss the relevant ground for review in the context of these facts.**

[10 Marks]

[25Marks]

QUESTION THREE

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 which was in force before its enactment.

Critically examine how the Constitution has affected judicial review and ouster clauses. Refer to legal authority to support your answer.

[25 Marks]

QUESTION FOUR

The Supreme Court of eSwatini stated in the case of *Chairman of the Liquor Licencing Board v Mkhonta* that administrative law is "essentially concerned with the control of abuse or excess public power". A researcher from the University of Raspara conducted research on the control of administrative power in eSwatini. One of the major findings of the research is that, the constitutional legal order of eSwatini leaves no room for Parliament to control the exercise of administrative power by public authorities.

Critically examine this finding. Refer to legal authority to support your answer.

[25 Marks]

QUESTION FIVE

Discuss the functions of the Commission on Human Rights and Public Administration which resemble those of an Ombudsman and are of significance to administrative law as articulated in the Constitution of the Kingdom of Swaziland Act 1 of 2005.

[25Marks]

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