



UNIVERSITY OF ESWATINI

SECOND SEMESTER MAIN EXAMINATION PAPER, JUNE 2020

INSTITUTE OF DISTANCE EDUCATION

DIPLOMA IN LAW

COURSE CODE: DL042

TITLE OF PAPER: ADMINISTRATIVE LAW II

TIME ALLOWED: 3 HOURS

Instructions:

1. Answer any four (4) questions.
2. Each question carries a total of 25 marks.
3. In answering any question, note that the quality of the content, clarity of expression and legibility of handwriting are absolutely essential.
4. Refer to legal authority to support your answers.

*Candidates may complete the front cover of their answer book when instructed by the Chief Invigilator and sign their examination attendance cards 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 ONE

On 12 March 2020, Mrs Benita Amor instituted review proceedings in a certain Court of Judicature of eSwatini. In her application she sought an order declaring a decision which the Road Transportation Appeal Board had issued against her in November 2003 invalid. The Court was not convinced by the explanation she gave for initiating the review proceedings in 2020 involving a decision made in 2003 and dismissed the application.

(a) On account of the above the set of facts,

- (i) identify the court of eSwatini which Mrs Amor had asked to review the proceedings of the Board; (*maximum length 1 line*) **[2 Marks]**
- (ii) state the legislative basis for the review jurisdiction of the court you have identified above; (*maximum length 2 lines*) **[4 Marks]**
- (iii) identify and state the rule on the basis of which the court refused to entertain the review application; (*maximum length 4 lines*) **[2 Marks]**
- (iv) state the two questions which the court considered when applying the rule; and (*maximum length 6 lines*) **[6 Marks]**
- (v) state the rationale for this long-standing rule. (*maximum length 6 lines*) **[6 Marks]**

[20 Marks]

(b) A group of dagga farmers in Northern Hhohho approached the High Court for an order compelling the Minister of Agriculture to remove certain provisions in the Cannabis Bill which they argued will affect their rights as dagga growers. The Court dismissed the application on the basis of one of the judicially-imposed obstacles to judicial redress.

With the aid of case law identify and state the purpose of the judicially-imposed obstacle on the basis of which the Court declined to grant a remedy. There is only one judicially-imposed obstacle which is relevant to this set of facts. Confine your response only to that obstacle. Do not name or even discuss the other two judicially-imposed obstacles which are not relevant to this set of facts.

YOUR ANSWER SHOULD NOT EXCEED 10 LINES.

[5Marks]

[25 Marks]

QUESTION TWO

Section 9(3) of the Farm Dwellers Control Act of 1982 provides as follows:

“[a] person aggrieved by the decision of a District Tribunal may, within thirty days of such decision, appeal to the Central Tribunal and therefrom, within thirty days, to the Minister whose decision shall be final.” [Underlining mine]

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 THREE

When the Teaching Service Commission (the Commission) sits to hear disciplinary matters involving teachers, it performs tribunal-like functions and in this context it may be called a tribunal. On what bases would you argue and insist that the Commission is a **tribunal** even though it is not called a tribunal.

[25 Marks]

YOUR ANSWER SHOULD NOT EXCEED THREE PAGES.

QUESTION FOUR

(a) For the past 25 years the Shiselweni Regional Education Office (SREO) has been administering a scheme in terms of which schools in the Shiselweni region receive financial aid (for tuition, transport and boarding) on behalf of needy pupils. When the executive committee of state-aided schools went to collect cheques from the SREO at the beginning of the 2020 financial year, they were told that the scheme has been cancelled and they would no longer receive bursaries. The executive committee has approached the High Court of eSwatini for an order reviewing and setting aside the decision of the (SREO).

With the aid of legal authority identify and discuss the ground for review of the decision of the SREO in the context of the given set of facts?

YOUR ANSWER SHOULD NOT EXCEED ONE AND A HALF PAGES.

[15 Marks]

(b) The Chief Invigilator at the University of Choice in Africa, DC, the special one, caught five candidates who sat for LAW212 consulting foreign material during the main examination in June 2020. The special one is also a lecturer at the university and he teaches LAW212. He confirmed in his report that the foreign material found in the possession of the candidates was intended to benefit them since it was very relevant to LAW212. The University management has constituted a disciplinary tribunal to inquire into the act of misconduct involving the candidates and the relevance of the material to LAW212. The special one has been appointed chairperson of the tribunal. The implicated candidates have reasonable apprehension that the special one will be biased against them and have asked for his recusal.

With the aid of case law, identify and discuss the possible source of bias in the context of these facts. There is only one possible source of bias which is relevant to these facts. Confine your discussion only to that source. Do not name or even discuss the other sources of bias which are not relevant.

YOUR ANSWER SHOULD NOT EXCEED ONE PAGE.

[10 Marks]

[25 Marks]

QUESTION FIVE

(a) Ms Animal Print Leggings is aggrieved and frustrated because the Electricity Disputes Tribunal (EDT) has turned down her application. She has been advised that in terms of section 33(2) of the Constitution of the Kingdom of Swaziland Act 1 of 2005 she has a right to be given reasons in writing for the decision of the EDT. She does not understand what purpose the giving of written reason will serve in her situation.

Advise her about two benefits that she will derive from getting written reasons for the decision.

YOUR ANSWER SHOULD NOT EXCEED ONE PAGE.

[12 Marks]

(b) Discuss two instances in which the High Court of eSwatini will substitute its decision for that of the original decision-maker in the context of administrative law.

YOUR ANSWER SHOULD NOT EXCEED ONE AND A HALF PAGES.

[13 Marks]

[25 Marks]

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