



**UNIVERSITY OF ESWATINI
INSTITUTE OF DISTANCE EDUCATION
BACHELOR OF LAWS/DIPLOMA IN LAW
FINAL EXAMINATION PAPER NOVEMBER 2019**

TITLE: CONSTITUTIONAL LAW 1

COURSE CODE: LAW 103

TIME ALLOWED: TWO (3) HOURS.

INSTRUCTIONS:

1. THERE ARE FIVE QUESTIONS IN THIS EXAMINATION PAPER AND FOUR QUESTIONS MUST BE ANSWERED.
2. ALL QUESTION CARRY 25 MARKS EACH.

MARKS ALLOCATED: 100

THIS PAPER SHOULD NOT BE OPENED UNTILL PERMISSION HAS BEEN GIVEN BY THE INVIGILATOR.

QUESTION ONE

The Kingdom of Bopano And Sugwell (B&S) is a small state in the Pacific. The country gained independence from the United Kingdom in 1973. At independence the country adopted a written constitution. This constitution was abrogated in 2001 following a military coup d'état. In 2013, there was a popular uprising in B&S which resulted in the overthrow of the military government. The new civilian government of B&S has decided to have a new constitution for the country reflective of its history, aspirations and ideals as a nation. To this end, the government has appointed a Constitution Review Commission (CRC).

The CRC engages you as a Constitutional Law expert to advise it on the nature of written constitutions and the systems of government that would be most suitable for a country that wants to uphold democratic ideals.

Advise the CRC. In your brief state which key constitutional concepts would be most suitable for inclusion in the Constitution of B&S. State reasons for your answer. **(25 marks)**

QUESTION TWO

In *Jan Sithole (in his capacity as the trustee of the National Constitutional Assembly-trust) and Others vs The Government of the Kingdom of Swaziland and Others Appeal Case No. 50/2008(unreported)* Magid AJA said "Democracy is, I would suggest, like beauty to be found in the eyes of the beholder". At paragraph 22.

Using your knowledge of the concept of Democracy critically discuss the accuracy of the Supreme Court's above quoted *dictum*. **(25 marks)**

QUESTION THREE

The doctrine of Constitutionalism requires that legitimate government should adhere to certain requirements in exercising its functions. Discuss these requirements. **(25 marks)**

QUESTION FOUR

Write short notes on the following:

- (a) The Rule of Law **(5 marks)**
- (b) Separation of powers **(5 marks)**
- (c) Mode of amendment of specially entrenched provisions of the Constitution of the Kingdom of Eswatini. **(5 marks)**
- (d) Federal and Unitary Constitutions **(5 marks)**
- (e) Legislative supremacy of Parliament **(5 marks)**

TOTAL [25 marks]

QUESTION FIVE

The doctrine of separation of powers entails that each arm of government should exercise its functions independently of the other arm. Is this doctrine practical in Swaziland? Discuss in detail. **(25 marks)**