



UNIVERSITY OF ESWATINI
FIRST SEMESTER RE-SITEXAMINATION PAPER
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
COURSE CODE: LAW103
TITLE OF PAPER: CONSTITUTIONAL LAW I
TIME ALLOWED: 3 HOURS

Instructions

1. This paper consists of six (6) questions.
2. Answer any four (4) questions.

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 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 1

(a) Section 1 (1) of the Swaziland Constitution provides that "Swaziland is a unitary sovereign democratic Kingdom". What do you understand by the concept of state sovereignty? [5 Marks]

(b) List the major distinctions between parliamentary and presidential systems of government? [5 Marks]

(c) Distinguish between direct democracy and representative democracy. [5 Marks]

(d) The Constitution of Swaziland Act No. 5 of 2005 is an inflexible constitution. Do you agree? Discuss referring to particular provisions of the constitution. [10 Marks]

[25 marks]

QUESTION 2

The doctrine of separation of powers is not a fixed or rigid constitutional doctrine. It is given expression in many different forms, and made subject to checks and balances of many kinds while democracy is a static concept that is not changeable. Critically analyse this statement. In your analysis refer to the courts' reasoning in the following cases:

- *Jan Sithole N.O. (in his capacity as the Trustee of the National Constitutional Assembly) and Others v The Prime Minister of Swaziland and Others* Appeal Case No. 35/2007 [2008] SZSC 22.
- *Glenister v President of the Republic of South Africa and Others* 2009 (1) SA 287 (CC).

[25 marks]

QUESTION 3

State and briefly analyse the principle of **constitutional supremacy**. Supplement your analysis by giving clear examples of how the courts of Eswatini have applied the principle in the following cases:

- *Makhosazane Eunice Sacolo (nee Dlamini) and Another vs. Jukhi Justice Sacolo and 2 Others* (1403/16) [2019] SZHC 166
- *Attorney General v Mary Joyce Doo Aphane* 2010 ZSCS 32
- *Hleta v Swaziland Revenue Authority & Two Others* 2016 SZHC 22

[25 Marks]

QUESTION 4

The Kingdom of Eswatini prides itself with the *Tinkhundla* electoral system as a system that represents the truest form of grass-roots consultation and public participation in state governance. While detractors of the system believe that it is an antithesis of the doctrine of constitutionalism, proponents of the system argue that it is the best system in the world. Do you agree? Critically evaluate the validity of these contending views, citing authorities where appropriate.

QUESTION 5

Write an essay in which you critically analyse the constitutional history of the Kingdom of Eswatini from 1968 to 2005.

[25 Marks]

END OF PAPER