

UNIVERSITY OF SWAZILAND
DEPARTMENT OF BIOLOGICAL SCIENCES
BIO601 ENVIRONMENTAL LAW MAIN EXAM PAPER

Time Allowed : **3 Hours**
Examiner : **Dr. M.N. Shongwe**
Total Marks : **100**

INSTRUCTIONS:

1. Answer **ALL** questions.
2. Begin each question on a new page.
3. Credit will be given for concise, well-structured answers and reference to applicable legal authority.

**THIS PAPER MAY NOT BE OPENED UNTIL PERMISSION HAS
BEEN GRANTED BY INVIGILATOR(S).**

QUESTION 1

After graduating from UNISWA, you join an environmental advocacy group dedicated to protecting disadvantaged communities from environmental hazards and toxins. Your first client is a neighbourhood association whose members include homeowners in Helemisi Township Manzini. They are extremely upset because the Manzini Municipal Council has built and started operating an entirely new large chemical production facility on the sports ground just adjacent to the township. The new facility lies within 500 metres from the neighbourhood. The facility produces artificial rubber, and these rubber products use feed stocks that include benzene and other organic compounds. The facility includes reactor towers that discharge volatile organic compounds through pipes to a large flare at the facility. Some fumes, including nitrous oxides, simply escape into the air as fugitive emissions. The facility draws water from the Mzimmene River to use in its production process, and then discharges the water back into the same river along with some production waste matter. The Municipal Council has employed about 50 Helemisi Township residents in the facility on permanent and pensionable terms.

Write a legal opinion in which you explain what rights the Helemisi Township residents might have to pursue, legal and administrative remedies for environmental justice in this situation, and the difficulties those environmental justice claims would possibly face.

[25 Marks]

QUESTION 2

(a) Discuss the relationship between the sovereign right of states to exploit their own natural resources and the responsibility of states to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction. [10 Marks]

(b) How can international environmental treaties/conventions become directly applicable in Swaziland? [3 Marks]

(c) What is the value of non-incorporated international agreements in Swazi national law? [2 Marks]

(d) The Swaziland constitutional bill of rights does not explicitly provide for environmental rights. Discuss this statement, and compare our position with the South African constitution. [10 Marks]

[TOTAL: 25 MARKS]

QUESTION 3

- (a) define international environmental law. [2 Marks]
- (b) Why do we need international environmental law? [5 Marks]
- (c) Prior to 1945, international environmental law was marked by a series of 'bilateral treaties' between concerned states. Discuss three examples of such treaties. [6 Marks]
- (d) Briefly describe how the court/tribunal decisions in the *Trail Smelter* case (1938), the *Corfu Channel* case (1946), and the *Lake Lanoux* arbitration (1957) contributed to the development of international environmental law. [8 Marks]
- (e) Give a brief analysis of the principle of 'common but differentiated environmental responsibility' set out in the Rio Declaration. [4 Marks]

[TOTAL: 25 Marks]

QUESTION 4

Community members of Ngwenyameni town are aggrieved by the operations of Salgawoga, a mining corporation which has been licensed to mine iron ore in the area. Salgawoga's mining activities produce clouds of red dust, which causes serious air pollution in and around the area. Children living near the mine have started to develop serious respiratory disorders. Despite numerous complaints from the community, Salgawoga has not taken any precaution to prevent or minimise the pollution. Salgawoga's argument is that 'it is not possible control the wind'. The community is now in the process of instituting legal action against Salgawoga and the national government. The community claims that that they were not properly consulted before Salgawoga was licensed; that the government's action of issuing the said licence was therefore highly irregular; and that specific provisions of the Environmental Management Act has been violated by both defendants. The community has verbally given a mandate to Yonge Nawe, a public interest NGO, to pursue the matter on their behalf. Yonge Nawe has encountered difficulty in obtaining critical information on the licensing procedure since the responsible authorities refuse to recognise the NGO as the community's representative. Analyse all the legal issues arising in this matter and advise all parties as to their rights, obligations and possible remedies.

[TOTAL: 25 MARKS]

END OF EXAM