



UNIVERSITY OF ESWATINI

FIRST SEMESTER RE-SIT EXAMINATION PAPER, JANUARY 2020

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

COURSE CODE: LAW211

TITLE OF PAPER: ADMINISTRATIVE LAW I

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

In a modern state, detailed provision is often required for the purpose of implementing and regulating laws and Parliament cannot be expected to deal with all such matters itself. It is implicit in the power to make laws for the Kingdom that Parliament can pass legislation delegating such legislative functions to other bodies." [Per Dunseith JP in *Zikalala v Jomar Investments (Pty) Ltd t/a Shamrock Butchery* (672/2206)[2007] SZIC 15 para. 24]

Critically discuss the methods of regulating the making of subordinate or delegated legislation.

YOUR ANSWER SHOULD NOT EXCEED THREE PAGES

[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.

YOUR ANSWER SHOULD NOT EXCEED ONE AND A HALF PAGES

[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.

YOUR ANSWER SHOULD NOT EXCEED ONE AND A HALF PAGES

[10 MARKS]

[25 MARKS]

QUESTION THREE

Matshidiso is a researcher from the University of Global Knowledge. She is interested in the origins of administrative power in eSwatini. She has received differing and conflicting information on the sources of administrative power in eSwatini. Write an essay in which you advise her about the sources of administrative power in eSwatini.

YOUR ANSWER SHOULD NOT EXCEED TWO AND A HALF PAGES

[25 MARKS]

QUESTION FOUR

(a) The term 'public administration' is commonly understood to refer to the organs of the executive branch of the government that are concerned with the day-to-day business of implementing law and administering policy. These organs and functionaries are capable of performing administrative acts.

Critically discuss the statement that the capability of a functionary to perform an administrative act is not determined by its membership of the public administration. Use relevant examples to support your argument.

YOUR ANSWER SHOULD NOT EXCEED ONE AND A HALF PAGES

[10 MARKS]

(b) Discuss the principle of legality and state how the legal system of eSwatini protects it.

YOUR ANSWER SHOULD NOT EXCEED ONE AND A HALF PAGES

[15 MARKS]

[25 MARKS]

QUESTION FIVE

With the aid of legal authority discuss the following:

- (i) acting under dictation;
- (ii) laying before Parliament; and
- (iii) delegation clause

[10 Marks]

[10 Marks]

[5 Marks]

[25 MARKS]

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