

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
MAIN EXAMINATION, MAY 2009

TITLE OF PAPER : **THE LAW OF HUMAN RIGHTS**

COURSE CODE : **L507**

TIME ALLOWED : **THREE (3) HOURS**

INSTRUCTIONS :

- 1. ANSWER ANY FOUR (4) QUESTIONS.**
- 2. MARKS ARE INDICATED AT THE END OF EACH QUESTION.**
- 3. CANDIDATES ARE THEREFORE ADVISED TO ALLOCATE THEIR TIME ACCORDINGLY**

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QUESTION 1

Dlamini a prominent farmer at Vuvulane passed away last month after a short illness. Dlamini and his family belong to a religious sect which does not observe the Swazi traditional mourning practice of requiring the wife to shave her head and wear black mourning gowns for a period of one to two years. The Chief of Dlamini's area upon seeing that Mrs Dlamini is not wearing mourning gowns sent a delegation from the Umphakatsi (Chief's Kraal) to direct her and her in-laws to wear the mourning gowns. Mrs Dlamini flatly refused citing her religious beliefs. The Chief sent another delegation this time to impound five head of cattle from the Dlaminis, further, the Chief threatened the Dlamini's with eviction from the area should they continue to disobey his orders.

As a human rights lawyer what advice would you give Mrs Dlamini, basing your answer on the constitution and any other relevant international human rights instruments that Swaziland is a party to.
[25 marks]

QUESTION 2

Mbutfo a member of the banned People's Revolutionary Army has been arrested under the Suppression of Terrorism Act 2008 on suspicion of being a terrorist. The police base this on finding pamphlets and the constitution of the banned party in his house. He has been languishing in jail now for three months without him being formally charged and brought before a court of law. He has been put in solitary confinement, on a meagre diet of bread and water, his relatives have been denied access to him, he is subjected to intense and very long hours of interrogation sometimes with his clothes off and his legs are always shackled to leg irons. He never gets enough sleep because the police always wake him at any hour of the day and night to interrogate him.

Discuss all the issues brought out by this problem making reference to the constitution and relevant international conventions which are binding on Swaziland.
[25 marks]

QUESTION 3

Discuss whether the Tinkhundla system of governance can stand side by side with the rule of law.
[25 marks]

QUESTION 4

Discuss law reform proposals which Swaziland would have to implement in order for her to comply with international, Regional and domestic human rights laws.
[25 marks]

QUESTION 5

Mfana is a member of the royal family and also a chief of Nkamanzi. Matse is a subject of Mfana who is a very successful agricultural farmer. Matse is wealthy from his commercial farming, he raises cattle, goats, pigs, chickens and grows a variety of food crops. Mfana is jealous of Matse's success and has the intention of dispossessing Matse of his land. He summoned Matse during the planting season to come and plant the Chief's fields for a period of a month under the Kühlehla custom. Matse has always heeded the Chief's summons to his subjects to work in his fields for no pay, but this has always lasted for a week not a month. This time Matse refused to work at all at the Chief's fields on the ground that the period set is too long since he has to tend to his own farming operations. Whereupon the Chief impounded three quarters of Matse's land as punishment. Matse went to the traditional authorities at Ludzidzini to seek redress. To his dismay, their judgement was:

1. That Matse should respect Mfana because he is a Dlamini prince and Dlaminis are more equal to other Swazis because they are "nearer to God", and also that Mfana is his Chief.
2. That Matse should have heeded the Chief's summons to work at the chief's fields and should not have regarded such work as forced labour since this has been a custom observed for time immemorial.
3. That the constitutional guarantee and protection of one's land and abode cannot assist him since all land in the country is held by the King in trust for the Swazi Nation and that therefore anyone stays on the land by mercy of the King who can evict such person at any time.

Does Matse have any redress under the constitution?

[25 marks]