

UNIVERSITY OF SWAZILAND  
FACULTY OF SOCIAL SCIENCE  
DEPARTMENT OF LAW

241

MAIN EXAMINATION PAPER, MAY 2014

---

TITLE OF PAPER: HUMAN RIGHTS

COURSE CODE: L 507

TIME ALLOWED: THREE (3) HOURS

INSTRUCTIONS:

1. ANSWER ANY FOUR (4) QUESTIONS, INCLUDING QUESTION 1, WHICH IS COMPULSORY.
2. CAREFULLY READ AND UNDERSTAND THE QUESTIONS.
3. PUT YOUR THOUGHTS IN AN ORGANISED MANNER WITH YOUR ANSWERS.

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

**QUESTION ONE [COMPULSORY]**

242

Kuvukiland is an independent state which enjoys full sovereignty and has a supreme Constitution with an entrenched bill of rights. Its charismatic leader recently called on all its citizens to debate 'the scourge and blight of homosexuality' that was fast consuming the 'good morals and values' of the nation. He made it clear that his intentions, with the support of the 'nation', were to pass legislation that would deal harshly with this 'sexual perversion' which was not only against the culture of the country but was also 'un-Godly'.

From the debates, an overwhelming decision was reached that 'sexual perverts', a stark reference to persons whose sexual orientation was not in line with the 'conventional heterosexual' ways, were to be hunted down and, where brought before the courts, sentenced heavily.

In the result the legislative process was, with uncustomary alacrity, put in motion and a piece of legislation known as the Anti-Gay and Lesbian Act passed. Its stated objects are to criminalise homosexuality, lesbianism and any sexual intercourse against the natural order. Significantly, no exception is to be accorded consenting adults. Announcing its passing, the President mockingly said: "Here in the country of our forbearers, we will not tolerate or countenance sexual misfits and their tendencies. We are appalled by this perversion because even the animals know which one to go for. We will be unrelenting in our quest to stem the tide of this blight".

Assume that you are a human rights activist and lawyer and have been given instructions by the Kuvukiland Coalition of the Gay and Lesbian to challenge this piece of legislation before the domestic courts of the land. Using jurisprudence from the European Court of Human Rights, the Supreme Court of the United States, and South Africa, discuss how you would go about presenting and arguing the case.

[25 MARKS]

**QUESTION TWO**

Human rights are said to be foreign to no culture and native to all nations. Fully discuss the debate between universality and cultural relativism in light of the mandate of the United Nations on human rights.

[25 MARKS]

**QUESTION THREE**

Traditionally, under the common law, private litigation demands that a party should demonstrate an interest, of a direct and substantial nature, before he/she can be afforded legal standing.

Demonstrate what changes have been brought about by the 2005 Constitution in the field of human rights litigation.

[25 Marks]

#### **QUESTION FOUR**

Write short notes on the following:

- a) Civil and political rights; [5 Marks]
- b) Economic, social and cultural rights; [5 Marks]
- c) Jus cogens; [5 Marks]
- d) The Universal Declaration of Human Rights; and [5 Marks]
- e) Margin of appreciation. [5 Marks]

[25 Marks]

#### **QUESTION FIVE**

At the Convention held in Virginia to ratify the US Constitution, John Marshall, who later became the fourth Chief Justice of the United States, argued passionately in support for the courts' exercise of the power of review (judicial review), in those instances where laws violated the Constitution. He said: "*....To what quarter will you look for protection from an infringement of the Constitution if you will not give the power to the judiciary? There is no other body that can afford such protection*".

In the context of the 2005 Constitution of the Kingdom of Swaziland, especially with an eye focused on human rights, discuss whether this sage endorsement finds application and locate it within the pertinent provisions.

[25 Marks]

## QUESTION SIX

244

Women, for the large part, are yet to enjoy the full bouquet of human rights against the backdrop of the patriarchal stance of our nation and the zeal to uphold its culture and traditions. Two cases demonstrate this malady. They are the *Mary-Joyce Doo Aphane v The Registrar of Deeds and Others*, High Court Civ. Case No. 383/2009; [2010] SZHC 29 (23 February 2010) *N. Sihlongonyane v M.J. Sihlongonyane*, High Court Civ. Case No. 470/2013A; [2013] SZHC 144 (18 July 2013) cases. The former dealt with registration of immovable property in the joint names of a couple married in terms of civil rites. The latter brought to the fore the problematic common law principle of treating married women as minors and placing an impediment on their right of standing (*locus standi*) before the courts.

Interrogate the impression in this statement and then state your position on it. Using the two decisions and others from the region or internationally, present an argument whether the idea of equality amongst the sexes is anywhere near accomplishment or not, especially in the field of family law: marriage in particular, and its (marriage) legal consequences.

[25 Marks]