

**UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW**

SUPPLEMENTARY EXAMINATION PAPER, JULY 2016

TITLE OF PAPER: HUMAN RIGHTS

COURSE CODE: L 507

TIME ALLOWED: THREE (3) HOURS

INSTRUCTIONS:

ANSWER ANY FOUR (4) QUESTIONS, INCLUDING QUESTION ONE (1), WHICH IS COMPULSORY.

DO NOT OPEN THIS PAGE UNTIL PERMISSION HAS BEEN GIVEN BY THE INVIGILATOR.

QUESTION ONE [COMPULSORY]

In recent times, the question whether women should be ordained priests or not has become a hot talking point or debate. The Anglican Church (or the Church of England) has been amongst the pioneering to break with traditional orthodoxy on this debate and taken a stand. The Catholic Church (and other numerous church formations), on the other hand, have not done so. Not that this is the only area of a perennial debate, with no consensus. Succession by women, whether to property rights, chieftaincy or kingship remain contentious terrain. Alas, these are debates that have marched on into the twenty-first century!

It is assumed that that you have acquainted yourself with the debate between the 'pristine' universalist human rights culture, on the one hand, and the rather 'murky', relativist human rights culture, on the other. The debate speaks to a universal culture of human rights and a relative culture of human rights. Based on that background, and the jurisprudence (case law) that has been spawned in various jurisdictions: Zimbabwe (Magaya v Magaya); Botswana (Mmusi and Others v Ramantele and Another; South Africa (Bhe and Others v Khayelitsha Magistrate and Others) and Shilabana and Others v Nmwamitwa you should be in good stead to deal with the problem.

You are required to interrogate the problem, and dealing specifically with the ordination of women priests, state what your informed human-rights inspired take is, as well as your reasons.

[25 marks]

QUESTION TWO

In the case of Kanane v State, the Botswana Court of Appeal was not persuaded to decriminalize the laws criminalizing the conduct of the appellant. The decision of the court attracted academic comment and criticism. One of the academics was a lecturer with the University of Botswana. He classified the result arrived at by the Court of Appeal as a missed opportunity in relation to the rights of homosexuals.

Drawing from the Dudgeon and Norris cases of the European Court of Human Rights, discuss how best the Court could have approached and decided the case.

[25 marks]

QUESTION THREE

Human rights are as old as the hills; it has been suggested. They have undergone mutation from the days when they were perceived as natural law proceeding from a divine source – immutable and shining like the stars – to the present-day when they are protected in various documents: internationally and nationally.

With that background in mind, sketch the pre-1945 philosophical underpinnings of human rights up to, and including the advent of, the United Nations impetus/motivation on human rights.

[25 marks]

QUESTION FOUR

Discuss class action litigation, positioning it within the Swaziland Constitution provisions, and referring to a South African decided case.

[25 marks]

QUESTION FIVE

International humanitarian law, also known as the law of armed conflicts or law of war, has two branches: the “law of Geneva” and the “law of The Hague”.

- a) Discuss, by stating which persons these two branches were historically meant to protect.

[10 marks]

- b) What is the present position of these two branches after the adoption of the Additional Protocols of 1977?

[5 marks]

- c) Distinguish between an international armed conflict and a non-international armed conflict.

[10 marks]

[Total:25 marks]

QUESTION SIX

Traditional private law litigation, in relation to persons, offers a rather narrow standing (*locus standi*) avenue when compared to that of human rights litigation.

Dealing with Swaziland, locate:

- a) The human rights litigation standing provisions, as to the persons who can litigate and as to the court to which the litigation can be brought, and state what it provides.

[10 marks]

- b) How does human rights litigation, in terms of standing, differ from that offered under traditional common-law private law standing, and why?

[15 marks]

[Total: 25 marks]

END OF QUESTION PAPER.