

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

MAIN EXAMINATION PAPER, MAY 2017

TITLE OF PAPER: HUMAN RIGHTS

COURSE CODE: L 507

TIME ALLOWED: THREE (3) HOURS

INSTRUCTIONS:

ANSWER ANY FOUR (4) QUESTIONS.

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

QUESTION ONE

Both the Swaziland and South Africa Constitutions have provisions for the enforcement of the fundamental human rights and freedoms that each has entrenched. We could correctly call these the litigation provisions. It has been argued, with a fair amount of justification, that when it comes to standing these provisions have introduced a more expansive approach than does the traditional common law principles.

Introduced in both the Swaziland and South Africa and Swaziland Constitutions is a **class action litigation**. Discuss what a class action litigation is and its advantage. In the discussion, make reference to relevant case law.

[25 Marks]

QUESTION TWO

In his prescribed book, Professor Mubangizi speaks of transitional societies in relation to societies emerging from an era devoid of the respect for human rights. He opines that for such societies to establish respect for human rights and the rule of law, there usually is a need for a search for justice. He refers to this as 'transitional justice'.

It is assumed that you are familiar with the pre-ambular provisions of the 2005 Constitution, particularly pre-ambular provision number 1, which speaks in terms of the Swazis' desire to start afresh under a new framework of constitutional dispensation.

Motivating your submission, discuss whether the advent of the 2005 Constitution fits in the scheme of a transitional justice.

[25 Marks]

QUESTION THREE

That the Kingdom of Swaziland is a member State to the United Nations, the Commonwealth and African Union, are a given. So is the fact that the 2005 Constitution has an entrenched bill of rights for the protection of the citizens.

In most of post-colonial Africa, especially within those societies arranged on patriarchal lines, male primogenitor provides a fertile human rights problem area which rears its head, now and again. In South Africa, a number of cases have gone the way of the Constitutional Court which, in its function of upholding human rights, has in turn produced some interesting jurisprudence. In Zimbabwe, the Magaya case is in point.

With that jurisdiction in mind, and particularly the dictates and imperatives of the chapter 3

(bill of rights chapter), second-guess or predict how, courts in Swaziland, should best go about dealing with a chieftaincy succession dispute involving a female contestant, where there is no male contender.

[25 Marks]

QUESTION FOUR

From the lips of Justice Robert H. Jackson, in the case of *West Virginia State Board of Education v Barnette*, 319 U. S. 624 (1943), fell these immortal words:

“The very purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials, and to establish them as legal principles to be applied by the courts. The right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcomes of no elections.”

Interrogate this quotation, as it relates to human rights discourse, against the general debate which suggests that courts have no business thwarting the will of the people (which lies with those elected). Your interrogation should indicate the position you take on the debate, that is to say, whether you are for the majoritarian or counter-majoritarian view, with a motivation of the stand you shall have taken.

[25 Marks]

QUESTION FIVE

In human rights discourse, it is the state (or government) that bears the role of protecting and promoting human rights.

- a) Why is the burden to protect human rights on the state?

[5 marks]

- b) Giving three examples of civil and political rights, state how the state is called upon to meet its obligation of protecting and promoting human rights of that category?

[10 Marks]

- c) Giving three examples of socio-economic rights, state how the state is called upon and goes about to meet its obligation of protecting and promoting human rights of that category?

[10 Marks]

[Total Marks:25]