

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

RE-SIT EXAMINATION PAPER, JULY 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

Swaziland, has a dual legal system. The 2005 Constitution takes cognizance of that fact and has provisions aimed at pertinently standardizing matters connected to Swazi law and custom, in so far as they relate to the human rights chapter.

Discuss how this interaction of legal systems is to be balanced in the event Swazi custom violates a basic right of an individual.

[25 MARKS]

QUESTION TWO

Speaking in 1788 at a Convention for the ratification of the United States Constitution, held in Virginia, John Marshall, later to become the fourth Chief Justice of the United States, fervently argued in support of the power of the judiciary to exercise 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"*.

Interrogate the quotation, as it relates to the human rights discourse, in the context of the 2005 Constitution of the Kingdom of Swaziland. In your interrogation, discuss whether this sage endorsement finds application (in Swaziland) and locate or pinpoint it within the relevant provisions.

[25 MARKS]

QUESTION THREE

Section 35 (1) of the 2005 Constitution sets out the litigation process to follow if a party wishes to approach court, for a remedy on a human rights violation. Its counterpart, section 38 of the 1996 Constitution of South Africa, similarly sets out the process for the approach in South Africa.

Compare and contrast the two, indicating, with reasons, which of the two provisions is preferable in the litigation of human rights.

[Marks: 25]

QUESTION FOUR

With regard to the findings and recommendations of the African Commission on Human and Peoples' Rights (ACHPR), in *Lawyers for Human Rights versus The Kingdom of Swaziland*, 251/2002, discourse on how you perceive the human rights situation in the country after the coming into effect of the 2005 Constitution, stating whether or not you consider there has been compliance on the issues raised by the ACHPR in its recommendations.

[25 marks]

QUESTION FIVE

In their work, 'The bill of rights handbook', Currie and De Waal deal with the basic principles of the new constitutional order as obtains in South Africa. Amongst these are constitutionalism, the rule of law, democracy and accountability.

Elaborate on these principles and consider whether or not, in the context of the 2005 Swaziland Constitution, they find application.

[25 Marks]