

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

MAIN EXAMINATION PAPER, MAY 2018

TITLE OF PAPER: HUMAN RIGHTS

COURSE CODE: L507

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]

Swaziland is a State Party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). She has, in her Constitution, domesticated the tenets of CEDAW, by way of entrenching them in the Bill of Rights chapter.

The women folk are expressive of their aspirations in the enjoyment of the human rights. This being a national election year, talk of a 50/50 gender representation in Parliament, in keeping with the regional political initiatives, and the very rights entrenched in the Constitution, is high on the agenda. During the last elections a widow could not contest, following the death of her husband, and the mourning period women have to undergo, in terms of custom. For what remains of their term, a woman Minister and woman Senator are not to be permitted within the precincts of Parliament, for a period of two years, in observance of a customary mourning period.

Locating the subject within the pertinent provision(s) in the Constitution, as well as against the country's obligations at international law, discuss the plight of women in Swaziland - in relation to their enjoyment of human rights, generally, and in political positions, specifically - given the cultural and traditional patriarchal ethos that holds sway.

[25 marks]

QUESTION TWO

Owing to a combination of history and legal developments, Swaziland's legal system and court structure are dual. Such developments, though, are not entirely unique to her. Most of past colonial Africa, bears testimony to this legacy.

An area where the duality brings about a persistent disharmony (or conflict), in the manner the legal systems apply, is that of private law: notably the family and succession laws. Apart from the coming into force of a Constitution, ranking supreme over all laws - with an entrenched bill of rights - there has been no legal reform initiative to harmonize the law sources that are recognised. The case of *Magaya v Magaya*, (SC 210/1998) stands as an example of how, some years back in Zimbabwe, inheritance laws clashed: the traditional law largely influenced by patrilineal descent, in terms of which a relationship to the father, or descent, through the male line, determines who inherits.

With that thought in mind, discuss this reality and argue for a clear and logical approach that would put the country out of this dilemma. In your discussion, take into consideration the endless universality versus cultural relativism debate as well as try to locate the problem within the human rights space in Swaziland.

[25 Marks]

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QUESTION THREE

Human rights litigation, assumes a different approach to legal standing (*locus standi*) than does traditional private law litigation.

Consider section 35(1) of the 2005 Swaziland Constitution (which is the human rights enforcement provision) and, with reference to relevant case law, fully discuss the approach and its underlying rationale: distinguishing it from that of traditional private law litigation.

[25 marks]

QUESTION FOUR

Write short explanatory notes on the following:

- a) Ripeness; [5 Marks]
- b) Inalienability of human rights; [5 Marks]
- c) International bill of rights; [5 Marks]
- d) First generation rights; and [5 Marks]
- e) Justiciability. [5 Marks]

[Total marks: 25]

QUESTION FIVE

International human rights law and International humanitarian law, are two human orientated disciplines that represent two different events in their applicability.

- a) Broadly discuss what international humanitarian law stands for, and its rationale in the modern world. [12.5 marks]
- b) Who are the persons sought to be protected under international humanitarian law, and why? [12.5 marks]

[Total marks: 25]

END OF QUESTION PAPER.