

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

SUPPLEMENTARY EXAMINATION PAPER, JULY 2018

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]

The one socio-economic orientated human rights Swaziland has had, on her litigation radar screen, relates to free primary education. It was predicated upon section 29(6) of the 2005 Constitution. Three times the matter was before the courts between the Swaziland Ex-Miners Association and the Swaziland Government.

Viewing the right to education against the background of General Comment No. 13 (Twenty-first session, 1999) of the Committee on Economic, Social and Cultural Rights, discuss broadly the manner the matter was litigated upon, indicating if it gave promise to the right at issue.

[25 marks]

QUESTION TWO

There is an ongoing debate, informed by two conflicting thoughts: the majoritarian and counter-majoritarian. In terms of the former, it is argued only the electorate, duly represented by Parliament, carries the legitimate mandate to make pronouncements on the law, including when they are to be repealed. The latter, on the other hand, stands for the view that there should be a judicial review of executive conduct and laws (including legislation, or Acts of Parliament), that are unconstitutional. The counter-majoritarian view contends that the Judiciary, when it reviews and strikes down legislated law, 'thwarts the will of the People.'

Critically discuss the weakness of the majoritarian view in the discourse of human rights. In your discussion, speak to preambular provisions (6) and seven (7), as well as sections 2(1), 35(1) and 151(2) (a) and (b) of the 2005 Constitution of Swaziland.

[25 marks]

QUESTION THREE

With the advent of human rights litigation, under public law, there has been a growing jurisprudence clearly indicating a more expansive (also called liberal or generous) approach to standing, so-called *locus standi in judicio*.

Given the very nature of the desire to have protected and promoted the human rights of every person, discuss, generally, the useful quality of this development, particularly in respect to class action litigation and public interest litigation, locating them within the provisions of the 2005 Constitution of Swaziland.

[25 marks]

QUESTION FOUR

Write short explanatory notes on the following:

- a) Indivisibility of human rights; [5 Marks]
- b) Universality of human rights; [5 Marks]
- c) Second generation rights; [5 Marks]
- d) Second Optional Protocol to the International Covenant on Civil and Political Rights ; and [5 Marks]
- e) Mootness. [5 Marks]

[Total marks: 25]

QUESTION FIVE

It is posited that International humanitarian law predates International human rights law.

Discuss, indicating whether you agree with the assertion or not. In your discussion, sketch the origins of International humanitarian law, its sources, and its justification.

[Total marks: 25]

END OF QUESTION PAPER.