

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

**MAIN EXAMINATION PAPER, MAY 2019**

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TITLE OF PAPER: HUMAN RIGHTS

COURSE CODE: L507

TIME ALLOWED: THREE (3) HOURS

INSTRUCTIONS:

- 1) ANSWER QUESTION 1 (ONE), WHICH IS COMPULSORY, AND ANY 3 (THREE) OTHER QUESTIONS OF YOUR CHOICE. THE TOTAL NUMBER OF QUESTIONS TO BE ANSWERED IS 4 (FOUR).
- 2) IN YOUR ANSWER, THE CORRECT USAGE OF GRAMMAR, CONTENT, ORGANISATION, COHERENCE, CLARITY OF EXPRESSION, ABILITY, SOUNDNESS OF ANALYSIS AND REASONING WILL BE FACTORED IN THE GRADING CRITERIA.
- 3) WRITE LEGIBLY AND BEGIN A NEW QUESTION ON A NEW PAGE.
- 4) EACH QUESTION CARRIES A TOTAL MARK OF 25..

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

### **QUESTION ONE [COMPULSORY]**

Following the vociferous calls made to Swazis to mount an offensive on the HIV/AIDS pandemic and treat it as a concern for the entire nation (“*indzaba yetfu sonkhe*”), the women regiment in eSwatini, Lutsango LwakaNgwane, is keen to make interventions. It has identified a partner who will provide a mobile facility to use for voluntary counselling and treatment (VCT) initiatives which it wishes to see off the ground when the regiment is summoned for duty (“*phez’ukwemkhono*”). Behind this is the reasoning that this could be the most opportune time, away from home, making it possible for women to easily access a VCT centre, independent of their partners/husbands. As part of traditional protocol, the group’s leadership approach the traditional authority (*induna*) on this initiative to seek “permission”. They are told, in no equivocal terms that what they are intending can be likened to a “witch-hunt on a family’s household”: an aphorism that speaks to subjecting the husbands/partners of the regiment to some indirect testing, as it were. Needless to say, the effect of the traditional authority’s response is to thwart the women’s initiative.

eSwatini 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.

You are called upon to advise the women’s regiment if they can approach court or the Human Rights Commission, and what rights, if any, have been violated.

[25 marks]

### **QUESTION TWO**

The chronicle of human rights makes for interesting reading, generally, and in Africa, particularly. For eSwatini, the 1968 Independence Constitution can be hailed as the first post-independent document with an entrenched contemporary bill of human rights. However, this was a short-lived celebration. In April 1973, that Constitution was revoked/repealed with savings. The bill of rights chapter was not saved. On the human rights aspect there was a long hiatus, until the adoption of the 2005 Constitution.

Making reliance particularly on the recommendations of the African Commission on Human and Peoples’ Rights, critically discuss, with motivation, whether eSwatini, against the events of April 1973, can be said to have been heeding to the call to protect and promote human rights (during the period she did not have a written constitution with an entrenched bill of rights).

[25 Marks]

### **QUESTION THREE**

Class action and public interest litigation provide a real opportunity in the litigation for human rights for the redress of violated rights to a wider category of persons.

With that in mind, discuss the two formats of standing (*locus standi in judicio*) in human rights litigation on the following basis:

- a) By explaining what each is suited for (when, why and how). [10 marks]
  - b) Locate and specify the provision that permits each one within the 2005 Constitution. [5 marks]
  - c) In a brief, yet concise manner, make reference to case law and state how, only one of the two, was utilised, and what advantages/benefits accrued to the litigants. [10 marks]
- [25 marks]

### **QUESTION FOUR**

Karan Vasak came up with a classification (or division) of human rights which followed the tripartite mottoes of the French Revolution: liberty equality and fraternity (*Liberté, égalité, fraternité*). Of the three classifications, you are to discuss any two in the following manner:

- a) Fully explain their nature/character, giving four examples in each case. [10 marks]
- b) Indicate how their realisation is to be achieved. [10 marks]
- c) Locate each one of them within an international treaty of your choice. [5 marks]

[Total mark: 25]

### **QUESTION FIVE**

Amongst cases heard and decided by the European Court of Human Rights, the jurisprudence on sexual orientation brings to the forefront, in a lucid manner, approach of balancing the enjoyment and limitation of a human right has be approached.

It is a given that the provisions of the chapter 3 rights in the eSwatini Constitution do not provide a guide by way of an interpretation clause. A hint that a balance has to be struck is discernible in paragraph 5 of the 2005 Constitution's preamble.

*[...] “Whereas it is necessary to blend the good institutions of traditional law and custom with those of an open and democratic society so as to promote transparency and the social, economic and cultural development of our Nation”...*

Nowhere is the phraseology “open and democratic society” given a precise meaning in the Constitution. There is repeated use of its twin “reasonably justifiable in a democratic society” in some provisions speaking to the limitation of the enjoyment of human rights though.

Discuss, in the context of the lesbian, gay, bi-sexual, transgender and inter-sex (LBGTI) community, how you would argue the balancing of the enjoyment and limitation of their sexual orientation rights.

**[Total marks: 25]**

END OF QUESTION PAPER.