



UNIVERSITY OF ESWATINI

FIRST SEMESTER MAIN EXAMINATION PAPER, NOVEMBER 2019

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

COURSE CODE: LAW511

TITLE OF PAPER: HUMAN RIGHTS

TIME ALLOWED: 3 HOURS

Instructions

1. This paper consists of Section (A) and (B).
2. Section A is compulsory.
3. Answer any three questions from Section B.

Candidates may complete the front cover of their answer book when instructed by the Chief Invigilator and sign their examination attendance cards but must NOT write anything else until the start of the examination period is announced.

No electronic devices capable of storing and retrieving text, including electronic dictionaries and any form of foreign material may be used while in the examination room.

DO NOT turn examination paper over until instructed to do so.

SECTION (A)

Question 1 (this question is compulsory)

There is an ongoing, palpable, homophobic sentiment doing rounds in a number of post-independent African countries: Eswatini included. Very broadly, this sentiment is expressed against a particular type of sexual orientation. The result is that the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community is increasingly finding itself at odds with those who perceive themselves as society's yardstick. By extension, this has (remarkably) found expression in the stance, by the governments of those countries, to criminalize the sexual expression of the LGBTIQs. Save for sodomy, a common law offence, Eswatini does not have a statute criminalizing any of the mentioned community's sexual expressions/activities, nor are there any overtures to criminalize. That notwithstanding, the religiosity and morality around this conversation is openly unkind. All that amid a Bill of Rights Chapter in the Constitution. This year, during the month of September, a government official responsible for the registration of companies and associations, declined an application for the registration of an LGBTIQ entity whose aims are to cater for the aspirations of its community members.

This takes us to the enduring question: is an LGBTIQ person not entitled to his human right of sexual orientation, no less than his/her heterosexual counterpart? The question could be asked differently: is it the business of the government to use the law to criminalize and police sexual orientation, including the refusal to register an entity solely based on the sexual orientation of its membership?

Putting on a human rights cap, and using the contemporary human rights framework, discuss robustly.

[25 marks]

SECTION (B)

Question 2

The Universal Declaration for Human Rights (UDHR) is a manifest pointer that International Human Rights rest on a universal edifice. It has been hailed as a milestone document in the history of human rights: the fountain spring from which flows contemporary human rights, and the modern *Magna Carta* (Great Charter). It is significant to mention that it was drafted by representatives with different legal and cultural backgrounds from all regions of the world. To properly appreciate its antecedents, consider this from the preamble:

Now, therefore, The General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure the universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Consider too, Article 5 of the Vienna Declaration and Programme of Action which proclaims:

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner on the same footing, and with the same emphasis. While the significance of normal peculiarities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of the state, regardless of their political, economic and cultural systems, to promote and protect all human rights.

Taking a broad outlook at the contemporary human rights project, at the international, regional and national lanes – and, considering a case law in point – discuss, in a pointed way, with motivation, whether at the end of the day there is/are compelling arguments in favor of cultural relativism, especially from the African continent.

[25 marks]

Question 3

To the surprise of many, human rights are actually much wider than what people normally think of. The currently most celebrated human rights, like equality before the law, freedom of

expression, and freedom of association, are only small part of the whole notion of human rights. The Czech jurist, Karel Vasak, and some other writers, commonly refer to human rights as belonging to one of three generations.

- (a) By way of discussion, contrast the first and second generation of human rights, giving three examples of each, as well as indicating how the beneficiaries (of these rights) are to achieve their enjoyment .

[18 marks]

- (b) In bringing home the point that human rights are interdependent (interconnected or interrelated) and indivisible discuss, by way of example, a right that is situated on both sides of the first and second generation of human rights classification.

[7marks]

[Total mark: 25]

Question 4

Write explanatory notes on what the following mean:

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| a) Universality of human rights. | [5 marks] |
| b) International Bill of Rights. | [5 marks] |
| c) Customary international law, as a source of human rights. | [7.5 marks] |
| d) Transitional society/Transitional justice. | [7.5 marks] |

[Total marks: 25]

Question 5

Contrary to earlier skepticism by the United Nations, that regional arrangements of human rights systems were a breakaway movement bent on calling the universality of human rights into question, it (the United Nations) later became less suspicious and even encouraged regionalism in the field of human rights.

With particular emphasis on the African regional arrangement of human rights, make a comparative discussion between the African system and the European system of human rights..

[25 marks]