



UNIVERSITY OF ESWATINI

SECOND SEMESTER MAIN EXAMINATION PAPER, NOVEMBER 2021

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

COURSE CODE: L507

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)

“The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections. If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.”

— Per Justice Robert H. Jackson delivering the unanimous opinion/decision of the court in
West Virginia Board of Education v Barnette, 319 U.S. 624 (1943)

Assuming this case had been before the court of Eswatini; and from a position of human rights, do you think that the opinion/decision on the right that was implicated would have been decided any differently? Motivate your position.

[25 marks]

SECTION (B)

Question 2

Against the background of a duality of governments in Eswatini: where there is, on the one hand, a modern state based government and, on the other hand, a traditional based government (grounded on traditional institutions), discuss whether there is hope for the principles of a constitutional order, and human rights to be promoted. I expect you to faintly indicate the principles.

[25 marks]

Question 3

Of the three classification of human rights, which follow a generational account – along a historical development of the right – discuss the one class which impacts on a right or rights that you consider should be placed high on the agenda in Eswatini. In the discussion, you are to explain why you have chosen the particular classification, as well as what it takes for the rights that fall under that classification of rights, to be achieved.

[Total mark: 25]

Question 4

The universal human rights and cultural relativism (cultural diversity) debate is thus far a vigorous one in the Asian and African continents. In most of post-colonial Africa, particularly, the legacy of a dual legal system is manifest. Nevertheless, as would be displayed in the Tanzanian case of *Ephraim v Pastory* (2001) AHRLR 236 (TzHC 1990), amongst others, incremental progress is underway in ensuring that human rights are promoted and protected.

(a) Give a brief survey of what this debate is about, taking a position on it.

[12.5 marks]

(b) Do you consider the Tanzanian case to have properly fashioned some jurisprudence in accord with human rights, or not? Motivate your position.

[12.5 marks]

[Total marks:25]

Question 5

The local chapter of the Lesbian, Gay, Bi-sex, Transgender, and Inter-sex (LGBTI) community has for some time been making attempts to have their association registered according to the laws of the country. They have met with little cooperation from the registration officers in that regard.

What opinion would you give to them in the face of the hostility or lack of cooperation in their endeavor? Ensure that your opinion aligns itself with the emergent human rights jurisprudence in this area, as well indicating what right is implicated.

[25 marks]