



UNIVERSITY OF ESWATINI

FIRST SEMESTER MAIN EXAMINATION PAPER, APRIL 2021

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)

Detective Constable Tube and Tyre Phikela, a well-known no-nonsense criminal investigator, has been assigned to get to the bottom to a spate of robberies that have given the community of Kwaluseni many a sleepless nights. His frustrated superiors have given him strict orders to “bring to book the culprit or culprits, by hook or by crook.” Together with his team they set out on this task. A tip-off they hastily follow, and which could very well be intended to deceive them, leads to the arrest of a once notorious robber who has done time in jail, and gotten rehabilitated/reformed. During his interrogation, he brings it to the attention of the police officers that he could not possibly have carried out the robbery on account of the fact that he has learned his lesson and that, even before the particular day the alleged robbery was carried out, he had been hospitalized for fractures on both legs: for which he was in a cast (Plaster of Paris).

Despite this explanation, Detective Constable Tube and Tyre Phikela is not satisfied and accuses him of “turning back to his old ways” and frustrating their policing campaign at reducing crime. He then suggested to his teammates that they should administer to the suspect the combined notorious “chicken” and “tube” methods to the suspect until he tells the truth.

Discuss which human right strands to be violated, were this type of interrogation to go ahead. In your discussion, indicate whether it can ever be justified and, assuming you were Detective Constable Tube and Tyre Phikela, how would you go about the interrogation.

[25 marks]

SECTION (B)

Question 2

In the context of the Eswatini Constitution, 2005, locate the provisions that speak of the judiciary as the final arbiter of constitutional and human rights litigation, and discuss if they adequately cover for standing of parties that can bring a matter of human rights violation before court.

[25 marks]

Question 3

In its classification of human rights, the human rights discourse typically gives a generational account which follows a historical development of the rights.

Discuss the nature of the second generation of human rights, and provide at least three examples, of the second generation of human rights, and how they are to be attained.

[Total mark: 25]

Question 4

Write explanatory notes on what the following mean:

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|--|--------------------|
| a) Indivisibility of human rights. | [5 marks] |
| b) Interdependence/interconnectedness of human rights. | [5 marks] |
| c) General principles of law, as a source of human rights. | [7.5 marks] |
| d) A protocol in the context a treaty. | [7.5 marks] |

[Total marks: 25]

Question 5

Section 35(1) of the Constitution, an enforcement provision of the protective provisions, or human rights (also known as the human rights litigation provision) stands eminent. To be found in this provision are preservations, innovations, and reinforcements, on *locus standi*, as it relates to the category of persons who can approach the court.

Discuss the rationale behind the *locus standi* conferred in the case of a detained person, pointing out whether you recognize any departure in it, from the traditional common law position. The referencing to decided case law, in making your point, will earn better and good marks.

[25 marks]