

**NATIONAL UNIVERSITY OF LESOTHO**  
**FACULTY OF LAW**  
**LL.B SUPPLEMENTARY EXAMINATION**  
**L2304 - CONSTITUTIONAL LAW: FUNDAMENTAL RIGHTS**

**AUGUST 2023**

**100 MARKS**

**TIME: 3 HOURS**

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**INSTRUCTIONS:**

1. There are six questions. You are required to answer any **FOUR (4)** questions.
2. Number all answers correspondingly to the questions.
3. Any form of cheating will be penalised.

### **QUESTION 1**

Constitutionalism denotes a political system of governance based on the supremacy of the constitution and a limited government. Explain with emphasis on the core principles of constitutionalism and with clear illustrations, what is meant by supremacy of the constitution and what is meant by limited government.

**[25 MARKS]**

### **QUESTION 2**

Section 19 of the Lesotho Constitution of 1993 states that “Every person shall be entitled to equality before the law and to the equal protection of the law”.

With considerations on the principles of formal equality and substantive equality, explain how and to what extent the Section 19 guarantees that gender equality can be achieved in Lesotho?

**[25 MARKS]**

### **QUESTION 3**

a) Give your understanding of what is meant by:

- i. Academic freedom **5 Marks**
- ii. Media freedom **5 Marks**
- iii. Artistic freedom **5 Marks**

b) With examples, clearly differentiate between formal equality and substantive equality. **10 Marks**

**[25 MARKS]**

### **QUESTION 4**

Beginning with a concise explanation of the three generations of human rights, give a critical analysis of the status and legal nature of the “Principles of State Policy” contained in Chapter 3 of the Constitution of Lesotho of 1993.

[25 MARKS]

### QUESTION 5

a) Briefly state the decision of the courts in the following cases:

- i. *Marbury v Madison* (1803)5 U.S.137 **2.5 Marks**
- ii. *Pretty v Unitec Kingdom* [2002] **2.5 Marks**
- iii. *S v Makwanyane & Another* (CCT3/94) [1995] ZACC 3 **2.5 Marks**
- iv. *Boloetse & Another v His Majesty the King & Another* [2022] LSHC 216 Const (12 Sept 2022) **2.5 Marks**
- v. *Ralekoala v Minister of Human Rights, Justice & Constitution Affairs & Ors* (CC 03/11) [2012] LSHC 8 **2.5 Marks**
- vi. *Government of South Africa & Others v Grootboom & Others* (CCT11/00) [2000] ZACC 19 **2.5 Marks**

b) The right to life is an absolute and non-derogable human right. There are, however, instance wherein derogations from the right to life may be possible; critically analyse those instances. **10 Marks**

[25 MARKS]

### QUESTION 6

Like many other poverty-stricken countries in Africa, the Kingdom of Lesotho faces the challenge of guaranteeing basic human rights and fundamental freedoms to its citizens. Having participated in the World Conference on Human Rights in 1993 and signed up to the Vienna Declaration and Programme of Action that was adopted at the conference, the government of Lesotho is required to ensure implementation of the Vienna Declaration at the domestic level. One of the crucial provisions of the Declaration is that a state cannot evoke the argument of lack of development, to deny its citizens entitlement to the full range of universally recognised human rights. The Lesotho government has over the two decades since the adoption of the Vienna Declaration, been under immense pressure from the

United Nations Human Rights Council and other international human rights organisations to carry out constitutional reforms to guarantee recognition and protection of the full range of universal human rights and freedoms.

The government is however, uncertain as to what concrete constitutional measures to take in redressing the human rights lapses in the Constitution. As a human rights advocate and constitutional law expert, you are consulted to advise the government and provide a legal opinion on the most critical areas of reforms that should be undertaken. Provide justification to your response.

**[25 MARKS]**