

NATIONAL UNIVERSITY OF LESOTHO
FACULTY OF LAW
LL.B FINAL EXAMINATION

L2304 – CONSTITUTIONAL LAW: FUNDAMENTAL RIGHTS

JUNE 2023

100 MARKS

TIME: 3 HOURS

INSTRUCTIONS:

1. You are required to answer any **FOUR (4)** of the **SIX (6)** questions.
 2. Number all answers correspondingly to the questions.
 3. Any form of cheating will be penalised.
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QUESTION 1

a) Discuss the constitutional law theory of transformative constitutionalism. In your discussion, explain whether the system of constitutionalism in Lesotho could be said to be transformative. 15 Marks

b) The human rights and fundamental freedoms enshrined in the Lesotho Constitution of 1993 are envisaged to be achieved principally through two processes. Clearly describe these two processes. 10 Marks

[25 MARKS]

QUESTION 2

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

[25 MARKS]

QUESTION 3

Critically analyse the counter-majoritarian dilemma in relation to the principle of judicial review/control with respect to the ruling in the *Marbury v Madison* (1803) 5 U.S. 137 case that equips the judiciary with the exclusive competence to interpret laws.

[25 MARKS]

QUESTION 4

As a least developed country, the Kingdom of Lesotho faces the challenge of guaranteeing basic human rights and fundamental freedoms to the Basotho people. The government of Lesotho participated in the World Conference on Human Rights in 1993 and has signed up to the Vienna Declaration and Programme of

Action that was adopted at the conference. One of the crucial clauses in the Vienna Declaration is to the effect that a state cannot, based on the lack of development, deny its people entitlement to the full range of universally recognised human rights. The Lesotho government has recently, been under pressure from the United Nations Human Rights Council and other international human rights organisation to provide constitutional recognition and protection of the full range of universal human rights and freedoms. The government is accordingly, in the process of undertaking constitutional reforms to redress the issue but is confronted with challenges as to what actually needs to be done.

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]

QUESTION 5

Differentiate with examples, between the following concepts and principles as they apply or are understood in constitutional law:

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|--|---------|
| a) Constitutional monarchy and absolute monarchy | 5 Marks |
| b) Right holders and duty bearers | 5 Marks |
| c) Justiciable rights and non-justiciable rights | 5 Marks |
| d) Rights and freedoms | 5 Marks |
| e) Judicial activism and judicial restraint | 5 Marks |

[25 MARKS]

QUESTION 6

The law guarantees to everyone the right to equality. Equality however, is an ambiguous concept especially, when viewed from the perspective of practical realities. Yet, as a human right enshrined in the Constitution, its realisation is

incontestable. Focusing on the dual nature of how equality is conceptualised, give a critical analysis on how the right to equality could be achieved.

[25 MARKS]