

**NATIONAL UNIVERSITY OF LESOTHO**

**FACULTY OF LAW**

**LL.B. FINAL EXAMINATION**

**L1301- INTRODUCTION TO LAW**

**JANUARY 2024**

**MARKS: 100**

**TIME: 3 HOURS**

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**INSTRUCTIONS:**

1. Write legibly.
2. There are six questions. Answer **four (4)** questions.
3. Question **1 (one)** is compulsory.

### QUESTION 1 (compulsory)

Answer the following questions and support your answer with relevant provisions of the Constitution where applicable.

(a) Which authority is responsible for law-making in Lesotho? **3 Marks**

(b) What does it mean to say that rights are not justiciable? Which part of the Constitution comprises non-justiciable rights? **7 Marks**

(c) Outline the process of law making by the legislative authority mentioned in (a.) above. **15 Marks**

**[25 MARKS]**

### QUESTION 2

Write short notes to explain the following and indicate their importance in the development of law in Lesotho:

(a) Constitution **5 Marks**

(b) Doctrine of *stare decisis* **10 Marks**

(c) Common Law **10 Marks**

**[25 MARKS]**

### QUESTION 3

Determine whether the following examples are *ratio decidendi* or *obiter dicta*. In each case, identify which aspects of the language used by the judge point to the extract being *ratio decidendi* or an *obiter dictum*.

(a) “There is no suggestion that dispensing cannabis to the seven priests cannot, with necessary adaptations, be subjected to the same or some similar control. Or for that matter, allowing priests to grow a limited number of cannabis plants for religious use. These are mere illustrations of how the problem of the exemption can be regulated. It is for Parliament to craft a workable exemption.” **5 Marks**

(b) “In the pre-democratic era same-sex unions were not only denied any form of legal protection, they were regarded as immoral and their consummation by men could attract imprisonment.” **5 Marks**

(c) “There can be legitimate debate about the methods and the mechanisms chosen by the lawmaker to give effect to the difficult duty entrusted upon it in terms of the epilogue. We are not concerned with that debate or the wisdom of its choice of mechanisms but only with its constitutionality. That, for us, is the only relevant standard. Applying that standard, I am not satisfied that in providing for amnesty for those guilty of serious offences associated with political objectives and in defining the mechanisms through which and the manner in such amnesty may be secured by such offenders, the lawmaker [...] has offended any of the express or implied limitations on its powers in terms of the Constitution. **5 Marks**

(d) “In the ordinary meaning of the words, the death sentence is undoubtedly a cruel punishment. Once sentenced, the prisoner waits on death row in the company of other prisoners under sentence of death, for the processes of their appeals and the procedures for clemency to be carried out. Throughout this period, those who remain on death row are uncertain of

their fate, not knowing whether they will ultimately be reprieved or taken to the gallows. Death is a cruel penalty and the legal processes which necessarily involve waiting in uncertainty for the sentence to be set aside or carried out, add to the cruelty. It is an inhuman punishment for it ‘[...] involves, by its very nature, a denial of the executed person’s humanity,’ and it is degrading because it strips the convicted person of all dignity and treats him or her as an object to be eliminated by the state. The question is not, however, whether the death sentence is a cruel, inhuman or degrading punishment in the ordinary meaning of these words but whether it is a cruel, inhuman or degrading punishment within the meaning of section 11(2) of the Constitution.”

**5 Marks**

- (e) “The manner in which the media carry out their constitutional mandate will have a significant impact on the development of our democratic society if the media are scrupulous and reliable in the performance of their constitutional obligations, they will invigorate and strengthen our fledgling democracy. If they vacillate in the performance of their duties, the constitutional goals will be imperiled. The Constitution thus asserts and protects the media in the performance of their obligations to the broader society.”

**5 Marks**

**[25 MARKS]**

#### QUESTION 4

(a) How many departments are in the Faculty of Law at the National University of Lesotho (NUL)? Name them. **5 Marks**

(b) Identify and explain any six (6) law courses that form part of the 2023 Faculty of Law Curriculum. Classify each course under the relevant department.

**20 Marks**

**[25 MARKS]**

#### QUESTION 5

a) Explain the connection between law and other social norms **10 Marks**

b) *S v Mucherechedzo and another (1982) 1 SA 215 (ZSC)* is a case from Zimbabwe, in which the accused appealed against their conviction by the trial court. The appellants were the former members the guerilla forces and later members of the Zimbabwean National Army. At the time of the commission of the offence in question, they were on leave in the area of Great Zimbabwe ruins. At the Rouz farm, they were told by the farm employees that the Roux were bad employers, that they were opposed to the Mugabe government and were urged to kill them. Next morning both went with their rifles to the farm and gunned down both Mr. and Mrs Roux in a deliberate and cold- blooded manner. They also stole a pistol, record player, some money and few other things.

The defence argued that both were under the influence of a spirit of a medium Sophie, the name of the spirit being Mbuya Nehanda, who was hanged in the 1890s and who was operating through Sophie. They both revered the spirit and attended upon her for cleansing themselves to the killings during the war

of liberation and for treatment of some minor ailments. It was argued that the medium was urging that the Europeans in the whole of the area of Great Zimbabwe ruins had to be killed and particularly those, who supported the previous regime, and that it was that medium which asked them to carry out the killings of Mr. and Mrs. Roux. The medium did not threaten them if they did not do her bidding but the two felt that if they disobeyed her, they would receive no further treatment for their ailments, which might, as a result, get worse and could even lead to their death. In effect, they relied on the defence of duress.

The court agreed that the defence of duress could be a valid defence. But in this case, was there duress? Duress required that the offence must have been induced by threats, actually believed in, of immediate death, or serious bodily harm, which could not be avoided except by committing the offence. The facts did not prove it. The evidence showed that the appellants voluntarily associated themselves with the medium and they could not have easily disassociated themselves. The evidence further showed that the appellants were influenced more by the reports that the Roux were bad employers than anything the medium said. Accordingly, the court sentenced the accused to death.

In the context above:

(a) Identify the issue/s

**5 Marks**

(b) Identify in a few lines the ratio of the case.

**10 Marks**

**[25 MARKS]**

## QUESTION 6

- (a) Thibose and Thabang were involved in an argument. Thibose hit Thabang and Thabang had to seek medical attention. He now wants Thibose to pay medical expenses.

Advise Thabang as to the type of action he can institute against Thibose. **5 Marks**

- (b) Molemo and Mphonini are engaged to be married. A day before the wedding day Molemo sends Mphonini a whatsapp text telling her that he no longer wants to get married but he fails to provide reasons why he is calling off the wedding.

Advise Mphonini as to the type of action she can institute against Molemo.

**5 Marks**

- (c) Livo was driving to town one morning, and on his way he forcefully drove into a road traffic light which then fell on Molly's car. Molly was severely injured because of the accident.

- i. What type of action can be brought against Livo?

**10 Marks**

- ii. In the action stated above, state the parties.

**5 Marks**

**[25 MARKS]**