

UNIVERSITY OF COLOMBO, SRI LANKA

FACULTY OF LAW

BACHELOR OF LAWS EXAMINATION, YEAR IV – 2016/2017

HUMAN RIGHTS LAW

(Three Hours)

Total Number of questions: 06

Answer **FOUR** questions **ONLY** selecting question **No.1** and any other **THREE** questions.

(Candidates will be penalized for illegible handwriting)

1. According to international economy index, the economic growth rate of the State of Sunderland has continuously been the lowest even after the protracted internal armed conflict was brought to an end five years ago. The Finance Minister of Sunderland has recently stated that the government is unable to take any steps to improve the economic conditions of the country, as the State has been badly projected in the eyes of the international community. Now, however, the World Bank has offered to assist Sunderland if the government would consider its own proposals for reviving the economy. One of its proposals is to privatize higher education in the country. Higher education in the country has been offered free of charge for its citizens.

Meanwhile, more than thirty people were killed due to an explosion at a garbage disposal site near the capital of Sunderland. Garbage disposal is being carried out by private companies in the country. Families living in the locality of the disposal site complain that they suffer from respiratory related diseases and that they are unable to engage in leisure activities outdoors due to the stench emanating from the disposal site.

Furthermore, in an attempt to attract direct foreign investment and to strengthen the image of Sunderland as a stable country, the government undertakes law reforms aimed at improving human rights protection system in the country. But, civil society groups continue to raise concerns over the rigid position maintained by the government relating to certain basic guarantees such as secularism, supremacy of rights over legislation, non-discriminatory nature of customary laws.

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Kamal is the leader of the metropolitan university student movement. He organizes several protest marches across the country against the proposals made by the World Bank and demanding sweeping law reforms. He is arrested while leading a protest march defying the police ban. In the ensuing melee, his both arms are broken but no action is taken by the police to arrange for medical treatment to him. Kamal's father visits him at the police station and threatens to beat him up 'till his legs go limp' as punishment for the disrepute that he has brought upon the family.

Assuming that the legal system of Sunderland is similar to that of Sri Lanka, evaluate the human rights situation in the country. Based on your evaluation, make suggestions to improve the situation through necessary legislative / administrative measures.

(34 Marks)

2. 'In any endeavour of contemporary constitutional reform process, it is inevitable to give due consideration to international human rights obligations undertaken by the States concerned.'

Do you agree? Discuss by discussing any three human rights related issues contemplated in the constitutional reform process in Sri Lanka.

(22 Marks)

3. 'The principle of equality and non-discrimination has been made subject to a range of interpretations. Whilst no interpretation can claim to be an absolutely correct one considering the different situations in which the principle has to be applied, the human rights based approach of 'treatment as an equal not equal treatment' provides an excellent philosophical basis by which equality and non-discrimination can be translated into meaningful legal and policy tools.'

Do you agree with the above statement? Discuss in the context of your conceptual understanding and the practical application of the principle of equality and non-discrimination today.

(22 Marks)

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4. Narasimma, a sovereign State, consists of sizable different ethnic and religious communities. The religion of the majority of Narasimma is Sumato and other two religions Vikki and Bahora are also widely practiced. Consider the following matters brought to the attention of Mr. Norman, a human rights activist:

The Minister of Defence issues a circular prescribing that all Narasimmans shall embrace a religion of their choice but that it shall be mandatory for all to follow their religious practices openly; and any comments or observations made on religious belief and practices shall not be tolerated under any circumstances and subject to severe penal sanction. The Cabinet of Narasimma declares that Sumato shall be the supreme religion of the country and that the Sumato priests are immune from civil and criminal sanctions;

Leaders of the reformed Vikki believers pronounce a verdict on orthodox Vikki believers that the latter shall not engage in worship in the Vikki monasteries, and inter-marriages are prohibited among the two groups. Leading priests of Bahora propose a separate code of rules, adjudicatory system and list of punishment for Bahoran people.

Mr. Norman requests you to prepare an advisory note on the above matters in light of national and international human rights legal standards. Assuming that Narasimma is a State party to all major international human rights instruments and its Constitution is similar to that of the Constitution of Sri Lanka, prepare the advisory note.

(22 Marks)

5. Currently, human rights scholars seek to understand social justice and human dignity from a cross cultural perspective. This is considered as an important development in the field. Despite the common understanding that human rights are universal, the application of human rights in different societies always challenges the applicability of universal standards of human rights across the globe. Respecting diversity and human dignity within one's own cultural sphere is the key to any successful effort of respecting human rights with genuine conviction.

Do you agree with the above statement? Discuss.

(22 Marks)

*Continued to Page No. 4...*

6. Donald Ducken is one of the most wanted terrorist suspects currently kept in the police custody of Putinland. He is being interrogated in relation to a terrorist offence. He is not allowed of any visitors including his lawyer. Daisy Moulania, wife of Donald, complains that she receives reliable information about the severe torture that her husband is subjected to in police custody. She states that police officers often use abusive language and life-threatening physical harassment during his interrogation. The Chief Police Officer of Putinland, Phonny Jonny maintains that the police use only the minimum and necessary force on Donald in obtaining relevant information. Meanwhile, the Minister of Defense, issuing a statement to the media, reiterates that the government would not hesitate to take all possible steps to defeat terrorism. He informs the public that the Putinland Police acts according to the provisions of the Public Security Act and the Emergency Regulations in letter and spirit for the purpose of defeating terrorism in the country.

Assume that Putinland is a State party to all major international human rights instruments and that its Constitution is similar to that of the Constitution of Sri Lanka. Answer the following:

Discuss, if any, the grounds based on which Moulania can initiate a legal action;

What would be the legal implications of the statement made by Phonny Jonny?;

Would your answer be different if Putinland is not a State party to the major international human rights instruments?; and

Support your answer with relevant statutory and case law authorities.

(22 Marks)

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