



The University of the South Pacific
Emalus Campus

Examinations
Semester 2 2004

SCHOOL OF LAW

COURSE NAME: Human Rights

COURSE NO: LA 325

TIME ALLOWED: Three (3) hours

READING TIME: Ten (10) minutes

NUMBER OF PAGES: Five (5)

NUMBER OF QUESTIONS ON PAPER: Three (3)

NUMBER OF QUESTIONS TO BE ANSWERED: Three (3)

MARK ALLOCATED FOR EACH QUESTION: Question 1 : 40 marks, Question 2 : 40 marks, Question 3: 20 marks

TOTAL MARKS: Fifty percent (50%) of the course

MATERIALS PERMITTED IN EXAMINATION ROOM:
NONE

1. Answer ALL THREE questions. The first question is worth 40 marks, the second question 40 marks and the third question 20 marks.
2. If a question is divided into sub-parts, all parts of the question must be answered. Use your time and efforts according to the marks allotted to each question and each sub-question.
3. Do not repeat the facts already stated in the exam question in your answers.
4. Answer all parts of the question. In attempting the essay questions (Question 3) it is recommended (though not required) that you write a brief outline of your answers.

Approved
[Signature]

5. You must obtain 20 marks out of 50 in the Examination in order to pass the course.

QUESTIONS START IN THE NEXT PAGE

QUESTION ONE

Briefly define, and if necessary compare and contrast the following terms. Write a minimum of four sentences and MAXIMUM fifteen sentences for each question. (Usually *correct* answers of about seven to twelve sentences are sufficient for each sub-question).

- (a) *Magna Carta* (1215) and *French Declaration of Rights of Man* (1789)
- (b) *The Genocide Convention* of 1948 and the *Geneva Conventions* [concerning humanitarian laws] of 1949
- (c) *Bill of Rights of the United States Constitution* (1791) and *Universal Declaration of Human Responsibilities* (1997)
- (d) (The concepts of) Cultural relativism and Collective Rights
- (e) (The concept of) Domestic Jurisdiction and *Draft Pacific Charter of Human Rights*
- (f) International Labour Organisation and International Court of Justice

(Question 1 : 40 marks)

QUESTION TWO

Give brief answers to the following questions. The marks allocated to each question is indicated. A general guideline as to how many sentences should be used to answer each sub-question is also indicated. Write brief answers according to the marks allotted and the guidelines (of number of sentences suggested for each sub-question).

- (a) What would you say is the most important (and in some ways controversial) element in the definition of Torture as stated in 1984 *Convention on Torture*? Give brief reasons for your answer. (5 marks: four or five sentences)
- (b) Are political groups and cultural groups included as the 'target' groups in the definition of genocide in the 1948 *Convention on the Prevention and Punishment of the Crime of Genocide* ('*Genocide Convention*')? What do you understand by the 'intent' element in the definition of genocide? Give (at least) one example where certain killings or certain actions enumerated in the *Genocide Convention* arguably do not fall into the definition of genocide because they do not meet the above requirements of genocide. (4 marks : three to six sentences)
- (c) The 1960 United Nations *Declaration on the Granting of Independence to Colonial Countries and Peoples* adopted by the General Assembly strongly encourages secession. True or False? Briefly explain your answer. (3 marks: two to four sentences)
- (d) What is the main reason for the Soviet Union and its allies for abstaining when the UN General Assembly adopted the *Universal Declaration of Human Rights* (UDHR) in December 1948? Why were there two separate international Covenants when the United Nations 'transformed' the UDHR into legally binding documents in the year 1966? What are the full names of those documents? (4 marks: three to four sentences)
- (e) What do you understand by the term *Sharia* law? What links have the application of this term have with the implementation of the 1979 *Convention on the*

Elimination of All Forms of Discrimination Against Women (CEDAW)? (4 marks: two to four sentences)

- (f) According to the 1990 *Convention on the Rights of the Child* a 'child' is defined as a person under the age of 17 years. True or False? Briefly explain your answer. (2 mark: two sentences)
- (g) As far as the self-determination issues in the South Pacific region are concerned the Bougainville- Papua New Guinea situation is in the context of a colonial situation and the New Caledonia-France situation is a non-colonial situation. True or false? Briefly explain your answer. (4 marks: three to four sentences)
- (h) The *Pinochet III* case mainly deals with the application of the Torture Convention under British domestic law and the International Criminal Court, first established in 1946, is a Court which solves the disputes among countries. True or false? (4 marks: three to four sentences)
- (i) The International Criminal Tribunal for Former Yugoslavia (ICTFY) and the International Criminal Tribunal for Rwanda (ICTR) were established by the victorious allied powers at the end of the Second World War. True or False? Briefly explain your answer. (2 marks: two to four sentences)
- (j) Briefly explain what an *ex post facto* law is. In the context of international human rights law in which setting or situation did the issue of the application of *ex post facto* laws arose as a defence during a trial? Assume that Phathone is a national of Saudon. Assume that Saudon law punished 'sodomy' (sexual relations among adult consenting males) as a criminal offence. Assume that Phathone was sent to six years imprisonment in 1973 for acts of sodomy. In the year 2003 the Saudon Supreme Court (in a separate case) held that punishment for 'sodomy' in Saudon is unconstitutional. The Saudon Supreme Court ruled thus under the new Saudon constitution which came into force in the year 2002 which prohibits 'discrimination on grounds of sexual orientation'. Phathone now wants to challenge his conviction of the year 1973 on the grounds that his human rights have been violated and also on grounds of 'ex post facto' application of the laws. Briefly discuss the validity (or otherwise) of Phathone's 'challenge' and based on the principles of international human rights laws whether he is likely to succeed. (8 marks: about seven to twelve sentences)

(Question 2 – 40 marks)

QUESTION THREE

'The notion that a law of nations [ie international law], redefined to mean the consensus of States on any subject, can be used by a private citizen to control a sovereign's treatment of its own citizens within its own territory is a 20th century invention of internationalist law professors and human rights advocates'

Justice Antonin Scalia, a Justice of the United States Supreme Court in a case decided by the United States Supreme Court on 29 June 2004. (Emphasis in original).

Carefully comment on the above statement by Justice Scalia. The following are the general guidelines in answering this essay question.

- (a) You do not need to know the name of the case or the facts concerning the case in which Justice Scalia make the statement. Just briefly and cogently express your views on the assumption(s), claim(s) made by Justice Scalia in the above statement
- (b) Though it is not required do so after you thought about the question it is recommended that a brief outline of your answers could be written.
- (c) The statement can and should be commented from (among others) what you have studied about history and development of human rights, notions concerning sovereignty and intervention, issues concerning the intricacies of implementation and enforcement of human rights, relevant case laws concerning human rights especially the United States case of *Filartigia v Pena-Irala* (1980)
- (d) You do not need to cover all of the issues stated above and you may wish to cover other topics and sub-topics which are not specifically mentioned in (c)
- (e) Make sure though that you do NOT merely 'repeat' or write what you remember from the above topics or from the course. It is important to relate what you have learned from the course in cogently commenting on the above statement
- (f) Make sure that you specifically state whether or not you fully agree or disagree, or partly agree or partly disagree with the above statement *and more importantly why you do so.*
- (g) You will be marked on how well and cogently you expressed your agreements or disagreements or part agreement or disagreements with the above statement and how well you can relate some of the materials and issues covered in the course in commenting on the statement.

(Question 3, 20 marks)

(About fourteen to maximum of about thirty to thirty five sentences)

END OF EXAMINATION PAPER