



Strathmore
UNIVERSITY

**STRATHMORE LAW SCHOOL
MASTERS OF LAWS (LL.M)
END OF MODULE MAIN EXAMINATION
LLM 8002: LEGAL THEORY**

Date: Friday, 28th March 2025

Time: 3 Hours

Instructions

1. This examination consists of **FIVE** questions.
2. Answer **Question ONE (COMPULSORY)** and any other **TWO** questions.
3. This is a closed-book examination.
4. You should spend a fair amount of time organizing your thoughts before starting to write.
5. Careful organization and clarity will be highly valued.
6. Please start each question on a new page.

Question 1 (compulsory):

According to article 159 of the *Kenyan Penal Code*, “Any woman who, being with child, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing or means to be administered or used to her, is guilty of a felony and is liable to imprisonment for seven years”

... XX, a single woman residing in Nairobi, instituted a federal action against the Director of Public Prosecutions. She sought a declaratory judgment that article 159 of the Kenyan Code was unconstitutional on its face as it violated the rights recognized by the African Charter on Human and People’s Rights, and an injunction restraining the Director of Public Prosecutions (and any other officers generally or specially authorized by him) from enforcing it”.

The *African Charter on Human and People’s Rights* states that:

Article 1

The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them.

Article 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 3

1. Every individual shall be equal before the law. 2. Every individual shall be entitled to equal protection of the law.

Article 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Article 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Article 16

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health. 2. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

Article 18

(...)

3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

Article 27

1. Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community. 2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

Construe a decision for the petition of XY, using the *relevant* articles of the African Charter on Human and People's Rights cited above. Justify your decision using:

1.a) Ronald Dworkin's theory of legal reasoning (10 marks):

1.b) The natural law theory of legal reasoning (10 marks):

1.c) The positivist theory of legal reasoning (10 marks):

Question 2:

Use the answer of the natural law tradition to the question, "What do we need the Law for", to justify or to criticize article 4 of the African Charter. **(15 marks)**

Question 3:

Use Dworkin's answer to the question "what do we need the Law for" to justify or to criticize article 4 of the African Charter. **(15 marks)**

Question 4:

Explain the positivist answer to the question "what is the nature of law?", applicate it to one (only one) of the tribal customary laws that exist in your own country, and evaluate (assess) how "western-centered" the positivist answer is. **(15 marks).**

Question 5:

Explain the Critical Legal Studies' answer to the question "what is the nature of law?", applicate it to one (only one) of the tribal customary laws that exist in your own country, and evaluate (assess) how "western-centered" the CLS answer is. **(15 marks).**