

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
EXAMINATION PAPER MAY 2005

TITLE OF PAPER : **JURISPRUDENCE**

COURSE CODE : **L502/; L504**

TIME ALLOWED : **3 HOURS**

MARKS ALLOCATED : **100 MARKS**

INSTRUCTIONS : **ANSWER ANY FIVE QUESTIONS. THE MARKS ALLOCATED TO EACH QUESTION AFFORD AN INDICATION OF THE TIME TO BE SPENT ANSWERING IT.**

THIS PAPER IS NOT TO BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR.

[TURN OVER]

QUESTION 1

- (a) Explain the differences between ethics (moral rules) and law. (10)
 (b) Comment upon the *common characteristics* of, as well as the *differences* between law and positive morality. (10)
[20]

QUESTION 2

Write notes on the positivistic theories of -

- (a) John Austin; or (20)
 (b) HLA Hart. (20)

Augment your discussion by employing a sketch to explain the relevant theoretical base of the doctrine of each of these legal philosophers.

[20]

QUESTION 3

ANSWER ANY FOUR OF THE FOLLOWING QUESTIONS (a) - (f).

Write detailed explanatory notes on the American Realist school, concentrating on -

- (a) prediction; (5)
 (b) rule scepticism; (5)
 (c) fact scepticism; (5)
 (d) the "illusive factors"; (5)
 (e) the approach of Fred Rodell; (5)
 (f) points of criticism against this movement. (5)
[20]

QUESTION 4

- (a) CH Perelman took an important step in his work *De la Justice* (1945) in which he distinguished between the concepts of *concrete justice* and *formal justice*. Explain and clearly distinguish these concepts. (10)
 (b) Explain the theory proposed by John Rawls for the attainment of a just society. (10)
[20]

QUESTION 5

Discuss the Critical Legal Studies (CLS) movement, paying special attention to Roberto Unger's alternative, as well as three popular substantive issues which illustrate the *form* of critique employed by CLS scholars. (20)

[20]

QUESTION 6

- (a) Discuss the approach of Sir Henry Maine to the study of law. (5)
- (b) Write an essay on first, second and third phase feminism, in the process explaining the main traits of each phase. (15)

[20]

QUESTION 7

- (a) Name the key terms of Islamic jurisprudence and afford a brief description of each. (6)
- (b) Merely state the four major forms of society in Southern Africa in the pre-colonial era, according to Martin Hall. (4)
- (c) Write an explanatory note on the question what African legal theory is, according to Woodman & Obilade *African Law and Legal Theory* (1992) Introduction. (10)

[20]