

**UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION (SUPPLEMENTARY) PAPER
YEAR 2006**

TITLE OF PAPER : JURISPRUDENCE
COURSE CODE : L502/L504
TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS:

- i. ANSWER QUESTION 1, (SECTION A), WHICH IS COMPULSORY, AND ANY THREE OTHER QUESTIONS FROM SECTION B. ANSWER FOUR (4) QUESTIONS IN TOTAL.**
- ii. QUESTION 1 CARRIES A MARK OF 28. ALL OTHER QUESTIONS CARRY 24 MARKS EACH.**
- iii. IN ANSWERING ANY QUESTION, THE QUALITY OF THE CONTENT, CLARITY OF EXPRESSION AND LEGIBILITY OF HANDWRITING ARE ABSOLUTELY ESSENTIAL.**
- iv. SELECT THE COURSE CODE THAT IS APPLICABLE TO YOU.**

THIS PAPER MUST NOT BE OPENED UNTIL PERMISSION HAS BEEN GRANTED BY THE INVIGILATOR(S).

SECTION A

[COMPULSORY QUESTION; YOU MUST ANSWER IT.]

QUESTION 1: [28 MARKS]

(a) [18 Marks]

Critically discuss the following statement:

No matter how much and how loudly members of the legal profession may claim to be the expositors of the law, it can justifiably be said that jurisprudence is not the preserve or monopoly of this profession.

(b) [10 Marks]

Can it be said that the above statement bears any relation to the history of the Constitution of the Kingdom of Swaziland Act, 2005 (Act 001 of 2005)? Why?

SECTION B

[ANSWER ANY THREE (3) QUESTIONS FROM THIS SECTION.]

QUESTION 2: [24 MARKS]

On the basis of the general postulates of positivism or the positivist school of jurisprudence, critically discuss the following constitutional provisions:

Whereas We the People of the Kingdom of Swaziland do hereby undertake in humble submission to Almighty God to start afresh under a new framework of constitutional dispensation...

[Preamble, Constitution of the Kingdom of Swaziland, 2005].

IN THE NAME OF THE ALMIGHTY GOD,
We the people of Ghana,

In exercise of our natural and inalienable right to establish a framework of government which shall secure for ourselves and posterity the blessings of liberty, equality of opportunity and prosperity...

[Preamble, Constitution of the Republic of Ghana, 1992].

QUESTION 3: [24 MARKS]

In the English case of *Oppenheimer v. Cattermole* [1976] A.C. 249, Lord Cross made the following statement in respect of a Nazi decree (of Adolf Hitler's Third Reich) that deprived a German Jewish refugee of his German nationality by the very fact of his being a Jew:

A law of this sort constitutes so grave an infringement of human rights that the courts of this country ought to refuse to recognise it as law at all.

In a critical discussion, show whether this statement has any relation to the concept of the legitimacy of law.

QUESTION 4: [24 MARKS]

Critically discuss the "common points of departure" (alias Manifesto of Realism) that, according to Karl Llewellyn and Jerome Frank, are the characteristic features of the Realist Movement or school of jurisprudence and which set the Movement apart from other schools of jurisprudence.

QUESTION 5: [24 MARKS]

Critically discuss the statement that though F. K. Von Savigny made a worthy contribution to jurisprudence through his *Volksgeist* theory, he fell for over-generalisation and, thereby, undermined this contribution to some extent.

QUESTION 6: [24 MARKS]

In a challenge predicated upon human rights, the African Centre for Democracy and Human Rights Studies has made the following statement:

The Centre challenges Africa to pay great attention to the protection of Economic, Social and Cultural Rights as it is only when these rights are protected that a state can claim to be providing real social justice which is one of the pillars of democracy rather than the more touted version of mass franchise and opposition parties and open presses.

[African Centre for Democracy and Human Rights, "Human Rights and Democracy", in *African Human Rights Newsletter*, Vol. 2, 1995, No. 2, p.5.]

Critically analyse this statement in the context of the sociological school of jurisprudence's general perception of social justice.

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