

**UNIVERSITY OF SWAZILAND  
FACULTY OF SOCIAL SCIENCE  
DEPARTMENT OF LAW  
FINAL EXAMINATION 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.**
- ii. QUESTION 1 CARRIES 28 MARKS. 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]

Critically discuss the following article in the context of the general concerns of jurisprudence:

#### **PARENTS FORCED TO SPARE THE ROD IF NEW LAW PASSED**

South African parents may soon be banned from smacking or inflicting any form of physical discipline on their children. This is in terms of a Bill being drawn up by the Department of Social Services. The move was prompted by the increasing rate of child abuse in the country.

If passed, the proposed law would involve an education drive by the government to teach parents alternate ways of disciplining their children.

The Director of Child Care and Protection in the Department of Social Development, Musa Mbere, recently met with child protection lobbyists and senior department officials to discuss the banning of corporal punishment in the home.

Members of the Children's Bill Working Group also discussed detailed proposals for alternatives to corporal punishment. The Group regards dealing with corporal punishment in the home as a broader part of its war against family violence.

Mbere said the proposals stemmed from concern over the high number of children abused in their homes. Mbere said: "There are two sides to the coin here. People don't know when to stop when they are beating up a child and that is the problem. On the other hand, it's going to be very difficult to monitor because it's happening behind closed doors, but those are all the things that have to be discussed still."

The banning of physical punishment of children in the home comes barely a month after the government banned virginity testing in terms of the Children's Rights Bill, amid protests from traditionalists, last month.

If passed, the proposed legislation would effectively ban smacking, or any form of physical punishment of children, making South Africa the first country in Africa to outlaw corporal punishment in the home. It will also see parents being trained in alternative forms of discipline and the establishment of childcare call centres to respond to public queries regarding corporal punishment issues.

Children SA Director Joan van Niekerk, who also participates in the Working Group, said the Bill would allow the government to make child abuse a violation of basic human rights. "All forms of violence between adults are outlawed. If a man were to slap his wife, he could be charged with common assault and yet we still allow for the slapping of children," said Van Niekerk.

She said that while her organization recognized that discipline in the home was very important, it needed to be applied in a non-physical way. "We are developing a manual that is culturally appropriate on alternatives to corporal punishment in order to promote positive discipline. We want to help develop a society that is free from all forms of violence," she said.

The Bill is expected to be tabled before the National Council of Provinces this year, following public hearings.

Church groups have already expressed their misgivings. The South African Catholic Bishops Conference parliamentary office researcher, Chance Chagunda, said: "If the focus is only on children's rights, where they can now challenge their parents, how are they going to be disciplined? What type of future generations are we going to bring up?"

[Futhi Ntshingila, "Parents forced to spare the rod if new law passed", *Sunday Times* (South Africa), February 12, 2006, p.5.]

## SECTION B

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

**QUESTION 2:** ..... [24 MARKS]

Currency notes and coins are legal tender, i.e., they can be legally used to pay for things in a particular country. The following statements appear on currency notes in Swaziland and the United States of America:

- (a) Swaziland: "GOD IS OUR SOURCE";
- (b) United States of America: "IN GOD WE TRUST".

Consider the above statements against the following questions:

**(i)** ..... [02 Marks]

State, without discussing, the school of jurisprudence to which these statements directly relate.

**(ii)** ..... [10 Marks]

What are the main postulates or suppositions of this school of jurisprudence?

**(iii)** ..... [12 Marks]

Outline, in a critical way, the main objections raised against these postulates of this school of jurisprudence by any two other schools of jurisprudence.

**QUESTION 3:** ..... [24 MARKS]

On the basis of John Austin's notion of sovereignty, critically analyse the statement that the conception of the legally unlimited sovereign misrepresents the character of law in modern states.

**QUESTION 4:** ..... [24 MARKS]

John Dugard has made the following observation in respect of apartheid South Africa:

In May 1948 the National Party came to power. It repudiated any suggestion that law was an autonomous institution committed to the advancement of human rights and principles of fairness.

Instead, law became the weapon in the hands of the National Party to achieve a legal order premised on white racial superiority and political repression. Natural law and the rule of law were discarded. Law was simply the will of the National Party.

[Dugard, J., "The Preamble of the Universal Declaration of Human Rights", in Robertson, M. (Ed.), Human Rights for South Africans (Cape Town: Oxford University Press, 1990), 16.]

With this observation in mind, undertake a critical analysis of Roscoe Pound's consensus model of society. You need not confine your analysis to South Africa.

**QUESTION 5:** ..... [24 MARKS]

**(a)** ..... [12 Marks]

Critically discuss the three principal assumptions that characterise the Marxist theory of law.

**(b)** ..... [12 Marks]

Briefly, but critically, discuss the following aspects of Marxist jurisprudence:

- i. Marxist perception of the state and law; (6 marks) and
- ii. Marxists' prediction for the state and law. (6 marks)

**QUESTION 6:** ..... [24 MARKS]

The bases of the racial theory of law are highly offensive to the fundamental principles of the concept of human rights. It is no wonder then that the international community has, principally through the United Nations, emphasised that this theory of law has no place within the comity of civilised nations. Critically discuss this statement.

.....**END**.....