

**UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER
YEAR 2007**

TITLE OF PAPER : **JURISPRUDENCE**
COURSE CODE : **L502/L504**
TIME ALLOWED : **THREE (03) HOURS**

INSTRUCTIONS:

- i. **ANSWER QUESTION 1 (SECTION A), WHICH IS COMPULSORY, AND ANY THREE OTHER QUESTIONS FROM SECTION B. ANSWER A TOTAL OF FOUR QUESTIONS.**
- 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]

On the basis of any **four** of the kinds of questions that are usually asked as part and parcel of general speculations about the law, i.e., the general concerns of jurisprudence, critically discuss the following observations made in a newspaper article:

“DON’T HIT, TALK”

SAVE-The-Children wants all teachers who violate the government guide to school regulations and procedures to be jailed. Elizabeth Kgololo, the Organisation’s Information officer said though the regulations were silent on punishment to be afforded (*sic*) teachers who contravene the law, government had given parents the right to lay charges on teachers who physically abused their children.

Kgololo said the offending teachers should be arrested to discourage the tendency of giving wrong corporal punishment. She appealed to parents not to bargain with teachers who were found to have wrongly battered pupils. Meanwhile, she pointed to a report titled “Ending Corporal Punishment in Swaziland” compiled by Save-The-Children stating that corporal as well as other forms of humiliating as well as degrading punishment should be abolished.

It says children want teachers and parents to talk to them and refrain from beating or using abusive language to correct them if they erred. “The use of corporal punishment on children contributes to a perception from an early age that violence is an appropriate response to conflict and unwanted behaviour. Corporal punishment of Swazi children is a legalised form of child-rearing in the home, at school and as a sentence by the court. However, it appears that a high court decision has placed a moratorium on whipping as a sentence by a court and that the courts are no longer making use of this legal option to sentence a person to whipping,” the report states.

It says Swaziland was expected to abolish corporal punishment because it had ratified the convention of children’s rights. They said the provision in the national constitution that corporal punishment should be meted subject to lawful and moderate chastisement for the purpose of correction was contradictory to obligations in international human rights instruments.

[Timothy Simelane “Don’t Hit, talk”, The Swazi Observer (Swaziland), Monday, March 19, 2007, p.4.]

SECTION B

[ANSWER ANY THREE QUESTIONS FROM THIS SECTION.]

QUESTION 2:

[24 MARKS]

Critically discuss the statement that the existence of different schools of thought in respect of jurisprudence should be expected.

QUESTION 3:

[24 MARKS]

Critically discuss the statement that the general postulates of positivism, or the positivist school of jurisprudence, are such that they leave virtually little or no room at all for other schools of jurisprudence.

QUESTION 4:

[24 MARKS]

(i)

(8 Marks)

State, without discussing, the different types of law as put forward by St. Thomas Aquinas.

(ii)

(16 Marks)

Critically discuss any **four** of the attributes of a just law as postulated by St. Thomas Aquinas in the context of any **one** of the generally agreed functions of law.

QUESTION 5:

[24 MARKS]

Critically discuss the statement that whatever problems might beset feminist jurisprudence, this jurisprudence has, especially since the United Nation's General Assembly's adoption of the Convention on the Elimination of all Forms of Discrimination against Women, 1979 (popularly referred to as CEDAW), become a force to reckon with.

QUESTION 6:

[24 MARKS]

Paragraph 5 of the Preamble of the Constitution of the Kingdom of Swaziland, 2005, states as follows:

Whereas it is necessary to blend the good institutions of traditional Law and custom with those of an open and democratic society so as to promote transparency and the social, economic and cultural development of our Nation.

Critically discuss this statement in the light of the jurisprudential concerns raised over the postulates of the historical school of jurisprudence.

=====END=====