

**UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
MAIN EXAMINATIONS
YEAR 2007/2008**

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

INSTRUCTIONS:

- (i) ANSWER ANY FOUR (4) QUESTIONS.
- (ii) EACH QUESTION CARRIES 25 MARKS.
- (iii) IN ANSWERING ANY QUESTION, NOTE THAT THE QUALITY OF THE CONTENT, CLARITY OF EXPRESSION AND LEGIBILITY OF HANDWRITING ARE ABSOLUTELY ESSENTIAL.

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

QUESTION 1:

The jurist Lon Fuller contends that for a legal system to qualify as a system of law, certain procedural purposes have to be seen as goals in themselves.

Critically discuss those requirements which, according to him, meet this stipulation in the case of statutes.

[25 Marks]

QUESTION 2:

(i)

State, without discussing, 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.

[8 Marks]

(ii)

On account of any THREE 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 report:

Court rules against religious beliefs –

Jehovah's Witnesses' baby given life-saving blood transfusion despite parents' objections.

RELIGION and medicine clashed in Durban this week over a Jehovah's Witness couple's refusal to allow doctors to give their critically ill daughter a blood transfusion.

The couple, Thabani and Simangele Mabanga – staunch members of the Jehovah Witness – refused to allow surgeons at Netcare's Parklands Hospital to carry out a blood transfusion during an emergency operation on their two-year old daughter on religious grounds.

Followers of the church, whose doctrines were developed in response to "corruption and compromise in mainstream Christianity" are opposed to blood transfusion.

Their stance on blood transfusion is bound by Acts 15, verse 29 of the Bible, which asks followers to "keep from things offered to false gods, and from blood, and from things put to death in ways which are against the law, and from the evil desires of the body".

The Mabangas said God was the ultimate guardian.

But against a tide of opposition from the parents and Jehovah's Witnesses, Parklands Hospital was granted an order by the Durban High Court allowing it to give Baby Mabanga transfusion. In granting the order, Judge Herbert Msimang said the court, as the upper guardian of all children, had to act in their best interests.

Baby Mabanga was admitted to Hospital at the end of August suffering from pneumonia. She was diagnosed with a massive abscess in her abdominal cavity that was threatening to cause heart failure.

On Monday her parents had indicated that if emergency surgery was required and doctors regarded blood transfusion as vital to save her life, then the transfusion could be carried out.

However, they later changed their minds and suggested that the surgeons should consider using a synthesised protein that reportedly helps to oxygenate the blood.

The court said the family had no medical evidence to back them up except for a pamphlet on the product that they handed to the court.

Surgery was eventually performed on the little girl on Wednesday and according to a church representative, Mike Summerton, her condition is stable.

[Bongani Mthethwa, "Court rules against religious beliefs – Jehovah's Witnesses' baby given life-saving blood transfusion despite parents' objections", Sunday Times (South Africa), September 23, 2007, p.8]

[17 Marks]

QUESTION 3:

Critically discuss the positivistic contention that law may most illuminatingly be characterised as a union of primary rules with ... secondary rules.

[25 Marks]

QUESTION 4:

In the English case of Fibrosa S. A. v Fairbairn [1942] 2 All E.R. 122 (H.L.), Lord Wright made the following comment about the hypothetical reasonable man:

The Court is thus taken to assume the role of the reasonable man, and decides what the reasonable man would regard as just on the facts of the case. The hypothetical 'reasonable man' is personified by the Court itself. It is the Court which decides.

Critically discuss this statement in the context of the tenets of formalism (i.e., formalism in law).

[25 Marks]

QUESTION 5:

Critically discuss the statement that a jurisprudential analysis of the racial principle and the leadership principle aspects of the racial theory of law exemplify the contention that jurisprudence apprises one with the fundamentals or rudiments of moral argument.

[25 Marks]

QUESTION 6:

Indicate, from a critical perspective, how the following statement relates to both the Critical Legal Studies' school of jurisprudence's outlook on jurisprudence and 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:

White people held (and hold) land, economic and political power in this country and legal education at South African universities has been generally aimed at satisfying the needs of the white society... The curricula and syllabuses were drawn up by white academics. There have been relatively few black legal academics, and those few could not have influenced the course of legal education... Law in South Africa has been taught in the abstract, divorced from its social context.

[Dlamini, C. R. M., "The Law Teacher, the Law Student and Legal Education in South Africa", 1992 (109) S. A. L. J., 595.]

[25 Marks]

END
