

**UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
MAIN EXAMINATIONS
YEAR: 2009**

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

INSTRUCTIONS:

- i. ANSWER ANY FOUR (04) QUESTIONS.**
 - ii. EACH QUESTION CARRIES 25 MARKS; THE TOTAL MARK IS 100.**
 - iii. IN ANSWERING ANY QUESTION, NOTE THAT THE QUALITY OF THE CONTENT, CLARITY OF EXPRESSION AND LEGIBILITY OF HANDWRITING ARE ABSOLUTELY ESSENTIAL.**
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QUESTION 1:

Critically discuss the following observations made in a newspaper article on the basis of any relevant **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:

Democrats in bid to defend right to vote

The Obama campaign this week went to court to block what it alleged was an attempt by Republicans in Michigan to stop people who lost their homes in the mortgage crisis from voting in November's election.

The suit, filed in a Michigan court this week, is the latest sign of contention over voting procedures. Voting rights activists in several battleground states have reported an aggressive push by Republican elected officials and activists to make it harder to vote.

In Macomb county, Michigan, a swing constituency, Republican officials for the first time tried to use the United States housing crisis as a way of striking people off lists, the Obama camp told reporters on Tuesday. "There is no doubt that there is an immediate threat to the voting rights of citizens in Michigan whose names appear on a foreclosure list," said Bob Bauer, an Obama lawyer.

The situation came to light last week when the Republican party chairperson of Macomb county told a local newspaper he planned to draw on publicly available lists of home foreclosures to bar people from casting their vote.

"We will have a list of foreclosed homes and will make sure people aren't voting from those addresses," the official, James Carabelli, told the *Michigan Messenger*.

The national Republicans later distanced the party from his comment, but other state party officials confirmed there were plans to deploy an army of poll "challengers" who would check voters' credentials...

In Wisconsin, meanwhile, the state's Republican attorney general has gone to court to try to compel poll workers to match voters' names against driving licence records. Florida, which has a Republican governor, also moved last week to require poll workers to check voters' names against a government database.

The stated rationale of all these moves is prevention of voter fraud, although organisations which study elections say such fraud is a minimal risk.

The effort received a boost last April when the US Supreme Court ruled that states were entitled to require voters to present a state-issued photo ID such as a driving licence at the polls.

Civil rights organisations argued that the requirement discriminates against the poor and the elderly, who often do not have driving licences because they cannot afford a car...

[Suzanne Goldenberg, "Democrats in bid to defend right to vote," *Mail & Guardian* (South Africa), September 19 to 25, 2008, p. 22.]

[25 MARKS]

QUESTION 2:

(a)

Briefly state, without discussing, any **four** of the attributes of a just human law (*lex humana*) as given by St. Thomas Aquinas.

[8 MARKS]

(b)

Critically analyse the following statement:

Though the contention of St. Thomas Aquinas that unjust laws should not be obeyed if they contradict divine law may, generally, not be subject to criticism, it is difficult, from the perspective of the concept of legitimacy of law, to accept his argument that other unjust laws should be obeyed in spite of their injustice for the sake of affirming respect for the legal system as a whole.

[17 MARKS]

QUESTION 3:

In highlighting the deficiency of John Austin's notion of sovereignty, H. L. A. Hart contends that the conception of the legally unlimited sovereign misrepresents the character of law in modern states.

Critically analyse this statement and, also, indicate whether the legal system of every modern state necessarily exhibits this character of law at all times.

[25 MARKS]

QUESTION 4:

Critically discuss the statement that it is clear from the postulates of the Manifesto of Realism, which Karl Llewellyn and Jerome Frank labelled as the common points of departure of the Realist school of jurisprudence from the formalists, that the formalist school of jurisprudence overemphasised continuity at the expense of the necessary flexibility that accommodates changing circumstances in society.

QUESTION 5:

The Constitution of the Kingdom of Swaziland Act, 2005 (Act No. 1 of 2005) stipulates in paragraph 5 of its Preamble 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 context of the implications of F. K. von Savigny's *volksgeist* theory.

[25 MARKS]

QUESTION 6:

The Constitution of the Kingdom of Swaziland Act, 2005 (Act No. 1 of 2005), provides in its Sections 20(1) and 28(1), which appear under the Constitution's Chapter 3 (titled "Protection and Promotion of Fundamental Human Rights and Freedoms") as follows:

S. 20(1) All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.

S. 28(1) Women have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.

Critically discuss whether through these provisions of the Constitution the Kingdom of Swaziland has responded adequately to the postulates or concerns of feminist jurisprudence within its jurisdiction.

[25 MARKS]

END