

**UNIVERSITY OF SWAZLAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
SUPPLEMENTARY 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 analyse the following extract from the famous American Declaration of Independence, 1776, as drafted by Thomas Jefferson, in the context of the pacts or contracts that the social contract theory of social organisation deems as underpinning rules in every civil society:

We hold these truths to be self-evident, that all men are created equal.
That they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness.
That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.
That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government.

[25 MARKS]

QUESTION 2:

The first paragraph of the Preamble of the Constitution of the Kingdom of Swaziland, 2005, states as follows:

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.

In similar terms, the Preamble of the 4th Republican Constitution of Ghana, 1992, commences as follows:

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 our posterity the blessings of liberty, equality of opportunity and prosperity.

From a jurisprudential perspective, critically discuss the relationship called for by these statements between natural law and human law or positive law.

[25 MARKS]

QUESTION 3:

The Preamble of the American Constitution, 1789, states as follows:

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Critically discuss the statement that at the time of the death of the American jurist Roscoe Pound, which coincidentally occurred in 1964, the year in which the American Civil Rights Act was passed by the American Congress, the lofty ideals in this preamble did not in reality either underpin Roscoe Pound's consensus model of society or the basic postulates of the Sociological school of jurisprudence.

[25 MARKS]

QUESTION 4:

A well-known jurist once stated:

Law is a command by a determinate common superior to the bulk of society, which is in the habit of obedience, to do or abstain from doing some action and which is enforced by the threat of punishment.

i. Give the full name of this jurist.

[3 marks]

ii. Critically discuss the statement that from a jurisprudential perspective this statement is largely untenable.

[22 MARKS]

QUESTION 5:

On account of any **three** of the fundamental principles of human rights, critically discuss the statement that the racial theory of law was bound to fail and not to gain any international favour in discourses relating to the norms by which civil society, as opposed to the state of nature, is to be maintained and developed.

[25 MARKS]

QUESTION 6:

The Critical Legal Studies' school of jurisprudence may have something in common with the Realist school of jurisprudence in its attitude towards formalism of the law. However, it goes beyond the Realist school of jurisprudence through its concept of "empowered democracy." Critically discuss.

[25 MARKS]

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