

**UNIVERSITY OF SWAZILAND  
FACULTY OF SOCIAL SCIENCE  
DEPARTMENT OF LAW  
MAIN EXAMINATION PAPER  
ACADEMIC YEAR 2009/2010**

<b>TITLE OF PAPER</b>	<b>:</b>	<b>JURISPRUDENCE</b>
<b>COURSE CODE</b>	<b>:</b>	<b>L502</b>
<b>TIME ALLOWED</b>	<b>:</b>	<b>THREE (3) HOURS</b>

**INSTRUCTIONS:**

- i. **ANSWER QUESTION 1, IN SECTION A, WHICH IS COMPULSORY, AND ANY THREE QUESTIONS FROM SECTION B.**
- ii. **QUESTION 1 CARRIES 28 MARKS; ALL OTHER QUESTIONS CARRY 24 MARKS EACH.**
- 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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## SECTION A

### [COMPULSORY QUESTION; YOU MUST ANSWER IT]

#### QUESTION 1:

On the bases of any four of the kinds of questions that are usually asked as part and parcel of general speculations about law, i.e., the general concerns of jurisprudence, and with due consideration to Chapter III of the Constitution of Swaziland Act No. 1 of 2005, titled "Protection and Promotion of Fundamental Rights and Freedoms", critically discuss the following national news item:

#### **Judge queries 'unSwazi human rights'**

**EZULWINI – High Court judge Thomas Masuku says Swazis need to rid themselves of the notion that human rights are 'unSwazi'.**

Justice Masuku was speaking at the Royal Villas during the 61<sup>st</sup> anniversary of the adoption of the Universal of Human Rights (sic!) (i.e., Universal Declaration of Human Rights). He said many people, especially in rural areas, were still in the dark about the meaning of human rights and had to be enlightened. He said there was also need to educate armed forces on human rights. "You cannot leave the armed forces out; their mindsets need to be aligned with human rights."

Justice Masuku said it should not be the preserve of the human rights commission to teach others about human rights but said other NGOs should join the fray. "As long as we are human beings, we have rights and need to exercise them to the fullest."

Justice Masuku said human rights are universal, in that what is a human right in one country, the same should apply in another.

He also said discrimination was an impediment to human rights and should be discouraged.

Masuku was delivering a key note address on the topic: "Embrace diversity; End Discrimination." "Does a person at Sitsatsaweni know what human rights are? Such a person also needs to be educated on such a subject because human rights are universal," he said.

On another note, Justice Masuku said when he looked at the subject of discrimination in the constitution, he found that it primarily addresses victims of discrimination in the public service, yet one could be subjected to discrimination even in the private sector.

[Timothy Simelane, "FOCUS ON HUMAN RIGHTS DECLARATION: Judge queries 'unSwazi human rights,'" Times of Swaziland, Friday, December 11, 2009, p.7.]

**[28 MARKS]**

## SECTION B

**[ANSWER ANY THREE QUESTIONS FROM THIS SECTION.]**

### **QUESTION 2:**

In the infamous case of *Dred Scott v. Sanford*, 60 U.S. 393 (1857), the American Supreme Court upheld the traditional legal concepts which did not recognise American Negroes as proper bearers of rights and determined that such view “was fixed and universal” (at 407). However, in the case of *Brown v. Board of Education* 347 U.S. 483 (1954), the same Court held that there should be no separate educational facilities based on race as in the field of public education the doctrine of ‘separate but equal’ has no place because separate educational facilities are inherently unequal.

With these holdings as general pointers, critically discuss the following statements:

The sociological school of jurisprudence contends that the practical value of law lies in its being interpreted to give efficacy to the aims and aspirations of society. However, this contention, as the school argues, may not by itself satisfy the demands or imperatives of social justice as generally perceived by it.

**[24 MARKS]**

### **QUESTION 3**

Critically discuss the statement that it is fair to contend that the postulates of the formalist school of jurisprudence clearly evidence the fact that the school over-emphasised continuity at the expense of the necessary flexibility that accommodates changing circumstances and, consequently, undermined the predominant basis of the concept of the legitimacy of law.

**[24 MARKS]**

### **QUESTION 4**

(a) In the context of the analysis of St. Thomas Aquinas, briefly distinguish divine law (*lex divina*) from eternal law (*lex aeterna*).

**[7 MARKS]**

(b) The attributes of a just human law as given by St. Thomas Aquinas generally reflect his three precepts or guiding rules of natural law. Critically discuss.

**[17 MARKS]**

**QUESTION 5:**

Patriarchy is, for very good reasons, the main focus of feminist jurisprudence and, in the context of Swaziland, continues to be of major concern to this jurisprudence regardless of the coming into force of the Constitution of the Kingdom of Swaziland Act No. 1 of 2005, in general and, especially, Chapter III of the Constitution that deals with the protection and promotion of fundamental rights and freedoms. Critically discuss.

**[24 MARKS]**

**QUESTION 6:**

(a) Briefly discuss the similarities and differences between the Critical Legal Studies Movement and the Realist School of jurisprudence.

**[10 MARKS]**

(b) Critically discuss how the following statement is related to the Critical Legal Studies Movement: If there is a single theme, it is that law is an instrument of social, economic and political domination, both in the sense of furthering the concrete interests of the dominators and in that of legitimating the existing order.

**[14 MARKS]**

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**END**

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