

UNIVERSITY OF SWAZILAND  
FACULTY OF SOCIAL SCIENCE  
DEPARTMENT OF LAW  
MAIN EXAMINATION PAPER  
YEAR:2011

254

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

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**INSTRUCTIONS**

- i. ANSWER QUESTION 1 (SECTION A), WHICH IS COMPULSORY.
- ii. ANSWER ANY THREE (3) QUESTIONS FROM SECTION B.
- iii. ANSWER A TOTAL OF FOUR (4) QUESTIONS.
- iv. EACH QUESTION CARRIES A MARK OF 25.
- v. IN ANSWERING ANY QUESTION, NOTE THAT THE QUALITY OF THE CONTENT, CLARITY OF EXPRESSION AND LEGIBILITY OF HANDWRITING ARE ABSOLUTELY ESSENTIAL.

**YOU MUST NOT OPEN THIS PAPER UNTIL YOU ARE GRANTED PERMISSION TO DO SO BY THE EXAMINATION INVIGILATOR(S).**

**SECTION A****[THIS QUESTION IS COMPULSORY AND MUST BE ANSWERED]****QUESTION 1:**

On the bases of any **FOUR** of the types of questions that are usually asked as part and parcel of the general speculations about the law, i.e., the general concerns of jurisprudence, as set out by Professor J. W. Harris, critically discuss the following national news item from a local newspaper:

**... traditionally, women were thrashed for adultery**

**MBABANE – Traditionally, it was accepted that a husband could administer corporal punishment upon a wife for committing adultery.** However, in the new constitutional dispensation, Judge Bheki Maphalala said this is frowned upon. The Judge went on to say that Swazi Law and Custom is never static but it evolves and develops with time and practical realities of the lives of the people. "Swazi Law and Custom, like all other customs, is never static but evolves and develops with the times and practical realities of the lives of the people. Traditionally, forced or arranged marriages were valid and legally enforceable; however, section 27(2) of the Constitution renders such marriages null and void. Similarly, it was traditionally accepted that a husband could administer corporal punishment upon a wife for committing adultery, or being lazy or for neglecting children or for refusing to cook for the husband ..." said Maphalala. The Judge also said the Constitution frowned upon such a practice. [Moses Dlamini, "Traditionally women were thrashed for adultery", Times of Swaziland, Monday, February 28, 2011, page 12]

**[25 MARKS]****SECTION B****[ANSWER ANY THREE (3) QUESTIONS FROM THIS SECTION]****QUESTION 2:**

The conception of the legally unlimited sovereign misrepresents the character of law in modern states.

i. Name the maker of this statement **[2 Marks]**;

- ii. Name the one whose jurisprudential concept was being criticised by the maker of the statement **[2 Marks]**;
- iii. Briefly state, without discussing, the elements of the concept that forms the basis of this statement **[6 Marks]**; and
- iv. Critically analyse the jurisprudential underpinnings of this statement **[15 Marks]**.

**QUESTION 3:**

Critically analyse the following two statements in the context of what is generally accepted as the predominant basis of the concept of the legitimacy of law:

- i. "A law of this sort constitutes so grave an infringement of human rights that the courts of this country ought to refuse to recognise it as a law at all". [Per Lord Cross in the case of *Oppenheimer v. Cattermole* [1976] A.C. 249]
- ii. "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". [An extract from the American Declaration of Independence, 1776, as drafted by Thomas Jefferson]

**[25 Marks]**

**QUESTION 4:**

Currency notes and coins are legal tender, i.e., they can be legally used to pay for things in a particular country. The following statements appear on currency notes in Swaziland and the United States of America:

- (a) Swaziland: "GOD IS OUR SOURCE";
- (b) United States of America: "IN GOD WE TRUST".

Consider these two statements against the following questions:

- (i) Simply state, without discussing, the school of jurisprudence to which these statements directly relate. **[02 Marks]**
- (ii) Briefly discuss how the entity called GOD features in the postulates of this school of jurisprudence. **[08 Marks]**

- (iii) Critically discuss the main jurisprudential objections made against the place of GOD in the postulates of this school of jurisprudence by any one other school of jurisprudence. **[15 Marks]**

**QUESTION 5:**

Critically discuss the statement that it is crystal 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.

**[25 Marks]**

**QUESTION 6:**

On the bases of the theory of maximal benefit and the theory of rights, critically analyse the racial principle and the leadership principle aspects of the racial theory of law.

**[25 Marks]**

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