

UNIVERSITY OF SWAZILAND  
FACULTY OF SOCIAL SCIENCE  
DEPARTMENT OF LAW  
SUPPLEMENTARY EXAMINATION

272

YEAR : 2012

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

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**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.

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

### **QUESTION 1:**

In general, the Sociological School of Jurisprudence perceives social justice as follows:

Social justice is realised in a particular community when judges and legislators, faced with concrete social problems or conflicts, perform their respective roles so as to give effect to the greatest total of interests or the interests which weigh most in the community with the least sacrifice of the scheme of interests as a whole. [Dowrick, F. E., Justice According to the English Lawyers, 1961, at 135.]

With this and Roscoe Pound's consensus model of society in mind, critically discuss the following statement made by Apartheid South Africa's Minister of Native Affairs at the time that regime's Bantu Education Act, 1953, was passed:

The Bantu must be guided to serve his community in all respects. There is no place for him in the European community above the level of certain forms of labour... Up till now he has been subjected to a school system which drew him away from his own community and practically misled him by showing him the green pastures of the European but still did not allow him to graze there. [Robertson, M. (ed.), Human Rights for South Africans, 1991, at page 190.] **[25 MARKS]**

### **QUESTION 2:**

**(a)** Critically discuss the three principal assumptions of the Marxist theory of law. **[12 MARKS]**

**(b)** Briefly, but critically, discuss the following aspects of Marxist jurisprudence:

i. Law as an instrument of domination and exploitation; **[7 MARKS]** and

ii. The withering away of law with the arrival of the classless state. **[6 MARKS]**

### **QUESTION 3:**

**(a)** State, without discussing, the three precepts or guiding rules of natural law as given by St. Thomas Aquinas. **[9 MARKS]**

**(b)** On the bases of two of the precepts or guiding rules of natural law as given by St Thomas Aquinas that you deem appropriate, critically discuss the following news item:

#### **Scientist pleads guilty to helping mom die in NZ**

A scientist who helped his terminally ill mother die has been sentenced to five months of home detention. The Otago Daily Times newspaper reports that 50-year old Sean Davison, a

South African-based microbiologist, wrote a book in which he describes how his 85-year-old mother Patricia, who lived in New Zealand, was in pain in 2006 during the last few months of her life. In the book, he notes that at his mother's request, he gave her crushed morphine tablets in a glass of water. The admission led to charges last year, and on Thursday he pleaded guilty to helping his mother commit suicide. Davison's lawyer described his client's actions as an "act of love." A judge said she accepted that Davison's actions were driven by compassion and described his offence as at the lower end of the scale.

[Internet site: <http://news.yahoo.com/scientist-pleads-guilty-helping-mom-die-nz-000056855.html> Accessed November 25, 2011.] [16 MARKS]

**QUESTION 4:**

Critically discuss the statement that the general trends or postulates of positivism, as set out by H. L. A. Hart in his book Essays in Jurisprudence and Philosophy, 1961 (pages 57 – 58), have basically no room whatsoever for Lon Fuller's concept of the morality of law. [25 MARKS]

**QUESTION 5:**

Critically discuss the following statement made by Nelson Mandela in the course of his Rivonia Treason Trial in apartheid South Africa in the context of the general postulates of the Critical Legal Studies Movement:

Why is it that in this courtroom I am facing a white magistrate, confronted by a white prosecutor, escorted by white orderlies? Can anybody honestly and seriously suggest that in this type of atmosphere the scales of justice are evenly balanced? Why is it that no African in the history of this country has ever had the honour of being tried by his own kith and kin, by his own flesh and blood? I will tell Your Worship why: the real purpose of this rigid colour bar is to ensure that the justice dispensed by the courts should conform to the policy of the country, however much that policy might be in conflict with the norms of justice accepted in judiciaries throughout the civilised world... Your Worship, I hate racial discrimination most intensely and in all its manifestations. I have fought it all my life. I fight it now, and I will do so until the end of my days. I detest most intensely the set-up that surrounds me here. It makes me feel that I am a black man in a white man's court. This should not be.

[Purnel, M., Long Walk to Freedom: The Autobiography of Nelson Mandela, 1994, at pages 312 – 313.] [25 MARKS]

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