

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
MAIN EXAMINATION PAPER

YEAR : 2013

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

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. QUESTION 1 CARRIES 28 MARKS; ALL OTHER QUESTIONS CARRY 24 MARKS EACH.**
- 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:

(a) Briefly discuss the etymology of the English word "Jurisprudence". **[4 Marks]**

(b) Paragraph 5 of the Preamble of the Constitution of the Kingdom of Swaziland Act No. 1, 2005, states 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.

On the basis of this objective of the Constitution and the imperatives of ANY 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, as stated by Professor J. W. Harris, critically discuss the following newspaper report:

CHIEF BANS TROUSERS

MGAZINI – Females who reside in Mgzini are not allowed to wear pants. This is an instruction that came from the newly appointed chief of the area Chief Sicunusa Dlamini. A female that is found to have broken this law is fined a chicken or E25. The community police have been tasked with ensuring that everyone in the area complies with the order. People of the area do not want to discuss the issue openly. A majority of women who were found at the Mgzini marketplace said the authorities of the area were very vigilant. The news of the ban was received with mixed feelings from residents of the area who believe that the ban deprived girls the opportunity of wearing the favoured clothes. Parents who declined to be named said they do not understand why the chieftom imposed such a ban of trousers in the area. They argued that there was nothing that could prevent girls from putting on pants while at their homes. "I believe girls can only be discouraged to wear pants when going to the chief's Kraal but when they are at their homes I see nothing wrong with them wearing trousers. In fact, we are the ones who buy trousers for them. This order came about when the new chief was installed about a year ago and we have not had the chance to interrogate the issue because this is making our area an object of mockery. Some have been fined chickens after being found in trousers," said a source in the area.

[Lunga Masuku, CHIEF BANS TROUSERS ... females fined chicken or E25 if spotted", *SWAZI NEWS*, Saturday, September 22, 2012, at pages 4 and 5.] **[24 Marks]**

[28 MARKS]

SECTION B

[ANSWER ANY THREE (3) QUESTIONS FROM THIS SECTION]

QUESTION 2:

In the English case of Fibrosa S. A. v. Fairbairn [1942] 2 All E.R. 122 (HL), Lord Wright made the following comment about the hypothetical reasonable man:

The Court is thus taken to assume the role of the reasonable man, and decides what the reasonable man would regard as just on the facts of the case. The hypothetical 'reasonable man' is personified by the Court itself. It is the Court which decides.

Critically discuss this statement from the perspectives of both the Formalist School of Jurisprudence and the Realist School of Jurisprudence.

[24 MARKS]

QUESTION 3:

Article 1 of the UN Convention on the Elimination of All Forms of Discrimination against Women, 1979, states as follows:

For the purpose of the present Convention, the term 'discrimination' against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality with men, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Critically discuss this provision of the Convention in relation to the tenets of Feminist Jurisprudence.

[24 MARKS]

QUESTION 4:

(a) Briefly state, without analysing or discussing, ANY THREE attributes of a just human law as given by St. Thomas Aquinas. **[6 Marks]**

(b) Critically analyse the following statement: Though the contention of St. Thomas Aquinas that unjust human laws should not be obeyed if they contradict divine law may, generally, not be subject to criticism, it is jurisprudentially difficult or even untenable, from the

perspective of the concept of legitimacy of law, to accept or justify his argument that unjust laws that do not contradict divine law should be obeyed in spite of their injustice for the sake of affirming respect for the legal system as a whole. **[18 Marks]**

[24 MARKS]

QUESTION 5:

Critically discuss the statement that the election of Mr. Barack Obama as President of the United States of America in November 2008 and his re-election as such in November 2012 clearly and seriously challenge, if not totally undermine, very critical components or elements of Lord Patrick Devlin's philosophical arguments in the Hart/Devlin debate on law and morality that followed the publication of the Wolfenden Committee Report in England in 1957.

[24 MARKS]

QUESTION 6:

(a) Briefly state F. K. von Savigny's *Volksgeist* theory, which forms the philosophical underpinning of the Historical School of Jurisprudence. **[6 Marks]**

(b) Critically discuss the statement that though the *Volksgeist* theory of the Historical School of Jurisprudence has made some noteworthy contribution to legal philosophy, its inherent nature justifiably attracts some such philosophical criticisms. **[18 Marks]**

[24 MARKS]

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