

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER (MAIN)
YEAR: 2015/2016

TITLE OF PAPER : JURISPRUDENCE

COURSE CODE : L 502

TIME ALLOWED : THREE (3) HOURS

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.

DO NOT OPEN THIS PAPER UNTIL TOLD TO DO SO BY THE INVIGILATOR.

QUESTION ONE

Critically discuss the statement that though the Marxist theory of law can justly be criticised in some respects, it is clear that the postulates of this theory bear close relation to those kinds of questions that are usually asked as part and parcel of general speculations about the law, i.e., the general concerns of jurisprudence.

[25Marks]

QUESTION TWO

In the English case of Fibrosa S. A. v Fairban [1942] 2 All E.R. 122 (H.L), 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 in the context of the tenets of formalism (i.e., formalism in law).

[25 Marks]

QUESTION THREE

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 FOUR

In highlighting the deficiency of John Austin's notion of sovereignty, H. L. A Hart contends that the conception of the legally unlimited sovereign misrepresents the character of law in modern states.

Critically analyse this statement and, also, indicate whether the legal system of every modern state necessarily exhibits this character of law at all times.

[25 Marks]

QUESTION FIVE

The bases of the racial theory of law are highly offensive to the fundamental principles of the concept of human rights. It is no wonder then that the international community has, principally through the United Nations, emphasised that this theory of law has no place in the comity of civilised nations.

Critically discuss this statement.

[25Marks]

END OF PAPER