



UNIVERSITY OF ESWATINI

FIRST SEMESTER EXAMINATION PAPER, APRIL 2021

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

COURSE CODE: L 502

TITLE OF PAPER: JURISPRUDENCE

TIME ALLOWED: 3 HOURS

Instructions

1. This paper consists of Five (5) Questions.
2. Answer Question One which is compulsory, and
3. Any three (3) questions of your choice.
4. All four questions may be attempted in any order.

Special Requirements

None

Additional Material (s)

None

*Candidates may complete the front cover of their answer book when instructed by the Chief Invigilator and sign their examination attendance cards but must **NOT** write anything else until the start of the examination period is announced.*

No electronic devices capable of storing and retrieving text, including electronic dictionaries and any form of foreign material may be used while in the examination room.

DO NOT turn examination paper over until instructed to do so.

Question One

The following real life *conundra* potentially pose menacing dilemmas for government socio-political policy. Questions on the proper relationship between what is lawful, ethical, moral and expedient in connection with it are perhaps not properly resolved. Consider them, and, adopting any functional jurisprudential theory, make a fierce attempt to find some appreciable resolution to them on by considering all necessary viewpoints. Where necessary, make relevant concessions.

- a) *In Country X, with the overwhelming growth of illegal drug-use and addiction across the country (and in pointless and little success in prosecution), the national government has permitted, inter alia, the establishment of clinics in certain locations where government nurses distribute clean and free needles to addicts. The reason for this was to attempt to cut crime and stop the spread of diseases.*

*However, the paradox in this governmental action is that if Country X's government is prepared to spend tax money so that "people can break the law in a safe way", then it should also be prepared to establish a designated "drunk-driving lane" on X's highways. Driving under the influence, and its associated hazards, is statistically a much bigger problem than illegal intravenous drug-use! The logic is the same with respect to both problems. **10 Marks***

- b) *Sputnik, a resident of the close-knit Republic of Kwaluseni plans and executes the most daring heist the tiny republic of 50,000 (mostly intellectual) residents has ever witnessed. However, no one in the Republic is aware who did it. It was executed at the First Republic Bank, and he siphoned off Swiss Francs 1 Million (an acceptable tender in the dual currency Republic) in reserves held at the bank. He lay low for 2 weeks to allow the dust to settle. Later, he goes on a shopping spree mostly in the Republic and uses a portion of the*

illicit proceeds to:

- a) *Purchase a bespoke Ferrari droptop Portofino*
- b) *Purchase a Tuscan mansion along the exclusive Kwaluseni boulevard, which was obtained part cash and part mortgage bond*
- c) *Adhering to the mantra that 'nothing will ever be as glamorous as she is, but her gift SHOULD at least try to compete', he purchased for Lindiwe (his Uneswa Law school fairly steady girlfriend): a designer Chopard diamond wristwatch; a Mint green silk Valentino dress; a designer Louis Vuitton handbag; a JCW Mini Cooper convertible, and to complete the look, the latest iPhone 11 Pro (together with sufficient data and airtime for chatting and planning their romps)*
- d) *Purchase a luxury cruise ship getaway on the Caribbean, Bahamas & Southern Antilles.*
- e) *Make a 1 million donation to his church, The Satan in Trouble Ministries International Church*

However, as most of these daring escapades go, Sputnik was nabbed by the Republic's elite commercial crimes police force and slapped with a plethora of fraud, theft and money laundering charges in an effort to recover the funds.

At his trial, Sputnik's Advocate proffers very novel arguments. Chief amongst these was the claim that there was nothing permanent about his taking of the properties, and that in any event, any taking by himself ecologically wound up benefitting the Republic in one way or the other.

15 Marks

Total 25 Marks

Question Two

- a) *The political and social infrastructure upon which eSwatini is founded appears to have found a nascent, fervently justified and, albeit controversial theoretical home, viz, 'monarchical democracy.' It is still inchoate in intellectual allure although its central premise is visible.*

What do you understand to be 'monarchical democracy', and in your most considered opinion which theory of legal thought approximates to, and might possibly legitimate, this nascent political theory.

20 Marks

b) Section 4 (4) of the Constitution of eSwatini states that:

"The King and *iNgwenyama* has such rights, prerogatives and obligations as are conferred on him by this Constitution or any other law, including Swazi law and custom, and shall exercise those rights, prerogatives and obligations in terms and in the spirit of this Constitution."

Explain the latent jurisprudential assumption contained in this significant provision of the Constitution.

5 Marks

Total 25 Marks

Question Three

Render a critical discussion of the law and economics movements as well as its main theorists.

25 Marks

Question Four

Eswatini has witnessed an exponential increase in the rates of domestic homicides particularly against women. Although the Sexual Offences and Domestic Violence Act, 2018 attempts to address and ameliorate the condition of women in particular, scholars and commentators view this as a weak symptomatic remedy. They instead point to a systematic and culturally embedded fault line that is responsible for this in Eswatini society.

Specifically adopting the feminist perspectives of Justice Ruth Bader Ginsburg and Catherine Mackinnon as your fulcrum of analysis, render a

critical analysis of the so-called 'battered woman/wife syndrome' in relation to criminal law enquiry as potentially falling under non-pathological criminal incapacity. You are to also specifically advert to the stages a victim undergoes.

25 Marks

Question Five

'What George Orwell prophesied years ago has now come full circle.'

The 'internet of things' and the telecommunications roll out of '5G' technology has given prospect to the surveillance by governments of its citizens in the modern era. This technology may be used or abused by government intelligence agencies to monitor the phone, email and other devices of people without obtaining a warrant.

In your opinion, and having regard to the competing rights, does a government have a valid claim to enforce surveillance on its people?

25 Marks

Question Six

Nomsa Manyovu, an intending plaintiff, approaches you for legal advice concerning a divorce suit she wishes to institute against her intended husband, Sputnik Manyovu, at the High Court of Eswatini. She intends to take her matter up all the way to the Supreme Court if necessary as she alleges certain constitutional issues bordering on Eswatini customary law.

You, as a seasoned Advocate are also a legal positivist within the tradition of both notable schools of legal realism. Feeling ethically bound to defer to her and take her into your confidence, advise her on certain aspects of her matter that she ought to be alive to. In particular, advise her on:

- a) The court processes (nature of court papers)
- b) The problem of evidence to be adduced
- c) The judges who will sit and decide her matter

25 Marks