



UNIVERSITY OF ESWATINI

FIRST SEMESTER MAIN EXAMINATION PAPER, APRIL 2021

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

COURSE CODE: LAW509

TITLE OF PAPER: JURISPRUDENCE I

TIME ALLOWED: 3 HOURS

Instructions

1. Answer any four (4) questions.
2. Each question carries a total of 25 marks.
3. In answering any question, note that the quality of the content, clarity of expression and legibility of handwriting are absolutely essential.
4. Refer to legal authority to support your answers.

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

In the Hart-Devlin debate, both Hart and Devlin raise important issues. Critically examine both their views and state which one of the views you find most convincing and why.

YOUR ANSWER SHOULD NOT EXCEED THREE PAGES

[25MARKS]

QUESTION TWO

The Preamble of the Constitution of the Republic of South Africa, 1996, states as follows:

We, the people of South Africa,
Recognise the injustices of the past;
Honour those who suffered for justice and freedom in our land;
Respect those who have worked (to) build and develop our country; and
Believe that South Africa belongs to all who live in it, united in our diversity.

Critically discuss the statement that the sentiments reflected in this preamble support the view that, from 1948 until 1994, Roscoe Pound's consensus model of society or the basic postulates of the Sociological school of jurisprudence did not underpin the legal system of the Republic of South Africa.

YOUR ANSWER SHOULD NOT EXCEED THREE PAGES

[25MARKS]

QUESTION THREE

In highlighting the deficiency of John Austin's notion of sovereignty, 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.

YOUR ANSWER SHOULD NOT EXCEED THREE PAGES.

[25MARKS]

QUESTION FOUR

A famous American judge, Oliver Wendell Holmes, remarked that law is not logic, but is based on experience – 'the felt necessities of the time,' dominant moral and political conditions, intuitions and 'even the prejudices which judges share with their fellow-men' have much more to

do with how a case is determined.

Critically discuss this statement in the context of the postulates of formalism in law.

YOUR ANSWER SHOULD NOT EXCEED TWO AND A HALF PAGES.

[25 MARKS]

QUESTION FIVE

With reference to locally decided cases, discuss how the new constitutional dispensation of eSwatini has discredited the essence of maleness which is revealed in African Jurisprudence.

YOUR ANSWER SHOULD NOT EXCEED THREE PAGES

[25 MARKS]