



# UNIVERSITY OF ESWATINI

FIRST SEMESTER MAIN EXAMINATION PAPER, NOVEMBER  
2019

FACULTY OF SOCIAL SCIENCES

DEPARTMENT OF LAW

COURSE CODE: L 502

TITLE OF PAPER: JURISPRUDENCE

TIME ALLOWED: 3 HOURS

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**Instructions:**

1. This paper consists of Six (6) Questions.
2. Question One (1) is compulsory.
3. Answer any other Three (3) questions of your choice.

**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.**

"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**

a) The shooting of innocent refugees by military figures at the Berlin Wall was found to be justified by the judges of the German Federal Court in terms of their interpretation of East German Law. Notwithstanding this, the Court convicted the military guards for shooting a fugitive, S. How would you explain the court's turn to natural law to justify the conviction?

**7 Marks**

b) Adolf Eichmann was a major military organizer of the holocaust (termed 'the final solution') in which millions of Jews were tortured and exterminated. He was tried by an Israeli court and hung. The eminent writer, Hannah Arendt agreed with the Supreme Court of Israel that Eichmann should be put to death, though her reasons were quite different. She concluded her study of his trial, 'Eichmann in Jerusalem', with the following words of condemnation: 'no one, that is, no member of the human race, can be expected to want to share the earth with you. That is the reason, and the only reason, you must hang'. She would have condemned him to forfeiture and elimination rather than punishment.

Suppose Eichmann had not been sentenced to death by the Israeli court. If he was to be punished, how was it to be done in contrast to 'not sharing the earth with him' as suggested by Arendt?

**10 Marks**

c) Advocate Gustava Sibanyoni, a lawyer of a convicted serial rapist (sentenced to five life sentences) pleaded with the court to give his client, Max Dlamini, a lenient sentence because the injuries sustained by his victims were "minimal". Advocate Gustava pleaded with the High Court to deviate from the prescribed maximum sentence for his convicted rapist client Max because in addition to the 'minimal injuries', he was partially sighted and was handicapped as he only had one leg. Advocate Gustava pleaded that prison conditions would 'kill' his client.

As the judge locate a relevant theory for deciding either and use it as justification.

**8 Marks**

**Total 25 Marks**

#### **Question Four**

Critically discuss the contribution of the philosopher Joseph Raz in modern legal positivism.

**25 Marks**

#### **Question Five**

American realism and Scandinavian realism are two schools of thought on the subject of legal realism. Drawing on any two pertinent decided cases, carefully compare and contrast the essence of these theories and determine whether realism is worth scholarly focus in jurisprudence. (You are required to select one local and international case authority and apply the *rationes decidendi* of these cases).

**25 Marks**

#### **Question Six**

Notionally locate yourself 50 years from now. In your opinion, would a government (that is the executive, legislature and judiciary) behoven to science and run by algorithms and artificial intelligence be better for a 'just society'?

**25 Marks**