



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

EXAMINATION PAPER

COURSE CODE : LLB 304
COURSE TITLE : Jurisprudence
DURATION : 3 Hours
LEVEL : 3.1
DATE :

08 JUL 2022

INSTRUCTIONS TO CANDIDATES:

1. Answer question **one** from **section A** and any **three (3)** questions from **Section B**.
2. Notes, handouts and textbooks are not allowed into the examination.
3. Begin each answer to a full question on a fresh page.
4. You are required, to write legibly.
5. You are directed to avoid using short hand and poor grammar.
6. During the course of your answers you must refer to any relevant case law, legal principles and legislation that may be applicable.
7. No cellphones are allowed into the examination room as well as all data storing devices. Failure to comply will lead to automatic disqualification.

SECTION A

QUESTION 1

Read the following extracts from the court record of the trial of Nelson Mandela held between October and November 1962 in which he conducted his own defence. Mandela stood accused of inciting persons to strike illegally and of leaving the country without a valid passport.

'I do not believe, Your Worship, that this court, in inflicting penalties on me for the crimes for which I am convicted, should be moved by the belief that penalties deter men from the course that they believe is right.

History shows that penalties do not deter men when their conscience is aroused, nor will they deter my people or the colleagues with whom I have worked before [...]

I am prepared to pay the penalty even though I know how bitter and desperate is the situation of an African in the prisons of this country [...]

Whatever sentence Your Worship sees fit to impose upon me for the crime for which I have been convicted before this court, may it rest assured that when my sentence has been completed I will still be moved, as men are always moved, by their consciences; I will still be moved by my dislike of the race discrimination against my people when I come out from serving my sentence, to take up again, as best I can, the struggle for the removal of those injustices until they are finally abolished once and for all.

I have done my duty to my people and to South Africa. I have no doubt that posterity will pronounce that I was innocent and that the criminals that should have been brought before this court are the members of the Verwoerd government..."

At the end of the trial, Mandela was convicted and sentenced to three years' imprisonment on the charge of incitement and two years' imprisonment for leaving the country without valid travel documents.

If you were the judge in his trial, what would your decision have been and why?

[Total 25 marks]

SECTION B.

QUESTION 2

Analyse the following statements:

(a) "Like a harlot, natural law is at the disposal of everyone". [Alf Ross, *On Law and Justice*, 1958, at p. 234J] [15 Marks]

(b) "Jurisprudence is as big as law and bigger". [Quoted in Lloyd and Freedman, *Introduction to Jurisprudence*, 1980, at p. 1] [10 Marks]

[Total 25 marks]

QUESTION 3

Evaluate the two views of legal positivism offered by Austin and Hart. Your answer must include an explanation of both views and a discussion of which of the two theories you think is most convincing [Total 25 marks]

QUESTION 4

The Presidential Powers (Temporary Measures) Act [Chapter 10:20] of 1986 gives the President prerogative powers. These include such powers as the dissolution of parliament, executive assent to legislation and making of treaties with foreign states. In *PF ZAPU v Minister of Justice (2)1985 (1) ZLR 305 (S)* at 315-316 the Supreme Court stated that these powers were not normally subject to judicial review.

Discuss the extent to which Zimbabwe's constitutional practice particularly on the nature, source and validity of law is reflected in the positivist command theory of law as advanced by John Austin. Your answer must provide strong justifications to support your views and assertions.

[Total 25 marks]

QUESTION 6

In *Commissioner of Police v Commercial Farmers Union 2000(1) ZLR 503 (HC)*, Chinhengo J held that, “the rule of law divorced from fairness and justice becomes a hollow concept.”

Discuss his sentiments in light of any relevant legal theories.

[Total 25 marks]

END OF PAPER