



## ZIMBABWE EZEKIEL GUTI UNIVERSITY

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### FACULTY OF LAW

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#### DEPARTMENT OF PUBLIC LAW

#### EXAMINATION PAPER

**COURSE CODE** : LLB 304  
**COURSE TITLE** : JURISPRUDENCE  
**DURATION** : 3 Hours  
**DATE** : 15 NOV 2019

#### INSTRUCTIONS TO CANDIDATES:

1. Answer FOUR questions only.
2. Choose at least ONE question from each section.
3. Each question carries 25 Marks.
4. Start each question on a new page of your answer sheet.

## SECTION A

### Question 1

*Law is what the court has decided in respect of any particular set of facts prior to such a decision, the opinion of the lawyers is only a guess as to what the court will decide and this cannot be treated as law unless the court decides by its judicial pronouncements - Jerome Frank*

To what extent is this statement correct, taking into account the Zimbabwean legal system? Your answer must cite substantive examples. [25 marks]

### Question 2

Ronald Dworkin in his book, *Taking Rights Seriously* (1977) p.22 states “*I want to make a general attack on positivism, and I shall use H.L.A Hart’s version as a target...*”

Give a critic of Ronald Dworkin’s “attack” on positivism and comment on the appropriateness of using Hart as a “version of positivism”. [25 marks]

## SECTION B

### Question 3

What, in your view, is the main contribution of each of the following to our understanding and development of the Zimbabwe legal system?

(a) Roscoe Pound?

(b) Karl Marx?

[25 marks]

### Question 4

“*Law is a command by a political superior to a political inferior*” Give an exposition of this analytical school of thought. [10 marks]

With reference to authoritative text and case law, elucidate on the practicability of this theory in the Zimbabwean legal system [15 marks]

**Question 5**

“During argument the view was expressed that justice was on the applicant’s side but the law was on the respondent’s side. Admittedly law and justice do not always coincide. Examples of oppressive and unjust laws can be found in many countries. But this does not mean that the courts, which are sworn to uphold the law, can ever allow their personal, subjective view of what constitutes justice to override the clear provisions of the law.” (per Ebrahim JA in a dissenting judgement in *The Minister of Lands, Agriculture and Rural Resettlement & Others v The Commercial Farmers Union SC 111/2001*, page 54)

Critically discuss the above sentiments in the light of any relevant legal theories. **[25 marks]**

**Question 6**

From which standpoint (legal theory) would you justify and substantiate each of the following:

- (a) Judicial Reasoning and Judicial Activism
- (b) Civil Disobedience
- (c) Law and Social change and development
- (d) Human rights
- (e) Rule of law

**[25 marks]**

\*\*\*\*\*END OF QUESTION PAPER\*\*\*\*\*