

**ZIMBABWE EZEKIEL GUTI UNIVERSITY**

**FACULTY OF LAW**

**JURISPRUDENCE (LLB 304) MODULE SYLLABUS**

5 DECEMBER 2018

Examination

**Instructions**

- (i) The exam carries 70 marks.
- (ii) Answer one question carrying 20 marks from Section A. Answer two questions that carries 25 marks from Section B.
- (iii) Students may not carry any notes into the examination room, including textbooks shall not be allowed into the examination venue
- (iv) Students are allowed to carry copies of the 2013 Constitution into the exam.

**Question 1.**

Justice Smart Muchena is one of five judges of the Supreme Court of Appeal in Zimbabwe. Before the Supreme Court is an appeal against sentence in a conviction for murder and armed robbery. The plea is for the Supreme Court to reduce a sentence of 45 years imprisonment handed down by the High Court. The Appellants argue that the sentence is too harsh, severe and induces a sense of shock to any reasonable person, and strongly contend that the proper sentence should be 15 years imprisonment.

Justice Muchena went to St Georges Preparatory School and St Georges High School for his early education, before proceeding to the University of Rhodesia where he studied for the LLB degree between 1963 and 1967. Between 1982 and 1985, Justice Muchena studied for a Master of Laws at Leicester University in the United Kingdom. Throughout his primary, secondary and university education, Justice Muchena was taught by only 2 black teachers for less than a year. As his father worked at the British Embassy, he was lucky to have received a number of bursaries and educational scholarships. As a Catholic family, they enjoyed a better quality of life and thus, a higher standard of life as compared to their majority African relations. When Justice Muchena moved to stay on his own after marriage, he maintained this higher standard of life, associating with European and other white academics, legal professionals and colleagues as his father had done. He continued to subscribe to various professional and social networks as his father had done whilst being a member of various clubs. As

a black Zimbabwean, he accepted the basis for the liberation struggle, but decried the destruction, loss and dispossession of property that characterised the war and its aftermath. As a boy, his father had always reminded him of the need to work extra hard in life in order not to be a beggar, or a thief, or a criminal of some sort. He was never taught about social problems, their causes or their consequences, and therefore failed to understand some of the root causes of crime, poverty and destitution. His view was that poverty is a result of laziness, and there is no excuse for crime or destitution. Criminals, he always believed, should be caught and punished in order to preserve social order, guarantee safety and security to citizens and their property. His beliefs made him find fascination in criminal law.

In light of the given facts, discuss the possible judgment likely to be handed by Justice Muchena and link your prediction to a jurisprudential theory. Your answer must outline the fundamental features of the theory and the theory's position on the definition, nature and content of law. (20 marks)

## Question 2

In the *Case of the Speluncean Explorers* by Lon Fuller, Keen J, had this to say:

"The second question that I wish to put to one side is that of deciding whether what these men did was "right" or "wrong," "wicked" or "good." That is also a question that is irrelevant to the discharge of my office as a judge sworn to apply, not my conceptions of morality, but the law of the land. ... The sole question before us for decision is whether these defendants did, willfully take the life of Roger Whetmore. The exact language of the statute is as follows: "Whoever shall willfully take the life of another shall be punished by death." Now I should suppose that any candid observer, content to extract from these words their natural meaning, would concede at once that these defendants did "willfully take the life" of Roger Whetmore.

In light of the given paragraph, and understanding of the *Speluncean Explorers Case*, explain the jurisprudential theory followed and adopted by Keen J in attempting to resolve this case. Identify and outline the major criticisms that have been made against this theory by post-Holocaust scholars such as Lon Fuller, and explain why such criticisms came up. (20 marks)

## **Section B Answer two questions**

### **Question 3**

Discuss fully Karl Marx's definition of law as serving bourgeois interests and the interests of the ruling class. **(10 marks)**

Illustrate, using examples from Zimbabwe's legal system (e.g cases and legislation) whether Marx's conclusions on the nature and role of law in society constitutes a realistic reflection of law in modern society. **(15 marks)**

### **Question 4**

Discuss and explain the applicability of HLA Hart's theory of legal positivism, in particular, Hart's description of the definition, origins and content of law. Your answer should include clear references and examples of Zimbabwe's legislative system and other important aspects of its legal system. **(25 marks)**

### **Question 5**

Section 3 of the Constitution of Zimbabwe, 2013 titled 'Founding values and principles' provides a list of particular values and principles that are the foundation of Zimbabwe's constitutional legal system.

Identify five values and principles that could be challenged by Legal Positivism on the basis that they should not be part of the law, and justify why Legal Positivism can possibly reject such principles as being outside the province of the definition of law.

**(10 marks)**

Identify and discuss six values and principles in the founding values and principles in section 3 which constitute a sufficient basis to categorize Zimbabwe's legal system as based on positive law considerations. **(15).**