

**LJU4801**

October/November 2012

**LEGAL PHILOSOPHY**

Duration 2 Hours

80 Marks

**EXAMINERS .**

FIRST

SECOND

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MRS SR SMITH

Closed book examination

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This paper consists of 2 pages

**INSTRUCTIONS:**

**Answer all the questions. Please read ALL the questions carefully before attempting an answer to make sure that you answer the question correctly.**

Read through the following scenario and then answer the questions set out below

In 2011 the Constitutional Court heard the case of *The Citizen 1978 (Pty) Ltd and Others v McBride* (CCT 23/10) 2011 (4) SA 191 (CC) This case was a defamation case brought by Robert McBride against the *Citizen* newspaper He alleged that they had defamed him The newspaper was of the opinion that the comments were covered by freedom of expression In the course of his minority judgment, Mogoeng J made the following remarks

[217] *Botho* or *ubuntu* is the embodiment of a set of values and moral principles which informed the peaceful co-existence of the African people in this country who espoused *ubuntu* based on, among other things, mutual respect

[218] *Ubuntu* gives expression to, among others, a biblical injunction that one should do unto others as he or she would have them do unto him or her

[TURN OVER]

[243] Indeed, human dignity must colour the spectacles through which we view defamatory publications, particularly those which are inextricably linked to our painful past. And so should our rich values, like *ubuntu*, which are consistent with the Constitution, our shameful history of institutionalised human rights violations, our commitment to make a decisive break with this past as well as our pursuit of the noble objectives of national unity and reconciliation also inform the interpretation and exercise of the rights to dignity, freedom of expression, privacy and property in this country.

### Question 1

In the first paragraph *ubuntu* is characterised as typically African. Write a brief essay in which you explain what *ubuntu* means and indicate whether you think the judge is right in his characterisation of *ubuntu*. (15)

### Question 2

In the second paragraph the judge seems to equate *ubuntu* with Christianity and a "biblical injunction". Write a critical essay in which you explain the Christian (or Medieval) philosophy of Aquinas and then indicate whether you think this philosophy is the same as or comparable to the ideas of *ubuntu* that you referred to in your answer to Question 1. (You should not repeat the information already contained in your answer to Question 1.) (25)

### Question 3

In the third paragraph the judge links *ubuntu* to human rights. Human rights can be regarded as something uniquely associated with modern legal philosophy. Write a critical essay in which you discuss the following aspects:

- 3.1 Can human rights be regarded as typically modern because of the individualist nature of human rights? Discuss briefly. (10)
- 3.2 Give at least two examples of modern legal philosophies that emphasise human rights, one from early modern and one from late modern thinking. (15)
- 3.3 Given that *ubuntu* is a pre-modern idea, do you think the judge is correct in linking *ubuntu* to human rights? Give reasons for your answer. (15)

**TOTAL: [80]**