

**LJU406-K**

October/November 2005

**INTRODUCTION TO LEGAL PHILOSOPHY (LLB)**

Duration : 2 Hours

100 Marks

**EXAMINERS :****FIRST :**

PROF IJ KROEZE

**SECOND :**

PROF K VAN MARLE

This paper consists of 3 pages.

**INSTRUCTIONS**

Read the questions **CAREFULLY** before answering them.

**SECTION A: SHORT QUESTIONS**

Answer **ALL** the questions in this section.

**QUESTION 1**

Give **brief definitions** of the following terms or concepts:

- |     |   |     |
|-----|---|-----|
| 1.1 | Natural law according to Thomas Aquinas | (2) |
| 1.2 | Plato's idealism                        | (2) |
| 1.3 | Authoritarianism                        | (2) |
| 1.4 | Nihilism                                | (2) |
|     |   | [8] |

**QUESTION 2**

African legal philosophy is based on the idea that there is a uniquely African approach to law and legal conflicts. Name five characteristics of this approach to illustrate how it is different from Western ideas.

[5]

[TURN OVER]

**QUESTION 3**

Briefly explain the differences between the following:

- |     |   |      |
|-----|---|------|
| 2.1 | Radical realism and progressive realism | (4)  |
| 2.2 | Law and morality, according to Hart     | (4)  |
| 2.3 | Liberalism and communitarianism         | (4)  |
|     |   | [12] |

**QUESTION 4**

Briefly explain what is meant by deconstruction in postmodern legal thinking. [4]

**QUESTION 5**

- |     |   |      |
|-----|---|------|
| 5.1 | List and briefly explain the three ways in which, according to Mary Joe Frug, the law encodes the female body with meaning. | (6)  |
| 5.2 | According to Hart, law is a system of rules. List and briefly explain what these rules are.                                 | (5)  |
|     |   | [11] |

**SUBTOTAL: [40]**

**SECTION B: LONGER QUESTIONS**

You must answer **all the questions** in this section.

**QUESTION 1**

Compare the views of Hobbes and Locke regarding the following:

- |     |   |      |
|-----|---|------|
| 1.1 | The state of nature and the social contract | (10) |
| 1.2 | The idea of natural rights                  | (5)  |
|     |   | [15] |

**QUESTION 2**

Discuss the decision of the South African Constitutional Court in *President of the Republic of South Africa v Hugo* 1997 4 SA 1 (CC) against the background of the various kinds of feminist jurisprudence. In particular, indicate which approach the majority and minority decisions followed.

[15]  
**SUBTOTAL: [30]**

[TURN OVER]

**SECTION C**

You must answer **one question** in this section.

**QUESTION 1**

Dworkin criticises traditional approaches to legal interpretation and proposes a different approach. Write an essay in which you explain his approach and its relevance to South Africa. In your answer you must refer to the following aspects:

- 1.1 Dworkin's criticism of conventionalism and pragmatism. (10)
  - 1.2 Dworkin's alternative. (10)
  - 1.3 Whether Dworkin's approach is suitable or desirable in the South African constitutional context. (10)
- [30]

**OR**

**QUESTION 2**

John Rawls attempted to provide a rational foundation for shared values in a community or society. Write an essay in which you critically discuss this philosophy, with reference to the following:

- 1.1 Rawls's justification for the rationality of these shared values (the maximin strategy). (10)
  - 1.2 The content of the values referred to. (10)
  - 1.3 Do you think that this philosophy can be applied in the South African constitutional context? (10)
- [30]

**SUBTOTAL: [30]**

**TOTAL: [100]**