

17:00

01/11/05

EX. HALL

EXAMS OFFICE USE
ONLY

University of the Witwatersrand, Johannesburg

Course or topic No(s)

LAWS4005

Course topic names(s)
Paper Number & title

JURISPRUDENCE

Examination / Test* to be
held during month(s) of (*delete
as applicable)

NOVEMBER 2005

Year of study
(Art & Science leave blank)

Degrees / Diplomas for which
this course is prescribed
(BSc (Eng) should indicate which branch)

LLB

Faculty/ies presenting candidates

COMMERCE, LAW AND
MANAGEMENT

Internal examiner(s)
and telephone extension
number(s)

PROF A PANTAZIS (X 78438)
PROF C HOEXTER (X 78450)
DR D BILCHITZ

External examiner(s)

PROF I J KROEZE (UNISA)

Special materials required (graph/music/drawing
paper maps, diagrams, tables, computer cards, etc)

Time allowance

Course no: LAWS4005 Hours: 2 (TWO)

Instructions to candidates
Examiners may wish to use this space to indicate,
inter alia,
the contribution made by this
examination or test towards the year mark, if
appropriate

1. Answer only the exam paper applicable to your class: either Hoexter / Bilchitz; or Pantazis.
2. Write your lecturer's name on your script.
3. In the Hoexter / Bilchitz paper, answer TWO questions, one from Section A and one from Section B
4. In the Pantazis paper, answer any THREE questions

**Internal Examiners or Heads of
Departments are requested to sign
the declaration overleaf**

There are two exam papers here: one for the class of Prof Hoexter and Dr Bilchitz, and one for the class of Prof Pantazis. Answer the correct exam paper and only that one.

CLASS OF HOEXTER / BILCHITZ

All the questions count 30 marks each.

Answer two questions. You must answer one question from each section.

SECTION A

QUESTION 1

How would you respond to the assertion that the Critical Legal Studies critiques of *legal rights* and *legal education* have little or no relevance for South Africa?

QUESTION 2

Identify *two* feminist perspectives that you believe would be of particular interest to a feminist living in South Africa today. Explain and defend your choice.

QUESTION 3

Discuss the debate about sexual identity with reference to legal developments in South African law.

SECTION B

In this section you must answer parts (a) and (b) of the question you choose.

QUESTION 4

(a) How does Mill deal with the objection that his conception of utility as pleasure renders utilitarianism a morality fit for pigs? Is his response convincing? (10 marks)

AND

4(b) Rawls claims that utilitarianism is not adequately able to take account of the “separateness of persons”. Construct an essay in which you critically evaluate this statement by considering the following:

- (i) outline the problems act-utilitarianism has with recognising individual rights;
- (ii) discuss whether rule-utilitarianism is able to cope with individual rights;
- (iii) briefly discuss how Rawls’ principles of justice avoid this problem. (20 marks)

QUESTION 5

(a) “The impersonal perspective is critical to political morality.” Critically discuss whether Mill commits a fallacy when he claims that “each person’s happiness is a good to that person, and the general happiness, therefore, a good to the aggregate of all persons.” Is there anything of importance that this step in Mill’s proof tells us when justifying a theory of justice? (10 marks)

AND

(b) “A hypothetical contract is not simply a pale form of contract; it is no contract at all.” (Ronald Dworkin) Construct an essay in which you critically discuss the notion of the original position in Rawls’ theory by considering the following:

- (i) describe the original position in the early Rawls;
- (ii) discuss the interpretation of the original position as a form of hypothetical contract;
- (iii) discuss Dworkin’s critique of this interpretation;
- (iv) consider an alternative interpretation (you may consider Dworkin’s alternative) of the original position and its role in a theory of justice. (20 marks)

QUESTION 6

(a) “By considering the nature of religious claims concerning justice it is possible to show on purely internal grounds that religion cannot provide a viable theory of justice for a society.” Evaluate this statement by considering the Divine Command theory of justice. (10 marks)

AND

(b) “What matters is not the relative magnitude of individual holdings, but their absolute levels of well-being.” Construct an essay in which you critically discuss this statement with reference to the articles of Scanlon, Frankfurt and Goodin, and consider the following issues:

- (i) discuss the reasons we may have for valuing equality;
- (ii) discuss the problems that Frankfurt finds with this notion;
- (iii) discuss Frankfurt’s alternative of sufficiency;
- (iv) evaluate whether the ideal of equality should be replaced by an ideal of sufficiency in South Africa, given the disparity of wealth in this country. (20 marks)

CLASS OF PANTAZIS

All the questions count 20 marks each.

Answer any THREE questions.

QUESTION 1: Historical School

Is Savigny's theory of law an accurate description of reality? Should law aspire to the reality he purports to describe?

QUESTION 2: Marx and the Law

What role does Marx see for the law?

QUESTION 3: American Legal Realism

What would law school education look like if the ideas of the American legal realists were applied to it?

QUESTION 4: Economic Analysis of Law

"The economic analysis of law favours the rich over the poor."
Discuss.

QUESTION 5: Critical Legal Studies

"The Critical Legal Studies movement is a species of radical skepticism."
Discuss.

QUESTION 6: Critical Race Theory

What are the main themes of Critical Race Theory?

QUESTION 7: African Jurisprudence

Is there a uniquely African jurisprudence?

QUESTION 8: Islamic Jurisprudence

"Islamic jurisprudence is primarily founded on divine revelation."
Discuss.
