

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

---

CLASS OF SWART / BILCHITZ

**There are two sections in this paper. Answer one question from each section. Each question counts for 30 marks.**

**SECTION A: MS SWART**

**Answer ONE question in this section.**

Question 1

Can liberal feminism accurately be described as egalitarian? Discuss with specific reference to South Africa.

(30 marks)

Question 2

Discuss the relationship between the philosophy of Jeremy Bentham and the Law and Economics School.

(30 marks)

Continued/ Page 2 SECTION B: DR BILCHITZ

**SECTION B: DR BILCHITZ**

**Answer ONE question in this section. You must answer parts (a) and (b) of the question you choose. Please note the mark allocations in order to determine how long you should spend on each question. Each question has also been formulated in such a way as to direct you towards the material you should concentrate upon: this is designed to assist you so as to avoid wasting time on irrelevant discussions. Please note that the structure of your answers will be taken into account in the evaluation thereof.**

Question 1

(a) 'The essential nature of justice is determined by G-d's commands and is dependent on religion.' Discuss the Divine Command theory (the claim concerning the metaphysical relationship between religion and justice) and critically evaluate this theory, discussing whether in fact the nature of justice must be determined independently of religion.

(10 marks)

AND

(b) 'Mill's proof of the utilitarian principle fails dismally.'

Critically evaluate this statement by constructing an essay that includes the following elements:

- (i) Outline Mill's proof of the utilitarian principle.
- (ii) Explain in what way Mill may be said to commit the naturalistic fallacy.
- (iii) Evaluate whether it is possible to save Mill from the charge that he commits the naturalistic fallacy.
- (iv) Explain in what way Mill may be said to commit the compositional fallacy.
- (v) Evaluate whether it is possible to save Mill from the charge that he commits the compositional fallacy.

BONUS ELEMENT TO ESSAY (if you have time):

(vi) Discuss any general issues that arise in connection with justifying theories of justice that you believe are highlighted by the difficulties Mill encounters in proving the utilitarian principle.

(20 marks)

(Total marks for this question: 30)

Continued/Page 3 Question 2

Question 2

‘The problem with utilitarianism is that, even if it opposes slavery, it allows the benefits of the slaveholder to be weighed against the cost to the slave.’

(a) In light of the statement above, consider whether utilitarianism would oppose slavery. In your answer you should include the following elements:

- (i) discuss the general problem utilitarianism has in accommodating individual rights;
- (ii) distinguish act utilitarianism and rule utilitarianism;
- (iii) evaluate whether act utilitarianism could oppose slavery;
- (iv) evaluate whether rule utilitarianism could oppose slavery;
- (v) discuss whether rule utilitarianism is in fact preferable and can accommodate individual rights.

(20 marks)

AND

(b) In light of the statement above, discuss whether Rawls’ theory fares any better by outlining the following:

- (i) Rawls’ concept of the original position;
- (ii) Rawls’ concept of the veil of ignorance and primary goods;
- (iii) why Rawls’ theory would not allow the benefits of the slaveholder to count in the original position behind the veil of ignorance.

(10 marks)

(Total marks for this question: 30)

Continued/ Page 4 Question 3

Question 3

(a) 'The later Rawls (the Rawls of *Political Liberalism*) is particularly concerned with the problem of how to construct a theory of justice in a society where there is wide-ranging disagreement over comprehensive religious and philosophical doctrines.'

In light of this statement, construct a short essay that includes the following elements:

- (i) explain the key concept of the 'overlapping consensus' in Rawls' theory that is supposed to assist in constructing a theory of justice for a diverse society;
- (ii) evaluate whether the fact that Rawls in his later theory states that his assumptions concerning a well-ordered society and the person are moral notions *latent* within a *constitutional democracy* weakens his theory in any way.

(10 marks)

AND

(b) 'The Socio-economic Rights in the South African Constitution were a compromise between the ideal state of equality and the reality of massive inequality: they enshrine the notion of sufficiency in our constitution that has no value in itself.'

Construct an essay in which you evaluate this statement and include the following elements:

- (i) Discuss whether Scanlon's arguments for the value of equality show that such a value has any intrinsic value in its own right or whether such value is derivative from other values;
- (ii) Evaluate Frankfurt's arguments against equality as a moral ideal and in favour of sufficiency;
- (iii) Evaluate whether you think the value of sufficiency has any value in and of itself;
- (iv) Evaluate whether the socio-economic rights in the South African Constitution enshrine an ideal of sufficiency or equality (or both) and discuss towards which ideal you think South Africa should head in terms of the just distribution of resources.

(20 marks)

(Total marks for this question: 30)

**CLASS OF PANTAZIS**

**Answer any THREE questions from the following questions. Each question counts for 20 marks.**

Question 1: Economic Analysis of Law

Discuss Law and Economics in the light of the following quote from Brian Bix *Jurisprudence: Theory and Context* 4 ed (2006) 190:

‘Part of the power of economic analysis is that it presents a largely instrumental approach, which fits well with the analysis and evaluation of law. It forces the question: do these legal rules achieve the objectives at which they aim, and would alternative rules do any better? However critical one might be of the values and biases perhaps hidden within economics, one might still benefit from focusing, at least part of the time, on questions of consequences.’

(20 marks)

Question 2: Critical Race Theory

How applicable are the ideas of the American Critical Race Theorists in South Africa today?

(20 marks)

Question 3: Postmodernist Jurisprudence

Is a postmodernist approach to law ethically empty?

(20 marks)

Question 4: Islamic and Traditional Chinese Jurisprudence

Compare Islamic jurisprudence and traditional Chinese jurisprudence on the capacity of these traditions to adapt to social change.

(20 marks)

Continued/ Page 6 Question 5

Question 5: Justice

In a morally pluralistic society is it possible to find a standard for public justice which does not prefer one conception of the good life over another?

(20 marks)

Question 6: Law and Globalization; Transitional Jurisprudence

Answer either (a) OR (b):

(a) How is the theory of law reconceived in order to take account of globalization?

(20 marks)

OR

(b) How is the theory of law reconceived for a society in transition from authoritarianism to democracy?

(20 marks)

-----