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02/11/07

EX. HALL

EXAMS OFFICE USE ONLY

University of the Witwatersrand, Johannesburg

Course or topic No(s)

LAWS4004

Course topic names(s)
Paper Number & title

JURISPRUDENCE

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

NOVEMBER 2007

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)

PROFESSOR C E HOEXTER (ext 78450)
DR D BILCHITZ

External examiner(s)

PROFESSOR I J KROEZE

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

Time allowance

Course no: LAWS4004 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. There are two different exam papers: one for Professor Hoexter's class and one for Dr Bilchitz's class. Answer only the paper of the class to which you belong.
2. Write your lecturer's name on your script.

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

THERE ARE TWO DIFFERENT EXAM PAPERS: ONE FOR PROF HOEXTER'S CLASS AND ONE FOR DR BILCHITZ'S CLASS. ANSWER ONLY THE PAPER OF THE CLASS TO WHICH YOU BELONG.

PROF HOEXTER'S CLASS

Answer any THREE questions. Each question counts 20 marks.

QUESTION 1

Does historical jurisprudence have anything to say to a South African today?

QUESTION 2

What is ubuntu and what is its significance in the context of African jurisprudence?

QUESTION 3

Some theorists justify criminal punishment by looking backwards, others by looking forwards. How would these two classes of theorist be likely to respond to prominent features of South Africa's criminal justice system today?

QUESTION 4

Do you think South Africans are under a duty to obey the law?

QUESTION 5

What can critical legal theory tell us about legal education and legal practice?

QUESTION 6

Identify two feminist perspectives on law that you believe are of particular importance in South Africa today. Explain and defend your choice.

TOTAL marks for Professor Hoexter's paper: 60

DR BILCHITZ'S CLASS

Answer TWO questions taken from two different parts of the paper. This means that you may not answer both questions in Part 2 or Part 4 or Part 5.

Each question is worth 30 marks, and it is suggested that you spend an hour on each question.

PART 1: Utilitarianism

QUESTION 1

‘Act utilitarianism cannot accommodate individual rights. Rule utilitarianism can.’
Construct an essay in which you discuss this statement critically with reference to the following:

- (a) Explain the problem that Rawls raises with act utilitarianism with reference to examples.
- (b) Distinguish act and rule utilitarianism.
- (c) Discuss the argument as to why rule utilitarianism could accommodate individual rights.
- (d) Discuss whether the argument in (c) succeeds and any challenges to it.

PART 2: Rawls

QUESTION 2A

‘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’s theory. In your essay you should:

- (a) Describe the original position in the early Rawls.
- (b) Discuss the interpretation of the original position as a form of hypothetical contract.
- (c) Discuss Dworkin’s critique of this interpretation.
- (d) Consider an alternative (you may consider Dworkin’s alternative) interpretation of the original position and its role in a theory of justice.

OR

QUESTION 2B

‘Reasonable disagreement in a liberal democracy is enduring and must be incorporated into a viable theory of justice for such a society.’ Construct an essay in which you discuss the revisions of the later Rawls (the Rawls of *Political Liberalism*) to his original theory with reference to the following:

- (a) Distinguish reasonable from unreasonable disagreement, and outline why Rawls believes that reasonable disagreement cannot be eliminated from a liberal democracy.

- (b) Explain how the fact of reasonable disagreement creates an argument for democratic toleration of others that differ from oneself.
- (c) Discuss how the notions of an ‘overlapping consensus’ and ‘public reason’ are designed to lead to a stable society that accommodates disagreement.
- (d) Evaluate whether Rawls introduces an unacceptable degree of relativism into his theory when he renders his key assumptions of the person and a well-ordered society relative to a constitutional democracy (implicit in the public culture of a constitutional democracy).

PART 3: Nozick’s Entitlement Theory of Justice

QUESTION 3

‘No distributional patterned principle of justice can be continuously realized without continuous interference with people’s lives’ (Nozick). Critically discuss this statement, including in your answer a discussion of the following:

- (a) An explanation of what is a patterned principle of justice in contrast to Nozick’s historical theory of justice.
- (b) An outline of Nozick’s Wilt Chamberlain argument as to why he thinks liberty upsets patterns.
- (c) A critical evaluation of the argument by considering:
 - (i) whether redistributive taxation is equivalent to forced labour; and
 - (ii) whether patterns always involve a violation of liberty (you may consider the Hobbesian and Lockean conceptions of liberty).

PART 4: Equality

QUESTION 4A

‘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:

- (a) Discuss the reasons we may have for valuing equality.
- (b) Discuss the problems that Frankfurt finds with this notion.
- (c) Discuss Frankfurt’s alternative of sufficiency.
- (d) 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.

OR

QUESTION 4B

‘Any viable theory of equality must take account of human difference.’ Critically evaluate this statement with reference to the following issues:

- (a) Explain ‘equality of welfare’ and what distribution of resources it would seek to achieve.

- (b) Evaluate whether equality of welfare is fair when resources are distributed according to differences in the following respects:
- (i) people's preferences, including expensive ones; and
 - (ii) the existence of disabilities.
- (c) Explain the key features of Dworkin's 'equality of resources'.
- (d) Evaluate whether Dworkin's theory is able to offer a more adequate account of how distributions should vary with differences in
- (i) people's preferences, including expensive ones; and
 - (ii) the existence of disabilities;
- (e) Which theory is preferable in your view?

PART 5: Other

QUESTION 5A

'Sexists violate the principle of equality by favouring the interests of their own sex. Similarly, speciesists allow the interests of their own species to override the greater interests of members of other species' (Peter Singer). Critically discuss this statement. In your essay you should:

- (a) Explain Peter Singer's argument for the claim that speciesism is akin to racism or sexism.
- (b) Explain why some critics think that only rational agents are entitled to equal consideration.
- (c) Evaluate Singer's argument from marginal human cases (children, mentally ill humans) and what it shows about non-human animal interests.
- (d) Evaluate whether the same logic of the argument in (c) can be used to support the claim that animals can have fundamental rights.

OR

QUESTION 5B

'Individuals are entitled to keep what they earn from the fruits of their labours.' Critically discuss this statement with reference to the following:

- (a) Outline Rawls's view regarding the arbitrariness of our talents and how the fruits thereof should be distributed.
 - (b) What are Nozick's criticisms of Rawls on this point?
 - (c) Evaluate briefly the reasons Nozick gives for believing that one should fundamentally be entitled to keep the fruits of one's labours.
 - (d) Briefly outline Dworkin's views regarding the distribution of goods on the basis of talents.
 - (e) Decide which of the above, if any, in your view offers the best account of how a society should distribute the fruits of an individual's labour.
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