



جامعة السلطان الشريف علي الإسلامية
UNIVERSITI ISLAM SULTAN SHARIF ALI
SULTAN SHARIF ALI ISLAMIC UNIVERSITY

Faculty of Shariah and Law
Semester II, 2022/2023 Academic Session

Final Examination Question Paper

Course Code : LB3309
Course Name : Jurisprudence
Course Level : Bachelor of Laws (LL.B) & Bachelor of
Shariah Law (BSL)
Time : 3 hours

Notes:

1. Answer any **four** of the following questions.
2. All answers, wherever relevant, must be supported by statutory provisions and case law.

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QUESTION 1 (15 Marks)

Discuss **FIVE (5)** practical relevance of jurisprudence. How has jurisprudence affected the legal discourse on the issue of law and morality?

QUESTION 2 (15 Marks)

Mr. Livingstone, who is the Prime Minister of Rantau Puteh Island as well as the Minister for Social and Community Welfare introduced in the House of Commons, which is equivalent to the Dewan Rakyat, a public bill (Anti-Homosexual Bill 2010) incriminating gay or homosexual activities. The bill provides for life imprisonment for anyone involved in gay or homosexual activities. Furthermore, the bill also provides for death sentence for anyone who transmits sexual diseases to others as a result of homosexual activities. Having more than 2/3 majority in the House of Commons, Mr. Livingstone was confident that his ruling party would get the support needed in order for the bill to go through and become a law. In his opening speech to the House while introducing the bill, Mr. Livingstone made a desperate plea to his party members of the importance of having such a law i.e. to curb immoral behaviours especially among the youth. He gave an example of how the youth have resorted to this despicable behaviour. He even went further by quoting the Bible i.e. how God punished the people of Sodom and Gomorrah because of homosexual activities. Mr. Adrian, a leader of the opposition in the House of Commons was not very happy with this move and declared his anger arguing that the international community should intervene and save the people of Rantau Puteh Island from this blatant abuse of the legislative process and above all violation of human rights by the ruling party of Mr. Livingstone. Mr. Nicholas, the Prime Minister of Rantau Hitam Island responded very positively to the call made by the opposition leader

and decided to cut-off all trading activities with Rantau Puteh Island. Mr. Livingstone reacted to the behaviour of the Prime Minister of Rantau Hitam Island as a cheap move which is unwarranted and uncalled for. He categorically stated that his effort would not be jeopardised by such a move and thus ready with the support of his party to go ahead and pass the bill based on what is good for the people of Rantau Puteh Island. One week later, the public bill (Anti-Homosexual Bill 2010) was passed by the House of Commons and got the approval of the House of Lords. A week later, the bill was legally declared as law (Anti-Homosexual Act 2010) after the granting of royal assent.

Advise Mr. Livingstone and Mr. Adrian on the issue of whether the enforcement of morality should be carried out by law.

QUESTION 3 (15 Marks)

What is the distinction between Hart's primary and secondary rules? Can it be maintained?

QUESTION 4 (15 Marks)

Discuss **FIVE (5)** contributions of Austin's command theory to our understanding of the law. Support your answer with relevant examples.

QUESTION 5 (15 Marks)

Consider the extent, if any, to which Rawls theory of justice contributes to our understanding of law. Support your answer with relevant examples.

QUESTION 6 (15 Marks)

Maasai women now want to have equal control over property they own with their husbands and they want the High Court to declare sections of the Marriage Act 1964 unconstitutional. They want the court to declare the common law doctrine that gives men more power over their wives in terms of property rights. They say sections 24 and 25 of the Marriage Act 1964 declared unconstitutional and invalid in as far as they are inconsistent with sections 20 and 28 of the 1995 Constitution. The matter was filed by Lankenua Judith against her husband Nkasiogi Peter. The Women and Law Eastern Africa (WLEA), Maasai chapter has also joined the proceedings in support of Lankenua Judith and all women married in civil rites and in common law. The matter appeared before a full bench of the High Court yesterday and the applicants were represented by Lawyer Kaihuri of Kaihuri & Lockech Law Firm.

She claimed that she was married to Nkasiogi Peter on August 19, 2000 in terms of civil rites and in community of property. She alleged during the subsistence of their marriage, he deserted her and their children until she was granted a court order directing him to pay Sh900 monthly as maintenance. Nkasiogi Peter then got married to another woman in Maasai customary law, but would occasionally go to her homestead and would sell cattle without Lankenua Judith's consent. She claimed the cattle belonged to her, but she had been forced to register them in her husband's name, due to marital power vested in him under the common law. Lankenua Judith claimed her husband had never contributed anything when purchasing the cattle, but he sold them bit by bit.

“After he deserted me, life became very tough. I attempted to sell some of the cattle we had in order to provide food, pay school fees and buy clothing for the children, but I was not allowed to do so. Each time I tried, I was told only my husband was allowed to sell the cattle. I was advised he had the marital power and furthermore, the cattle were registered in his name,” she said. She approached

a veterinary officer in a bid to have the cattle she had bought registered in her name, but she was advised that even if they were registered in her name, her husband's consent would be needed if she wanted to sell them.

"I was disappointed he did not need my consent in order to transfer ownership of the cattle, but I need his. I am very frustrated that I am bound by the common law which vests the marital power in my husband. This doctrine of marital power, being vested in men infringes on my right of equal treatment before the law. It gives my husband a more important status than myself when it comes to assets of our marital estate," she said. She added the doctrine infringed on the constitutional rights of equality before the law, equal treatment of women with men and the right to dignity. "The doctrine is discriminatory towards women," she said.

The matter, is pending before the High Court. It was postponed to October 24, 2020 for hearing. Nkasiogi Peter has opposed the application and has instructed Okiror to act as his Counsel.

[Maasai Observer, (Kenya) October, 11, 2020]

Critically discuss the above newspaper article in the context of the concerns of feminist jurisprudence.

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