

**NATIONAL UNIVERSITY OF LESOTHO**

**FACULTY OF LAW**

**LL.B FINAL EXAMINATIONS**

**L484: JURISPRUDENCE**

**MAY 2017**

**MARKS: 100**

**TIME: 3 HOURS**

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**INSTRUCTIONS:**

1. Answer any **FOUR** questions.
  2. Carefully read through all the questions.
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### Question 1

‘One of the most significant contributions to contemporary natural law thinking is the writing of Lon Fuller (1902-1978). He parted company with much of the earlier natural law traditions, rejecting Christian doctrines of natural law and seventeenth and eighteenth century rationalist doctrines of natural rights.’ Freeman. *Lloyd’s Introduction to Jurisprudence* p124.

In view of the quotation, critically discuss Lon Fuller’s theory of law.

(25 MARKS)

### Question 2

In view of the longstanding debate between Herbert Hart and Lon Fuller about the nature of legal rules, critically discuss the following *dictum* by Smallburger JA in the case of *National University of Lesotho v Motlatsi Thabane* (C of A 03/08) *ad para* [4]:

*Before proceeding I propose to make some comments concerning the Rules. They are primarily designed to regulate proceedings in this Court and to ensure as far as possible the orderly, inexpensive and expeditious disposal of appeals. Consequently the Rules must be interpreted and applied in a spirit which will facilitate the work of this Court. It is incumbent upon practitioners to know, understand and follow the Rules, most if not all of which are cast in mandatory terms. A failure to abide by the Rules could have serious consequences for parties and practitioners alike – and practitioners ignore them at their peril. At the same time formalism in the application of the Rules should not be encouraged. Opposing parties should not seek to rely upon non-compliance with the Rules injudiciously or frivolously as an expedient to cause unnecessary delay or in an attempt to thwart an opponent’s legitimate rights. Thus what amount to purely technical objections should not be permitted, in the absence of prejudice, to impede the hearing of an appeal on the merits. The Rules are not cast in stone. This Court retains a discretion to condone a breach of its Rules (see Rule 15) in order to achieve a just result. The attainment of justice is this Court’s ultimate aim. Thus it has been said that rules exist for the court, not the court for rules. The discretionary power of this Court must, however, not be seen as an encouragement to laxity in the observance of the Rules in the hope that*



*the Court will ultimately be sympathetic. There is a limit to this Court's tolerance.*

(25)

### Question 3

Legal realism is fundamentally a movement against formalism. However, it has two independent modalities – American realism and Scandinavian realism.

Compare and contrast American realism with Scandinavian realism.

(25 MARKS)

### Question 4

In view of the contemporary trends in traditional African jurisprudence, critically discuss the following quote by Poulter S, 'Marriage, Divorce and Legitimacy in Lesotho', *Journal of African Law* (1977) 21(1), 66-78, which has been quoted with approval by the Court of Appeal in the case of *Kose Hlasa V Morena Motjotjo Patsi* (C of A (CIV) 22 of 2016):

*...the chiefs who had traditionally administered the customary law in their courts and who were allowed to maintain this prerogative after Basutoland was removed from Cape rule in 1883, were eventually deprived of all judicial powers in 1938. Sweeping reforms were introduced by the colonial administration following serious complaints from the public over many years that the chiefs were unfit for the efficient and impartial dispensing of justice. In their place were established courts which are today styled "Central and Local Courts" but more colloquially referred to as "Basotho Courts". Broadly speaking, they operate according to western procedures. The traditional courts of chiefs and headmen therefore exist now merely as institutional forms of conciliation and mediation.*

(25 MARKS)

### Question 5

‘Austin, like Hobbes and Bentham before him, embraced the idea of law as sovereign command. Like Bentham, he acknowledged that the term ‘law’ means different things to different people, but he argued that we would all be better off if we learned to distinguish between different kinds of laws’. Ratnapala, *Jurisprudence* (2009).

Critically discuss Austin’s anatomy of ‘different kinds of laws’.

**(25 MARKS)**

### Question 6

a) Critically discuss the Marxist theories on rights, law and state.

(15 Marks)

b) It has been contended in some quarters that Karl Marx is somewhat a pupil of Hegel. However, Marxian works are largely based on the critique of Hegelian dialectic. He contends that Hegelian dialectic is standing on its head.

Compare and contrast Marxian Dialectic with Hegelian Dialectic.

(10 Marks)

**(25 MARKS)**