



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

A. M. E. C. E. A MAIN EXAMINATION

AUGUST – DECEMBER 2018 TRIMESTER

FACULTY OF LAW

EVENING PROGRAMME

CLS 301: JURISPRUDENCE

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Date: DECEMBER 2018

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions

- Q1. a) The Hart-Fuller debate has no relevance in the modern society today. Discuss **(15marks)**
- b) Law does not operate in isolation. But rather emerges and develops based on the context in which it is applicable-Anonymous. Discuss the statement above with reference to the critical Natural, Sociological and Utilitarianism theories of law. **(15marks)**
- Q2. a) The South African Constitution prohibits discrimination on basis of the sexual orientation. In light of the Wolfenden Report of 1957, discuss and evaluate the position of public vs. private morality in our laws. **(10marks)**
- b) Austin's command of law theory excludes constitutional, international and customary law from the body of positive law. Explain how Harts Theory corrects this flaw and assess whether the explanation offered by Hart really addresses this issue. **(10marks)**
- Q3. Republic v Mohamed Abdow Mohamed, High Court Criminal No. 86 of 2011(2013) eKLR is an example of a case where the court accepted the Director of Public Prosecutions termination of murder after the families of the accused and the deceased reached a settlement using traditional system/African customary law. Discuss a school of thought that may have underpinned the court's decision. **(20marks)**

- Q4. Comparing and contrasting, positivism and sociological schools of thought, critically discuss their various approaches to morality, justice and rights/duties. **(20marks)**
- Q5. H. L .A HART and JOHN AUSTIN remain two of the most prominent figures in the tradition of positive law. Differentiate and assess how they perceive the nature of law **(20marks)**

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