



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

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MAIN EXAMINATION

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JANUARY – APRIL 2019 TRIMESTER

FACULTY OF LAW

REGULAR PROGRAMME

CLS 320: JURISPRUDENCE

Date: APRIL 2019

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions

Q1. “SGR vandals will be hanged to death if President Uhuru Kenyatta implements a warning he issued while launching the services in Mombasa on Wednesday. A section of the new line was damaged by unknown people in Mariakani. Pictures showed a gap in a section of the guardrail, an incident that resulted in claims of sabotage...”Mimi ni wakwanza kukubaliana ya kwamba urais umenipea nguvu ya kuweka kidole...wale watapatikana wakiharibu reli, nitaweka kidole wanyongwe (I acknowledge that the presidency gives me the right to pass laws...those found vandalising the infrastructure...I will pass a law for them to be hanged).” Uhuru said vandalism will not be tolerated or a few people allowed to interfere with the rights of the present and future generations... “I’m the only one authorised to approve a capital punishment but I have never done it. I preferred pardoning the guilty and having them serve life imprisonment sentences,” he noted at the Miritini terminus.“But those who will be sentenced for destruction of public property...God forgive me...I will approve their hanging.”

- Nancy Agutu and Ernest Cornel, *Uhuru threatens death for SGR vandals, declares Sh700 fare at launch*, THE STAR NEWSPAPER, 31st May 2017.

- a) Considering the different theories of justice, do you agree with the president’s prescription of the death penalty for the SGR vandals?

15

Marks

- b) Assuming that you are a judge convinced that *Timothy Terrell’s Dimensions of Legal Reasoning’s* approach is the best way to resolving legal disputes; if the first vandalism of the SGR case comes to you, how would you go about deciding it?

15 Marks

- Q2. “We might therefore do well to consider how a philosophical judge might develop, in appropriate cases, theories of what legislative purpose and legal principles require. We shall find that he would construct these theories in the same manner as a philosophical referee would construct the character of a game. I have invented, for this purpose, a lawyer of superhuman skill, learning, patience and acumen, whom I shall call *Hercules*. I suppose that *Hercules* is a judge in some representative American jurisdiction. I assume that he accepts the main uncontroversial constitutive and regulative rules of the law in his jurisdiction. He accepts, that is, that statutes have the general power to create and extinguish legal rights, and that judges have the general duty to follow earlier decisions of their court or higher courts whose rationale, as lawyers say, extends to the case at bar.”
- Ronald Dworkin, *Hard Cases*, 88 HARVARD LAW REVIEW 1057–1109 (1975), p. 1083

Using Ronald Dworkin’s Interpretivist Legal Theory, imagine you are Judge Hercules confronted with hard cases not properly covered by either law or policy. How would you go about in the case? **20 Marks**

- Q3. Natural Law Theory has evolved over the years from the Greek philosophers to the 21st century legal theorists. Give a detailed account of this evolution highlighting the changes at the different stages. **20 Marks**

- Q4. “In other words, to disagree well you must first understand well. You have to read deeply, listen carefully, watch closely. You need to grant your adversary moral respect; give him the intellectual benefit of doubt; have sympathy for his motives and participate empathically with his line of reasoning. And you need to allow for the possibility that you might yet be persuaded of what he has to say.”
- Bret Stephens, *The Dying Art of Disagreement*, NEW YORK TIMES, Sept. 24, 2017.

How can Kenya apply Bret Stephen’s *The Dying Art of Disagreement*, and Allan Bloom’s *The Closing of American Minds* suggestions in the fight against corruption and clamour for good governance? **20 Marks**

- Q5. Answer the following questions –
- a) Briefly highlight Jeremy Bentham’s principle of utility and how it relates to go John Stuart Mill’s utilitarianism. **10 Marks**
 - b) What is the Marxist theory on governance? **5 Marks**
 - c) Highlight John Austin’s command theory. **5 Marks**

END