

**Jurisprudence 2021
Special Examination
ARL0011/JUR4A01**



Assessor:	Dr Marius van Staden
Moderator:	Mr J Storm
Submission date:	29 July 2021
Examination time:	08:00 to 11:00

The following instructions must be followed carefully:

1. Long questions has to contain an introduction and a conclusion.
2. Although the question paper is a two-hour question paper, students will have 3 hours to complete the exam.
3. Email your answer to mvanstaden@uj.ac.za.
4. All students who miss the deadline for submission must apply to write the supplementary exam and strictly no late assignments will be accepted.
5. Remember, if you struggle to submit your work you must email you lecturer.
6. No bibliography, table of content or cover page must be included.
7. Indicate your name and student number.
8. It is accepted that all students will be conversant with the plagiarism policy of the University of Johannesburg. Students who contravene this policy will receive 0% for the assignment and the matter will be referred to Judicial Affairs and Student Ethics. Do not add a plagiarism declaration. By submitting your assignment online you will be acknowledging that you are familiar with the UJ Plagiarism Policy.
9. Marks may be subtracted for failure to follow any instructions.

Question 1

Choose the most correct answer in each of the following instances. Write only the number of the question followed by your choice of answer.

1.1 According to Ronald Dworkin, what is indispensable in order to interpret and apply laws?

- a. Legal authority.
- b. Introduction of moral judgments.
- c. A body of judges who are capable of keeping personal value judgments out of reach of laws.
- d. A robust system of courts.

1.2 Legal positivism directly clashes with which theory?

- a. Normative jurisprudence.
- b. Natural law theory.
- c. Legal realism.
- d. Constructivist theory.

1.3 Who among the following scholars is not a proponent of legal positivism?

- a. Ronald Dworkin
- b. John Austin
- c. Joseph Raz
- d. H. L. A. Hart

1.4 What is the fundamental problem in finding an analogy of Austin's political sovereign in South Africa's Constitution?

- a. Austin's sovereign cannot be identified
- b. Austin's political sovereign does not himself/herself/itself habitually obey some other person or persons.
- c. Austin's concept is radically flawed.
- d. 'We, the people' as a political sovereign is a body that can be located with certainty.

- 1.5 Which of the following theories focuses on race?
- a. Critical legal studies
 - b. Critical race theory
 - c. Feminism
 - d. Gerontology
- 1.6 Illustration: People who act contrary to rules ought to be liable for punishment.
Principle: Austin said, “[t]he existence of law is one thing; its merit or demerit is another. Question: What then, according to Austin, gives a rule the force of Law?
- a. The idea of a sanction is built into the very notion of law.
 - b. Its rigidity.
 - c. Considerations of utility and efficient management of resources that Law contemplates.
 - d. Its incorporation of temporal moral value.
- 1.7 The point of conflict between natural law theorists and positivists is:
- a. There are objectively valid moral propositions.
 - b. Moral propositions constitute a superior law.
 - c. Failure to conform to such a superior law deprives ordinary positive law of all legality.
 - d. All of the above.
- 1.8 The principle of Liberty and Difference Principle, mentioned in a theory of justice was written by:
- a. Von Savigny
 - b. Austin
 - c. Rawls
 - d. Hart
- 1.9 The significance of the classification as ‘primary’ and ‘secondary’ rules indicates that Secondary rules ...
- a. are superior to Primary rules.
 - b. cannot exist without Primary rules.
 - c. can never become law.
 - d. are unimportant and can be applied in an unorthodox manner.

1.10 Which of the following concepts should be central to Feminist doctrine according to MacKinnon?

- a. Equality
- b. Difference
- c. Dominance
- d. Violence

1.11 Which position does Rawls claim is the least likely to be adopted by the POP (people in the original position)?

- a. The POP would choose equality above liberty.
- b. The POP would opt for the 'maximin' strategy.
- c. The POP would opt for the 'difference principle'.
- d. The POP would reject the 'system of natural liberty'.

1.12 Mill claims that in deciding how to act:

- a. we should always calculate the expected consequences of our action.
- b. we should depend on rules of thumb derived from the principle of utility.
- c. we should consult tradition.
- d. we should consult scripture.

1.13 Who should hold the greatest advantage in Rawls' ideal society?

- a. No one.
- b. The poor.
- c. The royals.
- d. The rich.

1.14 Maphai justifies affirmative action measures on ____ grounds.

- a. deontological
- b. utilitarian
- c. compensatory
- d. rights-based

1.15 Thompson justifies affirmative action measures on ____ grounds.

- a. deontological
- b. utilitarian
- c. compensatory
- d. rights-based

1.16 Nozick claims that a more-than-minimal state will

- a. eventually shrink.
- b. benefit no one.
- c. violate citizen's rights.
- d. interfere with the prerogatives of the state.

1.17 According to Rawls, all social values (opportunity, liberty, income, wealth, etc.) are to be distributed equally unless an unequal distribution is

- a. to the advantage of the least well off in society.
- b. beneficial to the majority.
- c. consistent with utility.
- d. deserved.

1.18 According to Gyekye, justice should aim at improving welfare by

- a. maximising utility for the majority.
- b. encouraging harmonious coexistence for all.
- c. those who have the capability to do so.
- d. imposing more taxes on the rich in society.

1.19 According to Tutu restorative justice is

- a. a blanket amnesty.
- b. national amnesia.
- c. similar to the Nuremburg trials.
- d. a compromise.

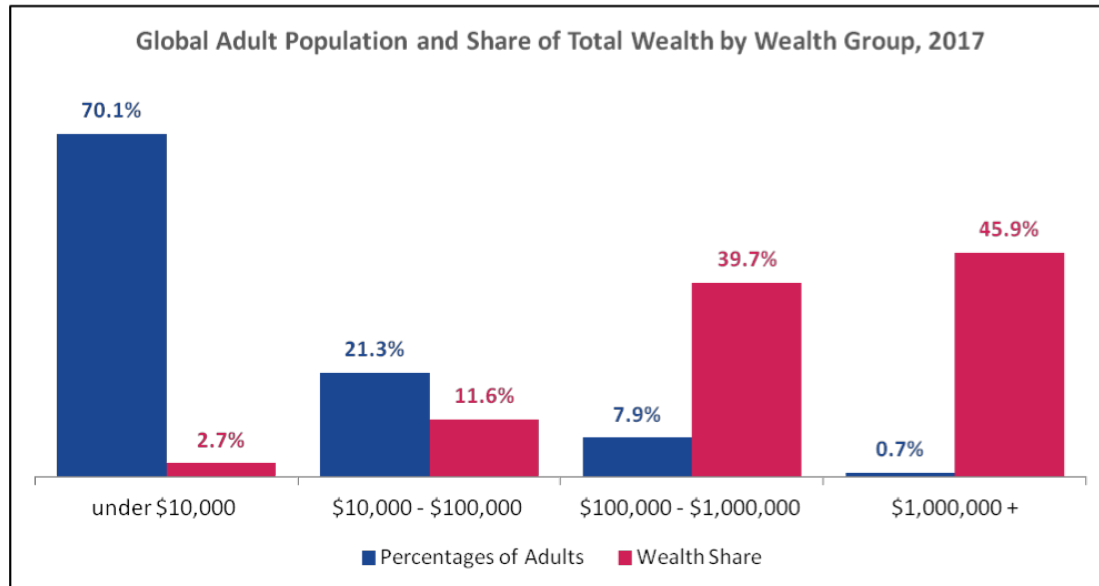
1.20 According to Singer, justice should aim at improving welfare by

- a. maximising utility for the majority.
- b. encouraging harmonious coexistence for all.
- c. those who have the capability to do so.
- d. imposing more taxes on the rich in society.

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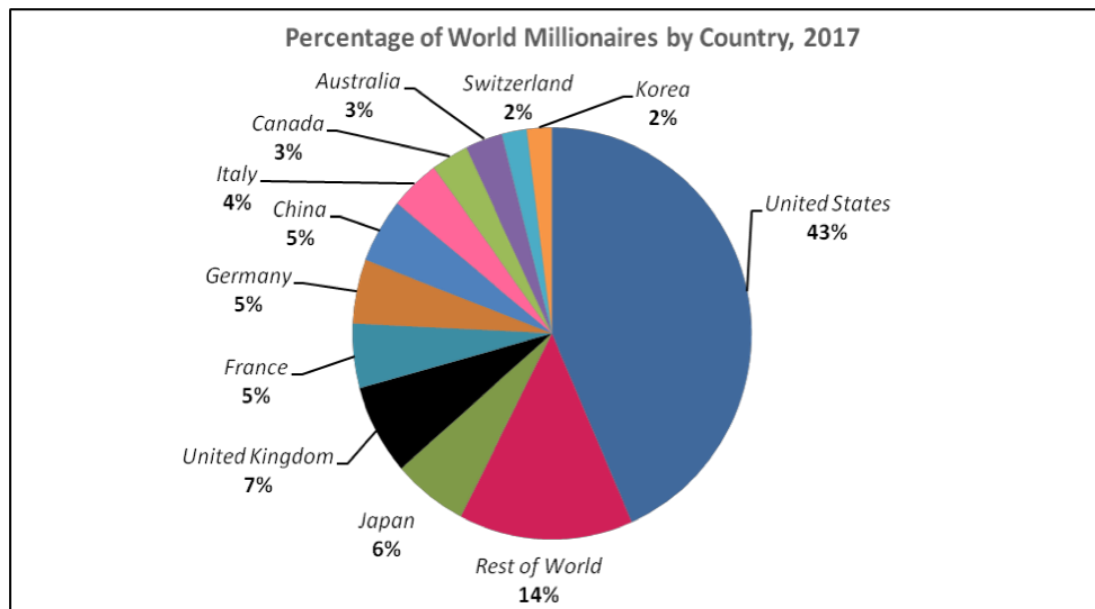
Question 2

Consider the following statistics concerning Global inequality as published on <https://inequality.org/facts/global-inequality/> and answer the following question.

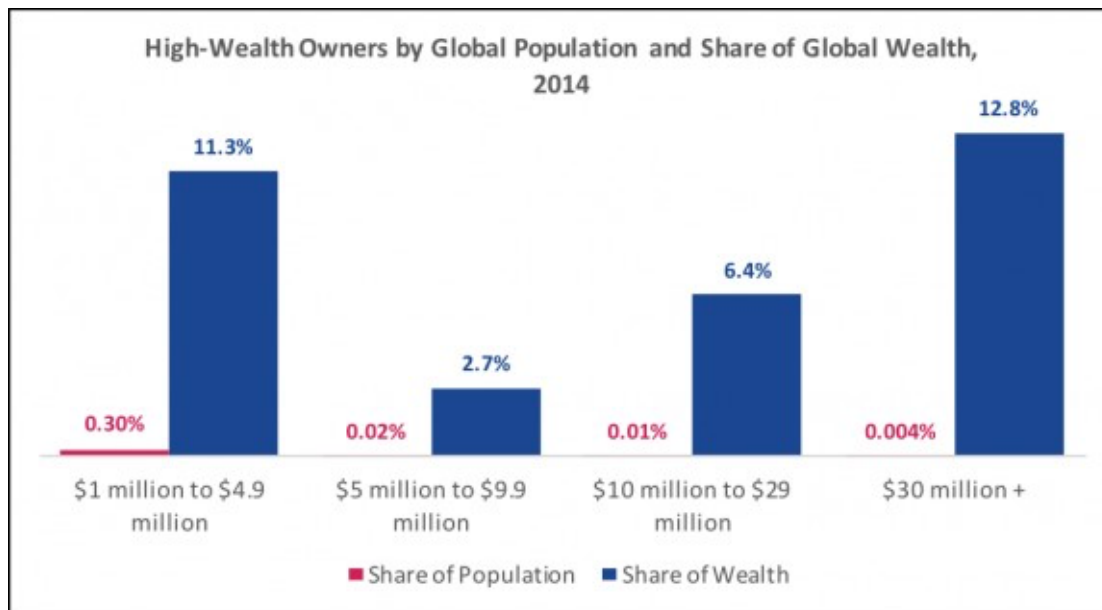


More than 70 percent of the world's adults own under \$10,000 in wealth. This 70.1 percent of the world holds only 3 percent of global wealth. The world's wealthiest individuals, those owning over \$100,000 in assets, total only 8.6 percent of the global population but own 85.6 percent of global wealth.

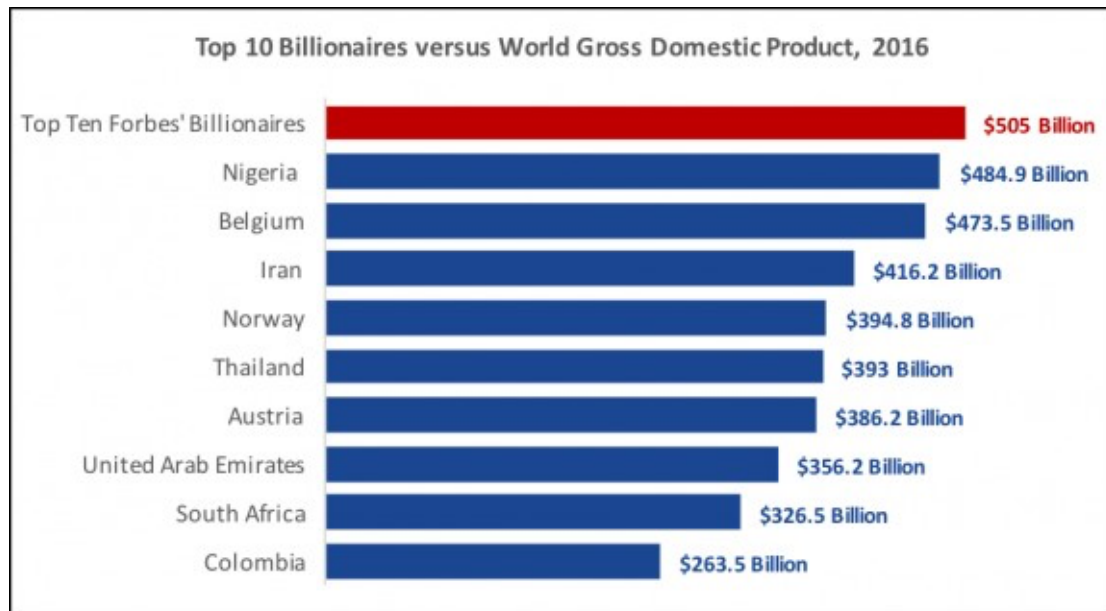
Western and European countries host the lion's share of the world's millionaires. More than 70 percent of the world's millionaires reside in Europe or North America, with 43 percent of these millionaires calling the United State home. The only non- Western nations with a significant share of millionaires: the industrial powerhouses Japan, China, and Korea.



2



“Ultra high net worth individuals” — the wealth management industry’s term of art for deep pockets worth more than \$30 million — hold an astoundingly disproportionate share of global wealth. These wealth owners own 12.8 percent of total global wealth, yet represent only a tiny fraction of the world population.



The world's 10 richest billionaires, according to Forbes, own \$505 billion in combined wealth, a sum greater than the total goods and services most nations produce on an annual basis.

Write an essay in which you critically consider the global distribution of wealth and if the current state of global inequality could be described as just or not. In your answer you have to consider the following theorists' positions but you need not do so in order:

- John Stuart Mill;
- John Rawls;
- Oritsegbubemi Anthony Oyowe;
- Robert Nozick;
- Peter Singer; and
- Kwame Gyekye.

(20)

Question 3

Systemic violence refers to institutional practices or procedures that adversely affect groups or individuals psychologically, mentally, culturally, economically, spiritually, or physically. Critically discuss the concept of "systemic violence" with reference to the following theories of law:

- critical legal studies;
- critical race theory; and
- feminist legal theory.

(20)

Total: 60