

MODULE : JURISPRUDENCE
CODE : 221JUR41A0/221ARL0011,
YEAR : 2022
PAPER : B

INSTRUCTIONS:

1. Answer ALL THE QUESTIONS.
2. Number your answers clearly.
3. Write neatly and legibly.

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QUESTION ONE

Between 1 and 5 February 2022, the Judicial Services Commission (JSC) interviewed five candidates for the post of Chief Justice of South Africa. Amongst the candidates were the then acting Chief Justice Raymond Zondo and the Judge President of the Supreme Court of Appeal, Mandisa Maya. At the conclusion of the process, the JSC recommended that President Cyril Ramaphosa appoints Judge President Maya as the next Chief Justice of the country. This recommendation sparked a great deal of excitement in some circles, and further galvanised voices that had immediately after her short-listing, argued that 'it was time for a female Chief Justice'.

With reference to the above facts, critically discuss the Feminist Legal Theory (FLT). In your answer, allude to the challenges posed by 'formal equality'.

[15]

QUESTION TWO

Critically discuss Justice Moseneke and former Chief Justice Pius Langa's views on 'transformative constitutionalism' in the context of how judges must adjudicate.

[15]

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QUESTION THREE

It is hard to imagine a topic more sensitive and a situation more difficult, than deciding who gets to live and who gets to die in a global pandemic. Yet this was the reality of the COVID-19 outbreak and the resource shortage it caused. Due to a lack of critical care resources, patients and families around the world had to live with the consequences of not receiving, or the withdrawal of life support. Such decisions had both an emotional and an ethical impact, such that the phrase “fair allocation” of a ventilator may seem appropriate. Ultimately, one may ask: who are we to decide who gets to live and who gets to die?

With reference to Immanuel Kant, Jeremy Bentham and John Stuart Mill, critically discuss the above facts. Based on authority, whose approach would, in your opinion, be fair and just?

[15]

QUESTION FOUR

Commenting on the responsibilities of various sectors of society in building a just and fair South Africa, former president, Thabo Mbeki, once said financially disadvantaged people have duties to not merely “hold out their hands and receive a hand-out”, but to also “understand that all of us as South Africans have a shared responsibility to attend the development of the country”.

With reference to the above statement, critically discuss the notion of “duties” in the context of justice and state whether financially disadvantaged members of society or the less fortunate have “duties” in this regard.

[15]

TOTAL: 60 Marks

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