

CHUKA



UNIVERSITY

UNIVERSITY EXAMINATIONS

EXAMINATION FOR THE AWARD OF DEGREE OF BACHELOR OF LAW

BLAW 114: SOCIAL FOUNDATIONS OF LAW

STREAMS: BLAW

TIME: 2 HOURS

DAY/DATE: THURSDAY 22/07/2021

2.30 P.M. – 4.30 P.M.

INSTRUCTIONS:

- **Answer question ONE and any other TWO questions.**

QUESTION 1

- (a) You have been employed as an intern in one of the leading socio-legal policy institution. As part of your initial assignment, you are supposed to advice on how the law can be used as a tool of social change. Please discuss how the law is a tool of social change using social engineering theory of Roscoe Pound and highlight advantages and disadvantages of the law as a tool of social change. (20 marks)
- (b) The social foundation of law is a relevant unit for the future of a lawyer. Define the concept of social foundation of law and discuss four ways (importance) that this course will assist you as a lawyer. (10 marks)

QUESTION 2

The legal system reflects and reinforces a male perspective. Patriarchy runs deep in our society and it is for this reason that the feminists have insurmountable challenge of dismantling patriarchy. This is compounded by emergence of different types of feminists. Discuss the feminism legal theory identifying the content, types of feminism and achievements of this movement.(20 marks)

QUESTION 3

Write short notes on the following

- (i) The pure theory and grund norm (5 marks)

- (ii) Modern natural law school thoughts (10 marks)
- (iii) John Austin's command theory (5 marks)

QUESTION 4

- (a) The Hart- Fuller Debate is one of the monumental legal debates. The questions in that debate have lingered in the minds of many legal scholars covering contemporary issues in jurisprudence. Despite the revisiting of this debate in modern day the arguments in the original debates remain crucial. Critically analyze the Hart Fuller Debate and its relevant in the contemporary understanding of the law. (13 marks)
- (b) Utilitarianism continues to influence decision makers such as legislators, judges or policy makers in different ways. Using contemporary examples explain the theory of utilitarianism and its relevance today. (7 marks)

QUESTION 5

‘When we study law we are not studying a mystery but a well-known profession. We are studying what we shall want in order to appear before judges, or to advise people in such a way as keep them out of court. The reason why it is a profession, why people will pay lawyers to argue for them or to advise them, is that in societies like ours the command of the public force is in trusted to the judges in certain cases and the whole power of the state will be put forth, if necessary, to carry out their judgments and decrees. People want to know under what circumstances and how far they will run the risk of coming against what is so much stronger than themselves and hence it becomes a business to find out when this danger is to be feared. The object of our study, then, is prediction, the prediction of the incidence of the public force through the instrumentality of the courts’ **The Path of the Law by Oliver Wendell Holmes, Jr. 10 Harvard Law Review 457 (1897)**

Critically evaluate the above statement and discuss prediction theory of Oliver Wendell Holmes. (20 marks)
