

**DAYSTAR UNIVERSITY**  
**SCHOOL OF LAW**

JANUARY 2022 - END OF SEMESTER EXAMINATIONS

**LLB 400      JURISPRUDENCE**

**INSTRUCTIONS:**

1. This paper has FIVE questions
2. Answer question 1 and any other two.

**QUESTION ONE      30 MARKS**

At the peak of the COVID-19 pandemic around August 2020, there were bans on public transport, large gatherings of people and all eateries were closed except for ‘take away’ service. The Government put in place measures that restricted church attendance, the number of people at weddings and funerals. Ian Nondi, an astute businessman, owns several long distance buses, at least one hotel in six major cities in Kenya, and has rental tents and chairs for group functions. He incurred losses during that period amounting to KShs. 320 million. A number of workers sued him for compensation for loss of jobs and earnings. The government introduced compulsory vaccinations. Neither him nor any member of his family or employees could get government service without proof of vaccination. Upon being vaccinated, Ian lost consciousness followed by two weeks of diarrhea, nausea, weakness in the joints, difficulties in breathing and a dull headache. For two weeks, he was unable to move around. The same fate visited his three children. Reports from the USA and UK indicate that vaccination is not prevention against infection as several people in those countries who were vaccinated became infected, some with very severe consequences. He has heard reports that all COVID-19 vaccines are experimental. He feels cheated to have been compelled to take an experimental drug. He believes the government misled and caused him immense suffering. He wishes to institute a suit. Choose a relevant school of jurisprudence and explain to him the arguments he needs to advance his cause.

**QUESTION 2**                      **15 MARKS**

Daniel Chol Mabior is a lawyer who has practiced law for over 40 years. At the time he went to school, the subject of jurisprudence was not seriously taught. He also did not pay much attention to it as all he wanted was property law and conveyancing. He just wanted to be a good lawyer taking care of his clients. Indeed, in the forty years of his practice, he has exemplified himself as such good lawyer. All his clients love him because he always finds a technicality to use to floor the prosecution. He has set up offices in almost each county and has a workforce of over 200 lawyers. His annual income is never less than KShs 100,000,000/=. He qualifies to be called a very successful advocate. Using his earnings, he has acquired properties both in Kenya and South Sudan. He has changed cars more times than he can remember. He also has over ten helicopters which he normally leases to politicians especially during campaign times. He has 15 children from three wives, all of whom went to University both in Kenya and abroad. His children are all successful. Now Mr. Mabior wants to become a High Court Judge. As one of the compulsory questions at the interview is a question on jurisprudence. He has gone to the internet to look up materials on jurisprudence. He found a lot of materials that were intimidating. He now needs assistance to be taken through the key tenets of the feminist theory of jurisprudence, its proponents, the attendant criticisms, and evidence of application in Kenyan courts. Please proceed to help him.

**QUESTION THREE**                      **15 MARKS**

Ms Neria Narkut has filed a suit in the constitutional court seeking just one order: that the hospital where she is currently admitted be allowed to assist her to die (euthanasia). Neria is 61 years old currently. While she was 50 years, she was involved in a terrible road accident where she suffered severe injuries to the brain, which injuries are permanent. She can only move in a wheelchair. She does not have means of livelihood to cater for basic needs. Her attempts to compel the state to provide her with food and free medication *vide* chapter 4 of the Constitution of Kenya, 2010 failed. Presently, she is happy that she can eat at the hospital. It is near impossible to get food at her house, let alone preparing it. Although she has five children, only one paid for her hospital insurance. And even this one child is unable to help her further. The children are tired of spending money on their mother. They wish her death. On her part, Neria is not happy with her quality of life for the past 11 years. Her children have abandoned her. No

one goes to visit her in hospital. Her friends got tired of visiting her after the first year of hospitalization. At the hospital, she has gone through the hands of several nurses, most of whom left the hospital. On several occasions, she has asked the hospital staff to give her a lethal injection and end her life. On all such occasions, the hospital has declined citing article 26 of the constitution that guarantees the right to life. In her suit papers, she has attempted to argue that the corollary to the right to life is the right to die. You are the Judge before whom this matter has been brought. Which relevant theory of jurisprudence would you use in writing your judgement.

**(Delete question)QUESTION FOUR**

**15 MARKS**

Advancements in science and technology have led to the availability of numerous products in medicine, agriculture, and other areas. In medicine for instance, millions of vaccines can be availed at very short notice using biotechnology. Needless to mention that new medicines for myriad diseases have also been produced. In agriculture, genetic modification of seeds has led to improved yields of many food crops thereby alleviating the challenge of food insecurity. Additionally, many machines can be produced with relative ease. In telecommunications, transmission of messages, internet connectivity and ease of doing business has been facilitated. However, it has also been acknowledged that each of these technologies has its own downside by way of side effects. The manner of production, marketing, distribution, use and overall regulation has been found to require a different approach. The Attorney General of the Republic of Kenya has realized that the making of laws touching on these advances in science and technology cannot fit in any of the conventional schools of jurisprudence. He needs to be enlightened on the techno-scientific theory of law. Please write a convincing brief on the techno-scientific theory of law.

**QUESTION FIVE**

**15 MARKS**

Discuss the relevance of Hans Kelsen's Grundnorm with respect to the Constitution of Kenya, 2010.