

THE OPEN UNIVERSITY OF SRI LANKA
FACULTY OF HUMANITIES AND SOCIAL SCIENCES
DEPARTMENT OF LEGAL STUDIES
LL. B DEGREE PROGRAMME-LEVEL 6
LLU6813 JURISPRUDENCE
FINAL EXAMINATION-2020/2021
DURATION-THREE (03) HOURS

DATE: **07TH SEPTEMBER 2021**

TIME: **09.30 am-12.30 pm**

Answer **FOUR (04)** questions only.

Each question carries **Twenty-Five (25)** marks.

Mr. Ronald a citizen of Nabia, was a terminally ill cancer patient who has been completely respiratory dependent since 2015. In 2020, his wife and parents accepted that his condition was intolerable by looking at the suffering and pain he endured. They went to the Supreme Court of Nabia, requesting to remove Mr. Ronald's respiratory support. The majority of the court stated that when there is clear and substantial evidence to prove that the patient would have wanted his life support removed, the court will grant an order entertaining an end-of-life request. The judgement made it clear that medically assisted suicide would "only be allowed in cases where the person is terminally ill."

NOTE- Questions No 1,2 and 3 are based on the above scenario and extracts from the judgment delivered by different judges in the Supreme Court of Nabia.

1. Chief Justice, Justice B and Justice C argued that this case allowed medically assisted suicide depending on the circumstances, for example, if a person is suffering from a terminal illness, suffering intolerable pain or has a life that is excessively painful and has a voluntary desire to die but is unable without assistance to commit suicide, then there should be legal and medical providers to enable a person to be allowed to die or assisted to die. The Chief Justice stated that when there is no statute or applicable legal provision, it must be applied by the court. The Supreme Court provided a definitive decision on medically assisted suicide and relied upon international treaties that had not been transformed into domestic law through enabling legislation. There was a clear statutory vacuum and therefore, the Court chose the creative route of judicial law making.

Explain the philosophical foundations of the jurisprudential theory that underpin the above view point. Also critically discuss the functional utility of this theory in defining the nature of the legal system in Sri Lanka.

2. Justice D and Justice E relied on Section 293 of the Penal Code of Nabia that is similar to the Sri Lankan Penal Code. They contended that medicalized killing of a person is not a 'medically assisted suicide', but considered it as culpable homicide as per the provisions of the Penal Code. They objected to the views of the majority judges contending that they had been ignorant of the plain words of the law. The words of the statute reflect the actual intention of the legislature. Words of the statute should be interpreted so as to give their clear meaning, and not what they ought to mean. There is no moral or ethical consideration in law or any necessary connection between law and morality.

- (a) Identify the philosophical foundation that may be derived from the viewpoints of Justice D and Justice E and critically examine the validity of applying these philosophical understanding to a contemporary legal system.

(15 Marks)

- (b) Discuss to what extent the separation between law and morality impacts on the State obligations to protect the rights of citizens in the contemporary legal systems.

(10 marks)

3. Based on the above judgment and in line with the international standards relating to medically assisted suicide, the Parliament of Nabia proposed a bill in July 2021 enabling physicians to facilitate medically assisted suicide. Subsequently, there was a series of challenges from the opponents of the bill arguing that the right to life guaranteed under the Constitution of Nabia does not include the right to die. Therefore, it violates the fundamental values of Nabian's Constitution. They compelled the Parliament to overturn the bill. On the other hand, the proponents of the bill argued that "patients have a right to make their own decisions to preserve free choice and human dignity: this right includes the right to choose assisted suicide". Some argued that though the legalizing of medically assisted suicide is accepted internationally, lawmakers of Nabia should follow the historical development of the country because the legal system is part of the culture of the people. Therefore, the law is not something that should be made arbitrarily and deliberately by a lawmaker.

Identify the jurisprudential theories that underpin the arguments and counter arguments levelled by the two sections and focusing on the salient features of the applicable jurisprudential theories, critically analyze the challenges that the legislators and jurists in

the modern socio economic and political context would have to address in reconciling such claims and counter claims.

4. At an election held in December 2020, Ms. Raki was elected as the Prime Minister under the 1975 Constitution of the State of Kiyanmar. In January 2021, just before the new Parliament was set to convene for the second time, Kiyanmar's military detained the Prime Minister and other ruling party members. They were placed under house arrest, and the army began filing various charges against those political personnel. The military handed power to its Chief and declared a state of emergency for one year, and closed the borders and communication system of the country. The Military Chief imposed Martial Law two days later and abrogated the 1975 Constitution.

A Provisional Constitutional Order of No 1 was enacted by the Military Chief in February 2021. It provided that the country was to be governed as nearly as possible following its terms subject to the Proclamation of Martial Law and subject to any Regulation or Order that may be made from time to time by the Military Chief. Since then, thousands of protesters, including civil servants, teachers, students, workers and religious leaders, started demonstrating on the streets against the military government. The coup was condemned by the United Nations and leaders of democratic nations worldwide and urging to release the political leaders and immediately establish democracy in Kiyanmar. In the meantime, ten political leaders sought advice from the Supreme Court of Kiyanmar about the legal validity of the Provisional Constitutional Order of No 1 enacted by the Military Chief in February 2021.

Analyze the legal validity of the coup with reference to Kelsen's theory of law.

5. "The fact that its central concerns have gained recognition in so many national constitutions and in international law is the highest testament to the power of the natural law idea."

Jurisprudence, Suri Ratnapala, (2009) p.160

Critically discuss the above statement with special reference to the legal responses that have been influenced by natural law thinking in the modern law-making process.

You are expected to cite examples from **at least three different jurisdictions** to support your answer.

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