

LEGAL PROFESSION ADMISSION BOARD

MARCH 2014

JURISPRUDENCE

Time: Three Hours This paper consists of **ten** questions.

Candidates are required to attempt any **four** questions.

All questions are of equal value.

No question is compulsory.

If a candidate answers more than the specified number of questions, only the first **four** questions attempted will be marked.

All questions may be answered in one examination booklet.

Each page of each answer must be numbered with the appropriate question number.

Candidates must indicate which questions they have answered on the front cover of the first examination booklet.

Candidates must write their answers clearly. Lack of legibility may lead to a delay in the candidate's results being given and could, in some circumstances, result in the candidate receiving a fail grade.

This examination is worth 80% of the total marks in this subject.

Permitted Materials: This is a closed book examination. No materials are permitted in the examination room.

As some instances of cheating and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct will result in instant expulsion from the examination and may result in exclusion from all further examinations.

This examination should not be relied on as a guide to the form or content of future examinations in this subject.

Question 1

Candidates must answer ALL parts of this question.

Jerome Frank famously argued that the rules and doctrines of a legal system do not determine a single correct answer to a legal question.

What were some of the arguments he put forward for that view?

Does Frank's view about the lack of determinative answers to legal questions pose any difficulties for those who contend that law is a rational activity that seeks to uphold and protect the rights of citizens?

Question 2

Ronald Dworkin argued that in regard to both the interpretation of constitutions and statutes, and the application of common law precedent, there are correct and determinate answers to legal questions. Dworkin in his 1986 work "Laws Empire" described this as "laws integrity".

What were some of the arguments advanced by Dworkin to support his view regarding correct answers to legal questions, and do any of Dworkin's arguments persuade you that there are indeed correct answers to legal problems?

Question 3

In regard to the concept of proof on the balance of probabilities, and proof beyond reasonable doubt; should lawyers concern themselves with the mathematical concept of probability or would lawyers be better to depend upon a commonsensical understanding of concepts of probability?

Question 4

Are any of the functions of contemporary tort law usefully explained by the economic analysis of tort law advocated by jurists such as Richard Posner?

Question 5

What were the arguments advanced by the 17th Century English political philosopher, John Locke, as to why there is a natural right to property? Could Australian land law be justified by this concept of a natural right to property? Would laws in regard to the expropriation of property with fair compensation (eg Government resumptions for public purposes) violate this moral right?

(Question 6 follows)

Question 6

John Rawls held a particular philosophical view on what constituted a just and good society. Analyse his view, and compare and contrast it with at least one other legal philosopher. Which viewpoint do you find more persuasive, if either, and why?

Question 7

What are the goals of punishment, and how do three main theories of punishment seek to attain these? Critically evaluate these theories.

Question 8

“I shall argue that there is no obligation to obey the law... I shall suggest that there is not even a prima facie obligation to obey it.”

Joseph Raz - Chapter 12 The Authority of Law

Is there an obligation to obey the law? Justify your position. Your answer must include analysis of at least two legal philosophers' views on this topic.

Question 9

“The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions...”

Locke, John. The Second Treatise of Civil Government. 1690.

“The existence of law is one thing; its merit or demerit is another. Whether it be or be not is one enquiry; whether it be or be not conformable to an assumed standard, is a different enquiry. A law, which actually exists, is a law, though we happen to dislike it, or though it vary from the text, by which we regulate our approbation and disapprobation. “

John Austin 1832 Lecture V

Proponents of Natural Law philosophy argue that man-made law ought to enshrine Natural Law, and that incongruence results in invalidity. They maintain that there is a duty to disobey law which is unjust, unless to do so would create a greater wrong.

Analyse and critique both the perspective of Natural Lawyers and the contrasting position of the Positivists with reference to the above two quotes/thinkers.

Question 10

Upon what did HLA Hart and Hans Kelsen argue that the legal validity of a law depended, and did they consider a law's moral value relevant to determining its validity?

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