

LEGAL PROFESSION ADMISSION BOARD

MARCH 2013

JURISPRUDENCE

Time: Three Hours This paper consists of **eight** 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

The American judge, Justice Oliver Wendell Holmes, described law as: *"The prophecy of what Courts will do in fact"*.

What did he mean by that statement and what implications did it have for the way judges decide cases? Discuss in your answer whether you consider it to be an adequate theory of law.

Question 2

Ronald Dworkin has proposed several ways of viewing the process of judicial decision making but all have in common an attempt to show how there can be one right answer to a legal question.

Why is it so important to Dworkin's view of the nature of law that there be one right answer to legal questions, and what are some of the arguments by which Dworkin has sought to establish that his view is correct?

Question 3

Originalism as a theory of constitutional interpretation has come to mean a number of different things, however, most originalist theories consider that a constitution has one meaning that does not change over time.

Why do these originalists hold that view about constitutional meaning? Do you consider a "living constitution" theory of constitutional interpretation is preferable, and if so, why?

Question 4

What social purposes of contemporary tort law, if any, are best explained by the economic analysis of tort law? Are there weaknesses in the economic analysis view of tort law, and if so are these weaknesses overcome by the alternative view of tort law that treats its social purpose as corrective justice?

Question 5

Do you consider that the modern Australian law of property in regard to land is best viewed as giving legal enforcement to a moral right to property or is it better understood from the perspective of a consequentialist moral viewpoint? What are some of the arguments that support the moral right, and consequentialist viewpoints respectively?

(Question 6 follows)

Question 6

Consider the following two quotes:

“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 Locke and Austin.

Question 7

John Rawls held a particular philosophical view on what constituted a just and fair 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 8

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

END OF PAPER