

UNIVERSITY COLLEGE LONDON

University of London

EXAMINATION FOR INTERNAL STUDENTS

For The Following Qualification:–

LL.B.

Jurisprudence and Legal Theory

COURSE CODE : LAWS2004

DATE : 04-MAY-06

TIME : 10.00

TIME ALLOWED : 3 Hours

JURISPRUDENCE AND LEGAL THEORY

Answer **THREE** questions including one question from **PART A** (The Big Book) and two questions from **PART B**.

PART A

1. Answer **ONE** of the following:

- (a) 'Jeremy Bentham's *A Fragment on Government* "broke the mould" of English jurisprudence.'

Discuss.

- (b) What does Cornell mean by advocating the right to an 'imaginary domain'?

Discuss in relation to **EITHER** one **OR** two of the following problems that Cornell analyses in the book:

- I. sexual freedoms and the doctrine of privacy
- II. prostitution
- III. reproductive capacity and equality in the workplace
- IV. adoption
- V. family law reforms
- VI. fathers' rights movement
- VII. international human rights.

- (c) 'It is not contradictory to describe Islamic law as both a divine law and a jurists' law.'

Analyse the above statement in the light of Muhammad Baqir As-Sadr's *Lessons in Islamic Jurisprudence*.

- (d) According to Smart, what are the advantages and disadvantages of 'centring' law in the feminist struggle for justice?

- (e) 'The fundamental sense of freedom is freedom from chains, from imprisonment, from enslavement by others. The rest is just extension of this sense, or else metaphor. To strive to be free is to seek to remove obstacles; to struggle for personal freedom is to seek to curb interference, exploitation, enslavement by men whose ends are theirs, not one's own.' (Berlin)

Discuss with reference to Berlin's distinction between negative and positive liberty.

TURN OVER

- (f) 'To understand Political Power right, and derive it from its Original, we must consider what State all Men are naturally in, and that is a *State of Perfect Freedom*... A *State also of Equality*, wherein all the Power and Jurisdiction is reciprocal, no one having more than another...' (Locke, *Second Treatise*)

Discuss.

- (g) Answer **EITHER** (i) **OR** (ii):

- (i) Does Kant provide persuasive arguments for a duty-based theory of morality?

OR

- (ii) What does it mean to treat people as 'ends' and not 'means'?
What part does 'the Kingdom of Ends' play in Kant's moral theory?

- (h) Discuss Mill's contention that someone's 'own good, either physical or moral' is not a sufficient warrant for legal or social interference with their liberty of action.

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PART B

2. 'Different versions of utilitarianism suffer from the same defects. They each offer an impoverished moral philosophy and an unworkable guide to public decision-making.'

Discuss.

3. 'If a case is not controlled by an established rule, judges must decide it by exercising discretion.'

Do you agree?

4. 'Law can be described and fully understood without recourse to morality.'

Discuss.

5. '[M]ost of the pioneering work in the analysis of a concept of a right has been done in relation to legal rights.' (Waldron)

What is this 'pioneering work'? How much of it is helpful to an understanding of moral rights?

6. Does law merely oblige conduct, or can it also impose obligations?

Discuss with reference to the views of **AT LEAST TWO** jurists.

7. Do we create moral principles, or do we discover them?

8. Where, according to Hobbes, is 'the life of man solitary, poor, nasty, brutish, and short'? What is his solution? Was he right in either his diagnosis or his solution?

9. Explain and critically comment on **ONE** account of distributive justice. (This may be either a particular conception of what is just, or a general account that limits the scope of any such conception).

10. 'Hart was wrong to think that a sheep-like society in which only officials accept the rule of recognition has a legal system. There is no law in a society where people, like sheep, end in the slaughterhouse.'

Discuss.

11. 'Jurisprudence is the general part of adjudication, silent prologue to any decision of law.' (Dworkin)

Do we have to engage in legal philosophy in order to find out what the law is?

END OF PAPER