

# UNIVERSITY COLLEGE LONDON

*University of London*

## EXAMINATION FOR INTERNAL STUDENTS

*For the following qualifications :-*

*LL.B.*

### **LL.B. Part II: Jurisprudence and Legal Theory**

COURSE CODE : LAWSII00  
DATE : 13-MAY-02  
TIME : 10.00  
TIME ALLOWED : 3 hours 15 minutes

02-N0173-3-150

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**TURN OVER**

## JURISPRUDENCE AND LEGAL THEORY

Answer **THREE** questions. Where there is an overlap between your answers to questions on this paper and your assessed essay, no credit will be given for repetition.

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

- (a) Is there common ground, as Dworkin argues, in the arguments used by those both for and against limited abortion and euthanasia? Is Dworkin's philosophical method of beginning with an intuitive understanding successful?
- (b) In the introduction to *Multicultural Citizenship*, Will Kymlicka argues that dealing with cultural pluralism is the greatest challenge facing democracies today. Describe and critically evaluate his contribution to understanding and responding to this challenge.
- (c) "Nothing is more frightening and more sinister in the whole prehistory of man than his *technique for remembering things*. 'Something is branded in, so that it stays in the memory: only that which hurts incessantly is remembered' – this is a central proposition of the oldest (and unfortunately also the most enduring) psychology on earth." (Nietzsche, *The Genealogy of Morality*)

Discuss Nietzsche's account of the concept of guilt (*Schuld*). Consider how this account connects to the overall project of the *Genealogy*, and how Nietzsche relates it to memory and will. Is this account of any relevance to law?

- (d) What is the task Kant's *Groundwork of the Metaphysic of Morals* is supposed to accomplish? How does he proceed? Is his project of any relevance for current debates in moral theory?
- (e) "... in war and in court and everywhere you must do what the city and country commands, or else persuade it that justice is on your side." (Plato)

What arguments does Socrates advance in *Crito* for the obligation to obey the law? Do you think they are correct?

- (f) "In *Natural Law and Natural Rights*, John Finnis presents an attractive and convincing view of human well-being. However, he fails in his attempt to argue from that view to a coherent account of the nature of human law, and the conditions under which it is justified."

Discuss.

- (g) Can today's policy makers take anything of value from Mill's liberty principle?
- (h) What is the meaning of "virtus" in *The Prince*? In what way was it a departure from the orthodox views of his contemporary "mirror-for-princes" writers?

**TURN OVER**

2. “There can be no ‘right’ answers to difficult moral and legal questions. All we have are different opinions, none inherently ‘better’ than any other. In choosing between these competing opinions, all we can do is to consider which one we find most amenable to our temperament and upbringing, or which one is likely to serve our, or society’s, goals the best.”

Do you consider this a persuasive account of our disagreements in morality and law?

3. Are the Marxists right to believe that we cannot understand law unless we understand political economy?

4. Are there circumstances in which law can be judged so evil as not to merit the designation of law? Could adopting the correct legal theory help us to resist evil or tyrannical regimes?

5. Answer **EITHER** (a) **OR** (b).

- (a) You find yourself driving towards a red traffic light in the middle of the night. You have not seen any other cars or pedestrians for several miles. Should you stop at the light because you have a general moral obligation to obey the law?

**OR**

- (b) How is Dworkin’s idea of integrity different from justice and fairness? Does integrity aid our understanding of the common law?

6. “Radically critical approaches to understanding the law, e.g. American Legal Realism, Critical Legal Studies, Feminist Legal Theory, Critical Race Theory, etc. all share a common theme: they have plenty of criticisms of the legal status quo, but they do not offer us a coherent alternative to put in its place.”

Discuss.

7. What are the difficulties in being a utilitarian?

8. Answer **EITHER** (a) **OR** (b).

- (a) “The lawyer is likely to become impatient when he hears that social arrangements can be *more or less* legal, that legal systems and the rule of law exist as a matter of degree ...” (Finnis)

Why is this? Does it contribute to the difficulties of engaging in jurisprudential thinking?

**OR**

- (b) What does Fuller mean by “the morality that makes law possible”?

**CONTINUED**

9. “In seeking to explain legal validity we should look no further than Kelsen’s exposition of the basic norm.”

Discuss.

10. How vulnerable is the command theory to the criticisms of Hart?

11. “In considering the simple truisms (*viz.* ‘the minimum content of natural law’) which we set forth here, and their connexion with law and morals, it is important to observe that in each case the facts mentioned afford a *reason* why, given survival as an aim, law and morals should include a specific content.” (Hart)

If this is so, then will there not be reasons to support the claim that such a content is a necessary feature of law?

12. Are there any limits to the legitimate interference of the state with the activities of individuals?

13. “At the root of Rawls’s approach in *A Theory of Justice* is the idea of ‘reflective equilibrium’ and not the agreement reached by the participants in the original position.”

Discuss.

**END OF PAPER**