

EXAMINATION FOR INTERNAL STUDENTS

For The Following Qualification:-

LL.B.

LL.B. Part II: Jurisprudence and Legal Theory

COURSE CODE : LAWSII00

DATE : 08-MAY-03

TIME : 10.00

TIME ALLOWED : 3 Hours 15 Minutes

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) ‘Wherever justice is practised, wherever justice is upheld, one sees a stronger power seek means to put an end to the senseless raging of the resentment among weaker powers subordinate to it...To talk of right and wrong *as such* is senseless; in themselves, injury, violation, exploitation, destruction can of course be nothing “wrong” insofar as life operates *essentially*— that is, in terms of its basic functions—through injury, violation, exploitation, and destruction...’ (Nietzsche, *On the Genealogy of Morality*, 2nd essay.)

In the light of this quotation, explain the connection between Nietzsche’s account of criminal justice in the 2nd essay and the overall project of the *Genealogy*.

(b) “Gentlemen, I am your very grateful and devoted servant, but I owe greater obedience to God than to you; and so long as I draw breath and have my faculties, I shall never stop practising philosophy and exhorting you and indicating the truth for everyone that I meet.” (Socrates in Plato, *The Apology*, 29d)

Give reasons for agreeing or disagreeing with Socrates that a person has a higher duty to follow his conscience rather than to accept laws he considers to be unjust.

(c) Is *On Liberty* dead nineteenth-century dogma or a living document offering real insight into the solution of contemporary political problems?

(d) Does what is usually referred to as the ‘Machiavellian revolution’ have any relevance for contemporary issues of politics, morality, or law?

(e) To what extent is the theory of punishment outlined by Bentham in *An Introduction to the Principles of Morals and Legislation* consistent with his account of the principle of utility?

(f) Is there any moral reason for allowing individual bankrupts to be offered a discharge, despite the fact that they are in breach of their promise to repay their creditors?

TURN OVER

(g) You are a member of an international team charged with assessing the extent to which the legal systems of the countries of the European Union may be challenged by a rising tide of immigration. The team's final report is to be released against a background of widespread discontent and downright insurgency among the citizenry of the northern towns and southern ports of Europe. The first draft of the report concludes that "the cohesiveness of the nation and community is threatened by mass immigration", and that "the countries of the EU will soon contain a very large number who have no personal connection with the fairly recent past, who feel neither pride nor shame in this past and, correspondingly, share no respect for standards of human rights, good governance and the rule of law that constitute the very basis of the legal and political institutions of Europe".

Comment critically on the proposed draft, showing explicitly how your conclusions involve a commitment to a particular theory of law.

2. The great importance of Austin's work is that it provides a kind of model of what an empirical theory of law is like. The fact that it was worked out in an absurdly simple fashion, with the aid of an enormous misrepresentation about tacit sovereign acceptance of various kinds of decisions, is from this point of view a virtue, just because it enormously simplifies the model as compared with reality.' (Morison)

Discuss.

3. How convincing is Hart's view, expressed in the 'Postscript' to *The Concept of Law*, that the 'general and descriptive' legal theory which he expounds is not in conflict with, and is even presupposed by, Dworkin's 'evaluative justificatory' jurisprudence?
4. Answer **EITHER** (a) **OR** (b).
 - (a) Can the law be anything other than a moral enterprise?

OR

 - (b) Compare and contrast the capacity of positivists and natural lawyers to respond to the problem of unjust laws.
5. Is Hart right to insist that Fuller's 'inner morality of law' consists in nothing more than rules of craftsmanship for the legislator, in that it is as compatible with the efficacious functioning of an evil legal system as a morally good one?
6. Explain our obligation to obey the law.

CONTINUED

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

(a) Is the theory of law as integrity 'the best interpretation of what lawyers, law teachers and judges actually do and much of what they say' (Dworkin)?

OR

(b) In *Law's Empire* Dworkin demands that critical legal theorists demonstrate why the view that legal rights and duties are indeterminate is preferable to his account of law as integrity. Does Unger succeed in his response to this challenge?

8. 'We should not expect some sort of "objectivity" when we discuss questions of morality or law. Objectivity exists when, as in the physical sciences, you can point to an empirical fact about the universe by virtue of which certain statements like "the earth is round" are correct, and others are incorrect. However, no such facts are available when we are thinking about morality or about law. It follows that there is no possibility of objectively right or wrong answers here.'

Discuss.

9. Write a critical evaluation of Kelsen's *Grundnorm*.

10. Evaluate the relevance of Hobbes' *Leviathan* for contemporary legal theory.

11. Marx wrote that 'the anatomy of civil society is to be sought in political economy'. Explain what this means, and what its implications are for the student of jurisprudence, and evaluate the thesis contained in the statement.

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

(a) 'Unlike direct utilitarianism, indirect utilitarianism may be successfully defended against Williams's critique on grounds of integrity, but only at the cost of ceasing to be a distinctly utilitarian theory.'

Discuss.

OR

(b) Is utilitarianism unjust?

13. What does Parfit understand by the 'non-identity problem', and how successful are his attempts to solve it?

TURN OVER

14. Answer **ONE** of the following:
- (a) Does the acceptance of Rawls's assertion that 'no-one deserves his greater natural capacity, nor merits a more favourable starting place in society', imply the endorsement of his two principles of justice?
 - (b) What does Rawls mean when he argues that his liberalism is 'political, not metaphysical'? What implications does this distinction have for law and legal theory?
 - (c) Which theory of distributive justice do you find most convincing, and why?
15. Critically assess Nozick's derivation of property rights from a human capacity to 'shape one's life in accordance with some overall plan'.
16. Evaluate Kymlicka's argument that liberals ought to recognize a right to multicultural toleration.
17. Assess MacKinnon's argument that the form of liberalism which informs mainstream legal theory is incapable of delivering full equality for women.

END OF PAPER