

UNIVERSITY COLLEGE LONDON

University of London

EXAMINATION FOR INTERNAL STUDENTS

For The Following Qualification:–

LL.B.

LL.B. Part II: Jurisprudence and Legal Theory

COURSE CODE : LAWSII00

DATE : 07-MAY-04

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) Does the community have rights and duties concerning the protection of what is 'sacred' or 'intrinsic' or 'inviolable' in Dworkin's sense? What bearing does your answer have on abortion and/or euthanasia?
- (b) On the one hand women have fought vigorously for legislation to improve women's domestic, economic and political position. On the other hand, women have found that laws, once passed, are unsatisfactory and the equalities they were intended to remove still remain. How does Carol Smart, in *Feminism and the Power of Law*, account for this problem and what, if any, solution does she propose?
- (c) In *History and Illusion in Politics*, Raymond Geuss claims that the liberal democratic state committed to a capitalist economy and defence of human rights is 'a historically contingent conjunction of disparate elements that do not fit together coherently.' Explain Geuss's argument for this, stating whether you agree or disagree with his conclusions.
- (d) How much legitimacy is conferred upon the Creditors' Bargain by the type of consent that, according to Jackson, lies at its heart? Could *any* type of consent confer legitimacy upon legal arrangements?
- (e) 'Those terrible bulwarks with which state organisations protected themselves against the old instincts of freedom – punishments are a primary instance of this kind of bulwark – had the result that all those instincts of the wild, free, roving man were turned backwards, against man himself. Animosity, cruelty, the pleasure of pursuing, raiding, changing and destroying – all this was pitted against the person who had such instincts: that is the origin of bad conscience!' (Nietzsche, *On the Genealogy of Morality*, trans. by Ansell-Pearson)

Critically discuss Nietzsche's account of criminal punishment. How does Nietzsche relate punishment to the ideas of guilt and bad conscience? Does his view on criminal punishment have any relevance to law?

- (f) 'Hobbes's "state of nature" describes the condition of humanity in primitive times; it has very little to say about modern societies.' Discuss.

TURN OVER

- (g) 'You have brought about my death in the belief that through it you will be delivered from submitting the conduct of your lives to criticism.' (Plato, *Apology*, 39e)

In what sense was Socrates critical of his contemporaries? What do you think was the point of his method of inquiry?

- (h) 'If there is a viewpoint in which the institution of the Rule of Law, and compliance with rules and principles of law according to their tenor, are regarded as at least presumptive requirements of practical reasonableness itself, such a viewpoint is the viewpoint which should be used as the standard of reference by the theorist describing the features of legal order ... [But] the theorist cannot identify the central case of his subject-matter, unless he decides what the requirements of practical reasonableness really are ...' (Finnis, *Natural Law and Natural Rights*)

What does practical reasonableness require?

2. 'A core of indisputable truth in the doctrines of natural law' is how Hart describes 'the minimum content of natural law'. How significant is this insight?
3. Critically assess Hans Kelsen's contribution to our understanding of the legal order.
4. Is the relationship between the law and the economic infrastructure as Marx characterised it?
5. 'Where justice is not even aimed at, where equality - the core of justice - is deliberately disavowed in the enactment of positive law, then the law is not simply "false law", it has no claim at all to legal status.' (Radbruch).

Consider the meaning and implications of this statement.

6. Critically discuss Dworkin's idea of integrity. Is it just another name for justice as applied in the real world?
7. What is the case for studying feminist jurisprudence?
8. 'For legal and literary texts alike, the author's intention is the key to interpretation. No plausible alternative is available.'

Discuss.

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9. 'Everyone now agrees that one or other form of legal positivism must be the correct theory about the nature of law. No one would find Dworkin's arguments against positivism persuasive today.'

Discuss.

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

EITHER (a) What, if anything, is private morality? Should the criminal law be used to enforce private morality?

OR (b) 'A statement that could not be empirically verified, even in principle, is simply incapable of being objectively true or false.'

Discuss with reference to statements of law, morality and literature.

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

EITHER (a) Should a political society seek to give effect to the principle of utility?

OR (b) 'Utilitarianism ... is alarmingly good at combining technical complexity with simple-mindedness ... Simple-mindedness consists in having too few thoughts and feelings to match the world as it really is.' (Williams).

Discuss.

12. Compare and contrast Hobbes's and Grotius's accounts of the foundations of social order, and the place of law within that social order. State which account, in your opinion, is more relevant for an analysis of law's role in a modern society.
13. Outline John Finnis's theory of 'basic good'. In what sense does this theory amount to a 'natural law' theory?
14. Should the legal order be understood as a system of primary and secondary rules?

END OF PAPER