28 OCT 2024

National Law University, Jodhpur
Jurisprudence- I
Semester: UG III Semester
Mid Term Examination- October 2024

Time: 90 minutes

MM: 50

Instructions: You are required to attempt three (3) questions in total. For questions 1 and 3, there is an internal choice. Please specify the question you are answering before providing your response.

1. "The existence of law is one thing; its merit or demerit is another."

Austin, John. *The Province of Jurisprudence Determined* (1832).

"The law is a system of rules, and its function is to regulate human behavior."

Hart, H.L.A. *The Concept of Law* (1961).

"The law is the aggregate of the social rules that are enforced by the State."

Bentham, Jeremy. *An Introduction to the Principles of Morals and Legislation* (1789).

In light of and with the help of above statements:

a. Discuss the foundational principles of the positive school of law, particularly focusing on theories given by Jeremy Bentham and John Austin. **(5 + 5 marks)**
b. Also analyze how their views on law differ from natural law theories. **(7 marks)**
c. Provide examples to illustrate how positive law is applied in contemporary legal systems, particularly in relation to legislative enactments and judicial interpretations.**(8 marks)**

2. "The law is the reason, unaffected by desire, which commands what ought to be done and forbids the opposite."

Aristotle. *Nicomachean Ethics* (circa 350 BCE).

"Natural law is nothing other than the light of understanding placed in us by God: through it we know what we must do and what we must avoid."

Aquinas, Thomas. *Summa Theologica* (1265-1274).

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"The law of nature is a law of reason, which is the same for all men and is derived from the common nature of man."

Grotius, Hugo. *De Jure Belli ac Pacis* (1625).

In view of the above statements, it would be safe to state that there is no one or single theory of natural law, rather there are many versions of it. What are some foundational principles of natural law and explain how its applicability to contemporary legal issues in India. Give examples. Also mention some common criticisms of natural law theory? **(15 marks)**

3. Compare and contrast Hobbes' and Locke's views on the State of Nature and role of Sovereign. What is the primary purpose of Government in their respective versions of Social contract theories?

(10 marks)

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NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination November -2024

Semester: UG III Semester

Subject: Jurisprudence-I

Time: 03 hours

Marks: 100

Instructions:

1. Answer any 5 out of 6 questions given below.
2. Please specify the question you are answering before providing your response.
3. Each question carries 20 marks and break up of marks for questions with multiple parts is provided along with it.

Q. 1)

Following is an excerpt from "Lochner vs New York 198 U.S. 45 (1905)"

"This case is decided upon an economic theory which a large part of the country does not entertain. ... It is settled by various decisions of this court that state constitutions and state laws may regulate life in many ways which we, as legislators, might think as injudicious, or, if you like, as tyrannical, as this, and which, equally with this, interfere with the liberty to contract. Sunday laws and usury laws are ancient examples. A more modern one is the prohibition of lotteries. The liberty of the citizen to do as he likes so long as he does not interfere with the liberty of others to do the same, which has been a shibboleth for some well known writers, is interfered with by school laws, by the Post Office, by every state or municipal institution which takes his money for purposes thought desirable, whether he likes it or not.... It does not need research to show that no such sweeping condemnation can be passed upon the statute before us. A reasonable man might think it a proper measure on the score of health. Men whom I certainly could not pronounce unreasonable would uphold it as a first instalment of a general regulation of the hours of work. Whether in the latter aspect it would be open to the charge of inequality I think it unnecessary to discuss."

In view of the dissenting opinion of Justice Oliver Wendell Holmes expressed above: **(10+10 marks)**

a. Evaluate the concept of Judicial Restraint and its importance in the Realist Movement.
b. Critically assess the arguments for and against judicial restraint in the Indian context.

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Q. 2)

"The individual is never actually an isolated individual; he is enrolled, placed, embedded, wedged into so many associations that existence outside of these would be unendurable."

- Eugen Ehlrich [Dias, R.W.M., Jurisprudence, p. 627.]

In context of the above statement, explain Ehrlich's concept of "living law" and its relevance to the Indian legal system and Indian society. Give examples to support your answer.

(20 marks)

Q. 3)

i. In the light of Immanuel Kant's moral philosophy, what is the categorical imperative, and how does it differ from hypothetical imperatives? Give atleast two (2) examples to support your explanation.

ii. A close friend confides in you about a secret they want to keep from their partner, which could affect their relationship. You believe that honesty is crucial, but revealing this information might lead to significant emotional harm. How would you approach this situation while adhering to Kant's emphasis on truthfulness and respect for others?

(10+10 marks)

Q. 4)

A state legislature enacts a law that permits surveillance of public spaces to enhance security. Some citizens argue this law violates privacy rights. **(15+5 marks)**

a. Would Bentham's theory of legal positivism support the enforcement of this law? Give reasons for your answer.

b. Also provide criticisms of Bentham's theory.

Q. 5)

Please consider the following excerpt from ***"M Siddiq (D) Thr Lrs vs Mahant Suresh Das & ors." [Civil Appeal Nos 4768-4771/2011]***

> "Swami Avimuketshwaranand Saraswati (DW 20/2) stated that according to his —study and knowledge the disputed site at Ayodhya is the birth-place of Shri Ram and has been worshipped regularly by devotees. He founded his belief on the scriptures, more particularly the Valmiki Ramayan to which he makes a reference: —

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"That, Lord Narayana, in third Shlok Couplet) of fifteenth Canto of Balkand of Srimad Valmiki Ramayana had himself, before taking incarnation by thinking about his birthplace proved the importance of birthplace."

... Referring to the tenth chapter of the Ayodhya Mahatmya, the witness relied on the importance of the Janmasthan:

"That, method of journey to Ayodhya has been described in the Tenth Chapter of Ayodhya Mahatamya of Vaishnavkhand of Skand Puran, famous as Sthal-Puran. Wherein Janmsthan of Shri Rama is clearly referred and its importance is given. Sites described in Purans with reference to above context are still in existence in Ayodhya. That is why every follower of Sanatan Dharma, visits these sites, particularly takes Darshan at Shri Ram Janam Bhoomi in Ayodhya, performs Parikarma and takes the dust of that place to his head and feels gratified.""

(10+10 marks)

i. In light of the above excerpts, explain the concept of Volkgeist given by Savigny. Also provide examples to explain the same other than the one mentioned above.

ii. How does this concept help us understand the cultural and historical dimensions of various legal disputes, such as the judgment abovementioned?

Q. 6) How can Hart's theory of primary and secondary rules be applied to contemporary legal issues, such as constitutional interpretation or legislative processes? **(20 marks)**

[To answer this, briefly explain the theory of primary and secondary rules and then, provide explanation and examples of how it may be applied in contemporary context.]

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