

NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination – Jan – May, 2024

Semester: LLM II Semester

Subject: Law and Justice in a Globalised World (Compulsory)

Time: Three Hours

Marks: 100

Instructions:

1. All questions carry equal marks.
2. Kindly answer any four out of six questions.

Q 1) "According to Devlin's Moderate Thesis, a society is entitled to enforce its morality in order to prevent the society falling apart at the seams, as it were. And, according to the Extreme Thesis, a society is entitled to enforce its morality in order to preserve its distinctive communal values and way of life." Explain with the help of relevant examples.

(Marks 25)

Q 2) "Amartya Sen questions both the utility and impartiality of the original position. The veil of ignorance may guard against class based advancement of interest; it cannot engender the richness of discourse which engagement with people and situations different from one's own may do. The veil of ignorance seems to presume a unique and singular truth, whereas truth may well have more plural manifestations. Consequently, Sen finds the impartiality of Rawls original position barren in comparison to Adam Smith's device of an Impartial Spectator. Taking inspiration from Smith, Sen puts in place an elaborate scheme of public reasoning before arriving at any policy. Justice, he holds, need not be blind-folded rather it should have the facility of multiple lenses through which it views reality." Comment with the help of relevant examples.

(Marks 25)

Q 3) "Nozick argues in Anarchy, State and Utopia that utilitarianism fails to respect the separateness of persons. A moral theory that did take separateness seriously would, in Nozick's opinion, hold that there are some things that one cannot do to others regardless of the benefit that might be produced. It would hold that individuals have rights that function as side constraints and not merely as moral goals to be maximized in some kind of aggregate." Explain with the help of relevant examples.

(Marks 25)

- Q 4) Write short notes on any two of the following –
- a. Feminist critique of Walzer's theory in Spheres of Justice.

- b. Dworkin's critique of Rawls theory of justice.
- c. John Stuart Mill's test for distinguishing between higher and lower pleasures.

(Marks 12.5x2 = 25)

Q 5) "According to Dworkin, once we identify legal principles as separate sorts of standards, different from legal rules we are suddenly aware of them all around us... In fact, legal principles are most conspicuously at play in hard cases where they guide and constrain judicial decision making in the absence of legal rules. Legal positivism ignores the existence of these norms precisely because it holds, via the Discretion Thesis, that hard cases are not governed by law. Judges must however exercise discretion in "weak senses" even in hard cases. For instance, they are required to use their judgment in reasoning from legal principles to legal conclusions. They however, do not exercise discretion in the "strong sense", that is they do not look beyond the law and apply extra-legal standards to resolve hard cases." Explain with the help of relevant examples.

(Marks 25)

Q 6) "Hart's recognition of law's normativity means that it is a characteristic feature of law that it makes conduct obligatory. Once we recognize this, we have to abandon the idea that there is no necessary conceptual connection between law and morality. Law can achieve its purpose of guiding human conduct whether or not it is substantively just, and so questions of substantive justice do indeed comprise a morality that is external to law. Law's internal morality by contrast, consists of procedural principles which the law maker must follow if he hopes to provide rules that can guide human conduct, that is, if he hopes to provide anything that can be properly called as law." Comment with the help of relevant examples.

(Marks 25)