

## NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination November -2024

Semester: UG III Semester

Subject: Jurisprudence-I

Marks: 100

Time: 03 hours

**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)**

“The law is the expression of the will of the state, and it cannot be divorced from the history of the people.”

*(Dicey, A.V. "Introduction to the Study of the Law of the Constitution." 1885)*

“The law is a product of the national spirit, and its development follows the natural evolution of the people.”

*(Savigny, Friedrich Carl von. "Of the Vocation of Our Age for Legislation and Jurisprudence." 1808)*

“The science of jurisprudence (or, simply and briefly, jurisprudence) is concerned with positive laws, or with laws strictly so called, as considered without regard to their goodness or badness.”

---John Austin, "Province of Jurisprudence"

- Taking hint from the above statements, state the key differences between- (10+10 marks)
- i. Historical School of Law and Analytical Positivism School of thought.
  - ii. Legal History and Historical Jurisprudence.

Q. 2)

Analyze the following social policy given hereinbelow in brief:

A. **NAME OF POLICY:** CHIRANJEEVI SWASTHYA YOJANA

B. **Description:** Chiranjeevi Swasthya Yojana aims to provide all citizens with access to comprehensive medical services without financial barriers.

The policy typically includes:

- **Preventive Care:** Routine check-ups, vaccinations, and screenings to catch health issues early.
- **Primary Care Services:** Access to family doctors and general practitioners for routine health management.
- **Specialized Medical Services:** Coverage for consultations, treatments, and surgeries from specialists.
- **Mental Health Care:** Access to psychologists, psychiatrists, and counseling services for mental well-being.
- **Emergency Services:** Immediate medical attention for acute health crises and accidents.
- **Prescription Drug Coverage:** Assistance with the cost of medications for chronic conditions and other health issues.
- **Long-term Care:** Support for elderly or disabled individuals needing ongoing assistance.

C. **Funding Mechanism:** It will generally be funded through taxation, which may include income taxes, payroll taxes, and possibly additional levies on goods or services. The aim is to ensure that healthcare is available to everyone, regardless of their ability to pay at the point of service.

How would Rawls and Nozick evaluate this policy differently based on their theories of justice? Provide a detailed comparison.

(20 marks)

Q. 3)

- a. What are the key tenets of the legal realist movement, and how do they contrast with traditional legal formalism?
- b. What is Jerome Frank's concept of fact skepticism?
- c. How does it challenge traditional views of legal certainty and objectivity?

(10+5 +5 Marks)



Q. 4)

Following is an excerpt from the minority opinion of Justice Indu Malhotra from judgment of the Supreme Court titled, "*Indian Young Lawyers Association vs The State of Kerala AIR ONLINE 2018 SC 243*":

"As a part of this system of spiritual discipline, it is expressly stipulated that women between the ages of 10 to 50 years should not undertake this pilgrimage.... (ii) This custom or usage is understood to have been prevalent since the inception of this Temple, which is since the past several centuries.

... The custom and usage of restricting the entry of women in the age group of 10 to 50 years followed in the Sabarimala Temple is pre-constitutional. As per Article 13(3)(a) of the Constitution, "law" includes custom or usage, and would have the force of law. The characteristics and elements of a valid custom are that it must be of immemorial existence, it must be reasonable, certain and continuous. The customs and usages, religious beliefs and practises as mentioned above are peculiar to the Sabarimala Temple, and have admittedly been followed since centuries. ...

(iv) The exclusion of women in this Temple is not absolute or universal. It is limited to a particular age group in one particular temple, with the view to preserve the character of the deity." It is limited to a particular age group in one particular temple, with the view to preserve the character of the deity. ... age group of 10 to 50 years are entitled to worship at the Sabarimala Temple. The usage and practise is primary to preserve the sacred form and character of the deity. It was further submitted that the objection to this custom is not being raised by the worshippers of Lord Ayyappa, but by social activists. ... there are about 1000 temples dedicated to the worship of Lord Ayyappa, where the deity is not in the form of a 'Naishtik Brahmachari'. In those temples, the mode and manner of worship differs from Sabarimala Temple, since the deity has manifested himself in a different form. There is no similar restriction on the entry of women in the other Temples of Lord Ayyappa, where women of all ages can worship the deity."

In view of the above excerpt: (15+5 marks)

- d. Explain the concept of Volkgeist given by Savigny and how does the concept of Volkgeist provide a framework for understanding the minority opinion's emphasis on preserving cultural and religious traditions?
- e. Having understood the theory of Volkgeist, do you agree with the above opinion? Give reasons for your answer.

Q. 5)

Discuss the role of moral reasoning in Dworkin's theory of law. How does he argue that morality should influence judicial decision-making? Give examples to support your answer.

(10+10 marks)

Q. 6)

Consider the following scenario and ethical dilemma. Explain how would Kant's categorical imperative guide the resolution of this dilemma?

#### Scenario

Consider a scenario involving a lawyer who discovers that their client has committed a serious crime, such as embezzlement, and is planning to continue these activities. The lawyer has a legal and ethical obligation to maintain client confidentiality, as mandated by attorney-client privilege. However, the crime in question poses a significant risk to the public, and the lawyer also has a duty to uphold the law and prevent further wrongdoing.

#### Dilemma

The ethical dilemma here arises from the conflict between two fundamental principles:

1. **Confidentiality:** The lawyer is bound by ethical rules to protect the client's confidentiality. Breaching this confidentiality could damage the client's interests and trust in the legal system.
2. **Duty to Report:** The lawyer may feel a moral obligation to report the client's criminal intentions, particularly if it could prevent harm to others. This raises questions about the lawyer's responsibility to society and the legal system.

(20 marks)