

## LL.B. V Term

### Paper LB - 502 - Jurisprudence - I (Theories of Law)

#### Prescribed Readings:

1. M.D.A. Freeman, *Lloyds Introduction to Jurisprudence* (7<sup>th</sup>ed., 2001)
2. R.W.M. Dias, *Jurisprudence* (5<sup>th</sup> ed. 1985)
3. P.J. Fitzgerald, *Salmond on Jurisprudence* (12<sup>th</sup> ed., 1966)
4. David P. Dertam (ed.) *A Textbook of Jurisprudence* by G.W. Paton (4<sup>th</sup> ed. 1972)

#### **Topic 1: Nature and Scope of Jurisprudence: Schools of Thought**

##### **Topic 2: Austin's Command and Sovereignty Theory**

- i) R.W.M. Dias, *Jurisprudence* Positivism : British Theories 331- 335 1
- ii) John Austin, *The Province of Jurisprudence Determined* by H.L.A. Hart, 5  
pp. 9-221 (1954)

##### **Topic 3 : Kelsen's Theory of Law**

- i) Hans Kelsen, *Pure Theory of Law* Translated by Max Knight pp. 1-17, 32  
24-58 (1970)
- ii) Hans Kelsen, *General Theory of Law and State* Translated by Anders  
Wedberg, pp. 110-137 (1946) 65

#### **Topic 4: Hart 's Legal System and Dworkin's Theory of Adjudication**

- i) H.L.A. Hart, *The Concept of Law* Law as the Union of Primary and 85  
Secondary Rules, 79-99 (2<sup>nd</sup> ed., 1961)
- ii) H.L.A. Hart, id., The Foundations of a Legal System, pp. 100-123 98
- iii) Ronald Dworkin, **Taking Rights Seriously**, The Model Rules I, pp. 22- 110  
31(1977, Indian Reprint 2010)
- iv) Ronald Dworkin, id., The Model Rules II, pp. 46-68 114

**Topic 5 : Karl Von Savigny's Theory of Law**

**Topic 6 : Henry Maine's Historical Materialism**

**Readings for Topic 5 & 6**

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| i)   | M.D.A. Freeman, <i>Lloyd's Introduction to Jurisprudence</i> , System of Modern Roman Law pp. 921-925 (7 <sup>th</sup> ed. 2001)     | 126 |
| ii)  | M.D.A. Freeman, <i>Lloyd's Introduction to Jurisprudence</i> , Sir Henry Maine: Ancient Law, pp. 925–928 (7 <sup>th</sup> ed., 2001) | 131 |
| iii) | R.W.M. Dias, <i>Jurisprudence</i> Historical and Anthropological Approaches 375-393  | 134 |

**Topic 7: Roscoe Pound's Theory of Law**

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| i) | R.W.M. Dias, <i>Jurisprudence</i> , pp. 431-435 | 147 |
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**Topic 8: Judicial Process**

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| i) | Lon L Fuller, <i>The Case of the Speluncean Explorers</i> , 62 <i>Harvard Law Review</i> 616-664 (1949) | 153 |
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**Topic 9: Revival of Natural Law in the Twentieth Century**

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| i)  | R.W.M. Dias, <i>Jurisprudence</i> pp. 479-488                        | 173 |
| ii) | Lon L.Fuller, <i>The Morality of Law</i> (1969, Indian reprint 2006) | 178 |

*Recommended readings:*

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|-----|---|--|
| i)  | W.G. Friedmann, <i>Legal Theory</i> Chapters 7-10 (pp 95-116) and Chapter 13-14 (pp. 132-156) (5 <sup>th</sup> ed.,1967); |  |
| ii) | Amartya Sen, <i>The Idea of Justice</i> 1-31, 52-66 (2009)  |  |

**IMPORTANT NOTE:**

- The topics and materials given above are not exhaustive. The teachers teaching the course shall be at liberty to add new topics/materials. The students are required to consult the latest editions of books.
- The Question Paper shall include one compulsory question consisting of five parts out of which four parts will be required to be attempted. The question papers set for the academic years 2010-11 and 2011-12 are given below for guidance of the students.

### LL.B. V Term Examinations, December, 2008

**Note:** Answer *five* question including Question No. 1 which is compulsory.  
All questions carry *equal* marks.

1. Attempt briefly any *four* of the following:
  - (a) Tacit command theory of Austin with respect to judge made law and customary law.
  - (b) Static and dynamic system of Norms.
  - (c) Rule of Recognition.
  - (d) "The movement of progressive societies has hitherto been a movement from *status* to *contract*."
  - (e) 'Social Engineering' thesis of Pound.
2. Explain with examples the following terms used by Austin in his lectures:
  - (i) Sovereignty; (ii) Subjection, and (iii) Independent political society.
 Can you locate such sovereign in India? (India has federal system with a written Constitution and is a member of organizations like U.N. and W.T.O.).
3. According to Kelsen, 'Norm is an ought proposition and a relation exists between validity, effectiveness and legitimacy in a normative system'.  
Explain the above and show how his theory ceases to be pure, uniform and general.
4. "The root cause of failure is that the elements out of which the theory was constructed, viz. the idea of orders, obedience, habits and threats, do not include and cannot by their combination yield, the idea of a rule, without which we cannot hope to elucidate even the most elementary forms of law..... The union of *primary* and *secondary* rules occupies the central place in a legal system." - H.L.A. Hart. Evaluate.
5. Elucidate the statement briefly:
 

"Law grows with the growth and strengthens with the strength of the people and finally dies away as the nation loses its nationality."

*Volksgeist* has attracted various comments in the contemporary modern world. Discuss.
6. What is the practical program given by Roscoe Pound to balance the competing interests in any given society? Does it suffer from any defects and weaknesses when actually applied in a social system? Explain with the help of examples.
7. Rudolf Stammler departed from Kantian theory by breaking the notion of law into two components: (i) The concept of law; (ii) The idea of law. Discuss critically.
8. It appears from the judgements of Trupency, Foster and Keen JJ., in the 'Speluncean Explorer' case that they belong to positive school of thought, yet they have given different reasons and arguments. Illustrate how the judges manage to do that. According to you, which judgment is most convincing and why?

**LL.B. V Term Examinations, December 2010**

Note: Attempt *five* questions including Question No. 1 which is compulsory.  
All questions carry *equal* marks.

1. Attempt briefly any *four* of the following:
  - (i) What is legal positivism? (ii) Describe the internal and external aspect of rules.
  - (iii) What do you understand by the Static and Dynamic system of norms?
  - (iv) Explain Savigny's Volksgeist.
  - (v) What is the objective of sociological jurisprudence
2. (a) How does Austin distinguish between Laws properly so called and laws improperly so called? Explain with the help of examples.  
(b) What is Austin's notion of an Independent Political Society? Is Austin's sovereign traceable within the Indian setup? Explain.
3. Critically analyse Kelsen's Pure Theory of Law with special reference to his concept of Grundnorm. How will you locate Grundnorm. How will you locate Grundnorm in the Indian legal system?
4. Why does Prof. Hart criticize the so-called 'Predictive interpretation' of Austin? Explain Prof. Hart's description of law as the Union of Primary and Secondary rules.
5. Explain Henry Maine's account of evolution of Law and Legal institutions in the Static and Progressive societies. Do you agree with his view that the movement of progressive societies has hitherto been a movement from status to contract?
6. What is the concept of social Engineering as propounded by Pound? Also explain his theory of 'balancing of competing interests' with the help of examples.
7. A Principal of a reputed public school was charged and put up for trial for alleged offence of abetment of Suicide when a 12 year old boy, who was a student of class 7<sup>th</sup> in his school, committed suicide upon being badly thrashed by him, for not doing the homework and bunking classes very often. The law of the land bans corporal punishment in schools.  
Express your considered view in the above issue in the light of Speluncean Explorer's case.
8. Natural law has had an abiding impact on legal thought, although its concept and meaning was varied from time to time. Even today it has neither lost its vitality nor its role.  
Explain the revival of natural law in the 20<sup>th</sup> Century.

**LL.B. V Term Supplementary Examinations, June-July 2011**

Note: Attempt *five* questions including Question No. 1 which is compulsory.  
All questions carry *equal* marks.

1. Attempt briefly any *four* of the following:
  - (a) Austin's positive morality
  - (b) Socially immanent sanctions

- (c) Static societies according to Sir Henry Maine
  - (d) Jural postulates
  - (e) Stammler's natural law with a variable content
2. (a) Explain Austin's theory of sovereignty.
    - (b) There is growing resistance under a rebel leader in country X. The rebels form a government which has more or less the same support as that enjoyed by the lawfully elected government.  
Does this country constitute an 'independent political society' described by Austin, and can sovereignty be located in such a country?
  3. (a) According to Kelsen the *grundnorm* provides unity and validity to the legal normative order. Elaborate.
    - (b) In a military takeover, the army removes the President of country Z and the General declares himself as the Supreme Administrator. He abrogates the Constitution and a new Constitution is promulgated. The general gradually begins receiving popular support.  
Can we say that a valid, legal and new order has come into existence in this country? Decide by bringing out the difference between Kelsen's concepts of validity, effectiveness and legitimacy.
  4. (a) What is the difference between primary and secondary rules according to H.L.A. Hart?
    - (b) Distinguish between the ultimate rule of recognition and the supreme criterion of validity.
  5. Explain SAVIGNY'S theory of law. Do you consider that only a law which reflects the spirit of the people can be considered 'law' in a legal system?
  6. Describe Roscoe Pound's theory of 'balancing of interests' and 'social engineering'. How far do you consider his theory relevant in India?
  7. Ten miners are trapped underground due to the collapse of a mine shaft. Rescue workers manage to send down a rescue carriage that can only carry six person, and which can only make one trip to the surface before the falling debris cuts off the mine from the surface completely.  
A fight breaks out underground over which 6 miners will use the rescue carriage to safety. Six of the healthy miners overpower and kill and weaker and order miners and manage to reach the surface safely.  
They are charged with the murder of the remaining for miners. Based on your reading of Prof. Lon Fuller's Speluncean Explorer's case, decide if they should be convicted or acquitted on the above mentioned facts bringing out your view of the nature and function of law in society.
  8. What are the reasons, in your opinions, that led to the revival of natural law in the twentieth century?  
Discuss with special reference to the theory of justice as propounded by John Rawls.

**LL.B. V Term Examinations, December, 2011**

**Note:** Attempt any five questions. All questions carry *equal* marks.

1. (a) Elaborate Austin's distinction between positive morality and laws properly so-called.  
(b) Critically examine Austin's theory of sovereignty and its relevance in India today.
2. (a) Distinguish between Kelsen's use of the terms 'validity' and 'effectiveness'.  
(b) Critically examine why Kelsen considers the legal order to be a coercive order. How does he distinguish between a legal community and a gang of robbers?
3. Why does Hart consider a legal system to be a union of primary and secondary rules?
4. (a) Historically has the movement of progressive societies always been from that of status to contract. Examine with reference to the development of law in India.  
(b) In your opinion, should modern law always reflect the "spirit of the people" in order to be valid.
5. Describe Roscoe Pound's theory of 'Balancing of interests' and 'social engineering'. In your opinion does his theory have practical applicability in a country like India? Discuss.
6. Due to the outbreak of a highly infectious and incurable viral disease within a hospital, the authorities decide to set the immediately to the entire premises killing all the inmates as the only way to immediately stop the outbreak of a major epidemic.  
The Officers responsible for taking this decision are jointly charged with the murders of all the inmates of the hospital.  
Based on your reading of Profesor Lon Fuller's Speluncean Explorer's case, decide the case on the above-mentioned facts bringing out clearly the reasons for your decision and your understanding of the nature and function of law in society.
7. Elucidate John Rawl's conception of justice as fairness. Do you consider that a theory of law must be just and have a minimum moral content in order to be valid? Discuss in light of development of the law in the past hundred years.
8. Write short notes on any two:
  - (a) External and internal aspect of rules:
  - (b) Dworkin's distinction between legal principles and legal rules;
  - (c) Anthropological approach to the study of law.

**LL.B. V Term Examinations, June-July, 2012**

**Note:** Attempt any five questions. All questions carry *equal* marks.

1. Examine critically the Austinian concept of Law. Discuss the concepts of sovereignty and Independent political society as explained by Austin with the help of examples.
2. What is the pure theory of Law? Examine critically the assumption that, 'the Grundnorm should have minimum of effectiveness.'
3. Discuss Hart's criticism of Austin's theory. How is the Rule of Recognition different from Kelsen's Grundnorm as an ultimate hypothesis validating the other legal norms?
4. (a) What are the chief components of Savigny's thesis?  
(b) Critically discuss Maine's dictum that, 'the movement of progressive societies has hitherto been a movement from status to contract'.
5. What is the aim of Social engineering? In the face of India's complex and diversified society and social institutions, how can Pound's scheme of interests and balancing metaphor be suitably applied in judicial methods and legal administration. Explain
6. (a) What do you understand by 'natural law with a variable content'.  
(b) Explain Rawl's 'Principles of Priority'.
7. Tried of domestic abuse a 23 year old girl jumped into a well alongwith her child of 2 years in order to commit suicide. After sometime when they were pulled out, the child was found dead but the girl survived. She is tried for the murder of her child as well as attempt to commit suicides. Discuss in the light of Explorer's case.
8. Explain any two:
  - (a) Positivism
  - (b) Law as a dynamic system of norms Dworkin's critique of Hart's legal positivism



## **LL.B. V Term**

### **Jurisprudence – I** (Theories of Law)

*Materials Selected and Edited by*

*Kamala Sankaran*

*Alka Chawla*

*Mahavir Singh*

*Vageswari Deswal*

*Alok Sharma*

**FACULTY OF LAW**  
**UNIVERSITY OF DELHI, DELHI-110007**  
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