

UNIVERSITY OF COLOMBO, SRI LANKA
FACULTY OF LAW

BACHELOR OF LAWS EXAMINATION, YEAR IV – 2020

Jurisprudence

(Three Hours)

Total Number of Questions: 07

Answer **FOUR (04)** questions and **no more**.

(Candidates will be penalized for illegible handwriting.)

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1. “For all the unmusical qualities which many find in Austin’s style and mode of presentation, it is through the gate of John Austin’s work that thousands of people have been led to explore the world of jurisprudence in common law countries- and continue to do so.”

W.L. Morrison , *John Austin* (London: Edward Arnold, 1982) 192.

In light of the above statement, briefly evaluate the contribution made by John Austin and its influence over modern legal theories.

(25 Marks)

2. Explain how H.L.A. Hart attempts to resolve problems in relation to uncertainty, stagnation and inefficiency of laws in a complex legal system with the help of different categories of rules.

(25 Marks)

3. Kelsen advocates a legal theory based on purity, untainted by any extraneous considerations, but merely validated by higher norms. However, when it comes to the highest norm of a particular legal system, the notion of purity is challenged.

Discuss the extent to which Kelsen’s theory is applicable to modern constitutional democracies. Support your answer with, at least two, examples.

(25 Marks)

4. Answer either (A) or (B) only.

(A) Controlling or eradicating pandemics such as COVID - 19 involves curtailing individual rights and entitlements for the common good of society. This warrants a balancing exercise being undertaken by the policy-makers when considering the competing interests of different segments of society. The social consciousness of judges will also play a key role in this exercise.

Critically analyse the above statement from the perspective of the sociological school of jurisprudence.

(25 Marks)

OR

(B) Rawlsian version of justice aims at establishing a fair society which guarantees equal rights, liberties and opportunities to all people. However, some are very skeptical about the practicability of the mechanism proposed by Rawls for putting his theory into practice.

Do you agree? Discuss.

(25 Marks)

5. The central theme of critical legal theory is to doubt the prospect of uncovering a universal foundation of law based on reason..... The myth of determinacy is a significant element of the critical assault on law.

Investigate this view, examining the contributions and limitations of the Critical Legal Studies movement.

(25 Marks)

6. "Arguments of policy justify a . . . decision by showing that the decision advances or protects some collective goal of the community as a whole. Arguments of principle justify a . . . decision by showing that the decision respects or secures some individual or group rights."

Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press, 1978) 82.

In light of the above statement, discuss what you understand by Dworkin's rights theory using appropriate examples.

(25 Marks)

7. Answer **both A and B**:

- (a) Postmodernism is the rejection of faith in rationalism, and a recognition that any argument, no matter how perfectly logical, is only as good as its presuppositions. Along with their rejection of rationality comes the rejection of the possibility of truth as well.

Comment to what extent the above statement reflects the plight of marginalized groups in tasting the fruits of justice in modern societies. You may refer to Sri Lankan society for the purpose of your discussion.

(12.5 Marks)

- (b) The problem with feminist legal theory is that there is no single theory that can be considered for legal reform so that necessary changes could be effected in a particular legal system.

Discuss the extent to which this is the case in Sri Lanka. What type of legal reform is urgently needed to address the concerns of the feminist legal school of your choice?

(12.5 Marks)
