

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Jurisprudence
Semester-III (Batch: 2013-18)



End Term Examination: Oct-Nov. 2014

Date: 19th October, 2014

Duration: 3 hours

Max. Marks: 50

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write any thing on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.

Answer any five from the following:

Marks

- Q.1 The Libertarianism, as the name suggests, emphasizes individual liberty as the central and indeed exclusive concern of social justice. A just society, according to the Libertarian, must grant and protect the liberty or freedom of each individual to pursue his desired ends. In the Libertarian view people are essentially rational end-choosers, to use our earlier term, and the kind of life appropriate to rational end-choosers requires them to be free to choose their own ends and free to pursue them without interference from others. This may seem to imply that the Libertarian holds that everyone should be able to do whatever he or she wants, but really the Libertarian holds no such view. The Libertarian view is that each person should have the same freedom to pursue his chosen ends, that each is therefore obligated to refrain from interfering with others in their freedom to pursue their ends, and that the function of the state is solely to protect each individual's freedom to pursue his chosen ends. The Libertarian therefore conceives of everyone as having certain rights, which protect his or her liberty to pursue a desirable kind of life. What is distinctive about Libertarianism is its conception of the rights that each individual has. (10)
- Critically analyse the above mentioned proposition with reference to John Locke's theory of law and in the present Indian context (along with illustrations).
- Q.2 According to natural law theory of law, there is no clean division between the notion of law and the notion of morality. Though there are different versions of natural law theory, all subscribe to the thesis that there are at least some laws that depend for their "authority" not on some pre-existing human convention, but on the logical relationship in which they stand to moral standards. Otherwise put, some norms are authoritative in virtue of their moral content, even when there is no convention that makes moral merit a criterion of legal validity. The idea that the concepts of law and morality intersect in some way is called the overlap thesis. Discuss in the light of thoughts of different thinkers. (10)
- Q.3 Hart's biggest criticism of the command theory was that, habitual obedience was not sufficient to explain the operation of legal systems, as it overlooked the social realities of the situation. He distinguished between rules and habits, and whilst denying the possibility of explaining rules solely by reference to external regularities of behaviour, (10)

introduced his concept of the internal point of view. When analysing social institutions or social practices, a sound theory must take into account the way the participants understand those institutions or practices. Critically analyse the above mentioned thoughts with your own opinions.

- Q.4 To expound the Law as an embodiment of Natural Rights was a dangerous conflation, since both of them are a quite different enterprises. It was particularly objectionable in Bentham's view, because the Law should be criticized and evaluated by reference to the Principle of Utility and not by reference to a misguided belief in the existence of Natural Law or Natural Rights. Do you agree with the above stated proposition? Discuss in the light of views of different thinkers along with concrete illustrations. (10)
- Q.5 In the realists' view the concepts of "legal obligation" and the "law" are myths, invented and sustained by lawyers for dismal mix of conscious and subconscious motives. The puzzles we find in these concepts are unsolvable because they are unreal, and our concern with them is just one feature of enslavement. We would do better to flush away the puzzles and the concepts altogether, and pursue our important social objectives without this excess baggage. (10)
Is this a fair assessment? Clarify with reference to the present day context.
- Q.6 Write short note on the following (2x5= 10)
(a) Acquisition of Possession
(b) Hohfeldian Analysis of Right
