

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Jurisprudence
Semester-III (Batch: 2014-19)

End Semester Examination: Oct-Nov. 2015

Date: 20th October, 2015

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** of the following questions:

Marks

- Q.1 The links between law and morality constitute the subject-matter of an age-old jurisprudential debate. Ought the law to concern itself with morality? Ought the law to reflect shifts in public opinion concerning moral question? What significance ought to be attached? The function of the law is to preserve public order and decency, to protect the citizen from what is offensive or injurious, and provide sufficient safeguards against exploitation and corruption of others. Some of the view that the courts retain a residual power, where no statute has intervened to supersede the common law, to superintend those offences which are prejudicial to the public welfare. (10)
- In the light of the above mentioned, discuss in brief the following, in the luminosity of present international and national developments along with relevant thinkers:
- (a) Has society, the right to pass judgement on matters of morals? Ought there, to be a public morality or morals always a matter for private judgement?
 - (b) If society has the right to pass judgement, has it also the right to use the weapon of the law to enforce it?
 - (c) If so, ought it to use that weapon in all cases or only in some, and if only in some, on what principles should it to distinguish?
- Q.2 The 'Historical Movement' in jurisprudence reflects the belief that a deep knowledge of the past is essential for a comprehension of the present. A study of existing legal institutions and contemporary legal thought demand, an understanding of historical roots and patterns of development. Two jurists' views are selected for comment. According to one view law as reflecting a people's historical experience, culture and spirit. For it ancient customs guide the law, growth of legal principles is evidence of 'silently operating forces' and not the result of deliberate decisions. Second view suggests that legal ideas and institutions have their own course of development, and that evolutionary patterns of growth may be deduced from historical evidences. (10)
- Critically analyse the above given jurists' views in detail in the Indian context.
- Q.3 Under the Third Reich the wife of a German, wishing to get rid of him, denounced him to the Gestapo for insulting remarks, husband had made about Hitler's conduct of the war. He was tried and sentenced to death, later his sentence was converted to service as a soldier (10)

on the Russian front. In 1949 the wife was prosecuted for procuring her husband's loss of life and liberty. Wife's defence was that he had committed an offence under the Nazi Statute of 1934. The court nevertheless convicted her on the ground that the statute under which the husband was punished offended the '*sound conscience and sense of justice of all decent human beings*'. Do you agree with the approach of the court? Elucidate approach of the court in your own views with the help of the Natural and Positive Law Theories.

- Q.4 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 the present Indian context through illustrations.

- 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: (2x5= 10)
- (a) Scandinavian Realism
 - (b) Acquisition of possession
