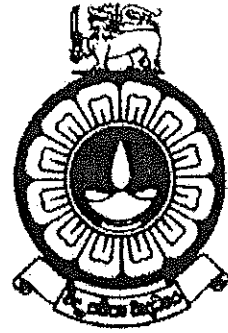


THE OPEN UNIVERSITY OF SRI LANKA
 FACULTY OF HUMANITIES AND SOCIAL SCIENCES
 DEPARTMENT OF LEGAL STUDIES
 LL. B. DEGREE PROGRAMME-LEVEL 6
 FINAL EXAMINATION -2017/2018
 LLU 6813/LWU 4321- JURISPRUDENCE
 DURATION - 03 (THREE) HOURS



DATE: 22nd FEBRUARY 2020

TIME: 01.30 p.m. - 04.30 p.m.

Answer **four (04)** questions only

Candidate will be penalized for illegible handwriting.

1. (a) "Austin's point is seemingly obvious in that a person or entity which is meaningfully sovereign is surely not subject to any other sovereign. The addition of this negative mark can, however, be argued to be unduly restrictive in the light of the political realities even of the nineteenth century, and much more so of the twentieth and twenty first century."

McCoubrey & White's Textbook on Jurisprudence, (2008) 5th ed. p 44

Do you think that the contemporary constitutional, political and social issues have posed a challenge to the traditional understanding of Austin's view of a sovereign?

Substantiate your answer citing examples from at least three jurisdictions.

(15 marks)

- (b) Which of the following would be included within the term of 'positive law'.

Write a justification for your position.

- (i) Municipal Council of Kandyana has passed a by-law, imposing a condition that children under 15 years should not be allowed into cinemas, with or without an adult.

- (ii) Customary Law

(05x2=10 marks)

2. Analyze how Natural Law has become a powerful instrument in the hands of jurists to measure the content of legal rules and evaluate legal statutes.

According to your opinion what is the most profound impact that Natural Law has made upon molding legal systems?

Support your answer with relevant authorities. (25 marks)

3. Mr. Ronald was elected as the President of South Irania under the 1970 Constitution of South Irania for a term of five years in February 2015. When the country was preparing for the next presidential election, in December 2019 the President in complete disregard of the 1970 Constitution assumed all state power, dissolved the Legislative Assembly and proclaimed a new Constitution. The opposition party in the meantime under the provisions of the 1970 Constitution sought advice from the Supreme Court of South Irania about the legality of the new Constitution. The state media of South Irania reported that the coup was successful, that the new Constitution is legally valid and, as a result of the revolution the previous constitution becomes invalid and does not form a part of the law. Mr. Ronald made a statement to the media that there was no protest among the people against the new Constitution and that they accepted it as the supreme law of the country.

Analyze the South Irania situation in light of Kelsen's theory?

Support your answer with relevant authorities. (25 marks)

4. "The fundamental belief of the Historical School is that the law is located in the spirit of the people. They treated custom as the predominant source of law. This analysis is not without its problems."

What were the main criticisms leveled against the Historical School?

Give reasons for your answer. (25 marks)

5. "One way of viewing the relationship between the economic base and law as an element of superstructure is instrumentalist. Simply put, according to this view the law is a means of oppression and domination of the proletariat by the ruling class. The latter has a stranglehold on the State and its law and uses it in order to advance its interests."

McCoubrey & White's Textbook on Jurisprudence, (2008) 5th ed., p205

Does this Marxist position represent a true picture of contemporary legal systems?

Give reasons for your answer. (25 marks)

6. "The central concern of Scandinavian Realism is to explain how the law changes the behavior of people. They seek to explain scientifically the force of the law, free of the metaphysical (mystical) element imbedded in traditional explanations."

Suri Ratnapala, Jurisprudence, (2009), p. 109

Critically analyze the relevance of the salient features of Scandinavian Realism in the modern social context. (25 marks)

7. Discuss the philosophical foundations of American Realist Movement and explain to what extent the movement provides insights regarding the understanding of the true nature of the Sri Lankan legal system. (25 marks)

8. Analyze the relevance of the key features of Pound's theory, focusing on Pound's explanation of the task of jurists and legislators in reconciling conflicts in the contemporary socio, economic and political context. (25 marks)

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