

THE OPEN UNIVERSITY OF SRI LANKA
FACULTY OF HUMANITIES AND SOCIAL SCIENCES
DEPARTMENT OF LEGAL STUDIES
LLB DEGREE PROGRAMME-2023/2024



LEVEL 06

LLU6813 JURISPRUDENCE

FINAL EXAMINATION

DURATION: THREE (03) HOURS

DATE: 02.05.2025

TIME: 2.00 PM-5.00 PM

Total number of questions-07

Answer four (04) questions only.

Illegible handwriting will be penalized.

The scenario given below is relevant to questions 1 and 2.

In the last week of December 2024, President Yookin of Novida was impeached by its Parliament. This impeachment was brought against him due to his controversial decision on 3rd December 2024 to declare martial law, violating the provisions of the Novidian Constitution. Further, President Yookin was alleged to have sent army troops to the Parliament to stop Parliament members from disturbing the declaration of martial law. In the meantime, the citizens of Novida launched a campaign opposing the decision of President Yookin. Novidian media reported that Yookin's decisions led the country into political chaos. **However, in his defense, Yookin argued that the short-lived imposition of martial law was the necessary response to the civil uprising and the danger of collapsing the entire government.** On 4th April 2025, the Constitutional Court of Novida upheld President Yookin's impeachment. The eight-member bench ruled that Yookin's declaration of martial law violated the Constitution, failed to follow proper legal procedures, and interfered with the independence of the judiciary. According to the Constitution, new elections must be held within 60 days from this decision.

1. (a) Critically analyse Novida's situation in light of the social contract theory by providing the relevant examples.

(15 marks)

- (b) Consider the core of President Yookin's defense and critically analyse whether you could morally justify it.

(10 marks)

(15 + 10 = 25 marks)

2. (a) Critically discuss whether the declaration of martial law by President Yookin could be categorized as 'positive law,' according to the ideology of Austin.

(05 marks)

(b) The crux of Positivism is based on the notion that law should be separated from morality. From this point of view, how could you justify the action taken by President Yookin? Analyse.

(20 marks)

(05 + 20 = 25 marks)

3. 'Among schools of jurisprudence, the Historical school is like a poor and slightly eccentric relation. Everyone is polite to it, and no one explicitly disowns it, but no one really takes it seriously. Some writers mention [...] its role in building up the intellectual life of nineteenth-century German universities. Others have found it a forerunner of sociological jurisprudence.'

RE Rodes. 'On the Historical School of Jurisprudence' (2004) 49 the American Journal of Jurisprudence 165.

In light of the above statement, critically analyse the contemporary value of the philosophical understanding of the Historical school of jurisprudence. Provide proper examples.

(25 marks)

4. On the night of September 17, 2023, in the red-light district of Maradana, Colombo, the conscience of the public was shaken by the brutal murder of 46-year-old sex worker Samanmalee Saparamadu, alias "Bindu", who lived in a three-storey lodging house on Lotus Lane. Around 9.15 p.m., while resting near the stairwell on the second floor, she encountered the accused, Chaminda Karunaratne, who allegedly tripped over her, leading to a heated exchange. Chaminda, in a sudden fit of rage, assaulted Samanmalee with his fists and knees, violently dragging her by the hair and banging her head against a concrete wall, resulting in severe bleeding. A domestic helper, Ayesha Namali, witnessed the incident and raised the alarm, prompting others to intervene. Several witnesses saw the accused continuing to beat the victim before fleeing the scene upon hearing their protests. He was apprehended by police about five hours later on the same street. Samanmalee was declared dead on arrival at the National Hospital.

Assume that you are the presiding judge in this case. Drawing on the philosophy of American Legal Realism, write a reasoned judgment that reflects how judicial decisions are influenced by social facts, practical consequences, and the law as it operates in real life. You may refer to relevant case law and legal provisions to support your reasoning.

(25 marks)

5. In the coastal town of Galle, a new luxury hotel project led to the forced eviction of over 30 low-income fishing families from their ancestral land, with minimal compensation and no alternative housing provided. Despite protests and media coverage, the authorities justified the action as 'legally sanctioned development.' A public interest litigation has been filed challenging the eviction.

Critically analyse this scenario using the lens of Sociological Jurisprudence. Discuss how the law should respond to such conflicts between legal rights, economic development, and social justice, with reference to the ideas of Roscoe Pound and other relevant thinkers. Cite relevant legal provisions, case law, or real-world examples where necessary to support your analysis.

(25 marks)

6. Hans Kelsen's Pure Theory of Law attempts to separate law from morality, politics, and sociology, proposing a hierarchy of norms culminating in a basic norm (Grundnorm). Critically examine Kelsen's claim that law should be understood as a system of norms independent of social, moral, or political influences. In your answer, assess whether this theory adequately explains how law operates in practice. Support your analysis with relevant examples from Sri Lanka and one other jurisdiction of your choice.

(25 marks)

7. 'The Marxist theory of law exhibits a number of general themes that have been reworked into new and variant combinations. In summary form, the major themes that are present in Marx's writing and in subsequent Marxist approaches to law are: law gives effect to, mirrors, or is otherwise expressive of the prevailing economic relations.'

Hunt, Alan. 'Marxist theory of law.' (2010) A companion to philosophy of law and legal theory. 350-360.

Do you agree with the above statement? Critically discuss the contemporary application of the Marxist theory of law with relevant examples.

(25 marks)

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