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BA (H) LL.M 13

2011

**MODERN THEORIES OF LAW  
AND STATE**

**Paper I-13**

*Full Marks : 80*

*Pass Marks : 32*

*Time : Three hours*

*The figures in the margin indicate full marks for  
the questions.*

1. "The problem of the relation between Justice and positive law dominated Greek thinking".  
— W. Friedman.  
Explain the above based on the contributions made by the Greek philosophers from Homer to Stoics.

16

Or

In the process of search for absolute values based on social contract theories, make an academic assessment of the contributions of the classical natural law philosophers from H. Grotius to J. J. Rousseau.

*Contd.*

16

2. What are the different meanings of the term "Positivism" that have been attributed by Professor H. L. A. Hart? Explain with logical reasons. Which meaning seems to be appropriately associated with positivism? 16

Or

"A Theory of law must be distinguished from the law itself".  
Explain the above in context to the Pure Theory as formulated by Hans Kelsen.  
How the effectiveness of Groundnorms is measured?

3. "There is a detectable priority at least as between national and social safety, sanctity of the person and property in that order. Beyond which no hierarchy is discernable" — RWM Dias, Jurisprudence.  
Explain the above in context to the social welfare as enshrined in the Constitution of India. What are the values as mandated in the Constitution of India? 16

Commerce Point

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Or

According to Ronald Dworkin legal systems contain rules and principles. How Dworkin logically related the rules to the principles in order to make a legal system dynamic and Justice Oriented? What is 'fit' principle and how is it ascertained by the Judiciary?

4. "Liberty ends where duty begins, and vice-versa" — RWM Dias.  
Analyse the above in terms of the criterion based on which the limits of liberty is determined. 16

Or

In the field of dynamic Indian Constitutional Jurisprudence, how according to you, the compatibility of liberty of individual with that of fundamental duties can be harmoniously arrived at?

5. "Law is the enterprise of subjecting human conduct to governance of rules." — Lon L. Fuller.  
Make an analytical assessment of the above on the basis of the understanding which Fuller has put forward as law is a particular means to an end. How will you relate the above with the principles of equality as provided in Articles 14-16 of the Constitution of India? 16

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3

Contd.

17

Or

In the modern-day global legal order, how do you define the concepts of 'Justice' and 'Justice according to law'?

How will you relate that concept of Justice (as defined by you) to the mandate of 'Justice' as assured by 'we the people' in the Preamble to the Constitution of India? Explain what are the different aspects of Justice, with reference to the above.

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