

2012

MODERN THEORIES OF LAW AND STATE

Paper : 1.3

Full Marks : 80

Time : Three hours

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

Answer any five questions as indicated below.

1. "In order to secure peace and to enforce law of nature, Hobbes argued, it is necessary for men to enter into a compact mutually among themselves by which everyone agrees to transfer all his power and strength upon one man, or upon an assembly of men, on condition that everybody does the same".

Explain the above in terms of the sovereign as proposed by Hobbes for the purpose of promoting the Peace, Safety and Convenience of all. 16

Contd.

Or

Give a comprehensive account of the contribution of Stammler as an exponent of "natural law with a variable content".

How did he distinguish the "technical legal science" and "theoretical legal science"? 16

② "Bentham was a champion of codified law and of reforming English law" — Dias.

Critically examine the above with reference to Bentham's distinction between "expositorial" and "censorial" jurisprudence.

Give a brief account of the individuality of law and the contents thereof as proposed by Bentham.

8+8=16

Or

10 What are the two basic starting points for understanding Kelson's approach to legal theory?

Critically examine how Kelson believed that all legal norms could and should be understood in terms of an authorisation to an official to impose sanctions. 8+8=16

③ "The judicial Oath does not enjoin a judge simply to do justice, nor simply to apply law, it requires him to do Justice according to law" — Dias.

5+1 Explain in context to the above how the judicial discretion is controlled by a sense of values that constitute a consensual domain and keeps prejudice in check.

What according to you are the principal yardsticks of evaluating conflicting interests in every decision reflecting a value judgement? 8+8=16

Or

Give a detail account of the contribution of Professor Hall in insisting on inclusion of moral value in a definition of positive law.

How he explains 'integrative' jurisprudence?

8+8=16

④ Provide a logistic account of the term "liberty ends where duty begins and vice versa" with some textual illustrative propositions. 16

Or

Critically examine the distinction that provides the respective bases for the terms "the institutional and the utilitarian interpretations of moral position.

16

5
Elucidate the dynamic perception that new in the era of legal theory is the application of cognitive psychology to a variety of topics in law.

How do you assess the role of emotion in decision-making process? 16

7
Or

Academically evaluate the role of higher judiciary in India in laying the foundation of the 'Jurisprudence of obligation' within the ambit of the mandates of the Constitution of India, citing some of the landmark judgements of the higher judiciary in India. 16

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