

2013

MODERN THEORIES OF LAW AND STATE

Paper : 1003

Full Marks : 80

Time : 3 hours

The figures in the margin indicate full marks for the questions

1. "Natural law theory has a history reaching back centuries BC, and the vigour with which it flourishes notwithstanding periodic eclipse, especially in the 19th century, is indicative of its vitality." (Dias, p. 470)

Elucidate the above statement in the light of the contributions made by different exponents towards the development of the natural law theory.

16

Or

"The problem of the relation between justice and positive law dominated Greek-thinking." (W. Friedmann)

Explain the above statement based on the contributions made by the Greek philosophers from Homer to Stoics.

2. Make an exhaustive note on the contributions made by Austin towards the development of analytical positivism. How far is his theory different from that of Bentham? 10+6=16

Or

"A theory of law should be uniform, i.e., it should be applicable at all times and in all places." (Eas, p. 358)

Elucidate the above concept in the light of general jurisprudence propositions of law and science, groundnorm and its effectiveness and validity as advanced by Kelsen. 16

3. What do you understand by the terms 'values' and 'value-judgment'? What are the different textures of law? Mention briefly at least five yardsticks by which conflicting interests are evaluated by Judges. Cite Supreme Court cases to support your views. 16

Or

"The new faith is that the truth must lie not with a doctrine that takes the maximization of aggregate or average general welfare for its goal, but with a doctrine of basic human rights protecting specific basic liberties and interests of individuals, if only we could find

some sufficiently firm foundation for such rights to meet some long familiar objections." (Ronald Dworkin and Contemporary Jurisprudence, p. 214)

Explain the above statement in terms of utility and basic human rights of the modern day.

4. "With regard to limitation, it is clear that liberty ends where duty begins, and vice versa."

Elucidate the above statement in the light of various limitations of liberty. 16

Or

Write exhaustive notes on the following :

8+8=16

- (a) Machinery of the law
- (b) Restraint of liberty

5. "Legal theory is not a single-research program. Its practitioners do not even agree on the meaning of 'theory'. Some legal theory is social, scientific, some not; some legal theories emphasize abstract theory, some empirical research, some neither; some legal theory has a strongly political, even polemical flavor and some not; some is primarily descriptive and some heavily normative; some focuses on particular fields

(4)

of law and some covers a broader span."
(R. A. Posner, Frontiers of Legal Theory, p. 4)

How is legal theory related to other disciplines? Explain. Logically analyze the chief points of legal theory.

16

Or

Evaluate the contributions made by the Indian Judiciary in evolving new sets of 'jurisprudence', viz., environmental, human rights, dalit, poverty, etc., in recent years. Support your views with the help of case laws.

