

Jurisprudence

Objective:

The question of knowing the metabolism of law involves various inquiries such as what is law and where the law is and the functions thereof? However, the investigation invariably requires distinction of the law with which we are concerned, and the subject of jurisprudence and here it is clearly concerned with social science laws. As the course progresses students would be prepared to understand that this subject is more about questions and not answers. The pedagogy will be more interactive than lecture centric. The main purpose is not to make student learn rather make them able to find out how to learn and what to learn by raising questions which otherwise people find trivial or superfluous.

The subject is divided into two parts, first part concerns the theories and the second part is about fundamental legal concepts. We shall begin by reviewing classic works in two distinct jurisprudential traditions--those of legal positivism and natural law. As we explore these materials, try to understand the ways in which these three approaches to law conceptualize the relationship between "law in theory" and "law in practice." We conclude with a series of inquiries into more discrete topics, such as the relationship between law and morality and the nature of rights and other legal concepts.

The reading materials would primarily be text books as they are mentioned underneath every module. Additionally we would also learn through a classic movie Judgment of Nuremberg would be watched collectively.

Part I: Important legal thoughts

1. Nature of Jurisprudence

1.1. What is jurisprudence

1.2. Normative character of law

Compulsory reading:

Freeman, M.D.A., 'Lloyd's Introduction to Jurisprudence', Eighth Edition, Sweet & Maxwell, pp 1-23

Campbell, A.H., "A Note on the Word Jurisprudence", (1942), 58, LQR, 334

2. **Meaning of Law**

2.1. Essentialism

2.2. Words or fact

2.3. Law and Morals

2.4. Morals as part of law

Compulsory readings:

Freeman, M.D.A., 'Lloyd's Introduction to Jurisprudence', Eighth Edition, 2008, Sweet & Maxwell, pp 33-58

Fuller, L.L., 'The Morality of Law', Second Edition, 2000, Universal Law Publishing, pp 33-91

3. **Classical Positivism**

3.1. Bentham's concept of jurisprudence

3.2. The command theory of law

3.2.1. The Command

3.2.2. The Sovereign

3.2.3. The attachment of sanctions

3.2.4. The Benthamite Complete Law

3.3. The viability of command theory

3.4. The question of public international law

Compulsory readings

Hart, H.L.A., *The Concept of Law*, Oxford University Press, Second Edition, 2002, chapters 2 & 3

Fitzgerald, P.J., *'Salmond on Jurisprudence'*, Twelfth Edition, N.M. Tripathi Pvt. Ltd, 1999, pp.25-35

4. Modified Positivism:

4.1. Hart's gunman and critique of command theory,

4.2. The importance of rules

4.2.1. Obligation and internal aspects of rules of recognition

4.2.2. The Union of Primary and Secondary rules

4.2.3. The basis of the rule of recognition

4.2.4. Legal system and the importance of officials

4.3. Public International law in Hart's Theory

4.4. Abuse of law: the debate between Hart and Fuller

Compulsory reading

Hart, H.L.A., *The Concept of Law*, Oxford University Press, Second Edition, 2002, chapters 5 & 6 and 10

A movie "Judgment at Nuremberg"

5. Pure Theory

5.1. In what sense a pure theory

- 5.1.1. Pure theory and Kantian theory of knowledge
- 5.1.2. The meaning of purity
- 5.2. The hierarchy of norms
 - 5.2.1. The structure of norms
 - 5.2.2. Validation in the hierarchy of norms
 - 5.2.3. The Grundnorm
- 5.3. The problem of revolutionary transition
- 5.4. Concretisation and the substance of norms
- 5.5. The reality of concretisation
- 5.6. The role of International law in pure theory
- 5.7. Monism, dualism and the Grundnorm in the Public International Law
- 5.8. The Grundnorm of Public International Law
- 5.9. The value of pure theory

Compulsory reading:

Freeman, M.D.A., 'Lloyd's Introduction to Jurisprudence', Eighth Edition, 2008, Sweet & Maxwell, pp 305-357

6. Natural law

- 6.1. What is natural law
- 6.2. The attractions of natural law
- 6.3. Greek origins, jus gentium and medieval period
- 6.4. Grotius and International law
- 6.5. Natural law and social contract
- 6.6. Kant and human freedom
- 6.7. Dworkin and Hard cases

Compulsory readings:

Freeman, M.D.A., 'Lloyd's Introduction to Jurisprudence', Eighth Edition, 2008, Sweet & Maxwell, pp 137-228

Part II: Legal Concepts:

7. Sources of Law

7.1. Legislation

7.2. Precedents

7.3. Customs

Compulsory readings:

Paton, G.W., A textbook on Jurisprudence, Fourth Edition, Oxford University Press, 2004, pp 190-254

8. **Legal Rights and titles**

9. **Liability**

10. **Ownership & Possession**

11. **Persons**

Compulsory readings for 7, 8, 9 & 10

Fitzgerald, P.J., 'Salmond on Jurisprudence', Twelfth Edition, N.M. Tripathi Pvt. Ltd, 1999, pp.246-328

Hohfeld, "SOME FUNDAMENTAL LEGAL CONCEPTIONS AS APPLIED IN JUDICIAL REASONING" 23 Yale L. J. 16

Examination:

The examination would be consisting of an internal examination and a final end term examination. The internal exam would be of 40% of the total examination marks and end term examination would carry the rest, i.e. 60% marks. Internal exam will have two components one the written submission of the topic assigned to the students. A topic would be allotted to two students, one would be required to develop his/her writing in favour thereof and the same would be criticized by the other student who has been allotted the same topic. Both of them would exchange their part after the submission of the paper

to me and develop their argument that think would defend their writing. Second part would be the oral part of the internal examination which would be, naturally, the 20 percent of the 40 % that has been earmarked for internal examination.

End term examination would be pretty straight based on the conventional written examination system.