[This question paper contains 8 printed pages.]

2471

Your Roll No. .........

LL.B./V Term

F

Paper LB-502: JURISPRUDENCE - I

(Theory of Law)

Time: 3 Hours

Maximum Marks: 100

(Write your Roll No. on the top immediately on receipt of this question paper.)

Note:—Answers may be written either in English or in Hindi; but the same medium should be used throughout the paper.

Taking all due precautions, all answers should be written in English and only English should be used in the entire examination.

Attempt any Five questions.

All questions carry equal marks.

Answer the questions giving examples from Indian Legal System.

कुल पांच प्रश्नों के उत्तर लिखिए।

सभी प्रश्नों के अंक समान हैं। प्रश्नों के उत्तर भारतीय विधिक प्रणाली से उदाहरण देते हुए लिखिए।

P.T.O.
1. Explain Austin’s command theory and his Tacit command theory

Are following laws/commands according to Austin:

(a) Customs in India
(b) Supreme Court of India declaring NJAC Act unconstitutional.
(c) General Clauses Act
(d) An Act repealing the existing law.

आस्टिन की कमांड थ्वयरी और टेसिट कमांड थ्वयरी की व्याल्या कीजिए।
क्या आस्टिन के अनुसार निम्नलिखित विधियाँ/कमांड्स हैं?
(क) भारत में हठिया।
(ख) भारत के उच्चतम न्यायालय का एन.जे.एस.एन.एक्ट को अस्वीकारीक योजित करना।
(ग) साधारण खंड अधिनियम।
(घ) विधान विधि को निर्लत करने वाला अधिनियम।

2. (a) What are the essentials of a society Independent and Political according to John Austin. What are the different types do of societies in existence in

the world? Can you locate a sovereign in India? What is the impact of growth of institutions like WTO on the theory of sovereignty of Austin?

(b) According to H.L.A. Hart, John Austin cannot explain continuity of sovereign specially when a king dies in an Autocracy. Explain the reason as to why Hart makes this observation with respect to Austin.

(क) जॉन आस्टिन के अनुसार किसी स्वर्तव्य और राजनीतिक समाज के आयोकक तत्त्व क्या होते हैं? विश्व में विधान विधान समाजों की विधिया प्रवृत्तियाँ क्या हैं? क्या आप भारत में संवैधानिक क्रांति लगा सकते हो? आस्टिन के संवैधानिक विधिया विशेष वापस संगठन जैसी संस्थाओं की संवृद्धि का क्या प्रभाव पड़ा है?

(ल) एच.एल.एच. हार्ट के अनुसार जॉन योस्टिन संवैधानिक की निर्मूलता की व्यावहारिक रीतों विषयता प्रजा एकत्रित शासन में गृहु को प्राप्त हो जाता है- नहीं कर सकता। उन कारणों को स्कांप कीजिए हार्ट आस्टिन के बारे में ऐसी टिप्पणी क्यों करता है?

3. (a) A Society having only primary Rules of obligation suffers from certain defects. Explain how Hart
tries to remove those defects in a Legal system. Use illustration from the India legal system, wherever possible.

(b) According to Hart, Austin's guneman theory is a predictive theory as it does not explain the 'idea of obligation' embedded in the definition of "Rule", resulting in neglect of internal aspect of Rules comment on the statement given above and clearly bring out the differences between social habits and social Rules as given by Hart.

4. The speluncean Explorer's Case provides a window to look into the process of judicial decision making, use any of the two below stated principles/doctrines and show how the judges differed from each other in either the reasoning or the decision making while deciding the fate of the "unfortunate" explorers in "willfully" taking the life of Roger Whetmore. [The facts of the speluncean Explorers case need not be stated by the students].

(a) Doctrine of separation of Powers and the morality of legalism.

(b) Varying Rules of Interpretation.

(c) Judges of the Supreme Court are to provide justice to the people and not merely give a judgment applying the law of the land in a given situation.
(ल) निर्णय के बदले निषय।

(ग) उच्चतम न्यायालय के न्यायाधीशों की ही गई स्थिति में स्थानीय विधि
लापू करते हुए लोगों को न्याय प्रदान करता है, न केवल निर्णय
करता है।

5. Elucidate the theory of “Balancing of Interests”, as
given by Roscoe Pound. Explain how his theory can/
cannot be used to answer conflicting ideologies in
relation to contemporary problem with a special focus
on problems of homosexuality, Reservation Policy in
India and Rape as a crime against a person. (20)

6. What were the reasons for the growth of Historical
school of thought in Europe? Critically analyse the idea
of “Volksgeist” given by Karl Von sanigny. Do you
think his theory can be applicable in a multicultural
multilingual and pluralist democracy like India? (20)

7. According to Hans Kelsen, the legal order is a social,
Coercive and a Normative order. Explain the above
statement.

8. Write short notes on any two of the following:

(a) Critical analysis of ‘Presupposition of Basic Norm’
by Hans Kelsen

(b) Rule of Recognition and its legal validity in Hart’s
Concept of law.

(c) Henry Maine’s distinction between static and
Dynamic Societies.
(क) हेन्स केल्सन द्वारा आधारभूत सन्नियम की पूर्ववर्तिनी का समीक्षात्मक
विवेचन।

(ख) हार्ट की विपरीत की संकल्पना में मानवता का नियम और इसकी
विविधता।

(ग) हेनरी मैन की स्वतंत्र के और गतिविधियों में बीच सुधारता।