

UNIVERSITY OF LONDON

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**LLB EXAMINATION**

for External Students

PART II EXAMINATION (Scheme A)  
FOURTH YEAR EXAMINATION (Scheme B)  
GRADUATE ENTRY LEVEL II (Route A)  
GRADUATE ENTRY THIRD YEAR (Route B)

**BSc DEGREES**

for External Students

MANAGEMENT WITH LAW, LAW WITH MANAGEMENT, ACCOUNTING  
WITH LAW AND LAW WITH ACCOUNTING FOR STUDENTS IN THE  
EXTERNAL PROGRAMME

**Jurisprudence and Legal Theory**

Wednesday 13 May 2009: 2.30 - 5.45 pm

Candidates will have **fifteen minutes** during which they may read the paper and make rough notes **ONLY** in their answer books. They then have the remaining **THREE HOURS** in which to answer the questions.

Candidates should answer **ONE** question from **SECTION A (The Set Book)** and **THREE** questions from **SECTION B** of the following **TWELVE** questions.

Candidates should answer all parts of a question unless otherwise stated.

## SECTION A (The Set Book)

1. “But the dichotomy of ‘law based merely on power’ and ‘law which is accepted as morally binding’ is not exhaustive. Not only may vast numbers be coerced by laws which they do not regard as morally binding, but it is not even true that those who do accept the system voluntarily, must conceive themselves as morally bound to do so, though the system will be most stable when they do so. In fact, their allegiance to the system may be based on many different considerations: calculation of long term interest; disinterested interest in others; an unreflecting inherited or traditional attitude; or the mere wish to do as others do. There is indeed no reason why those who accept the authority of the system should not examine their conscience and decide that, morally, they ought not to accept it, yet for a variety of reasons continue to do so.”  
(Hart, *The Concept of Law*)

Discuss.

2. Give some examples from the *The Concept of Law* where Hart picks out distinctions in the meaning of words to advance his claims about the nature of law, and critically assess how successful he was in using this technique in these examples, and how much such examples contributed to the overall project of the book.
3. What is the rule of recognition, and what are Finnis’s and Dworkin’s criticisms of Hart’s theory of the rule of recognition? Are these criticisms sound?

## SECTION B

4. “Durkheim believed that the key to understanding law in modernity was to see it as an index of underlying social forms. These forms themselves relate to structures which hold society together.”

Discuss.

5. “Marx’s work has been constantly re-interpreted. A Marxist theory of law needs to be understood in light of this fact.”

Discuss.

6. “Feminism reminds legal theory that there is no neutral standpoint, and no objective knowledge. Claims to truth or authority always are underpinned by power; and power is inevitably that of men over women.”

Discuss.

7. “To the extent that Critical Legal Studies engages with legal reasoning, it shares an essential concern with postmodern accounts of rhetoric.”

Discuss.

8. “For those who are not writing about race in America, critical race theory is primarily concerned with the problem of the postcolonial.”

Discuss.

9. In view of Raz’s normal justification thesis, on what basis might the law have authority to make laws (i) empowering officials to punish murderers, (ii) requiring the wearing of seat belts, (iii) imposing taxes and (iv) regulating traffic?

10. What is Dworkin’s ‘rights’ thesis? What is his ‘right answer’ thesis? In what ways, if any, are the two connected?

11. For most of his life, Kelsen described the grundnorm or basic norm as a 'pre-supposition' which made the understanding of law possible, but in his later years referred to it instead as a 'fiction'. What is the grundnorm, and which of these terms better describes it and its place in Kelsen's theory of law?
  
12. 'Fuller's "principles of legality" perpetrate a confusion between two notions it is vital to hold apart: the notions of purposive activity and morality. Poisoning is no doubt a purposive activity, and reflections on its purpose may show that it has its internal principles. ("Avoid poisons however lethal if they cause the victim to vomit", or "Avoid poisons however lethal if their shape, colour or size is likely to attract notice.") But to call these principles of the poisoner's art "the morality of poisoning" would simply blur the distinction between the notion of efficiency for a purpose and those final judgments about activities and purposes with which morality in its various forms is concerned.'

Discuss.

END OF PAPER