BLOGS

MCQ’s on Jurisprudence for CLAT PG [Part 10]

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Modern jurisprudence reflects a continuing struggle to explain the nature of law beyond mere command or habit. Early positivist theories, most notably associated with John Austin, conceived law as the command of a sovereign backed by sanctions.

While this model offered clarity and precision, it was increasingly criticised for its inability to account for constitutional limitations, judicial discretion, and the normative force of legal obligations. The reduction of law to coercion failed to explain why legal rules are treated as binding even when sanctions are absent or unenforced.

This conceptual gap was addressed, though not entirely resolved, by H.L.A. Hart’s re-formulation of legal positivism. Hart rejected the command theory and instead described law as a system of primary and secondary rules. Primary rules impose duties, while secondary rules confer powers—such as the rule of recognition, which identifies valid legal norms within a system. Crucially, Hart located the authority of law not in fear of punishment, but in the internal point of view adopted by officials who accept rules as standards of behaviour. This move shifted jurisprudence from a purely external description of law to an analysis that acknowledged its normative dimension.

However, Hart’s model attracted criticism from Ronald Dworkin, who argued that law cannot be reduced to rules alone. According to Dworkin, legal systems also contain principles—standards that do not operate in an all-or-nothing fashion but possess weight and moral significance. In hard cases, judges do not merely apply existing rules but interpret legal practices in light of moral principles that best justify the legal system as a whole. This interpretive approach challenged the positivist separation between law and morality, suggesting that legal reasoning is inherently value-laden.

Parallel to this debate, legal realism questioned the assumption that law operates as a closed, logical system. Realist scholars emphasised that judicial decisions are influenced by social facts, economic pressures, and institutional constraints. Law, from this perspective, is not simply what statutes or precedents declare, but what courts actually do in practice. This focus on behaviour

rather than doctrine exposed the indeterminacy of legal rules and highlighted the role of discretion in adjudication.

Taken together, these jurisprudential perspectives reveal law as neither purely coercive nor entirely moral, neither mechanically applied nor wholly subjective. Instead, law emerges as a complex social institution—structured by rules, animated by principles, and shaped by human judgment.

Q1. Which jurist described law as a system of "primary and secondary rules" in order to directly rebut the Austinian conception of law as commands backed by sanctions?

a. Hans Kelsen

b. H.L.A. Hart

c. Ronald Dworkin

d. Joseph Raz

Q2. The expression "the life of the law has not been logic; it has been experience" was authored by:

a. Roscoe Pound

b. Oliver Wendell Holmes Jr.

c. Karl Llewellyn

d. Jerome Frank

Q3. Which work contains Hart's most sustained critique of Austin's command theory?

a. Concept of Law

b. Law, Liberty and Morality

c. The Province of Jurisprudence Determined

d. Taking Rights Seriously

Q4. Ronald Dworkin's criticism of Hart's positivism was primarily directed against:

a. Hart's rejection of natural law

b. Hart's separation of law and morality

c. Hart's rule-based model of legal validity

d. Hart's acceptance of judicial review

Q5. Who coined the metaphor of judges as "noble liars" to criticise the idea that judicial decisions are mechanically derived from legal rules?

a. Karl Llewellyn

b. Jerome Frank

c. Oliver Wendell Holmes Jr.

d. Felix Cohen

Q6. Which jurist argued that uncertainty in law stems less from rules and more from the psychological makeup of judges?

a. Karl Llewellyn

b. Roscoe Pound

c. Jerome Frank

d. Hans Kelsen

Q7. The statement that "law is a minimum of morality" is most closely associated with:

a. Lon L. Fuller

b. H.L.A. Hart

c. Ronald Dworkin

d. John Austin

Q8. Lon Fuller's critique of positivism was grounded primarily in:

a. Democratic legitimacy

b. Predictability of judicial behaviour

c. Internal morality of law

d. Judicial discretion

Q9. Which of the following works was written as a direct response to Hart's The Concept of Law?

a. Law's Empire

b. Taking Rights Seriously

c. The Morality of Law

d. Pure Theory of Law

Q10. Hans Kelsen rejected Austin's theory mainly because:

a. It ignored morality

b. It failed to explain international law

c. It relied on sociological obedience

d. It underestimated judicial creativity

Q11. Which jurist described legal rules as “tools” rather than binding commands, emphasising their instrumental use by judges?

a. Roscoe Pound

b. Karl Llewellyn

c. H.L.A. Hart

d. Joseph Raz

Q12. The notion that judges decide cases first and rationalise them later through legal reasoning is most famously attributed to:

a. Oliver Wendell Holmes Jr.

b. Jerome Frank

c. Ronald Dworkin

d. Lon Fuller

Q13. Who criticised legal realism for threatening the normative authority of law and reducing it to judicial habit?

a. Hans Kelsen

b. H.L.A. Hart

c. Lon Fuller

d. Ronald Dworkin

Q14. Which jurist insisted that even in “hard cases”, judges do not exercise discretion in the strong sense?

a. H.L.A. Hart

b. John Austin

c. Ronald Dworkin

d. Roscoe Pound

Q15. The phrase “government of laws and not of men” was used in jurisprudential discourse to defend:

a. Judicial supremacy

b. Natural law theory

c. Rule-based positivism

d. Legal formalism

Answers

1. Correct Answer: B – H.L.A. Hart

Explanation: Hart introduced the framework of primary and secondary rules in *The Concept of Law* to overcome the limitations of Austin's command theory, especially its inability to explain constitutional systems and rule-guided official behaviour.

2. Correct Answer: B – Oliver Wendell Holmes Jr.

Explanation: Holmes' statement encapsulates the realist rejection of formalism, emphasising lived experience over abstract logic as the true driver of law.

3. Correct Answer: A – *The Concept of Law*

Explanation: Hart's critique of Austin — including the gunman analogy and habitual obedience — is systematically developed in this foundational text.

4. Correct Answer: C – Rule-based model of validity

Explanation: Dworkin argued that Hart's model failed because it excluded principles, which judges routinely rely on, especially in hard cases.

5. Correct Answer: B – Jerome Frank

Explanation: Frank attacked the myth of certainty in law, arguing that judges often disguise intuitive decisions behind legal reasoning.

6. Correct Answer: C – Jerome Frank

Explanation: Frank's "fact scepticism" focused on the human element in judging, unlike Llewellyn's rule scepticism.

7. Correct Answer: B – H.L.A. Hart

Explanation: Hart acknowledged a minimal moral content in law necessary for social survival, without collapsing law into morality.

8. Correct Answer: C – Internal morality of law

Explanation: Fuller argued that principles like generality and consistency are moral conditions for something to count as law at all.

9. Correct Answer: B – *Taking Rights Seriously*

Explanation: This work directly challenges Hart's positivism and introduces Dworkin's theory of principles and rights as trumps.

10. Correct Answer: B – Failure to explain international law

Explanation: Kelsen criticised Austin for tying law to a sovereign backed by sanctions, which cannot account for international legal order.

11. Correct Answer: B – Karl Llewellyn

Explanation: Llewellyn viewed rules as flexible instruments used pragmatically by courts, not rigid determinants.

12. Correct Answer: B – Jerome Frank

Explanation: Frank believed that judges decide intuitively first, and reasoning follows as justification, not causation.

13. Correct Answer: B – H.L.A. Hart

Explanation: Hart warned that realism risks reducing law to mere predictions, stripping it of its normative force.

14. Correct Answer: C – Ronald Dworkin

Explanation: Dworkin rejected Hart's "strong discretion," insisting judges are bound by principles even when rules run out.

15. Correct Answer: C – Rule-based positivism

Explanation: The phrase supports the idea that governance should be structured by stable rules, not individual will — a positivist ideal.