BLOGS

Passage Based Questions on Jurisprudence for CLAT PG [Part 9]

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Jurisprudence has long grappled with a central tension: whether law derives its authority from social facts or from moral content. This debate is most sharply reflected in the divide between legal positivism and natural law theory, though modern jurisprudence has increasingly moved beyond rigid binaries. Classical positivists such as John Austin conceived law as a command of the sovereign backed by sanctions, emphasising obedience and authority over moral evaluation. This view, however, struggled to explain constitutional democracies, where power is limited, dispersed, and subject to judicial review. The inadequacy of command theory led to more nuanced accounts of legal validity, most notably in the work of H.L.A. Hart.

Hart rejected the idea that law could be reduced to coercive commands and instead conceptualised a legal system as a union of primary and secondary rules. Primary rules impose duties, while secondary rules confer powers—rules of recognition, change, and adjudication being central to legal order. The rule of recognition, in particular, provides the criteria by which legal validity is determined within a system. Importantly, Hart maintained a separation between law as it is and law as it ought to be, insisting that moral merit is not a condition of legal validity. Yet, he acknowledged that legal systems often incorporate moral principles, especially in constitutional contexts.

This admission became a focal point of critique by Ronald Dworkin, who argued that Hart's model failed to account for the role of principles in legal reasoning. According to Dworkin, judges do not merely apply rules but interpret legal materials in light of moral principles that give coherence to the legal system. In hard cases, where rules run out, judicial discretion is not unconstrained; it is guided by principles such as fairness, equality, and justice. Dworkin's theory of "law as integrity" suggests that law is best understood as a moral practice, requiring judges to interpret legal texts in a manner that presents the legal system in its best moral light.

Parallel to this debate is Lon Fuller's emphasis on the internal morality of law. Fuller argued that legality itself embodies moral values, such as generality, prospectivity, clarity, consistency, and

congruence between official action and declared rules. A system that systematically violates these principles, even if procedurally authoritative, cannot properly be called law. Unlike natural law theorists who ground law in substantive moral values, Fuller focused on procedural morality, suggesting that respect for human agency is inherent in the very idea of governance through rules.

Hans Kelsen, by contrast, sought to purge jurisprudence of moral and sociological considerations altogether. His Pure Theory of Law proposed a hierarchical system of norms, each deriving validity from a higher norm, culminating in the Grundnorm. For Kelsen, law is a normative system whose validity is determined internally, not by reference to morality or social efficacy. While elegant in structure, this theory has been criticised for its abstraction and its limited engagement with constitutional practice, where courts routinely invoke values such as dignity and justice.

In contemporary constitutional adjudication, especially in jurisdictions like India, jurisprudence reflects a synthesis rather than adherence to any single school. Courts frequently rely on textual authority, institutional practices, and moral reasoning simultaneously. Concepts such as dignity, proportionality, and constitutional morality demonstrate that modern legal systems cannot be fully understood without acknowledging the interplay between legal form and moral substance. Jurisprudence today, therefore, is less about choosing between positivism and natural law, and more about understanding how law operates as a normative, institutional, and moral enterprise.

Q1. The primary weakness of Austin's command theory in the context of modern constitutional democracies is its inability to satisfactorily explain:

a. Judicial review of legislation

b. Criminal liability without sanctions

c. Moral disobedience to unjust laws

d. Federal distribution of powers

Q2. Hart's distinction between primary and secondary rules was intended mainly to address which deficiency in earlier positivist theories?

a. Over-emphasis on morality

b. Failure to explain law without coercion

c. Lack of international legal validity

d. Absence of legislative supremacy

Q3. The rule of recognition in Hart's theory primarily functions as:

a. A moral yardstick for justice

b. A sociological description of obedience

c. A criterion for legal validity within a system

d. A judicial doctrine for constitutional interpretation

Q4. Dworkin's critique of Hart is best understood as challenging Hart's view that:

a. Judges inevitably legislate in hard cases

b. Legal systems contain moral principles

c. Law can exist without social acceptance

d. Rules are hierarchically organised

Q5. According to Dworkin, judicial discretion in "hard cases" is limited because judges are bound by:

a. Legislative intent

b. Institutional precedent alone

c. Moral principles embedded in the legal system

d. Popular morality

Q6. The theory of "law as integrity" requires judges primarily to:

a. Apply rules mechanically

b. Choose outcomes that maximise social welfare

c. Interpret law in a manner that best justifies past legal practice

d. Defer to executive policy choices

Q7. Lon Fuller's concept of the "internal morality of law" differs from classical natural law because it:

a. Rejects morality altogether

b. Focuses on procedural rather than substantive morality

c. Treats divine law as supreme

d. Grounds law exclusively in social facts

Q8. A legal system that frequently enacts retroactive, contradictory, and secret laws would be considered deficient under Fuller's theory because it fails to:

a. Protect fundamental rights

b. Achieve democratic legitimacy

c. Respect human agency through legality

d. Maintain separation of powers

Q9. Kelsen's Pure Theory of Law attempts to insulate law from morality primarily by:

a. Rejecting judicial interpretation

b. Locating validity in a hierarchical normative structure

c. Denying the role of constitutions

d. Treating law as a social practice

Q10. The Grundnorm in Kelsen's theory is best described as:

a. A moral principle of justice

b. A historical source of sovereignty

c. A presupposed norm validating the legal order

d. A written constitutional provision

Q11. One major criticism of Kelsen's theory in constitutional adjudication is that it:

a. Encourages judicial activism

b. Over-emphasises legislative supremacy

c. Fails to explain value-based constitutional reasoning

d. Collapses law into morality

Q12. The increasing judicial reliance on concepts such as dignity and proportionality indicates a departure from:

a. Constitutional supremacy

b. Legal positivism's strict separation thesis

c. Federal constitutionalism

d. Written constitutionalism

Q13. In contemporary jurisprudence, the relationship between law and morality is best characterised as:

a. Completely identical

b. Entirely separate

c. Contextually interdependent

d. Hierarchically ordered

Q14. The synthesis approach adopted by modern courts suggests that jurisprudence today is less about choosing schools and more about:

a. Defending parliamentary sovereignty

b. Reconciling normative reasoning with institutional practice

c. Eliminating judicial discretion

d. Prioritising legal certainty over justice

Q15. Which jurisprudential insight best explains why constitutional courts often rely simultaneously on text, precedent, and moral reasoning?

a. Law is merely an instrument of social control

b. Legal validity is exclusively moral

c. Law operates as a normative, institutional, and moral enterprise

d. Judicial power is inherently political

Answers

1. Correct Answer: A – Judicial review of legislation Explanation: Austin's command theory presumes a sovereign whose commands are supreme and unquestionable. In constitutional democracies, courts routinely invalidate legislative acts through judicial review, which cannot be adequately explained within a model premised on absolute sovereign authority.

1. Correct Answer: B – Failure to explain law without coercion Explanation: Earlier positivism reduced law to coercive commands. Hart introduced secondary rules to explain how law functions through accepted procedures, powers, and institutions even where coercion is absent.

1. Correct Answer: C – A criterion for legal validity within a system Explanation: The rule of recognition identifies what counts as law in a given system—such as constitutional provisions, statutes, or precedents—without invoking moral correctness.

1. Correct Answer: A – Judges inevitably legislate in hard cases Explanation: Dworkin rejected Hart's view that judges exercise open discretion when rules run out. He argued that principles constrain judicial reasoning even in hard cases.

1. Correct Answer: C – Moral principles embedded in the legal system Explanation: For Dworkin, principles like equality and fairness are part of law itself, limiting judicial freedom and guiding interpretation.

1. Correct Answer: C – Interpret law in a manner that best justifies past legal practice Explanation: Law as integrity requires coherence between past decisions and present interpretation, treating law as a continuous moral narrative.

1. Correct Answer: B – Focuses on procedural rather than substantive morality Explanation: Fuller did not insist on just outcomes but on just processes, arguing that legality itself carries moral value.

1. Correct Answer: C – Respect human agency through legality Explanation: Fuller believed that predictable and transparent rules respect individuals as rational agents capable of planning their conduct.

1. Correct Answer: B – Locating validity in a hierarchical normative structure Explanation: Kelsen detached law from morality by grounding validity in a chain of norms rather than ethical evaluation.

1. Correct Answer: C – A presupposed norm validating the legal order Explanation: The Grundnorm is not written or moral; it is an assumed foundational norm that explains why lower norms are valid.

1. Correct Answer: C – Fails to explain value-based constitutional reasoning Explanation: Modern constitutional adjudication relies on dignity, liberty, and justice—concepts Kelsen's value-neutral framework struggles to accommodate.

1. Correct Answer: B – Legal positivism's strict separation thesis Explanation: The separation thesis holds that law and morality are distinct. Contemporary jurisprudence increasingly integrates moral reasoning into legal interpretation.

1. Correct Answer: C – Contextually interdependent Explanation: Modern jurisprudence recognises that while law and morality are distinct, they interact deeply in constitutional and rights-based adjudication.

1. Correct Answer: B – Reconciling normative reasoning with institutional practice Explanation: Courts today blend text, precedent, and values rather than rigidly adhering to any single jurisprudential school.

1. Correct Answer: C – Law operates as a normative, institutional, and moral enterprise Explanation: This captures the modern understanding that law cannot be reduced to rules alone; it also involves values and institutional context.