

Write Your Exam Code Here: \_\_\_\_\_

Return this exam question paper to your invigilator at the end of the exam before you leave the classroom.

**THIS EXAMINATION CONSISTS OF 4 PAGES (INCLUDING THIS PAGE)**

**PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER**

**THE UNIVERSITY OF BRITISH COLUMBIA**

**FACULTY OF LAW**

**FINAL EXAMINATION – DECEMBER 2018**

**LAW 300**

Jurisprudence and Critical Perspectives

Section 1

Professor Goold

**TOTAL MARKS: 100**

**TIME ALLOWED: 180 MINUTES**

**(AND 15 MINUTES READING TIME)**

\*\*\*\*\*

- NOTE:**
1. This is a closed book examination. Communications devices such as mobile phones are not permitted. Candidates are permitted to write on the paper during the 15 minutes reading time, but must not begin the examination until instructed.
  2. All candidates must answer **three (3) questions**.
  3. Each question is worth **equal marks**.

**THIS EXAMINATION CONSISTS OF 12 QUESTIONS**

**LAW 300 – Section 1**

1. Is there a point to studying jurisprudence and legal theory as part of the JD degree at a Canadian law school in 2018? How might exploring the “what is law” question help to inform our understanding of such things as judicial decision-making and the legitimacy of law? Explain your answer.
  
2. According to John Finnis, the fundamental concern of any sound natural law theory is “to understand the relationship(s) between the particular laws of particular societies and the permanently relevant principles of practical reasonableness.” How might such an understanding of natural law help us to resolve questions about the legitimacy and limits of law in 2018? Explain your answer.
  
3. “Numerous indigenous legal traditions continue to function in Canada in systemically important ways. They influence the lives of indigenous and non-indigenous peoples. Canada would be better described ... as multi juridical or legally pluralistic. The continued existence of indigenous law requires a pluralistic approach to understanding the relationships between Canada’s many legal traditions.”  

(John Borrows)

Should different Indigenous legal traditions receive greater recognition in Canada? What would it mean for Canadian society – and the Canadian legal system – to recognise Indigenous law as law in the ways advocated by scholars like John Borrows and Gordon Christie? Explain your answer.
  
4. To what extent – if at all – is the version of legal positivism set out in H.L.A. Hart’s *The Concept of Law* still relevant to our understanding of the nature and role of law in 2018? Should we abandon the study of legal positivism in favour of other, more “critical” theories of law? Explain your answer.

LAW 300 – Section 1

5. “Suppose the legislature has passed a statute stipulating that "sacrilegious contracts shall henceforth be invalid." The community is divided as to whether a contract signed on Sunday is, for that reason alone, sacrilegious. It is known that very few of the legislators had that question in mind when they voted, and that they are now equally divided on the question of whether it should be so interpreted. Tom and Tim have signed a contract on Sunday, and Tom now sues Tim to enforce the terms of the contract, whose validity Tim contests. Shall we say that the judge must look for the right answer to the question of whether Tom's contract is valid, even though the community is deeply divided about what the right answer is? Or is it more realistic to say that there simply is no right answer to the question?”

Ronald Dworkin

- Discuss with reference to Dworkin’s work on judicial interpretation and his “right answer” thesis.
6. Why do we need a theory of justice? What might law students, lawyers and judges gain from studying the work of writers such as Rawls and Nozick? Explain your answer.
  7. Does utilitarianism provide a coherent and convincing justification for the institution of punishment? Are there other theories of punishment that you find more coherent and convincing? Explain your answer.
  8. According to Horwitz, the most important legacy of legal realism is its “challenge to the orthodox claim that legal thought was separate and autonomous from moral and political discourse.” How did legal realism – and its rejection of formalism – change the way in which we think about law and legal decision-making? Are the insights of the legal realists still relevant to our understanding of law in 2018? Explain your answer.

LAW 300 – Section 1

9. “All the critical scholars unite in denying the rational determinacy of legal reasoning. Their basic credo is that no distinctive mode of legal reasoning exists to be contrasted with political dialogue. Law is simply politics dressed up in different garb; it neither operates in a historical vacuum nor does it exist independently of ideological struggles in society.”

Hutchinson and Monahan

Do you agree with the claim made by many critical legal scholars that the operation of law is simply an exercise in politics? What are the implications of this claim for how we think about the role of law in society and especially the function of judges? Explain your answer.

10. In what ways does the law legitimate and exacerbate the oppression of women? How do different feminist legal scholars propose that we should respond to this problem, and do you think their suggestions go far enough? Explain your answer.
11. Compare and contrast the ideas central to **at least two** of the following topics covered during this course: (a) the purpose and value of jurisprudence and legal theory; (b) natural law; (c) Indigenous legal theory; (d) legal positivism; (e) interpretivism and the work of Ronald Dworkin; (f) theories of justice; and (g) theories of punishment. How does critically reflecting on the ideas you have identified and discussed help to enhance our understanding of the nature and role of law?
12. Compare and contrast the ideas central to **at least two** of the following topics covered during this course: (a) formalism and legal realism; (b) critical legal studies; (c) feminist legal theory; and (d) queer legal theory. How does critically reflecting on the ideas you have identified and discussed help to enhance our understanding of the nature and role of law?

END OF EXAMINATION