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DIPLOMA IN LEGAL STUDIES ANNUAL EXAM 2008

General Report on Jurisprudence Paper 2008:

The overall standard this year was very good with a significant number of 1st's and a healthy amount of 2.1's. I was impressed with the quality of the research in a number of papers and some papers displayed a wealth of reading and erudition. Most papers indicated that they had listened to the nuances of classroom discussions as the papers often follow same. Students who performed badly displayed in general that they had not done the work and there were 7 failures. Some of those failures showed they understood some questions but either did not complete a full paper or simply did not deal with the question they were asked. Although Jurisprudence is a difficult and demanding subject there is no good reason with the requisite amount of effort that the student cannot pass. I now turn from these general observations to an analysis of specific questions.

Question 1/A

The first part of the question on nervous shock invited realist considerations of policy and Dworkinian arguments about principle. The second part was Dworkin's example of Riggs v Palmer and the question can someone as a matter of principle profit from their own wrong? The third part was on historicism and original intent for which the students were supplied with a conference paper of mine. The fourth part was on natural law and again considerations of principle. The fifth part was primarily law and economics considerations offset against considerations of principle and rights. The last part was on the relationship between law and morality.

In general students made a number of relevant points in dealing with this question. Students who performed less ably did not spot some of these issues nor did they answer all parts of the question.

Question 1/B:

Students who performed badly in this question did not address the nuances of His Honour Peter Charleton's guest lecture evidencing that they had not attended same. Students also did badly by providing a descriptive account of the literature and films rather than an analysis which displayed some jurisprudential weight.

Question 2

This question on Hart invited a wide ranging critical evaluation of the book. I was expecting a critical analysis of the primary and secondary rules, the internal point of view and the open texture of rules. In particular students should have probed the Dworkinian critique of Hart and whether the internal point of view is a moral idea. In general this question was competently answered. Students who performed less ably did so by providing a descriptive or overly basic account of the jurist.

Question 3:

This question on natural law which had several parts was well answered in general. However, many students contended that all natural lawyers believe an immoral law is not a law (Finnis and Aquinas for example do not). Students also committed the mistake of not probing the goods of Finnis in sufficient detail. Those observations apart the question was well answered.

Question 4:

This question on Dworkin was for the most part not particularly well answered. The students in general provided a general analysis of Dworkin but did not probe the concept of integrity in sufficient detail. Thus they did not examine its relationship to legality, coherence, personal integrity, procedural due process, justice, fairness and equality. Although it is an elusive and difficult concept the student was required to attempt an explanation of what Dworkin says it is.

Question 5/A

This question was well answered and most students were able to display an understanding of liberal jurisprudence. It was noticeable however that although Rawls and Nozick were discussed Unger was not dealt with nor the law and economics movement by many students.

Question 5/B

This question on the components as to what constitutes a just society was generally answered averagely in that students provided skeletal or sketchy details as to what a just society should include in accordance with the stipulations of the parts of the question but did not weigh jurisprudential arguments in sufficient detail. It is not sufficient for example to just state a just society should have a property right – the question should jurisprudentially weigh the arguments for and against property rights and thus reference for example Locke and Nozick.

Question 6:

In answering this question Gilligan was answered well, Gramsci averagely with many students not probing his thought in detail. In general students did not display a sufficient understanding of Kafka or Foucault with notable exceptions. A worrying feature was for students to answer half the question.

Question 7:

The question on radical jurisprudence was tolerably well answered. However, there was a tendency to analyse one aspect of radical jurisprudence and leave it at that. Thus for example it was insufficient to just deal with Feminism or Marxism or the CLS all had to be dealt with. I must say in general the students did not sufficiently amplify on the CLS

Question 8:

Most students performed well in this question and probed Posner, The Coase Theorem, Pareto and Kaldor Hicks. Student also addressed Dworkin's critique of the Law and Economics movement.

Students who performed less ably just made some general observations about the movement being about wealth maximisation

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