

3.3 Module 20 Jurisprudence

3.3.1 Headline information about the module

Module title	Jurisprudence
Module NFQ level (only if an NFQ level can be demonstrated)	8
Module number/reference	Module 20
Parent programme(s) the plural arises if there are embedded programmes to be validated.	LLB (Hons)
Stage of parent programme	3
Semester (semester1/semester2 if applicable)	Semester 1
Module credit units (FET/HET/ECTS)	ECTS
Module credit number of units	5
List the teaching and learning modes	Full-Time, Part-Time
Entry requirements (statement of knowledge, skill and competence)	Successful completion of Stages 1 and 2 of the programme
Pre-requisite module titles	None.
Co-requisite module titles	None
Is this a capstone module? (Yes or No)	No
Specification of the qualifications (academic, pedagogical and professional/occupational) and experience required of staff (staff includes workplace personnel who are responsible for learners such as apprentices, trainees and learners in clinical placements)	Lecturers are expected to hold at least a level 8 legal qualification, preferably with a professional legal qualification. It is an advantage to have completed the Certificate in Training and Education provided by Griffith College.
Maximum number of learners per centre (or instance of the module)	60
Duration of the module	One Semester, 12 weeks
Average (over the duration of the module) of the contact hours per week (see * below)	2
Module-specific physical resources and support required per centre (or instance of the module)	Lecture room with internet access and digital projector.

Analysis of required learning effort (much of the remainder of this table must also be presented in the programme schedule—take care to ensure consistency)										
Effort while in contact with staff										
Classroom and demonstrations		Mentoring and small-group tutoring		Other (specify)		Directed e-learning (hours)	Independent learning (hours)	Other hours (specify)	Work-based learning hours of learning effort	Total effort (hours)
Hours	Minimum ratio teacher/learner	Hours	Minimum ratio teacher/learner	Hours	Minimum ratio teacher/learner					
24	1:60						101			125
Allocation of marks (within the module)										
				Continuous assessment	Supervised project	Proctored practical examination	Proctored written examination	Total		
Percentage contribution				30			70	100%		

3.3.2 Module aims and objectives

This module aims to provide the learner with a holistic understanding of the concepts of traditional Jurisprudence, thereby encouraging the development of a critical, insightful and philosophical mind-set in the learner. It also aims to build the capacity of learners, in the light of their studies, to develop a critical perspective on other law subjects and to develop their skills in formal debate and reasoning.

3.3.3 Minimum intended module learning outcomes

On successful completion of this module, learners will be able to:

- (i) Embed and apply the fundamental principles of jurisprudence and the philosophy of law in term of core areas of traditional jurisprudence.
- (ii) Evaluate and critically conceptualise the principles of Jurisprudence that pertain to major schools of jurisprudential thought.
- (iii) Explain and analyse the principles of Jurisprudence that pertain to law and morality, autonomy and legitimate restriction, and contemporary jurisprudential debates.
- (iv) Research, interpret and apply the theories of jurisprudence;
- (v) Communicate and analyse jurisprudential arguments with clarity and precision.
- (vi) Apply a holistic understanding of the principles of conventional Jurisprudence.

3.3.4 Rationale for inclusion of the module in the programme and its contribution to the overall MIPLOs

Jurisprudence is a required module for learners in their award year. Jurisprudence is a traditional area of study for undergraduate law learners and provides them with a theoretical understand of the content and operation of legal systems. They are also able, upon completion, to adopt a critically reflective position with regard to the extant legal system and identify opportunities for its enhancement. Learners are also empowered in this module to deploy jurisprudential theories and concepts in order to resolve legal cases and controversies. As a practical consideration, it is still a required subject which learners must have completed in order to sit entrance examination to the King's Inns, and equally serve theme in a general sense in their analysis of the law, whether that be in the context of legal practice, academia, or cognate fields. It uniquely contributes to MIPLO's 4, 9, and 10.

3.3.5 Information provided to learners about the module

At the start of the Academic Year, learners will receive their Faculty Handbooks. The Faculty Handbook provides general information about the faculty, its staffing, resources, and operation. Detailed programme information is supplied through Moodle, including copies of the approved module descriptors from the accredited programme along with a programme timetable detailing related teaching, learning and assessment.

During the first class of the module, learners receive a detailed outline of the module showing the schedule of delivery and the dates when assignments are released and due for submission.

Moodle is used to provide learners with ongoing access to module related information, from the handbooks and module outlines provided in advance of the module commencement, the lecture material and links to related resources provided on a scheduled basis in line with the module delivery.

3.3.6 Module content, organisation and structure

This module is delivered over 12 weeks with two hours of lecture for each of those weeks. The subject matter covered by the course is organised along the following headings:

- Introduction to Jurisprudence
- Positivism
- Natural Law
- Law and Morality
- Autonomy and Legitimate Restriction
- Dworkin
- Legal Realism

3.3.7 Module teaching and learning (including formative assessment) strategy

The module is delivered by means of participative lectures which consist of tutorial-style discussions, group work sessions and exercises. Formative assessment is provided through tutorial-style discussion, group work and exercises focus on specific case law and problem-

based learning requiring the learner to analyse the law and apply it to concrete cases of human rights abuses. The lectures are supplemented by structured on-line resources and reading.

In order to support learners through the exam process, they engage in answering of sample exam questions and correction of their own and peers' papers, thereby familiarising themselves with the module learning outcomes and marking criteria. Learners also engage in workshops and online discussion forums to complement and reinforce their learning.

Learners undertaking the course via blended learning benefit from varied and additional options for engagement to compensate their reduced attendance of campus. These include webinars, screencasts (recorded lectures), discussion fora, and increased use of the College's VLE (Virtual Learning Environment), Moodle.

In addition to what has been stated, classroom assessment and benchmarking techniques are deployed to encourage learners to develop more agency in terms of their own learning including in-class presentations, group work, peer-review exercises and reflective practice. The variety of teaching, learning and assessment techniques reflect an enhanced emphasis on skills acquisition to deepen practical knowledge. Finally, the attention of learners is drawn to current industry practice and technology used in the specific area of law to add a further dimension to learning, tracking the actual practice of legal professionals.

3.3.8 Work-based learning and practice-placement

The Jurisprudence is a classroom-based module and does not require work-based learning and practice elements.

3.3.9 E-learning

Moodle, the College Virtual Learning Environment , is used to disseminate notes, advice, and online resources to support the learners. The learners are also given access to Lynda.com as a resource for reference.

3.3.10 Module physical resource requirements

Requirements are for a fully equipped classroom. The classroom is equipped with a PC and Microsoft Office; no other software is required for this module.

Moodle can be accessed in the learner's home, various open labs on campus and in the library.

3.3.11 Reading lists and other information resources

Primary Reading:

- Bix, B.H. (2015) Jurisprudence: Theory and Context. London: Sweet & Maxwell*
Freeman, M. (2014) Lloyd's Introduction to Jurisprudence. London: Sweet and Maxwell
Hart, H.L.A. (2012) The Concept of Law. Oxford: OUP
Keating, A. (2016) Jurisprudence. Dublin: Clarus Press
Nussbaum, M. (2011) Creating Capabilities: The Human Development Approach. Cambridge, MA; Harvard University Press
Riddall, J.G. (2005) Jurisprudence. Oxford: OUP
Sen, A. and Nussbaum, M. (1993) The Quality of Life. Oxford: OUP
Sen, A. (1999) Development as Freedom. Oxford: OUP

Secondary Reading:

- Devlin, P. (2010) The Enforcement of Morals. Oxford: OUP*
Dworkin, R. (2013) Justice for Hedgehogs. Harvard University Press
Dworkin, R. (2013) Taking Rights Seriously. Bloomsbury Press
Dworkin, R. (2006) Justice in Robes. Cambridge: HUP
Dworkin, R. (2006) Law's Empire. Hart Publishing.
Finnis, J. (2011) Natural Law and Natural Rights. Clarendon Press.
Finnis, J. (1998) Aquinas: moral, political and legal theory. Oxford: OUP
Harris, J.W. (2004) Legal Philosophies. Oxford: OUP
Kelly, J.M. (2001) A Short History of Western Legal Theory. Oxford: OUP
Menand (2002) The Metaphysical Club. London: Flamingo
Murphy, T. (2004) Western Jurisprudence. Dublin: Round Hall
Rawls, J. (2010) A Theory of Justice. Oxford: OUP
Twining, W. (2009) General Jurisprudence. Cambridge: CUP

3.3.12 Specifications for module staffing requirements

The faculty member responsible for the module should have at least a Level 8 legal qualification (LLB (Honours), BABL, BALB, preferably with a professional legal qualification and a third level teaching qualification (e.g. Certificate in Training and Education). The project itself must also retain an administrative assistant (part-time) for the business of the project and to ease the burden of correspondence.

Learners also benefit from the support of their respective Programme Director, Programme Administrator, Lecturers, a dedicated Learning Technologist, Learner Representative, and Students' Union and Counselling Service.

3.3.13 Module summative assessment strategy

Theoretical knowledge is assessed through submission of a written assignment worth 30% and by an end of module examination worth 70% of the total marks in this subject. The assignment requires research and structured, critical analysis of a topic within Jurisprudence. The final examination assesses learners' progress toward the learning outcomes for the Jurisprudence module by requiring them to produce critical analyses of concepts and theories identified in the course.

No.	Description	MIMLOs	Weighting
1	Assignment	iv	30%
2	Exam	i-iii, v, vi	70%

3.3.14 Sample assessment materials Sample Assignment

Critically examine, analyse, and compare the positivist theories of the essence of a legal system, as they were proposed separately by John Austin and HLA Hart.

Assignment Marking Criteria – See Appendix 1

Question 1

Critically analyse how Hart attempts to derive a comprehensive theory for the identification and functioning of a legal system from the empirical and sociological observation of a given society.

Sample Answer

- *An account of the identification of the ultimate “rule of recognition” within any society from empirical evidence within a given society.*
- *An account of the further rules that derive from this “rule of recognition”: primary “rules of conduct” and secondary rules establishing the operation of the primary rules.*
- *An answer may also refer to the internal aspect of law, the validity of rules (other than the “rule of recognition”) and an account of the role of judges in “hard cases”.*
- *Critical analysis can build on the following:*
 - *An assessment of the merits of Hart’s approach in contrast with classical positivist theory, in particular the displacement of the sovereign at the centre of the legal system with particular rules.*
 - *An assessment of the analytical potential of Hart’s approach, i.e. that it can account for revolution and change of legal system, and can (in some views) provide an account that those from different ideological perspectives may accept.*
 - *Criticisms of Hart’s approach by Dworkin that it fails to take into consideration the importance of legal principles which cannot be derived from a single “rule of recognition”.*
 - *Criticisms of positivism more generally by those such as Fuller that it fails to acknowledge that such empirical accounts of law make unacknowledged normative assumptions, e.g. the internal rationality of law.*

Question 2

Classical positivist accounts of law depend on the figure of the sovereign who determines the law. Critically analyse the different accounts of the sovereign, particularly in the views of Bentham and Austin.

Sample Answer

- *An account of the account of an indivisible, illimitable sovereign giving orders backed by threats as being at the centre of Austin's account of law.*
- *Bentham's more nuanced account of sovereignty than is not necessarily indivisible or illimitable, accepting divided, partial, and legally limited sovereignty, and in expression of volition rather than in giving orders.*
- *An answer may also refer to the account of sovereignty e.g. in Hobbes, Locke and Grotius.*

Critical analysis can build on the following:

- *The benefits of understanding law in an objective manner separate from its moral or political viability.*
- *The importance of having an ultimate source of law such as the sovereign to decide in any contradictions at other levels, in order to establish the supremacy of the rule of law.*
- *The difficulty in establishing that law is based on the will of a sovereign in relation to transition of sovereigns (the persistence of law) and in relation to a sovereign that may be composed of more than one person, therefore requiring laws in order to accurately determine the will of the sovereign.*
- *Any other of Hart's criticisms of Austin such as the 'having an obligation' vs. 'being obliged'/paradox of compliance without the prospect of punishment.*

Question 3

Critically assess and analyse ONE of the following authors, with the aim of determining whether the theory he proposes corresponds to the positivist school of jurisprudence:

- (i) Hans Kelsen; or
- (ii) Joseph Raz.

Sample Answer

For (i) the learner should begin by critically analysing Kelsen's pure theory of law, which states that there is a basic norm, or grundnorm to which all other norm with a given society are subordinate and referent, creating a hierarchy of laws within the legal system. Like postivist in general, Kelsen states that the normativity of the grundnorm is not premised on any moral, metaphysical, or political consideration, and that they normativity of laws in general does not trace moral or metaphysical considerations, but rather their normativity is based in their relation to the grundnorm. This allows for a normative vision of legal systems as a system within which all laws drive their normative force from the same grundnorm. In critically assessing whether Kelsen has indeed perfectly formulated a non-reductive theory for finding normativity within a legal system, students can incorporate notions of reflective endorsement of legal norms (HLA Hart) or the necessity of reason-giving or rationality as a means of assessing or deriving normativity (natural law). For (ii) the learner should begin by noting the critical distinction that Raz draws between legitimate and non-legitimate authority; the former is where the institution or official which seeks to illicit authority from another is capable of furnishing for the later first-order reasons to comply with the authority asserted, as though reasons would be acted on my the recipient her or his self, all things being equal, i.e. the subject putatively always already has reasons act in the way demanded, thus grounding the

normativity of the command given. In such a manner, Raz establishes the normativity of legitimate authority. The learner might oppose the foregoing to a situation of illegitimate authority or imposition where the demand upon the subject is would privilege their own, incompatible first-order reasons for acting over the demand or authority imposed, i.e., the subject does not a priori have reasons for acting in the way he or she is being called to do by an institution of authority and would not patently substitute the reasons of the demanding authority for their own as maxim to premise the actions. Raz is compatible with other positivist

endeavours in that he does not ground the normativity of his system of definition of legitimate authority in any metaphysical or moral considerations, nor make it referent to any higher or overriding law which is external to the subjects own exercise of first-order reason giving or accepting. Therefore, he is able to ground the normativity of his system in his concept of 'authority' much as through Hart's concept of the 'rule of recognition'.

Question 4

Critically assess and analyse the jurisprudential school of legal realism, with particular attention to whether and to what extent it can be characterised as a rejection of the positivist and natural law schools of jurisprudential thought.

Sample Answer

Student should identify initially the central critical assertion of legal realism-that the law is not the strict identification and application of the relevant legal rule to a given factual matrix, but rather an active enterprise which incorporates a wider range of considerations such as socially desirable aims and the expectations of individuals engaged with the legal system (prediction theory); in this manner, Holmes and his progeny reject the law as the perfunctory application of the rules to facts. Students may then reference in their response the vision of the operation of law and the ways in which judicial decision makers make their decisions. Students may further identify two sub-categories of legal realism: rule-sceptics (i.e., Karl Llewellyn) or fact-sceptics (i.e., Jerome Frank). They should further note points of contradistinction to the positivist enterprise (i.e., to Austin, Bentham, or Hart) in that realists reject the assertion that law can be captured in a grand theory and that the law a self-contained system of rules which is sealed from other considerations; moreover, such grand theories are maladaptive to the needs of a given society. Also, learner should make some attempt to at noting further points of contradistinction to natural law theory, in that law is already, always entangled with the system in which it is being applied to resolve cases, and not metaphysical recurrence to a higher law of some description is possible, as the resolution of cases involves a more empirical and scientific enterprise that is sensitive to the needs and policy concerns of a given society.

Question 5

Dworkin views rights as trumps in legal procedures. On what basis does he justify the existence of such rights, and what other considerations does he consider them to trump? Critically assess the consequences for such an understanding of rights in particular where rights may clash.

- *An answer to this question will contain the following:*
- *An account of Dworkin's theory of law and policy considerations.*

- *An account of rights in Dworkin's framework as trumping policy considerations (and therefore utilitarian concerns)*
- *An account of rights as being built on human dignity and equality rather than liberty. Critical analysis can build on the following:*
- *The role rights play in providing clear limitations to government policy.*
- *The question as to whether any policy that can be weighed against a right.*
- *The question of trying to mediate between different rights and whether Dworkin is appealing to the principle of proportionality.*

Question 6

With reference to the Hart-Fuller debate, critically assess and analyse the following statement: Mere compliance with the duly-enacted law is not the final test of whether an action is lawful, for, in a final assessment, we are made to answer to a higher standard in the assessment of our conduct; in fact, mere compliance with a written law provides no positive defence for evil committed.

Sample Answer

The learner should begin by giving an historical account of this debate and the context in which the debate on this subject between Hart and Fuller arose: the dispute as to whether the laws of the Nazi regime ever attained the status of law. Student should then introduce the figure of Radbruch, a jurist whose writings loom large in this debate. In essence, Radbruch was jurist in the positivist school of jurisprudence who reverted to the natural law school of jurisprudence in the wake of WWII. In effect, he made a thorough examination of the legal regime which existed in the Nazi state, with a view to examining whether laws which were so manifestly unjust and morally indefensible attained the status of law at all. Radbruch held that, on balance, the laws of the Nazi regime never attained the status of law, and were null and void ab initio as they violated central principles of justice, such as equality before the law. His formulation, known as Radbruch's theory, states that where there is a conflict between positive law and morality, this conflict should generally be resolved in favour of the positive law, save in such cases where adherence to law would effect manifest injustice and the divergence between the positive law and morality becomes insupportable, to such an extent that it can be considered 'erroneous law'.

Student should then, continuing from this, state that Hart will maintain a stronger positivistic stance with regard to laws of the Nazi regime, maintaining a strict separation of law and morality and stating that Nazi law was, in fact, law, and it remained law until it was repealed. Fuller, by way of contrast, will posit his own view of the eight principles which form the 'inner morality of law', Nazi laws run afoul of his, principally for the Nazi reliance on retrospective legislation to validate atrocities, such as massacres of civilians, which ran contrary to his principle that the law must be retrospective. Student may then explore further nuances within the context of this debate. Therefore, the above statement reflects better the position of Fuller, whereas Hart would maintain that such retrospective judgments are not generally acceptable. Exceptional students will draw the nuance that Hart was not staunchly against trying such criminals if the decision to do so was taken as a policy decision by the community at large in appreciation of the gravity of the crimes committed, but it such action could not be justified