South Asian University
Faculty of Legal Studies
LLM
2012-2014
Monsoon Semester (First Semester)
Course Information

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Part II
**Course Aims**

The curricula presence of Jurisprudence & Legal theory is founded on the avowed purpose of introducing the student to the general aspects of the law as an instrument of social policy. In the words of Julius Stone, “it is the lawyer’s examination of precepts, ideals and techniques of the law in the light derived from the present knowledge in disciplines other than law.” Jurisprudence and legal theory are the summation of the knowledge on the nature of legal rules, the underlying meaning of legal concepts and on the essential features of legal systems, and therefore referred to as the philosophy of law. Law as the system of social ordering, gains its reasons and content from the theoretical constructs, and the theoretical constructs themselves are strengthened by the societal development. This symbiotic relationship thus necessitates the study of jurisprudence as an introduction to the first principles of law and beyond. The accumulated wisdom of thinkers and the concepts that have gained a formal structure through their wisdom forms the curricular content for this course.

The course structure has been prepared to understand the working of the symbiotic relationship of theoretical constructs and practical issues. Apart from gaining strength with module-specific readings, there are readings drawn from the practice of law, especially the case judgment readings, and this helps the student to found their reasoning on logical premises. It is expected that this course shall give a significant impetus to the student’s research interests, apart from being a significant fillip in comprehension and articulation of the knowledge of law.

This course has a collection of readings to go along with the topics that explain the various approaches to social ordering that have been attempted in human history. Also included are topics related to the concepts of rights and duties, the sources of law and the techniques of the judicial process.

**OBJECTIVE OF THE COURSE**
The course on the “Jurisprudence & Legal Theory” is one of the compulsory courses for LL.M. It has been designed and developed with a view to meet the following objectives –

1. Understand the foundations of theoretical knowledge in international law.
2. Appreciate the importance of theoretical constructs in social policy ordering, the role of law as an instrument of such policy activity.
3. Articulate a critique on the rule of law and its nuances in influencing public policy activity.
4. Appreciate the linkages that evolve in this course between theoretical knowledge and policy activity through the readings and case judgments interspersed in this course structure.

Week 1

The institution of law is analysed in terms of two concepts indispensable to an understanding of its formal structure and substantive objectives – order and justice. Law is seen as an instrument founded on the synthesis of order and justice. Also occupying discussion space in this week would be the distinction between law and other agencies of social control – power, ethics and morality.


Week 2


Readings


Week 3

Readings


Week 4

Positivism – the Utilitarian underpinnings in Bentham’s theory – the imperative analytical theory of Austin – the Neo analytical positivism in the theories of HLA Hart and Joseph Raz

Readings


Week 5

Pure theory of Law

Hans Kelsen – grundnorm – monism and the integration of domestic law and international law – two constructs of the pure law theory – jus cogens - influence of these constructs in the development of international law especially the human rights law and international trade law.

Readings


Week 6

Sociological approaches to Law
The module looks at the sociological character of law – the social origins of law and legal institutions - the living law as being positive law founded upon the social norms – Weber’s ideas of rational law-making being a result of law conditioned by sociological considerations. Jurisprudence of Interests and free law movement

**Week 7**

Economic approach to Law

The module discusses Law as a reflex of the economic substrate – a scientific approach to explain the role of law in the society – economic determination of law - Substitution of metaphysical ideas with materialistic ideals- Marxian thoughts on the immediate indispensability of law and the eventual disappearance – Evgeny Pashukanis and the Commodity-Exchange theory of Law

Readings


**Week 8**

Legal Realism

The module looks at theories that emphasize the need to look at the practice of law for gaining an understanding of the law as against formalism and especially positivism – American Realism – Holmes, Llewlyn, Cardozo – Scandinavian realism – Alex Hagerstrom, Karl Olivercrona, Alf Ross

**Week 9**

Critical legal theory approaches - The Indeterminacy critique - on the Classical Liberal Theory Of Rights and the Instrumentalist thesis on policy discretion – Duncan Kennedy, Robert Gordon

Readings

Feminist Approaches to law – the liberal equality model, the difference model, the dominance model and the anti-essentialist model – Martha Fineman, Catherine MacKinnon

Readings

Cain, Patricia A. 1991 – Feminist Legal Scholarship, 77 Iowa L. Rev. 19


Week 11

Legal Rights and Duties – Jural Co-relatives – Hohfeld’s classification – critique on Hohfeld by Holmes-Pollock – Asian understanding of the fundamental and primordial nature of rights – the judicial statements from Bangladesh and the Pakistan judiciary.

_Anwar Hossain Chowdhary vs. Bangladesh; 41 DLR 1989 App. Div. 165, 1989 BLD (Spl.) 1_

_Al-Jehad Trust vs. Federation of Pakistan; PLD 1996 SC. 367_

Week 12

Rule of law – benefits and drawbacks of rule of law – the adjustment of conflicting interests - Ronald Dworkin and Constructivism

Readings –


Week 13

Concepts of ownership and possession

Week 14

Concept of Legal Personality
Reading List

Bodenheimer, Edgar – Jurisprudence, the Philosophy and Method of Law (Delhi: Universal Law Publishing co. Ltd., 2011), 7\textsuperscript{th} Indian rep.

Dias, RWM – Jurisprudence (London: Butterworths, 1985), 5\textsuperscript{th} ed.


Freeman, MDA – Lloyd’s Jurisprudence (London:Sweet &Maxwell, 2001)


Salmond, John William – Salmond on Jurisprudence 12\textsuperscript{th} ed. By PJ Fitzgerald (London:Sweet & Maxwell, 1966), 12\textsuperscript{th} ed.