LEGAL THEORY / JURISPRUDENCE MODEL EXAM

LAWSKOOL.CO.UK

LAWSKOOL UK

IRAC method of completing exams

Issues - Outline the issues that you are going to discuss.

Rules - Define the legal rules that are relevant to the question.

Application - Apply the legal rules to the facts of the question (this is the hard part!).

Conclusion - Tie things up, usually in the form of an advice to your hypothetical client.

Always use your reading time wisely to **PLAN YOUR ANSWER** before writing. This is of utmost importance as it will help you clarify your thoughts and ensure that you avoid following desperate exam strategies that unprepared students commonly resort to, such as:

i) 'the kitchen sink' i.e. spilling all of your knowledge that is vaguely related to the topic onto the exam paper and hoping for the best.

ii) 'the garden path' i.e. going off on an irrelevant tangent

Remember that the **APPLICATION IS THE MOST IMPORTANT SECTION** of your answer and should take up the bulk of your time. The actual conclusions you reach are often superfluous. Rather, your marker will be most interested in *how you arrived* at your conclusion.

Question ONE: Model Answer

In order to address the issues raised by this question it is necessary to explain and critically analyse a number of different theories of the role of obedience in ensuring compliance with the law.

Fuller raised the point that no constitution[1] can be "self executing"[2]. He believed for a law to be effective we must have respect and 'active belief' that it is a morally good law.[3] In other words, we need to believe that there is value attached to obeying a particular law.

A contrary view was raised by exclusive positivist Raz who objected to Fuller's idea that moral acceptance is required to lift a law to legitimacy. Instead he believed that only 'formal sources'[4] of law can do so because law is a purely factual matter.

Let us consider an oppressive dictatorship. If this type of regime wrote a new constitution there is little doubt that 'general acceptance'[5] would be needed to 'execute'[6] the law. The citizens may not accept the laws or constitution but choose to obey out of fear, thus the constitution can be 'self executing'. However, for it to be *effective,* 'general acceptance' that it is morally good would be required. Fear and repression *may* execute the constitution but it does not guarantee the long term *effective* functioning of a legal system. As Bix summarises, "[there is a] need for co-operation and reciprocal obligation between officials and citizens for a legal system to work."[7] Thus Fuller's point can only be partly defended…….....

1 Or law for that matter.
2 Meaning it needs acceptance from the public for it to be legitimate.
3 Belief that it is "necessary, right and good."
4 Formal sources of law being: statutes, judicial decisions and the constitution.
5 L Fuller, 'Positivism and Fidelity to Law: A reply to Professor Hard' (1958) 71 Harvard Law Review 630
6 The word 'execute' is defined as 'put into effect' from the Oxford Dictionary, 10th Edition.
7 B Bix, 'Inclusive versus exclusive legal positivism' in B Bix, Jurisprudence: Theory and Context (3rd Ed, Sweet & Maxwell, London 2003) 47-50.

Question TWO: Model Answer

Schauer asserted that "it is exactly a rule's rigidity even in the face of applications that would ill serve its purpose that renders it a rule,"[8] to which this writer does not fully agree. In essence he believes in formalism,[9] applying a rule to its literal meaning *even if* it frustrates the purpose.

A contrary view was raised by Fuller. Schauer believed:

> "There is something shared by all speakers of a particular language which enables one speaker of that language to be understood by another even if the second knows nothing about the circumstances or context in which the first spoke."[10]

Therefore, it can be said that for Schauer there is a 'literal meaning' to a rule.[11] Fuller stressed that we can only know the meaning of a rule if we interpret its purpose and that it is bizarre to follow a rule if it does not achieve its purpose. Instead he advocates a 'purposive' approach, asserting that "judges should ignore the plain meaning of legal rules when the plain meaning dictates a result which defeats the rule's apparent purpose." [12]…….....

Question THREE: Model Answer

An 'adequate' interpretation of the existing law would add to the body of law, but would not change the meaning of the rules one iota. It would make the law straightforward and simple, but inflexible and probably even unjust. A rigid application of the rules is appropriate in simple cases, but would be an undesirable approach to take in cases

8 F Schauer & W Sinnott-Armstrong, 'The Interpretation of Legal Texts' In F Schauer & W Sinncott-Armstrong (eds) The Philosophy of Law (Fort Worth, Harcourt Brace, 1996) 122-4.
9 Though Schauer does admit there is no real good achieved by this approach he believes it would cause less problems than a purposive approach.
10 Meyerson, above n 8, 68.
11 For Fuller there is no such thing as a 'literal meaning'
12 Meyerson, above n 8, 69.

raising complex issues of law, which may not have been foreseen in the construction of previously existing law.

In practice, judges do not apply the law mechanically in most cases which require further interpretation and strive to make the law just and relevant to a modern day society rather than simply adequate[13]. The consequences of this are criticisms from 'hard' legal positivists to the effect that judges should interpret the law as it is, not how it 'ought to be' which lends itself to retroactive law-making. This perspective indicates that decisions which few would suggest led to the wrong outcome (e.g. *R v. R*[14]) are in fact, examples of retroactive law-making…….....

♠♠♠♠

[13] H.L.A. Hart, *The Concept of Law*, 2nd edn. (New York: Oxford University Press, 1997). p. 126-128

[14] [1991] 3 WLR 767