



FACULTY	FACULTY OF LAW		
DEPARTMENT	MATURE AGE ENTRY EXAMINATIONS		
SUBJECT			
SUBJECT CODE			
DATE	15 AUGUST 2015		
DURATION	3 HOURS	MARKS	100

REGULAR EXAMINATIONS

Examiner: PROF. SK AMOO

This question paper consists of SIX pages (including this front page)

Instructions: ANSWER ALL QUESTIONS. IN SECTION C CANDIDATES ARE REQUIRED TO CHOOSE ONLY ONE TOPIC FOR THE ESSAY.

UNIVERSITY OF NAMIBIA EXAMINATIONS

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SECTION A

Read the passage and answer the questions that follow. Candidates are advised to answer the questions in their own words.

THE FUNCTIONS OF RULES

Why have rules? What are they for? In view of the enormous variety of kind of rules, and the many different contexts in which they operate, it is difficult to give very general answers to questions like this. It is sometimes said that the main function of rules is to guide behaviour. But this is not very informative. For instance, it does not tell us when it is helpful or necessary to have general guides to behavior and when attempts to provide general guidance are useless or even counter-productive. Nor is guidance the only function of rules. Rules may be introduced, for example, in order to communicate information or values, in order to make a public declaration of support for a moral principle or a particular policy, in order to economize effort, or as a form of window-dressing- perhaps as a lazy way of avoiding coming to grips with an intractable problem. The functions of rules are almost as varied as the types of rules. The functions of rules of grammar are not identical with the functions of rules in social relations. And in addition to the obvious functions of a rule in a particular context, there may be secondary or hidden functions, which can easily be overlooked.

We can be a little more specific, although still operating at a very general level, if we examine some of the functions of rules in human groups. And this may also help to bring out a point that many functions performed by rules could also be performed without them. For instance, Mother might have been more successful in keeping Johnny out of the larder by locking the door instead of making a rule.

The American jurist, Karl Llewellyn, developed a theory about the functions of rules in social groups, popularly known as the 'Law Jobs Theory'. This can be briefly restated as follows: All of us are

members of groups, such as a family, a club, a teenage gang, a school or commercial organization, a trade union, a political party, a nation state, the world community. In order to survive and to achieve its aims, in so far as it has aims, any human group has to meet certain needs or ensure that certain jobs are done. The first, perhaps the most important, of these jobs is to channel behaviour and expectations of members of the group in order to avoid conflicts or disputes within it. Secondly, when disputes arise, they have to be resolved or, at least, be kept at a tolerably low level, or else the group will disintegrate or its objectives will be frustrated or impaired. Thirdly, as the circumstances of the group change, so the behaviour and expectations of the members of the group have to be adjusted to such changes in order to avoid conflicts and disappointments. Fourthly, decision-making in the group needs to be regulated both in respect of who has power and authority to participate in decisions and in respect of the procedures by which decisions are arrived at. This allocation of authority and power is typically the primary function of a 'constitution' of, for example, a club or a nation state. Fifthly, in any group, but especially in complex groups, techniques, skills and devices need to be developed for satisfactorily meeting the first four needs. Channelling behaviour, settling disputes, making smooth adjustments to change and providing for acceptable ways of reaching decisions can often be difficult tasks, involving high levels of skill or quite refined or sophisticated devices. Rules are one type of device for doing the law jobs. Skills in making rules suited to their purposes, and skill in interpreting rules or handling them in other ways are part of the general job that Llewellyn called 'The Job of Juristic Method'. Some of these skills are highly specialized and may become the province of a few individuals with narrowly defined roles such as legislative draftsmen; but others are basic to many aspects of rule-handling.

It is important to grasp two points about this theory. First, although it is called the 'Law Jobs Theory', it is not restricted to the role of official law in a national legal system. It is very much wider than that. It concerns the regulation and operation of all human groups and it emphasizes problems that are common to them. It is accordingly very useful for our purposes, in that, just as we emphasize problems concerning the interpretation of rules in many different types of social context, so Llewellyn emphasizes the universality of the conditions that give rise to the need for rules.

Secondly, Llewellyn stresses the point that rules are one of the main devices for performing the law jobs, but they are not the only ones. For example, within the family perfectly satisfactory patterns of behaviour regarding the watching of television may develop without any resort either to consciously created rules or even to the development of tacit conventions (although it would be an unusual situation in a family of several people in which there were absolutely no rules or conventions relating to such matters as how to determine which television programme to watch when different members of the family want to watch different programmes). Or, to take an example from a legal context, let us look at the problem of promoting harmonious race relations in a plural society; among those who desire to promise harmonious relations, some people believe that legislation, such as that embodied in

race relations laws, is useless or worse than useless. 'You cannot legislate harmony,' they might argue. On the other hand, many people believe that race relations legislation is important, perhaps even necessary, for controlling and reducing racial conflict. Some would argue that the existing race relations legislation in Britain is too narrow and too timid and should be greatly extended. But few people would argue that all the problems of racial harmony could be resolved by law alone. These are just two examples of situations in which questions arise about the value of resorting to rules at all in order to resolve problems.

Llewellyn's theory is useful as a starting point for our analysis. But it needs elaboration in a number of ways. In particular it is important to emphasize that the functions he lists are not the only functions that rules may perform. Llewellyn's account is concerned mainly with direct regulation of behaviour and expectations by rules and other devices. In this view, an ineffective rule is useless or worse than useless. But rules are sometimes introduced in order to educate or to communicate approval or disapproval, even if there is very little chance of getting the bulk of those who are subject to them to conform immediately. For example, during the Prohibition era in the United States there came a time when it was clear to many people that the Prohibition laws were not effective in reducing the consumption of alcohol; and it was even arguable that, by driving the distribution of spirits into the hands of the criminal world, the net result, may have been to increase rather than decrease the total consumption of alcohol by certain classes of people. It is generally acknowledged that Prohibition gave a boost to organized crime, by giving it a profitable economic base. Some supporters of the Prohibition would have no doubt accepted these as good reasons for giving up trying to control this form of social behaviour by means of law; but others could argue that, whether or not Prohibition legislation was effective, it performed a valuable function by expressing disapproval of a particular form of social behaviour, even though the state was not in practice able to enforce conformity.

It is sometimes said that the main function of some school rules and certain kinds of safety regulation is to inculcate people into acceptance of certain values or standards. Similarly, in Soviet Russia one of the primary functions of law is seen to be educative. And this is seen by some as a secondary function of legislation on the race relations.

An approach to rules, in both legal and other contexts, that presents them as deliberate instruments designed to further in a direct fashion clear policies is really too simple. Indeed, if 'function' were equated with 'purpose', the picture painted by the 'Law Jobs Theory' would be misleading. For not every group, or every rule, has clear 'purposes'. Some rules may have been created unthinkingly, as an instinctive response without any clear purpose or policy behind them; some may have 'grown' in some obscure and complex way; and some may have survived to be dysfunctional, even if originally they had some useful purpose. Similarly, some rules that developed in response to one kind of need may have survived to perform some quite different kind of function. Many legislative rules represent

a compromise between competing interests or values. Moreover, a single rule or set of rules may have a complex set of functions, not all of which are concerned with directly influencing the behaviour they purport to regulate. A good example again is to be found in the following statement on the purposes of race relations legislation:

- (1) A law is an unequivocal declaration of public policy.
- (2) A law gives support to those who do not wish to discriminate, but who feel compelled to do so by social pressure.
- (3) A law gives protection and redresses to minority group.
- (4) A law thus provides for the peaceful and orderly adjustment of grievances and the release of tensions.
- (5) A law reduces prejudice by discouraging the behaviour in which prejudice finds expression.

Not everyone will agree with this statement, but it clearly illustrates the variety of claims that can be made about the purposes of a law.

In interpreting rules it is of paramount importance to try to ascribe clear and coherent purposes or policies or principles behind them but it is equally important to realize that such efforts may be wholly or partly unsuccessful. A model of a legal rule as an instrument of policy is very useful. But in using this model, we need to be aware that the problem may be rather more complex and subtle than appears on the surface. In particular, we need to be aware that rules may have latent as well as manifest functions, that they often have unforeseen consequences, that a rule may be serving a different function from that which was originally intended when it was created, and that some rules are, as judged by the standards of the moment, pointless or positively dysfunctional or counter-productive. Moreover, there may be no clear consensus about one or more of these matters and this too may be a source of perplexity.

1. Explain why it is not very informative to state that the main function of rules is to guide behavior? {5 MARKS}
2. Explain the central theme of Karl Llewellyn's 'Law Jobs Theory'. { 5 MARKS}
3. Explain what the author states are the alternative devices to rules in regulating behavior. { 5 MARKS}
4. What are the limits or weaknesses of Karl Llewellyn's 'Law Jobs Theory'? { 5 MARKS}
5. Write a summary of the last three paragraphs of the passage in approximately 170 words. {20 marks}

NOTE: Candidates who exceed the prescribed number of words will be penalized.

SECTION B

1. State the three organs of state in Namibia and explain the functions of one of them.
{3 MARKS}
2. Do you think it is a violation of the right of the individual for a Court to refuse to grant bail for serious offences such as rape and murder? { 3 MARKS}
3. Name and explain two rights of an accused in criminal proceedings. { 2 MARKS}
4. What is meant by expropriation of private property? { 2 MARKS}
5. Explain the following concepts: 'marriage in community of property' and 'marriage out of community of property'. {3 MARKS}
6. What is a hire-purchase agreement? { 2 MARKS}

SECTION C

Write an essay not exceeding three pages on ANY ONE of the following topics.

- (a) The importance of a multi-party system in a young democracy such as Namibia.
- (b) The role of the lawyer in the community.
- (c) The socio-economic and legal ramifications of the 'shebeen' phenomenon in Namibia.
- (d) Effective land reform strategies in Namibia.

{45 MARKS}

/100/

TOTAL