

Jurisprudence Fall 2001 Answer Key

Is It Jurisprudence?

___ 10 J is anything theoret. about law; J theory must be able to address questions of law and justice, evaluate meanings of law, handle normative questions of what law should do; J theories must offer foundational philosophies and methods for evaluating law

___ 10 What is eco-theory? Global application of environmental principles; community, not individual, centered. Goals of sustainability, preservation for future generations (w/std of living), conservation, for some rights of nonhuman species; preserve diversity

___ 10 biocentrism (evaluates humans' relationship to environment): "interwoven web," interdependence of all species, not just humans, Taylor; human species not superior; interplay among ecosystems; all organisms "teleological centers of life" (inherent value)

___ 5 environmentalists' variety of views (splinters into deep ecology, ecofeminism)

___ 5 not all recognized schools of J do everything (positivism and natural law focus on sources of law; empirical foundation of CLS lacking), but all deal only w/humans

Methods of Inquiry

___ 10 sustainability: optimal carrying capacity of earth; replace what is used w/something of value; survival of environment and all species

___ 10 global, world w/o borders, respect for other cultures; egalitarian, denies hierarchies: absence of any group's superiority (political, economic or social); protection of humankind rather than any ind. or grp interest; communalist, non-individualist

___ 10 consideration of future generations (ensured of same or better std of living)

___ 5 values empirical and scientific inquiry

___ 5 uncertainty analysis; consideration of future necessitates imagination and vision, as well as weighing incommensurables

___ 5 question primacy of humans over other species (we share the planet, not own it)

___ 5 promotes diversity

___ 10 Taylor's principles: self-defense (can destroy dangerous organisms that don't co-exist well if LRA); proportionality (basic needs trump non-basic, no matter the species); minimum wrong (resolves human non-basic v. nonhuman basic); distributive justice (distrib resources over species when interests basic to all); restitutive justice (some compensation or restoration when distrib justice + min wrong principles imbalance)

___ 5 clear moral standards (universal values)

Guide Substantive Law

___ 10 dynamic quality + uncertainty analysis mean diminished value of precedent

___ 5 environmental laws (resource, population, pollution, endangered species issues); more expansive criminal sanctions for environmental or eco-injuries (e.g.. natural habitat destruction); reshape property rights regimes and zoning laws

___ 10 critique L & E assumptions underlying K, prop, tort doctrine: value of efficiency, ignoring uncertainty and externalities; equivalence of resource valuation; nonmonetary valuation; test of K breaches not efficiency, but environmental impact

- ___ 5 protect rights of future generations = entirely new duties
- ___ 5 creation of duties toward nonhuman entities would re-envision and regulate property, tort, K rights
- ___ 5 proportionality (basic needs prioritized over nonbasic needs) and distributive justice ideals (reconciliation of competing basic needs) extensible to many kinds of case (e.g., constitutional) as universal guidelines; egalitarian
- ___ 5 restitutive justice applied to torts (questions whether tort damages are sufficiently restorative) and civil rts reparations; minimize harm
- ___ 5 would fundamentally reshape abortion + birth control law for population purposes (e.g., reverse Rust v. Sullivan)

Comparisons To and Critiques From Other Schools

- ___ 15 L & E critique: efficiency should be overarching goal (determines best use of resources) and market valuation of resources is best, Posner, Landes, Epstein; L & E would question quantification and weighing of ineffable eco-values (e.g., pristine wilderness); critique focus on future generations, but Solow uses econ principles in service of intergenerational preservation
- ___ 10 natural law critique rests on human supremacy (from religious strand) and “naturalism” of resource use; eco-theory can draw on Rawlsian state of nature + protection of least advantaged; enviros can tap civil disobedience Thoreau, ML King
- ___ 10 positivism favors majoritarianism + power (“the sovereign”); legitimacy from enactment of authority; moral inquiry (ought) shd not be conflated w/ legitimacy (is)
- ___ 5 draw on Dworkin re supplemental principles based on consensus
- ___ 5 legal realists’ concern that efficacy of eco-theory depends on individual judges
- ___ 10 CLS wd admire goal of reducing alienation, Gabel; crits wd also advocate deconstructing hierarchies (test eco-theory by flipping current privileging of humans), Balkin, and moving away from power determining outcome
- ___ 5 crits offer critique of rights based approach; instrumental, recon value of law?
- ___ 10 like CRT & fem, eco-theory calls for attention to issues (and voices) ignored and entities subjugated; cultural feminists wd embrace communalism + collective responsibility, but critique essentialism of eco-theory (ignores differences among groups)
- ___ 10 CRT + law & lit narrative tools wd be persuasive to introduce outgroups, Delgado (Sand Cty is lit, as is Silent Spring) v. Farber & Sherry critique re typicality, verification

- ___ 10 organization
- ___ 10 article format (title, clear demarcations, roadmap, intro, conclusion)
- ___ 10 stylistic (spelling, typos) + composition (grammar, original language, flair; avoidance of personal pronoun, colloquial expressions)
- ___ 10 use of examples/specific application of other J theories to questions asked
- ___ 10 innovative arguments/thorough analysis
- ___ 5 word count
- ___ 5 exam number on each page
- ___ 5 pagination