

Jurisprudence 1999 Answer Key

I.A. Feminist Critique of Law & Economics

___ 10 general tenets of L & E (original understanding, not parroting notes):
assumptions, rational actors, self-interest, individual defines measure of utility, resource allocation, wealth maximization, efficiency, cost-benefit analysis, normative/positive

___ 10 feminist critique of rationality: irrational behavior and bias exist; discrimination is rational, Epstein; women are compelled to act for others (dominance theory) or perhaps conditioned or choose to act altruistically and care for others (special treatment theory); is rational decision making implicitly masculine?

___ 10 L & E presumes individual is focus; feminist theory believes community or collective should be the focus; self-interest tends to create hierarchy; is self-focus a masculine construct of autonomy?

___ 10 L & E overlooks gender: the ways social forces construct economic situations; assumptions of equality are flawed (women are devalued, have different incentives and bargaining abilities). Ayres, Landes & Posner

___ 10 assumption of perfect information: power disparities = information disparities; men have greater access to information because of power and domination of market

___ 5 free market isn't free or equal: male-dominated laws limit choices and create market valuation biases

___ 5 if wealth maximization is principal goal, this will disadvantage women because the existing distribution of resources is unequal

___ 5 special treatment: women need special compensation for nurturing roles that are not valued economically

___ 5 dominance theorists would argue that L & E assumptions just rationalize the domination of women, assign blame to women (as independent self-responsible economic actors) for their marginalized situations

___ 5 cultural feminists would critique L & E for not recognizing differences

___ 10 application of feminist theory (and understanding differences among theorists) tied to critique of L & E

___ 10 innovative arguments; real dialogue (L & E responses)

I.B. Feminist Version of Law & Economics

___ 10 instead of theorizing that maximizing individual utility maximizes social welfare, feminist L & E might maximize the collective directly (e.g., pro-family employment policies or using the theory to reveal social injustices, Ayres)

___ 10 increase empirical accuracy if assumptions reflect reality (people aren't rational, not all have access to information); ensure, rather than assume, access to information

___ 10 L & E model assumes equality of actors, which is a good objective (say the equal treatment theorists); include multiple perspectives in the definition (does self-interest promote this goal?)

___ 5 L & E focus on economic efficiency should be turned toward other goals, such as nurture and caring

___ 5 suggested changes in laws to create communal responsibility (e.g., if we tailor laws to allow efficiency breaches, why not recognize emotional harms, relational interests, or contract benefits for marriage)

___ 5 change theory to recognize social construction of choices

___ 10 innovative arguments

___ Total 150

II. Required Pro Bono

Raymore (J.R.) Natural Law

___ 10 application of natural law tenets (scientific and religious bases; do the right thing; law and morality tied)

___ 10 pro bono is the right thing for the public good; law schools must teach practice skills and commitment to community; law schools already teach ethics in P.R. and J.

___ 5 students must go beyond doing what they are told, Milgram experiments

___ 10 model Rule 6.1 reflects transcendent values of service and community; network of 104 law schools working with 4,000 organizations

Heart (J.H.) Positivism

___ 10 application of general tenets: law is rules, command of sovereign; separation of law and morality, Hart, Dworkin

___ 10 this proposal tries to impose morality; law schools should teach what the law is; only 30 law schools require pro bono

___ 10 should not create new laws to tinker with morality; rules should not be based on normative assumptions

___ 10 Model Rules are just rules of a professional organization, not a sovereign; Model Rule 6.1 just says "should" render pro bono assistance; although Supreme Court has held them constitutional, no requirements that law schools must adopt them; no AALS Rule mentioned

Tushman Critical Legal Studies

___ 10 application of CRT tenets: ideology - law influences ways of envisioning society; indeterminacy - why this standard?; alienation if good deeds are compelled

___ 5 tension for Tushman, since crits generally like collective responsibility and public good

___ 10 required pro bono would be repressively tolerant, a patch kit that might stifle more fundamental reform; law generally retains the status quo; is this just political flash?

___ 10 what effects would the requirement have on students: economic, psychological, pedagogical; class effects of the rule - free labor from a disempowered group

___ 10 good deeds and good ideas can't be legislated: this would be the bureaucratic enforcement of philanthropy; this is top down administration or prescribed relationships, Gabel (choose 1 of 4,000 volunteer-ready projects; required number of hours might be perceived as a ceiling)

___ 20 dialogue among the theorists; innovative arguments or presentation; thoroughness

___ 10 specific factual analysis of the problem; avoidance of a generalized high-level theory discussion

___ Total 150

___ 10 style and quality of writing, composition, grammar

___ 10 overall typos and proofreading