LEGAL THEORY / JURISPRUDENCE MODEL EXAM

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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

(In legal theory subjects assessments may be on a 'take home' basis so you can effectively evaluate and ponder about the issues. You should check whether this is the case at your Law School.)

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]

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 believing only 'formal sources'[4] of law can do so because law is a purely factual matter. …….

Question Two

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,"[5] with which I do not fully agree. In essence he believes in formalism,[6] applying a rule to its literal meaning *even if* it frustrates the purpose.

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."[7] …….

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 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.
6 Though Schauer does admit there is no real good achieved by this approach he believes it would cause less problems than a purposive approach.
7 Meyerson, above n 8, 68.

Question Three

It is apparent we enjoy legal rights granted from a variety of sources, which are enforceable through the courts. However the issue of the enforceability of our 'moral right', often classed as 'human rights' is a contentious topic. There is a plethora of debates centred on *how* human rights should be protected in the legal system. However we first need to answer the preliminary question of whether human rights should be recognised in law at all. …….

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