Course: JIL 502 - Jurisprudence and Legal Theory II (4 Credits, Compulsory)

Course Content
Jurisprudence and Legal Theory II (JIL 502) seeks to provide the student with an in-depth knowledge of Legal philosophy by providing the student with a knowledge of the more important schools of jurisprudence and the several characteristic and content that differentiate them. The course further deals with the various analysis of fundamental legal concepts such as rights, liabilities, liberties, ownership, possession and so on. Further, the concept of African law is given specific content in these studies of law as well as the present pressing issues of codification of law and its ability or otherwise to lose its essential “living” quality.

Course Description
The course will touch on the foundational basis of law inherent in the several theorization of the different schools of jurisprudence. As well, we analyse basis fundamental concepts amongst which are the concepts of rights, duties, liabilities, possession, ownership, personality, liberty, and so on. The thorny issue of customary law unification is x-rayed.

Justification
The study of jurisprudence has always swung between law and the social sciences. For the first time, students are given the opportunity to learn law in terms of not only its legal elements but as a social science that allows them a glimpse into the several schools of jurisprudence. Despite their differing persuasions, they have elements that are similar and the student is able to harness these elements into an opinion that he will use in his justification of the overall purpose of his study as a law student. He is also able to have a philosophical understanding of some of the most commonly used legal concepts in his practice. Unfortunately, these concepts are also some of the least understood. This lack of understanding comes from a lack of specific analysis of their elements. Hopefully, this course will put this confusion to rest thereby making the budding legal practitioner a more rounded solicitor/advocate.

Course Objectives
The aims and objectives of this course is to give the students a foundational basis for the study and understanding of the basic contents of Jurisprudence and Legal Theory thereby preparing them for a more complex theoretical content in the second semester of the academic session. At course completion, students will be able to

- Have a basic understanding of the relation of law to society both in terms of its nature, applicability and its eternal purpose;
- Be able to distinguish between law and morality, justice and religion and further be able to define law and its effectiveness in relation to these other sociological and metaphysical imperatives;
- Have a theorization of law and social change. Hopefully with specific reference to Nigeria, be able to decipher the elements that can make law more efficient; understand
its attributes as a social control tool and how this has been harnessed by various
government in and outside Nigeria for progress or otherwise;
- Understand the relationship between ethics and the law;
- Have a complete knowledge of the sources of law and what elements are characteristic
of law in terms of its sources; and
- To have a good understanding of the nature of law, how laws are ascertained and the
tools lawyers and jurists use in arriving at resolutions through deductions and analogy.

Course Requirements
Every student is mandated to participate actively in class, in group discussions and study group
activities. Student are required to sign up for an email account and be ready to research on the
Internet and further make inquiries from organization related to the particular topics in the
course for information on jurisprudential, sociological and cultural aspects as they affect law
and justice and the descriptive perception of both in Nigeria, developing countries as well as
the other western nations with more developed jurisprudential mien. Furthermore, attendance
should not be less than 75%.

Methods of Grading

<table>
<thead>
<tr>
<th>No</th>
<th>Types</th>
<th>Score (%)</th>
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<tbody>
<tr>
<td>1.</td>
<td>Assignments/Tests</td>
<td>20</td>
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<td>2.</td>
<td>Class Participation, Attendance &amp; Class E-discussions</td>
<td>10</td>
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<tr>
<td>3.</td>
<td>Comprehensive Final Examination</td>
<td>70</td>
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<td>4.</td>
<td>Total Score</td>
<td>100</td>
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Course Delivery Strategies
It will establish the use of traditional person to person lecturing and teaching using Powerpoint
presentations as the foundational basis as well as group discussions/tutorial/presentations and
web interactions. Subscription would be made by students to use online resources on library
blogs where comments would be posted by students and web interactions with other local and
international students will be engendered using jurisprudence based research networks like the

Week 1
THE THEORY OF LAW
Objective
To have a basic understanding of the several definitions of law, the seeming intractable problem of having a definition to end all definitions, the relation of law to other areas of social facts and to have a profound knowledge of the several theories of law relating to its nature, function and purpose.

Description
First 2 Hours
The definitions of law,
The basic schools of law

Second 2 Hours
Law in relation to other social sciences
The early periods of theorization, the Sophists, the Greeks, the Romans etc

Study Questions
1. What is legal theory
2. Examine the early Greek period and its effect on legal theory.
3. What is the consequence of the Roman period of the senate on legal theory?
4. Can law be defined? Use Prof. Okunniga's statement as a case study.
5. Is it at all desirable to have a definition of law to end all definitions?

Reading List
- Wikipedia, en.wikipedia.org/wiki/Jurisprudence
- The Internet Encyclopedia of Philosophy

Week 2
NATURAL LAW SCHOOL

Objective
To understand the several Natural Law jurists and their persuasions while at the same time focusing on the consequence of their postulations to the Nigerian legal system.

Description
First 2 Hours
Effect on several spheres of Nigerian law.

Second 2 Hours
The issues of liberty, life and property.
The effect of natural law doctrines on revolutions.

Study Questions
1. "Like a harlot, natural law is at the disposal of everyone". Discuss.
2. What is the relevance of natural law sentiments to Administrative Law in Nigeria?
3. Are revolutions a necessary aspect of natural law because of the deviation from the social contract theory?
5. There is no such thing as an inherent logic common to all. Discuss.

Reading List

**Week 3**
**THE HISTORICAL SCHOOL**
**CONCEPTS OF CUSTOMARY LAW**

Objective
To assist students learn about the Historical School with specific emphasis on the African content of customary law while using the German Historical School and their notion of *Volksgeist* as a background.

Description
First 2 Hours
Studies of the German Historical School.
Karl Von Savigny and Henry Maine
Second 2 Hours
Concepts of customary law
An African unitary philosophy

Study Questions
1. How did the German Historical School emerge?
2. The historical school posits that customs predate legislation and custom is superior to legislation. Do you agree?
3. Henry Maine’s theories based on his anthropological studies postulated the several stages of growth of law. Explain these stages.
4. What is African law?

Reading List

Week 4
THE ANALYTICAL SCHOOL
Objective
To acquaint the student with one of the most powerful schools of jurisprudence sometimes called the Positivist School and its command of the sovereign principle.
Description
First 2 Hours
Study of the jurists like Jeremy Bentham, John Austin, Hans Kelsen etc
Study of the basic principles of the school.
Second 2 Hours
Criticism of the theories laid down by the jurists
The application of the theories in Nigeria’s present legal regime
The search for a Nigerian Grundnorm
Study Questions
1. In contemporary times, how has the doctrine of the command of the sovereign fared?
2. Explain Hans Kelson’s Pure Theory of law.
3. Jeremy Bentham has been called both a Realist and a Positivist. Explain.
4. Criticize the doctrine of hedonistic calculus.
5. Examines Raz’s explanation of Positive law doctrines.

Reading List

Week 5
PURE THEORY OF LAW
Objective
To acquaint the student with the notion of law as a self supporting phenomenon and whether that is true and in fact desirable.

Description
First 2 Hours
Hans Kelsen and his theory of linked norms within the legal lexicon.

Second 2 Hours
Criticism of the pure theory of law and whether emerging theories capture the essence of present legal systems.

Study Questions
1. Examine the Pure Theory of Law.
2. Proffer a critic of Hans Kelsen’s linkage of one norm to another.
3. Where the grundnorm emanates from the people vide the preamble to constitutions, define, in Nigerian terms, the first historical Constitution and why.
4. Of all the theories of law, Hans Kelsen’s theorization most captures the definition of legal systems. Discuss.
5. Is it logical to call Law a self supporting phenomenon?

Reading List

Week 6
THE MARXIST THEORY OF LAW
Objective
To help students focus on theories grounded on economic and politics like none other by understanding Karl Marx’s thoughts on productive forces, relations of production and the initiation of social classes and their relevance to economics and politics.

To teach students about the Marxist theory of law

Description
First 2 Hours
The structure of Marxism
The state as well as the law in Marxism

Second 2 Hours
Criticism
Study Questions
1. What are your thoughts on Socialism and Marxism and how have these theories fared?
2. Examine Karl Marx’s theorization of the super-structure
3. Criticize the Law in Marxism.
4. Explain how the state can instigate elements of production for development.
5. In the light of Marx’s postulation, is it possible to have a classless society and is it at all desirable?

Reading List
- L.B. Curzon\textsuperscript{2}, Jurisprudence 2\textsuperscript{nd} ed., Cavendish Publishing Limited, London 1995, 139-147

Week 7
AFRICAN LAW
THE SOCIOLOGICAL SCHOOL OF JURISPRUDENCE
Objectives
This focuses the student on a comparative analysis of several jurisdictions where several aspects of customary law are practiced in Africa and helps the student in finding out any underlying philosophy in this genre of law. Further, the sociological school is examined with particular reference to its scholars, its postulations and its effectiveness. Nigeria is also used as a case study for the effects of sociological jurisprudence.

Description
First 2 Hours
Characteristics of African law
Underlying philosophy
Pre and post colonial Africa and African law
Proof of customary law
Limitations to African law in the contemporary world
African law and Common law.

Second 2 Hours
Jurists of the Sociological School (Erlich, Ihering, Rosco Pound, etc)
The Sociological school and legislation
The Sociological School and Interpretation of Constitutions

Study Questions
1. Does any philosophy to African law exist?
2. Trace documented histories of proceedings in African law vis a vis the powers of the monarch.
3. What are the limitations to the propagation of African law in a global world?
4. What is African law?
5. Theorize on the clash between African law and the Islamic and Christian religions and why this clash is ongoing.

Reading List
- John Ademola Yakubu\textsuperscript{4}, Colonialism, Customary Law and the Post-Colonial State in Africa: The Case of Nigeria
• Muhtar Etudaiye, The Relevance of the Sociological School of Jurisprudence to Legal Studies in Nigeria, Readings in Jurisprudence and International Law, Dept. of Jurisprudence and International Law, University of Ilorin, 2004, p. 217-238

Week 8
TUTORIALS
Descriptions
This is the period in the semester where the class is divided into groups and given questions relating to previous topics treated and where broad and specific interaction between student and students and teachers are undertaken with specific emphasis on questions and inquiries from students. Participation by groups and individual students is crucial.
Study Questions
➢ Groups and students will determine study questions.

Reading List

Week 9
THE REALIST SCHOOL OF JURISPRUDENCE – AMERICAN AND SCANDINAVIAN REALISM
Objective
To have a background knowledge the Realist School of the American and Scandinavian persuasions and also to use Nigeria and the moral, tribal and religious sentiments as a basis for a study of Nigerian Realism.
Description
First 2 Hours
Study of Justice Oliver Wendell Holmes Jr., Axel Hagerstrom and others.
Basic principles of the Realist School.
Second 2 Hours
An examination of Realism in Nigeria using factual situations with electoral and other civil and criminal cases as case studies.
Study Questions
1. “The life of the law has not been logic, it has been experience”. Holmes. Discuss.
2. Do judges balance the interests of the parties and draw an arbitrary line in arriving at decisions?
3. Examine recent electoral matters that have come before the Court of Appeal and the Supreme Court and isolate elements of realism, if any.
4. Trace the Supreme Court of Nigeria’s decisions during military and civilian regimes and analyse traces of realism.
5. What is Legal Pragmatism?
Week 10
THE PRINCIPLES AND PRACTICE OF THE MALIKI SCHOOL
To assist the student in understanding the jurisprudence of the Maliki school of law and its several theorizations in the area of family law, inheritance and succession as well as criminal law.
Description
First 2 Hours
Basic characteristics of Maliki jurisprudence
Second 2 Hours
Divine punishment
Family law
Inheritance and Succession law
Punishment theories
Study Questions
1. What is the foundational basis of Maliki Jurisprudence?
2. What are the four approaches to Maliki jurisprudence?
3. Examine elements of Maliki law in contradistinction with Islamic schools of jurisprudence.

Reading List
- The Holy Quran

Week 11
ANALYSIS OF FUNDAMENTAL LEGAL CONCEPTS – RIGHT, DUTIES, LIABILITY
Objective
To acquaint the student with the concept of rights, duties and liabilities which are commonly used in legal lexicons thereby arming them with the legal and philosophical basis for distinguishing them and helping them in general practice.
Description
First 2 Hours
What are rights as distinguished from privileges?
What are duties and the philosophical foundation for having duties and liabilities?
Second 2 Hours
The use of certain factual events and case studies to arrive at what constitutes rights, duties and liabilities

Study Questions
1. Define rights and privileges.
2. When does liability flow to an accused person in a criminal matter?
3. When does liability flow to a defendant in a civil matter?
4. What is a duty under the social contract theory?
5. How may a right be deciphered?

Reading List

Week 12
ANALYSIS OF FUNDAMENTAL LEGAL CONCEPTS – OWNERSHIP, POSSESSION

Objective
To understand the concept of ownership and its marked difference from possession which may or may not flow from ownership. As a social policy, the two concepts permeate commercial law and goes into areas as varied as criminal law in terms of the consequences of wrong assumptions.

Description
First 2 Hours
Ownership as a social policy and the liberty that is consequent upon ownership.
Failures of social theories not derived around ownership

Second 2 Hours
Possession as a social fact
Savigny’s theory of possession
Salmond’s theory of possession

Study Questions

Reading List
Week 13
ANALYSIS OF FUNDAMENTAL LEGAL CONCEPTS – PERSONALITY, LIBERTY
Objective
To help students understand the concept of personality in legal terms and that of liberty. The foundational basis for these are treated thereby giving students a more grounded view of law as a whole.
Description
First 2 Hours
Legal personality of individuals, of government agencies, of international institutions, of corporations.
Second 2 Hours
Liberty and deprivation of liberty.
Study Questions
1. What is the legal personality of infants and how can this be linked with that of those of unsound minds?
2. Discuss the legal personality of corporations and the criticisms levied against the concept of the corporate veil.
3. What are the theories of legal personality?
4. Explain Kelsen’s “bundle” theory.
5. What is liberty and when may an individual be deprived of it?
Reading List
- Funso Adaramola\textsuperscript{3}, Basic Jurisprudence, 3\textsuperscript{rd} ed., Raymond Kunz Communication, Lagos, 2004, 191-211

Week 14
CODIFICATION, RESTATEMENT, ADAPTATION AND UNIFICATION OF CUSTOMARY LAW
Objective
To acquaint the student with the current arguments relating to codification of customary law and whether that will make it lose its adaptive qualities. At the same time, students will be able to consider the damages, if any, done by colonial and contemporary judges to the growth of this law. Further, there are suggestions that there could be a unification of customary law. The jurisprudential basis for this argument will enable students have personal views relating to different sphere of the divide.
Description
First 2 Hours
Codification of customary law
Restatement and adaptation of customary law

Second 2 Hours

Whether customary law can be unified and whether this is at all desirable.

Study Questions

1. Is codification of customary law desirable in the present times?
2. The principle of judicial notice has limited the “living law” element of customary law. Discuss.
3. Is it possible for customary law to be adapted to statutory law? What role do legislatures play in this sphere?
4. Create a scenario where customary law is unified and state whether a unification of customary law is as possible as a unification of its uniquely philosophy.
5. Is there an African ideology in laws?

Reading List


Week 15

REVISION

Descriptions

Revision of the various weeks’ lessons and general overview of the course. Class and group discussions will also be made on topical issues based on reactions from students during the sessions.

Study Questions

- Study questions may or may not be founded on what may be the issues to dwell on in the coming semester examination. But rather a teaching by giving guidance on how questions are answered in examinations both in terms of organization and in terms of content.

Reading List

- Lord Denning, What is Next in the Law, Butterworths, London 1982 (Read generally)
- Funso Adaramola, Basic Jurisprudence, Odade Publishers, 2008
Keys:

1: Available in the University Library.
2: Available in the Faculty Library
3: Available in the Departmental Library.
5: Available in the Personal Library of the Lecturer.