QUESTION NO 16:-

WHAT ARE THE BASIC NORMS/ GRUNDNORMS AND ITS BASIC CHARACTERITICS?

1. PREFACE:

The idea pure theory of law is presented by Hans Kelsen. Hans Kelsen's pure theory of law is the most pror influential legal to influential legal theory for continental law systems.

MEANING OF PURE THEROY OF LAW:

A form of legal positivism propounded by Austrian theorist Hens Kelson that seeks to expunge all "impi According to Oxford Dictionary: its "scientific" account of law. Such impurities includes psychology, sociology, ethics and political theory

DEFINITION OF PURE THEROY OF LAW:

According to Black's Law Dictionary:

"The philosophy of Hans Kelson in which he contends that a legal system must be "pure" that is self- s not dependent on extra -legal values".

MAIN EXPONENTS:

Hans Kelson was the main exponent of pure theory of law.

TELSEN'S PURE THEROY OF LAW:

According to Kelson:

theory of law should be uniform it should be applicable to all times and all places.

Kelson writes that a theory of law must be free from ethics, politics, history, sociology etc. in other words it must be pure. If a theory is to be general, to be general, to be general. pure. If a theory is to be general, it has shorn of all variable factors. It is true that Kelson did not deny the values of educe, politics, history and sociology. educs, politics, history and sociology,

ELEMENTS OF PURE THEROY OF LAW:

Keelson gave his view under this theory about:

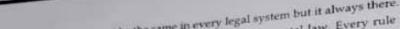
- I. State.
- II. Sovereignty.
- III. Public and Private law.
- Public and Private Rights. IV.
- International law private and juristic law. V.

7. AIM OF PURE THEROY OF LAW:

- The aim of theory of law is to reduce and multiplicity of utility.
- Legal theory is a science and not volition. II.
- It is the knowledge of what law is and not what the law ought to be.
- Law is a normative and not a natural science. As a theory of norms, legal theory is III. not concerned with the effectiveness of legal norms. IV.

The view of Kelsen is that in every legal system, no matter with, what propositions of law we start, an hierarchy of 8. THE BASIC NORMS: "oughts" is traceable to some initial or fundamental "ought" from which all others emanate. This is called by him Grundnorm or the bask of fundamental norms.

9. CHARECTERISTICS OF BASIC NORMS:



- > It is not necessary that there should be one fundamental law. Every rule of law derives its efficiency
- from some other rule standing behind it, but grundnorm has no rule behind it. > The grandnorm is the initial hypothesis upon which the whole systems rest. We cannot account for the
- Kelsen does not give any criterion by which the minimum effectiveness is to be measured. The
- effectiveness of the grundnorms depends upon sociological factors which are excluded by Kelsen itself.
- The application of a higher norm involves the creation of new lower norms.
- > The application of a general norm may depend upon the act of the parties who may themselves come to some agreement

10. IMPLICATION OF PURE THEROY:

Kelsen arrived at the following conclusions from his idea of grundnorm:

- There exists no distinction between public and private law. Both of them have their origins from the same grundnorms.
- It is not the idea of right, but the idea of duty that is essential. This is evident in the element of " ought" present in every norm, he conclude that law essentially structures human behaviour and that the idea of duty is essential to fulfill this function the idea of right is only a by-product of legal system.
- Personification is used by law only as a technical device to achieve its goal as a normative science. Thus a distinction between natural person and juristic person is irrelevant for the purpose of studying law.
- > The distinction between procedural law and substantive law is relative and procedural law is more significant.
- > The distinction between and that of question of fact is relative. Fact is nothing but an assumption of the judge as to what must have happened in order to apply a particular norm.



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Kelsen did not believe in separation of power and argued that all the three legislative, executive and judiciary are executive.

judiciary are essential "norm-creating" agencies. Most significant feature of Kelsen pure theory of law is the concept of state, sovereignty, private and public law. IL MOST SIGNIFICANT FEATUTRE OF KELSEN'S DOCTERINE: and public law, legal personality, right and duty international law-

Prof Dias is of the view that with reference to international law, the grundnorm is a pure a 12 VIEW OF PROF DIAS ON PURE THEORY OF LAW: supposition unlike that of municipal law.

The Kelsen's pure theory of law is criticized by many writers according to them, notwith- standing the logical coherence of Kelsen's structure, he provide no guidance in the actual application of the law. He showed how, in the 13. CRITICISM ON KELSEN'S THEROY: presence of concretizing the general norms, it may be necessary to make a choice either in decision or interpretation. The judge or the official concerned is already aware of that necessity and his need is for some guidance as to how he should make his choice. The answer is not to be found in the teaching of Kelsen's.

In the last I can say that Hens Kelsen is one of the most influential legal philosophers of the last century have contributed to answering the some basic questions about the law. He considerably influenced the modern legal 14. FINAL NOTE: thoughts. The great contribution of Kelsen's was that he demonstrated the unity of legal system as well as the mechanics of its operation and that was really a valuable contribution.

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