

# Legal Anthropology

**Elective  
Past  
Papers**

LL.B. I



# **GHAQDA STUDENTI TAL-LIĠI**

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2020/2021

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## ABOUT GhSL

Għaqda Studenti Tal-Ligi (The Malta Law Students' Society) is a faculty-based, non-profit organisation at the University of Malta that represents all law students within the Faculty of Laws.

The organisation plays a pivotal role in law students' academic and social life at the University of Malta. The organisation has also been responsible for publishing the prestigious *Id-Dritt*, and the *GhSL Online Law Journal*.

Moreover, GhSL boasts its own Thesis Library, located at the GhSL office in the Faculty of Laws. Additionally, GhSL is the only law organisation responsible for the distribution of authoritative law notes and past papers.

For further queries on this set of notes, as well as any other, please feel free to contact our **Resources Officer** at [resources@ghsl.org](mailto:resources@ghsl.org).



## Advice from an Alumna

By Dr Priscilla Mifsud Parker

The law course is a long journey, but one that, if well-travelled, will lead to beautiful destinations. In an industry which is today attracting many young individuals looking to develop their career in law, it is important to stay ON the beaten track and remain focused. It may go without saying that it is of great importance for all students to attain good academic grades, to be dedicated to their work, as well as to be determined in this highly-competitive industry in order to fulfil their dream of becoming lawyers one day. However what is crucial is that as students and later on as professionals we are innovative by being sensitive to the changes around us. These changes might be political, economic, environmental, socio-cultural or others; what is for sure is that they all have an impact on the profession of a lawyer. We are members of a dynamic profession which is very sensitive to its surroundings. The type and 'genre' of advice which is required from us is all affected by what is being experienced by the receivers of this advice.

Work experience is considered as a vital part of the staple diet of any prospective lawyer in order to put into practice and refine the knowledge gained from the theoretical reality of the lecture halls and lawbooks into the skills required for a successful career in law. An internship will not only show future recruiters that you have a genuine interest in pursuing a career in this sector, but that you have the practical knowledge and skills to succeed in your role.

Here are some personal suggestions that I feel helped me during my journey:

### 1. *Being Ambitious*

A powerful trait in any competitive industry, ambition will help you in your law course, in your career as a lawyer, as well as in your life. Whilst the law course can be quite intimidating and challenging, an ambitious individual who is dedicated to learning new things has the potential to understand and realize long-term goals. Do not view the journey as one whole insurmountable mountain but focus on the next small goal and once achieved move on to the next and goal by goal you will reach your final target point.

In this respect, gaining valuable work experience through an internship is an important step taken by an ambitious young lawyer who wants to attain certain skillsets, and remain a step ahead of his/her peers. By being inquisitive, analytical and humble enough to accept guidance and mentoring one is guaranteed a fruitful experience in a law firm. It is also not only a means to start focusing on the direction of your career and to build upon your chosen path, but will undoubtedly expose you to the international world. This is crucial, as most of the traditional legal sectors have been intertwined with new areas of legislation and all these together now present much more opportunity for intra-jurisdictional work.

### 2. *Networking*

By engaging with counterparty students abroad and in international fora one gains an insight into another reality and is exposed to different cultures, ways of communicating and is able to bridge



the differences between parties to a mundane discussion which will eventually become a transaction or a major project in professional life.

### *3. Organisational Skills*

Organisation is key in any industry. Good organisation skills always stand out to a recruiter when considering potential applicants. Such skills can be obtained by gaining experience either through organising one's own work, study plan, student events or cultural/philanthropic events.

Going hand-in-hand with this, is having a study plan. By planning your studies ahead, one will have a sufficient amount of time to meet all the demands, while also being able to participate in productive outside activities. Reviewing notes or case briefs before class can also help you follow and participate in class discussions better, whilst following case-law allows you to apply them for specific situations. In view of the amount of material involved summarising and carving out the most crucial points is essential to then build your argument in papers.

### *4. Taking your own class notes*

It is always important to take down your own notes as laws are always evolving and passed-down notes would provide the context but are not ideally used for the detail. Researching the particular topic and comparing Malta's law with that of other jurisdiction gives one a completely different outlook and commenting on these variances in an exam paper, dissertation or assignment would distinguish one student from another. Not to be overlooked are also the consultation papers, commentaries and other official public documents that are issued by local authorities from time to time on different areas of law and industry. Being abreast of what is happening in industry will help putting the particular law or regulation in context.

### *5. Participation*

Participation is a main element of the learning process. Being actively involved during seminars and lectures and participating in legal debate sessions, mock trial competitions and moot courts are essential in order to improve your persuasive and presentation skills. If you find this very difficult (all of us have different characters and traits), then try to focus on participation in other events which will expose you to public speaking starting off in smaller groups in a more familiar environment and trying out new experiences and larger audiences as you go along.

### *6. Practice is the key to success*

This leads us to our next point – practice. Attaining good grades is undoubtedly an important part of the law course, however, in themselves, they are not enough to show that you have substantial material to succeed. Working within a law firm introduces you to the world of work, and allows you to gain specific industry-related skills which one will only ever be able to learn in a workplace setting.

Work experience can provide you with valuable insight which will help you decide what your career aspirations are and in which areas you would like to further delve into.

UNIVERSITY OF MALTA

FACULTY OF LAWS

LEGAL ANTHROPOLOGY

Unit Code: CL037

Credit Value: 2

20<sup>th</sup> January 2000

10.15-11.15 am

Choose *one* of the following questions and write an essay in response:

- 1) Is it possible for law to exist: "without courts, codes or constables"? Examine the concept of law by referring to anthropological research.
- 2) Marx described law as subsidiary to economic relations. Outline Marx's theory of law, criticise it and discuss its implications.
- 3) Malinowski stated that the Trobriand islanders possess civil law. Explain his arguments and the criticism they have attracted.
- 4) Laws are usually praised for their precision. Through his study of Barotse litigation, Gluckman came to appreciate the usefulness of vague and unclear legal terminology. Exemplify and discuss this statement.
- 5) Llewellyn and Hoebel stressed the importance of "trouble cases" in the study of law. Explain the reasons for this methodological preference and show how they applied it in their study of the "law ways" of the Cheyenne Indians.
- 6) "It is precisely because most of the concepts and procedures employed in the legal system are replicated in a number of other domains of Moroccan life that the justice of the *qadi* reveals itself most clearly when seen in the context of the entire culture." (Lawrence Rosen, The Anthropology of Justice, p. 11) Discuss this statement in the light of Rosen's research in the Moroccan courts.
- 7) Compare Rosen's research in the Moroccan courts to that carried out by Merry in American criminal courts and small claims tribunals.

UNIVERSITY OF MALTA

FACULTY OF LAWS

B.A. (Legal and Humanistic Studies): Part One (Year One)

CL 037 - Legal Anthropology

Monday, 22<sup>nd</sup> January 2001

11.45a.m. – 12.45p.m.

This test will consist of 40 "multiple choice" questions. *All* these questions must be tackled. Each question is of equal value and will count for 2.5% of the final test grade. One of the answers to each question is correct. Circle the letter on the left side of the more accurate answer (e.g. (b) ), making sure that it is clear to which answer your mark refers.

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- 1) Separating culture from society:
  - A is primarily a helpful analytical approach in anthropological research
  - B reflects the practical irrelevance of culture in everyday social relationships
  - C is what distinguishes Marxist anthropology from cultural anthropology
  
- 2) A Functionalist description of Maltese society:
  - A would highlight the importance of conflict between various social classes
  - B would focus on the internal diversity present in Maltese society
  - C would explore the way our social system reproduces the equilibrium between its parts
  
- 3) Participant Observation is:
  - A a kind of "armchair theorising" practised by early anthropologists
  - B the study of another society by the researcher's personal immersion in that society
  - C ethnographic fieldwork which focuses on the observation of people as participants in social activities
  
- 4) Social Anthropology is:
  - A the study of primitive peoples on the margins of civilisation
  - B the study of contemporary societies against the backdrop of the societies from which they have evolved
  - C the study of contemporary societies through a comparative ethnographic approach
  
- 5) Social Scientists usually view law:
  - A as a separate self-contained system, which is not influenced by society
  - B as a set of rules, which are applied and interpreted in a value-free manner
  - C as socially and culturally embedded

- 6) Descriptions of law and society are inextricably interrelated. So:
- A) Functionalist social theory presupposes a Positivist conception of law
  - B) Marxist social theory presupposes a Positivist conception of law
  - C) Naturalist descriptions of law presuppose a Marxist theory of society
- 7) An example of mechanical solidarity would be:
- A) the work relationships between industrial employees and their managers in a factory
  - B) the social relationship between two largely self-sufficient farmers
  - C) the professional relationship between a lawyer and his client
- 8) In terms of Durkheim's theory of social evolution:
- A) there is a historical transition from societies based on organic solidarity to societies based on mechanical solidarity
  - B) there is a historical transition from societies based on mechanical solidarity to societies based on organic solidarity
- 9) Durkheim's theory of legal evolution:
- A) argued that in societies with an advanced division of labour, the legal system would no longer be preoccupied with questions of status. Instead, contract law would assume more and more importance.
  - B) predicted that criminal law would become an ever more important part of advanced legal systems
  - C) claimed that legal evolution would result in the declining importance of criminal law and the rise in importance of contract law.
- 10) Unilineal theories of social evolution:
- A) are criticized by most contemporary anthropologists, who disagree with the notion that all human societies must pass through the same historical phases
  - B) form the theoretical framework in terms of which most modern anthropological research is still carried out
- 11) Marx claimed that the most "basic" sector of society is:
- A) the economy, primarily understood as the fundamental relations of consumption and exchange
  - B) the superstructure, composed of the primary social classes
  - C) the social relations of production through which the material basis of life is produced
- 12) Marx stressed that to establish the Capitalist mode of production, it is first necessary:
- A) to create the right incentives to promote capital investment
  - B) to create a class of workers who do not own the other factors of production
  - C) to introduce more efficient productive techniques
- 13) In Marxian theory, social classes are formed:
- A) from groups of people who share the same tastes and move in the same social circles
  - B) from individuals who have a similar social status
  - C) from individuals who share a similar position in the relations of production



- 14) In the Marxian analysis of the capitalist mode of production, law is said to operate:
- A to mystify the working classes
  - B to control the excesses of capitalism
  - C to effectively safeguard the right of employees to have fixed working hours
- 15) E P Thompson attacked the Marxian view of law, primarily because:
- A it gave marginal importance to cultural factors, while over-emphasizing economic ones
  - B it over-emphasized conflict, ignoring the forces which operate to produce social harmony
  - C it did not adequately explain why law should have a mystifying effect
- 16) In a matrilineal society such as that found in the Trobriand islands:
- A a male child will inherit property and social roles from his mother's brother
  - B residence will necessarily be matrilocal, so that a man would go to live in his wife's village on marriage
  - C a man's sisters will look after his wife, who on marriage will go to form part of her husband's matrilineage
- 17) Malinowski discovered law in the Trobriand islands:
- A in the system of traditional courts administering local custom
  - B in the binding obligations arising from the exchange of gifts
  - C in the pronouncements of the tribal chiefs, who had the power to create new rules of law
- 18) *Kula* gift exchange is:
- A a form of ceremonial barter, through which valuable armshells are exchanged for necklaces, thus enhancing the wealth of both parties
  - B a kind of inter-village trade through which vegetables are exchanged for fish
  - C a type of exchange through which the participants seek to acquire individual fame and reputation
- 19) Malinowski argued that the obligation to give and reciprocate gifts is most effectively sanctioned by:
- A the principle of reciprocity, which appeals to the enlightened self interest of the party
  - B the desire of each giver to appear generous and munificent, thus enhancing his personality and the respect in which he is held
  - C the rules of manners and etiquette
- 20) P Bohannan:
- A endorsed Malinowski's theory of law, arguing that legal and moral obligations are difficult to separate even in western society
  - B criticized Malinowski on the grounds that he neglected the institutional specificity of law
  - C criticized Malinowski on the grounds that it is not possible to have law in stateless societies like the Trobriands

- 21) Hoebel's approach to the anthropological study of law echoed Malinowski's since:
- A he tried to locate law by looking at the ordinary social relationships of the Eskimo
  - B he emphasized the importance of studying economic exchanges to understand Eskimo law
  - C he refuted Durkheim's theory of legal evolution
- 22) Hoebel lists the "fundamental jural postulates" of Eskimo culture. These postulates were:
- A Explicitly stated by the Eskimo themselves
  - B Extracted by Hoebel from the reports of observers of Eskimo life
- 23) The Eskimo have a practice of wife-sharing.
- A Conflicts over adulterous relationships are consequently rare and not frequent, since sexual jealousy does not exist among them
  - B Nevertheless, sexual jealousy is common and conflicts over adulterous relationships are frequent.
  - C Women are therefore considered to be subordinate to their husbands and divorce is not an accessible option for them.
- 24) Eskimo song duels may help to resolve conflicts, since:
- A at the end of the contest, an attempt is made to mete out justice to the winner
  - B there is an element of ordeal involved in the contest
  - C while singing, the parties may focus on their performance and forget what provoked it
- 25) For many years, cultural differences between Blacks and Whites in the U.S.A. were systematically ignored and were not the subject of research. One reason for this is that:
- A the claim to have a separate culture was primarily understood to imply that one spoke a separate language
  - B Black culture was considered to be so different from that of Whites that it could not be studied by White anthropologists.
- 26) Thomas Kochman observed that when his students engage in public debate:
- A the White mode of behaviour is high-key, in the sense that it is animated, inter-personal and confrontational.
  - B the Black mode of behaviour is low-key, in the sense that it is dispassionate, impersonal and non-confrontational.
  - C the White mode of behaviour is low-key, in the sense that it is dispassionate, impersonal and non-confrontational.
- 27) According to Kochman, a fundamental reason for the distinctive Black conflict style is:
- A Emotion is interpreted differently in Black culture than in White culture
  - B Black students come from socially deprived backgrounds
  - C Black students are often trying to impress White students

28) Kochman also observed that Black and White students also disagree as to what establishes the authority of an idea:

- A Black students consider ideas to be authoritative simply because they have been published by an expert in the field.
- B White students consider ideas to be authoritative simply because they have been published by an expert in the field.
- C for White students, the publication of an idea is not sufficient in itself to establish its authority. The idea must be personally held by the student who quotes it.

29) Laura Nader's research in Mexico showed that:

- A the traditional form of conflict resolution practised by the Zapotec Indians was suppressed by the state and its courts.
- B indigenous cultural factors may substantially influence the actual working of the formal court system.
- C the municipal court of Ralu'a did not pay enough attention to the social consequences of its judgements.

30) Nader observed that the Zapotec courts she studied:

- A differ from courts in the US, since they do not view litigation as a zero-sum game
- B share with US courts a preoccupation to "make the balance" between litigating parties.

31) Indirect rule was:

- A the traditional Barotse approach to government
- B a term coined by Gluckman to describe the judicial policy adopted by the Barotse court
- C a form of colonial government evolved by the British

32) The Barotse court (*kuta*) traditionally reached its judgements:

- A on the strength of the opinion of the chief counsellor present, who was the only person allowed to express his views on the case
- B on the basis of the opinion of a simple majority of the counsellors present in court.
- C through a process of collective decision-making, which combined the possibility of appeal to a higher authority with the notion of judicial review.

33) Gluckman used the "Case of the Eloping Wife" to illustrate:

- A the way the *kuta* referred to concepts of social time and folk psychology in order to assess the credibility of witnesses
- B the flexibility of the bridewealth system adopted by the Barotse, which allowed a divorced woman to contract a second marriage *before* her new husband had approached her father to discuss the marriage payment.
- C the inherent patriarchal bias in traditional Barotse society

34) Gluckman used the concept of the "reasonable man":

- A to expose the similarities between the Barotse *kuta* and Western courts
- B to show how the human ability to reason is the same all over the world
- C to attack the reasoning of the Barotse *kuta* by showing how its decisions were based on false reasoning.

- 35) The logical outcome of Ghuckman's analysis is that:
- A imprecision in legal drafting can threaten the legitimacy of the legal system
  - B there may be good social reasons for having ambiguously drafted laws
  - C common sense is much the same all over the world
- 36) In his fieldwork among the Nuer, Evans-Pritchard discovered that they had a system of "segmentary opposition." In terms of this system:
- A the members of any tribal segment will unite with the adjacent segments against larger sections
  - B the various parts (or segments) of the tribe are in a perpetual state of war with one another
  - C Each segment of the tribe will oppose any other segment once the opportunity presents itself.
- 37) The "Leopard-skin Chief" among the Nuer:
- A has the authority to give binding judgements settling disputes, whether the parties agree or not
  - B is chosen from among the members of the dominant lineages
  - C has only a marginal role to play in dispute settlement
- 38) In his analysis of the Nuer, Evans-Pritchard:
- A merged the study of law with that of social structure
  - B studied law as an independent and autonomous variable
  - C gave particular attention to their traditional court: the Burata
- 39) In his study of the Manambu villagers of Papua New Guinea, Simon Harrison observed that:
- A the Manambu believe in the Rule of Law, which they see as the only force capable of quelling innate human aggressive tendencies.
  - B Manambu men do not see homicidal aggression as innate in individuals
  - C the Manambu are violent and aggressive people, who are proud of having committed cannibalism and other crimes
- 40) Simon Harrison used his study of the Manambu:
- A to critique Marxist social theory
  - B to question the Functionalist orientation of previous legal anthropologists
  - C to question the concept of an original social contract
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UNIVERSITY OF MALTA

FACULTY OF LAWS

B.A. (Legal and Humanistic Studies)

Part One (Year One)

CL 037 - Legal Anthropology

Monday, 21<sup>st</sup> January 2002

11.45a.m.-12.45p.m.

This test will consist of 40 "multiple choice" or "short answer" questions. *All* these questions must be tackled. Each question is of equal value and will count for 2.5% of the final test grade. One of the answers to each "multiple choice" question is correct. Circle the letter on the left side of the more correct answer (e.g. **(b)**), making sure that it is clear to which answer your mark refers.

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- 1) Which of these statements reflects a Functionalist understanding of Maltese society?
  - A Court delays serve to reduce litigation, since they encourage litigants to settle out of court
  - B Through court delays the legal profession asserts a superior social position in relation to other groups in Maltese society
  - C Court delays reflect the substantial social change which has occurred in Malta, which has created social pressures with which the courts are unable to cope
  
- 2) A cultural anthropologist would probably study Maltese law:
  - A By exploring the ways in which our legal system caters for the needs of our economy
  - B By studying the social backgrounds of lawyers and judges
  - C By exploring popular beliefs about law
  
- 3) Anthropological research is carried out through:
  - A Fieldwork, which involves hands-on research in non-Western societies
  - B Participant Observation, which requires the anthropologist to observe the conduct of individuals as they go about their daily routines
  - C Participant Observation, which requires the anthropologist to involve him/herself in the daily life of the society being studied.
  
- 4) Social theories which emphasize conflict:
  - A Tend to obscure the mechanisms by which social order is produced
  - B Promote a view of society as homogenous
  - C Ignore the forces which bring about change

- 5) Which of these statements reflects a Positivist understanding of law?
- A An unjust law is not a law
  - B The legal solution to a problem is not necessarily the just solution
  - C The essence of law is the promotion of human well-being
- 6) Which of these statements might have been made by a legal anthropologist nowadays?
- A "We, who believe ourselves knowledgeable, need to go amongst the most ignorant peoples to find out how we began to make progress."
  - B "In primitive societies the core of legislation is a series of taboos."
  - C "The true problem is not to study how human life submits to rules – it simply does not; the real problem is how the rules become adapted to life."
- 7) Emile Durkheim coined the expression "*conscience collective*" to refer to:
- A Those beliefs and feelings which are shared by all the members of a society
  - B A special characteristic of segmentary societies, which is lacking in complex societies
  - C The collective awareness shared by the members of a simple society
- 8) Organic solidarity is expressed through:
- A The professional relationship between two lawyers who work in the same field of law
  - B The professional relationship between a lawyer and his client
  - C Social relations between peasants in agrarian societies
- 9) According to Durkheim's theory of legal evolution:
- A Simple societies do not evolve elaborate systems of crime and punishment
  - B The development of criminal law as an important feature of the legal system occurs in proportion to the development of the state and its police force
  - C In complex societies, criminal law is a marginal feature of the legal system
- 10) Sir Henry Maine believed that:
- A Movements to codify the law tend to accompany democratization processes
  - B The identification of law with unwritten customs usually empowers ordinary people
  - C Beliefs in the divine origin of law are common in progressive societies
- 11) By writing the history of the regulation of the working day in the U.K., Marx intended:
- A To demonstrate how law could be used to promote social well-being
  - B To show how ineffectual law is in restraining capitalist development
  - C To highlight the influence which law exerts on the working of capitalist economies
- 12) The Marxist expression: "mode of production" refers to:
- A The particular synthesis of forces and relations of production which prevails in a given historical period
  - B A distinctive feature of production under industrial capitalism, which requires the extraction of "surplus value" from the worker
  - C The way in which relations of production articulate with technology in the industrial era

- 13) Karl Marx argued that, historically, the extraction of "surplus value" was preceded by:
- A The development of a prosperous economy, which produced more than was needed to cater for the basic needs of the working class
  - B The creation of a class of landless ex-peasants
  - C The emergence of a prosperous middle class with expensive tastes
- 14) Which of these statements was made by E.P. Thompson?
- A "What we have observed is something more than law as a pliant medium to be twisted this way and that by whichever interests already possess effective power"
  - B "I was led by my studies to the conclusion that legal relations could neither be understood by themselves nor explained by the so-called general progress of the human mind, but that they are rooted in the material conditions of life"
  - C "The most fundamental right under the law of capital is the equal exploitation of labour-power by all capitalists"
- 15) Bronislaw Malinowski's research:
- A Disproved Durkheim's theory of the significance of "restitutive" sanctions in complex societies
  - B Confirmed Marx's belief in the existence of primitive communism
  - C Disproved Durkheim's theory of the significance of "repressive" sanctions in simple societies
- 16) *Kula* gift exchange is:
- A A form of ceremonial barter, through which valuable arm-shells are exchanged for necklaces, enhancing the wealth of both parties
  - B A type of exchange, through which the participants seek to acquire individual fame and reputation
  - C A kind of inter-village trade, through which vegetables are exchanged for fish
- 17) Malinowski claimed to have 'discovered' law in the Trobriand islands. Where did he look for it?
- A In the religious beliefs of the islanders
  - B In their political custom by which chiefs could establish rules for the tribe
  - C In their social and economic customs relating to the exchange of gifts
- 18) By referring to the importance of the principle of reciprocity in Trobriand society, Malinowski meant to refer to:
- A The rule that equivalent gifts should be given in exchange for the gifts received
  - B The rule that only those islanders who are already related can exchange gifts
  - C The rule that the equivalent of whatever is given to unrelated individuals should also be given to close family members

- 19) While the Trobriand islanders possess a matrilineal kinship system, a patrilineal system prevails among the Nuer. Which of the following statements is correct?
- A In a matrilineal system, a man's son is officially considered to be related to his paternal grandmother, but not to his paternal grandfather
  - B In a patrilineal system, daughters are considered to transmit membership of their father's lineage to their children
  - C In matrilineal systems, male children are often expected to go to live with their maternal uncles on reaching the age of puberty
- 20) The effectiveness of the "leopard-skin chief" as a mediator among the Nuer mainly derives from:
- A His socially recognized power to curse an individual who disobeys his verdict
  - B His political marginality
  - C His membership of the dominant lineage
- 21) Nuer society, as described by E. E. Evans-Pritchard was:
- A Violent and egalitarian
  - B Hierarchically organised
  - C Peaceful and law-abiding
- 22) One problem with E. Adamson Hoebel's description of Eskimo law is:
- A He tried to infer legal rules directly from social practices and customs
  - B He focused almost exclusively on normative principles, ignoring dispute settlement mechanisms
  - C His definition of the legal field was too narrow and restrictive
- 23) Hoebel's research:
- A Confirms that human societies have existed in which there was no concept of private property
  - B Suggests that Eskimo society encouraged individualism in precisely the same way as Western society does
  - C Proves neither statement A nor statement B
  - D Proves both statement A and statement B
- 24) Hoebel lists the "fundamental jural postulates" of Eskimo society. These postulates were:
- A Explicitly stated by the Eskimo themselves
  - B Extracted by Hoebel from the reports of observers of Eskimo life
- 25) Eskimo song duels serve to resolve conflicts as:
- A They publicize the cause of the dispute, thus encouraging the parties to settle
  - B They encourage the parties to focus on their performance while singing instead of their previous focus on the causes of the dispute.
  - C Eskimo believe that victory in a song-duel could indicate that the victorious party is favoured by spiritual beings.



- 26) According to Thomas Kochman, political correctness as regards cultural differences:
- A Does more harm than good
  - B Is needed to avoid reproducing racist notions
  - C Is intrinsic to Black conflict styles
- 27) Kochman argues that a fundamental reason for the distinctive Black conflict style is:
- A Black students come from socially deprived backgrounds
  - B Black students are often trying to impress White students
  - C Emotion is interpreted differently in Black culture
- 28) One of the key differences between Black and White conflict styles is:
- A Black students assume that the right to intervene in a debate must be given to them by an external authority
  - B White students assume that the publication of an idea is not sufficient in itself to establish its authority. The idea must be personally held by the student who quotes it.
  - C White students assume that the right to intervene in a debate must be given to them by an external authority
- 29) Laura Nader highlighted the impact of Zapotec culture on the Mexican Zapotec courts which she studied. In particular, she noted:
- A That these courts were located in a small face-to-face community, where litigants are united by various overlapping social ties
  - B That there was a strong emphasis on social hierarchies throughout Zapotec society
  - C There was a cultural preference, rooted in Zapotec religious beliefs; to see litigation as a zero-sum game
- 30) Evans-Pritchard claimed that in tribal societies sociability decreases with social distance. Simon Harrison:
- A Would agree with this claim
  - B Would disagree with this claim
- 31) For the Manambu people of Papua New Guinea:
- A Wearing masks is a good way to render oneself unrecognizable, facilitating warfare
  - B Wearing masks involves self-transformation
  - C Wearing masks has a primarily religious significance
- 32) In his study of the Manambu, Simon Harrison observed:
- A They believe in the Rule of Law, which they see as the only force capable of restraining innate human aggressive tendencies
  - B Manambu men do not see homicidal aggression as innate in individuals
  - C The Manambu are violent and aggressive people, who are proud of having committed cannibalism and other crimes.

- 33) The Manambu case is interesting as:
- A It affirms the distinction between lawful power and unlawful violence.
  - B It suggests that we need to invert the relationship between law and violence
  - C It demonstrates how well Hobbes' political theory fits the facts in non-Western societies
- 34) Simon Harrison used his study of Manambu violence:
- A To critique orthodox Marxist social theory
  - B To question the Functionalist orientation of previous legal anthropologists
  - C To question the concept of an original social contract
- 35) One of the problems involved in applying the Australian Aboriginal Land Rights (Northern Territory) Act of 1976 derived from the fact that:
- A The drafters of the Act defined a 'descent group' in a fixed manner, which does not conform to aboriginal practice
  - B The drafters of the Act assumed that most aboriginal land was traditionally held in common ownership, when there were many forms of individual land ownership
  - C The drafters of the Act ignored the fact that aborigines traditionally used to establish land ownership by reference to multiple criteria
- 36) According to Robert Layton:
- A Our concept of truth is influenced by the fact that we live in a literate society
  - B The concept of truth is substantially the same in literate and non-literate societies
- 37) One characteristic of the "relational accounts" produced by litigants before small claims tribunals and studied by John Conley and William O'Barr is:
- A These narratives focus narrowly on the legal principles involved in the case
  - B These narratives are detailed and highly factual
  - C These narratives link the facts of the case to other personal problems of the litigants

#### Short Answer Questions

- 38) The anthropological term for the practice of judging other cultures according to the criteria of one's own culture is:

\_\_\_\_\_

- 39) As a result of his fieldwork among the Nuer, Evans-Pritchard claimed to have discovered a fundamental principle of their political organization which enables them to achieve a certain stability although they do not possess a state. He called this the principle of:

\_\_\_\_\_

- 40) Three characteristics of the mode of behaviour which Kochman's White students considered appropriate for public debate are:

\_\_\_\_\_

UNIVERSITY OF MALTA

FACULTY OF LAWS

B.A. (Legal and Humanistic Studies)

Part One (Year One)

CVL1013 - Legal Anthropology

Monday, 20<sup>th</sup> January 2003

11.45a.m.-12.45a.m.

This test will consist of 40 "multiple choice" or "short answer" questions. *All* these questions must be tackled. Each question is of equal value and will count for 2.5% of the final test grade. One of the answers to each "multiple choice" question is correct. Circle the letter on the left side of the more correct answer (e.g. **B**), making sure that it is clear to which answer your mark refers.

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- 1) In the "Case of the Speluncean Explorers", one of the judges stated: "Our positive law is predicated on the possibility of men's coexistence in society. When a situation arises in which the coexistence of men becomes impossible, then it is my opinion that the force of our positive law disappears with it." This statement is an example of:
  - A A Positivist approach to issues of legal validity and interpretation
  - B A Naturalist approach to issues of legal validity and interpretation
- 2) Most social scientists would nowadays agree that society is best thought of as:
  - A A collection of individuals
  - B A social body which is an organism in its own right and which has a separate and independent existence from that of the individuals that form it.
  - C Statements A and B are both correct
  - D None of the above statements is correct
- 3) The American anthropologist Clifford Geertz claims that: "Law, here, there, or anywhere, is part of a distinctive manner of imagining the real." This statement emphasizes that:
  - A Law is always part of social, political and economic processes
  - B Law is part of culture
  - C Law has a ubiquitous mystifying effect
- 4) A Maltese lawyer once observed that our legal system is like a complex and well-adjusted machine, which could easily lose its equilibrium as a result of clumsy attempts at reform. This statement views society in a way that anthropologists would call:
  - A Functionalist
  - B Marxist
  - C Mechanical Solidarity

- 5) Social Anthropology is:
- A the study of primitive peoples on the margins of civilisation
  - B the study of contemporary societies against the backdrop of the societies from which they have evolved
  - C the study of contemporary societies through a comparative ethnographic approach
- 6) N. Rouland argues that:
- A Legal Anthropology should restrict itself to the study of "exotic" societies, given the unbridgeable differences that exist between traditional and modern legal systems
  - B Law exists in all societies, but gains increasing importance and complexity with the rise of the modern state
  - C That there exist clear, universally recognized, frontiers to regulatory functions which possess a legal dimension
- 7) Descriptions of law and society are inextricably interrelated. So:
- A Functionalist social theory presupposes a Positivist conception of law
  - B Marxist social theory presupposes a Positivist conception of law
  - C Naturalist descriptions of law presuppose a Marxist theory of society
- 8) Emile Durkheim and Sir Henry Maine both believed that the distinctive characteristic of the modern era is:
- A Increased individualism
  - B The formation of a new Social Contract
  - C The growth in importance of repressive law
  - D Unilineal evolution
- 9) Durkheim claimed that organic solidarity is:
- A What links the various components of the social body in segmentary societies
  - B The basis of law in all societies
  - C The unifying force which develops from relations of economic interdependence.
10. Durkheim argued that:
- A There is an intrinsic connection between law and society, so that social changes are necessarily reflected in its legal system.
  - B. The legal system is an independent sector of society such that it is impossible to assess the nature and extent of social change by looking at a society's legal system.
11. For Durkheim, primitive society is characterised by:
- A. A low division of labour
  - B. An authoritarian and repressive legal system
  - C. Substantial uniformity in morality
  - D. Statements A, B and C are all correct
  - E. None of the above statements is correct.

Ethnology or Cultural Anthropology is concerned with the study of cultures in their traditional forms and in their adaptations to changing conditions in the modern world.

- 12) In his historical overview of the political struggles which accompanied attempts to regulate the length of the working day in England, Karl Marx:
- A Emphasised the importance of contract law to protect the liberty of the individual worker
  - B Argued that the drafting of human rights' charters is the best way to protect the working classes from the excesses of capitalism
  - C Was sceptical about the ability of both human rights and contract law to protect workers
  - D Considered such legal rules as being the tools through which the workers were oppressed
- 13) Which of the following statements was made by Karl Marx?
- A "What we have observed is something more than law as a pliant medium to be twisted this way and that by whichever interests already possess effective power"
  - B "I was led by my studies to the conclusion that legal relations could neither be understood by themselves nor explained by the so-called general progress of the human mind, but that they are rooted in the material conditions of life"
- 14) By referring to profit as "surplus value", Marx wished:
- A To highlight the way in which capitalism forces workers to produce more than they need
  - B To emphasize the wastefulness of capitalists who do not reinvest their profits
  - C Statements A and B are both correct
  - D None of the above statements is correct
- 15) Marxist theory generally sees law as:
- A A superficial and unimportant phenomenon when compared with the economy
  - B A means through which people are mystified
  - C A tool with which capitalists can shape society in their own interest
  - D Statements A, B and C are all correct
  - E None of the above statements is correct
- 16) Marx stressed that to establish the Capitalist mode of production, it is first necessary:
- A to improve education, so as to have an enterprising and productive middle class
  - B to create a class of landless peasants by dispossessing them of their land
  - C to introduce more efficient productive techniques
- 17) In his study of crime in eighteenth century England, E.P.Thompson attacked which of these aspects of Marxist legal theory?
- A The rigid separation between the (economic) base and the (legal) superstructure
  - B The theory of surplus value
  - C The distinction between factors of production and relations of production
- 18) Malinowski challenged various assumptions then made about "savages". In particular, he attacked the commonly held view that:
- A "Savages" had no law
  - B They live in a state of primitive communism
  - C Both statements A and B are correct
  - D None of the above statements is correct

- 19) Malinowski claimed:
- A That Trobrianders possess a system of Civil law
  - B That Trobrianders possess a system of Criminal law
  - C Statements A and B are both correct
  - D None of the above statements is correct.
- 20) In a matrilineal society, such as that found in the Trobriand islands:
- A A male child will be considered to be a close relative of his maternal uncles and aunts.
  - B A female child will be considered to be a close relative of her paternal uncles and aunts
- 21) To which of the following attributes of law did Malinowski give most importance when formulating his definition of law in Trobriand society?
- A The written form X
  - B The presence of a sanction
  - C Judicial enforceability y
- 22) Eskimos believe that land cannot be owned by a single individual. This confirms:
- A That there exists a form of primitive Communism in Eskimo society
  - B That Eskimos have no concept of private property
  - C Statements A and B are both correct
  - D None of the above statements is correct
- 23) Hoebel listed the "fundamental jural postulates" of Eskimo society. These postulates:
- A Are derived straightforwardly from observations of Eskimo behaviour
  - B Reflect a serious attempt to separate the content of customary norms from that of legal rules
  - C Are derived from various kinds of gift exchange relationships within Eskimo society.
- 24) According to Hoebel, the Eskimo Song-Duel functions to resolve conflicts because:
- A It gives the parties a chance to discover the just solution in terms of Eskimo law
  - B It focuses the attention of the parties away from the cause of their quarrel
  - C Statements A and B are both correct
  - D None of the above statements is correct
- 25) In studying Eskimo law, Hoebel followed Malinowski's lead, because:
- A He focused on the obligations deriving from the exchange of gifts, which he saw as the principal source of legal obligations within Eskimo society
  - B He identified Eskimo law with Eskimo culture and social structure.
- 26) Thomas Kochman observed that when his students engage in public debate:
- A the White mode of behaviour is high-key, in the sense that it is animated, inter-personal and confrontational.
  - B the Black mode of behaviour is low-key, in the sense that it is dispassionate, impersonal and non-confrontational.
  - C the White mode of behaviour is low-key, in the sense that it is dispassionate, impersonal and non-confrontational.

27) The Black students researched by Kochman:

- A Understood self-control differently from the White students, who saw self-control as a matter of repressing one's feelings.
- B Understood self-control differently from the White students, who saw self-control as a matter of "getting your act together"

28) In the judicial process of the Mexican Zapotec court observed by Nader, great importance was given to:

- A The detailed discovery of the objective facts
- B The restoration of a state of equilibrium between the parties
- C The assertion of local social hierarchies

29) Nader links the procedural styles of different courts to the impact of the cultural context in which they operate. She claims that:

- A The Zapotec court tends to deliver "prospectively oriented" judgements.
- B The Zapotec court tends to see conflict as a zero-sum game
- C The Zapotec court tends to interpret the law in a positivist manner.

30) The principle of "segmentary opposition" is:

- A A social mechanism through which stability is achieved in an egalitarian stateless society
- B The basis of Nuer behaviour in warfare between different tribes
- C Statements A and B are both correct
- D None of the above statements is correct

31) In Nuer society:

- A The most intense feuds occur within villages X
- B The most intense feuds occur between villages
- C The most intense feuds occur between tribes

32) Law in Nuer society:

- A Has a different force depending on the kind of social and lineage ties between the litigants.
- B Is applied universally and equally in accordance with the egalitarian values of the Nuer people.

33) Evans-Pritchard claimed that in tribal societies sociability decreases with social distance. Simon Harrison:

- A Agreed with this claim
- B Disagreed with this claim

34) According to Simon Harrison, Manambu tribesmen must undergo various ritual and magical preparations before going to war. He suggests that this is because:

- A They think that in war a warrior is temporarily possessed by the spirits of his ancestors.
- B They believe that they must prepare themselves ritually before unleashing the aggressive forces within themselves
- C They use magic to weaken their opponents before they have to fight them

UNIVERSITY OF MALTA

FACULTY OF LAWS

B.A. (Legal and Humanistic Studies)

Part One (Year One)

CVL1013 - Legal Anthropology

Monday, 19<sup>th</sup> January 2004

2.15p.m.-3.15p.m.

This test will consist of 40 "multiple choice" or "short answer" questions. *All* these questions must be tackled. Each question is of equal value and will count for 2.5% of the final test grade. One of the answers to each "multiple choice" question is correct. Circle the letter on the left side of the more correct answer (e.g. **(B)**), making sure that it is clear to which answer your mark refers.

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1) Emile Durkheim asserted that in "simple" societies:

- A. There tends to be an advanced division of labour
- B. Individualism is a widely shared value
- C. There tends to be a stress on moral conformity
- D. All of the above
- E. None of the above

2) Durkheim assumed that social evolution would:

- A. Produce a noticeable transformation of the legal system
- B. Not necessarily have any impact on the legal system, since this is a separate social organ
- C. Inevitably lead to the development of more sophisticated laws repressing deviance

3) Individualism is considered by Durkheim to be:

- A. A corrosive force which undermines the collective consciousness
- B. A complex of values which forms an important part of the collective consciousness
- C. Both of the above
- D. None of the above

4) The Marxist term for the profit extracted by capitalist producers from their labourers is:

- A. Surplus value
- B. Factor of Production
- C. Capital
- D. All of the above
- E. None of the above

*Said E. Zommit*



- ) In his analysis of capitalist society, Karl Marx concluded that law is:
1. A basic structuring element, without which fundamental economic institutions like the limited liability company would be inconceivable.
  2. Part of the cultural superstructure determined by the economic base.
  3. Both of the above.
  4. None of the above.
- 5) In his historical overview of the political struggles which accompanied attempts to regulate the length of the working day in England, Marx:
- A. Emphasised the importance of contract law to protect the liberty of the individual worker
  - B. Argued that the drafting of human rights' charters is the best way to protect the working classes from the excesses of capitalism
  - C. Considered such legal rules as being the tools through which workers were oppressed
- 7) Which of these statements was made by the historian E.P. Thompson?
- A. "The most fundamental right under the law of capital is the equal exploitation of labour -power by all capitalists"
  - B. "The essential precondition for the effectiveness of law, in its function as ideology, is that it shall display an independence from gross manipulation and shall seem to be just. It cannot seem to be so without upholding its own logic and criteria of equity; indeed, on occasion, by actually *being* just."
  - C. "Capital, which has such 'good reasons' for denying the sufferings of the legions of workers surrounding it, allows its actual movement to be determined as much and as little by the coming degradation and final depopulation of the human race, as by the probable fall of the earth into the sun."
- 8) In his study of crime in eighteenth century England, Thompson attacked which of these aspects of Marxist legal theory?
- A. The rigid separation between the (economic) base and the (legal) superstructure
  - B. The tendency to view law reductively, as a mystifying language disguising injustice
  - C. The disinclination to see law as a tool that can be used to rectify class injustices.
  - D. All of the above
  - E. None of the above
- 9) Which of these statements is correct?
- A. Gift exchange is basically a form of barter
  - B. The main purpose of *Kula* is to establish trading partnerships
  - C. Malinowski ascribed Trobriand obedience to law to the force of habit
  - D. Like Durkheim, Malinowski was a Functionalist
- 10) According to Bronislaw Malinowski, Trobriand law was an effective legal system despite the lack of "codes, courts and constables." The greatest weakness of his analysis was:
- A. He did not identify any legal sanction for those who do not reciprocate gifts received
  - B. He did not make a clear distinction between legal and customary rules
  - C. He did not explain how and by whom rights and obligations could be created

- 11) In Trobriand society, a man would be considered to be a member of the same matrilineage as:
- His own children
  - His mother's sister's son (i.e. the son of his maternal aunt)
  - His mother's brother's daughter (i.e. the daughter of his maternal uncle)
  - All of the above
  - None of the above
- 12) Evans-Pritchard insists that among the Nuer, the status of the Leopard-skin Chief' is equivalent to:
- That of a Government Minister in our own society
  - That of a Judge in our society
  - Both of the above
  - None of the above
- 13) According to Evans-Pritchard, Nuer law:
- Is relative and based on force
  - Reflects the Nuer religion
  - Is laid down by the Tribal Council
  - All of the above
  - None of the above
- 14) If a fight erupts between two individuals, each of whom belongs to a different secondary segment of the same Nuer tribe, then:
- Each would know that he can rely on the support of all those persons who belong to the tertiary segments which are considered to fall within his secondary segment
  - The tribe will divide up along the lines of primary segmentation and the leopard skin chief must judge the case
  - There will be intense pressure on each of the parties to settle the conflict speedily
  - All of the above
  - None of the above
- 15) Evans-Pritchard's description of the Nuer portrays the blood-feud as:
- A periodical collapse in the equilibrium between political segments, which challenges the integrity of the Nuer political system.
  - A movement between political segments, by which the form of the Nuer political system is maintained.
- 16) The difference between the Islamic concept of *Haqq* and the Western notion of a legal right is:
- The Islamic concept is also a religious one which refers to Divine justice.
  - The Islamic concept refers to what is morally right.
  - The Islamic concept refers to the true reality.
  - All of the above
  - None of the above

7) Clifford Geertz claims that law is:

- 1. "The specific result of the configuration of obligations, which makes it impossible for an individual to shirk his responsibility without suffering for it in the future"
- 2. "Part of a distinctive way of imagining the real"
- 3. Both of the above
- 4. None of the above

8) Anthropologists have claimed that Moroccan court procedures reveal a cultural focus on:

- 1. Normative witnessing.
- 2. The documentary proof of orally given testimony.
- 3. Elaborate legal pleadings.
- 4. All of the above
- 5. None of the above

9) Geertz researches Moroccan law using the characteristic approach of:

- 1. A cultural anthropologist
- 2. A social anthropologist

10) The people of Mafia island in Tanzania follow:

- 1. Islamic law
- 2. The law of the State of Tanzania
- 3. Local customary law
- 4. All of the above
- 5. None of the above

11) *Mahari* under Islamic law is:

- 1. The dowry which the bride's father at the marriage ceremony agrees to give the groom.
- 2. A sum of money which the groom at the marriage ceremony agrees to pay the bride.
- 3. The alimony which men are compelled to give their wives following a divorce
- 4. All of the above
- 5. None of the above

12) Pat Caplan's research shows that:

- 1. Laws necessarily form part of a single unitary system.
- 2. The interpretation of legal rules is uninfluenced by local conflicts and power struggles
- 3. Tanzanian villagers were able to manipulate the interpretation of laws in their own interests.
- 4. All of the above
- 5. None of the above

13) In Manambu culture, it seems that violence is seen as:

- 1. Stemming from deep-seated aggressive drives present within individuals.
- 2. Deriving ultimately from forces which are external to the individual
- 3. An expected result when encountering strangers
- 4. All of the above
- 5. None of the above

- 24) According to Simon Harrison, the Manambu associate fighting with:
- A. Transformations of identity
  - B. Ritual invocation of the spirits of dead ancestors
  - C. The use of masks and body-paint
  - D. All of the above
  - E. None of the above
- 25) When, in the early 1920's, the Australian Naval and Military Expeditionary Force made a punitive expedition against a Manambu village, this was interpreted by the villagers:
- A. As a reprisal for their own earlier aggression against white Australians
  - B. As a head-hunting raid organised by a white Australian tribe
  - C. As an attack for which their Nyaule neighbours were primarily responsible.
  - D. All of the above
  - E. None of the above.
- 26) In the case of the "Eloping Wife", the *Kuta* (the Barotse court) paid most attention to which of the following factors in order to assess the credibility of the litigants?
- A. Geography
  - B. Social rank
  - C. Social time
- 27) Max Gluckman's key insight could be formulated as follows:
- A. Legal systems must be able to accommodate change while preserving a sense of continuity with the past.
  - B. The legitimacy of a legal system is weakened by ambiguous laws.
  - C. A legal system in which the interpretation of the meaning of the same law changes over time will tend to lose its own legitimacy.
  - D. All of the above
  - E. None of the above
- 28) The *Kuta* used to decide cases on the basis of:
- A. The opinion of the British Governor or his representative.
  - B. The consensus of all the counsellors present at the sitting.
  - C. The opinion of the most senior counsellor present.
- 29) One major similarity between Gluckman's research and that of Sally Falk-Moore is:
- A. Both anthropologists carried out fieldwork in Tanzania
  - B. Both anthropologists tackled the ways in which legal systems preserve their legitimacy.
  - C. Falk-Moore argued that the tribal courts of the Chagga people assess the credibility of witnesses using the same kind of reasoning as the *Kuta* does.
- 30) Falk-Moore observes that custom means:
- A. A set of traditional rules handed down from one generation to another.
  - B. Contemporary usages and practices

- C. The residual category of local norms claiming tradition as legitimation that refer to matters on which there has been no legislation or binding judicial ruling by the central state, yet which the state is willing to acknowledge and enforce.
- D. All of the above
- E. None of the above.

- 31) The working class litigants observed by Sally Merry wanted the U.S. court:
- A. To hear and decide their claims strictly in terms of the law.
  - B. To adopt a flexible approach and try to mediate between litigants.
  - C. To process its case-load more rapidly

- 32) The processes of cultural domination described by Merry operate:
- A. Through formal rituals which alienate litigants
  - B. Primarily by re-classifying the parties' legal claims

Short Answer Questions

- 33) Durkheim used to describe the force which prevents social disintegration as:
- 

- 34) Malinowski compared *Kula* valuables to heirlooms and also to:
- 

- 35) Which other forums apart from the court, did the Tanzanian villagers observed by Caplan use to settle their disputes?
- 

- 36) Complete this sentence: "Thomas Hobbes claimed that a short and violent life is normal for people living in..."
- 

- 37) The equivalent of "the reasonable man" in Maltese law would be:
- 

- 38) Why is it relatively easy to present a rule of customary law as if it were very ancient?
- 

- 39) Name the three kinds of discourse that Merry observed in use during her fieldwork:
-

*David E. Zornit*

UNIVERSITY OF MALTA

FACULTY OF LAWS

B.A. (Legal and Humanistic Studies)

Part One (Year One)

CVL1013 - Legal Anthropology

Wednesday 15<sup>th</sup> September 2004

9.00am - 10.00am

This test will consist of 40 "multiple choice" or "short answer" questions. All these questions must be tackled. Each question is of equal value and will count for 2.5% of the final test grade. One of the answers to each "multiple choice" question is correct. Circle the letter on the left side of the more correct answer (e.g. B), making sure that it is clear to which answer your mark refers.

- modern*
- 1) Emile Durkheim asserted that in modern complex societies:
    - A. Individualism is a widely shared value. ✓
    - B. There tends to be a stress on moral conformity. ✓
    - C. None of the above
    - D. All of the above
  - 2) Durkheim assumed that social evolution would:
    - A. Inevitably lead to the development of more sophisticated laws repressing deviance
    - B. Lead to a streamlining of basic social institutions
    - C. Lead to a legal system which is more responsive to diversity
  - 3) Individualism is considered by Durkheim to be:
    - A. A corrosive force which undermines the collective consciousness
    - B. A complex of values which forms an important part of the collective consciousness
    - C. Both of the above
    - D. None of the above
  - 4) The Marxist term "mode of production" refers to:
    - A. Land, Labour and Capital as factors of production
    - B. Social relations of production
    - C. Both of the above
    - D. None of the above

- 5) In his analysis of capitalist society, Karl Marx concluded that law is:
- A. A basic structuring element, without which fundamental economic institutions like the limited liability company would be inconceivable. X
  - B. Part of the cultural superstructure determined by the economic base X
  - C. Neither of the above.
  - D. Both of the above.
- 6) In his historical overview of the political struggles which accompanied attempts to introduce capitalism in eighteenth century England, Marx:
- A. Stressed the significance of the process by which common land was privatised
  - B. Pointed to increasing urbanisation as the key factor promoting capitalist production
  - C. Both of the above
  - D. None of the above
- 7) Which of these statements was made by the historian E.P. Thompson?
- A. "The most fundamental right under the law of capital is the equal exploitation of labour -power by all capitalists"
  - B. "The essential precondition for the effectiveness of law, in its function as ideology, is that it shall display an independence from gross manipulation and shall seem to be just. It cannot seem to be so without upholding its own logic and criteria of equity; indeed, on occasion, by actually *being* just."
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- 8) In his study of crime in eighteenth century England, Thompson attacked which of these aspects of Marxist legal theory?
- A. The rigid separation between the (economic) base and the (legal) superstructure
  - B. The tendency to view law reductively, as a mystifying language disguising injustice
  - C. The disinclination to see law as a tool that can be used to rectify class injustices.
  - D. All of the above
  - E. None of the above
- 9) Which of these statements is correct?
- A. Gift exchange is basically a form of barter
  - B. There are significant differences between gift exchange and barter
- 10) According to Bronislaw Malinowski, Trobriand gift exchange was:
- A. An effective legal system despite the lack of "codes, courts and constables."
  - B. A system of customary obligations which could best be described as a system of morality lacking legal enforceability.
  - C. Both of the above
  - D. None of the above.

A O

11) In Trobriand society, a man would be considered to be a member of the same matrilineage as:

- A. His own children
- B. His mother's sister's son (i.e. the son of his maternal aunt)
- C. His mother's brother's daughter (i.e. the daughter of his maternal uncle)
- D. All of the above
- E. None of the above

12) Evans-Pritchard insists that among the Nuer, the status of the Leopard-skin Chief' is equivalent to:

- A. That of a Government Minister in our own society
- B. That of a Judge in our society
- C. Both of the above
- D. None of the above

13) Law in Nuer society:

- A. Has a different force depending on the kind of social and lineage ties between the litigants.
- B. Is applied universally and equally in accordance with the egalitarian values of the Nuer people.
- C. Both of the above
- D. None of the above

14) If a fight erupts between two individuals, each of whom belongs to a different secondary segment of the same Nuer tribe, then:

- A. Each would know that he can rely on the support of all those persons who belong to the tertiary segments which are considered to fall within his secondary segment
- B. The tribe will divide up along the lines of primary segmentation and the leopard skin chief must judge the case
- C. There will be intense pressure on each of the parties to settle the conflict speedily
- D. All of the above
- E. None of the above

15) Evans-Pritchard claimed that in tribal societies sociability decreases with social distance. Simon Harrison:

- A. Agrees with this claim
- B. Disagrees with this claim
- C. Neither agrees nor disagrees

16) The difference between the Islamic concept of *Haqq* and the Western notion of a legal right is:

- A. The Islamic concept is also a religious one which refers to Divine justice.
- B. The Islamic concept refers to what is morally right.
- C. The Islamic concept refers to the true reality.
- D. All of the above
- E. None of the above



17) Clifford Geertz claims that law is:

- A. "The specific result of the configuration of obligations, which makes it impossible for an individual to shirk his responsibility without suffering for it in the future"
- B. "Part of a distinctive way of imagining the real"
- C. Both of the above.
- D. None of the above.

18) Anthropologists have claimed that Moroccan court procedures reveal a cultural focus on:

- A. Normative witnessing.
- B. The documentary proof of orally given testimony.
- C. Elaborate legal pleadings.
- D. All of the above
- E. None of the above

19) Geertz researches Moroccan law using the characteristic approach of:

- A. A cultural anthropologist
- B. A social anthropologist

20) The people of Mafia island in Tanzania follow:

- A. Islamic law
- B. The law of the State of Tanzania
- C. Local customary law
- D. All of the above
- E. None of the above

21) *Mahari* under Islamic law is:

- A. The dowry which the bride's father at the marriage ceremony agrees to give the groom.
- B. A sum of money which the groom at the marriage ceremony agrees to pay the bride.
- C. The alimony which men are compelled to give their wives following a divorce.
- D. All of the above
- E. None of the above

22) Pat Caplan's research shows that:

- A. Laws necessarily form part of a single unitary system.
- B. The interpretation of legal rules is uninfluenced by local conflicts and power struggles.
- C. Tanzanian villagers were able to manipulate the interpretation of laws in their own interests.
- D. All of the above
- E. None of the above

23) In the case of the "Eloping Wife", the *Kuta* (the Barotse court) paid most attention to which of the following factors in order to assess the credibility of the litigants?

- A. The respective social rank of father and husband
- B. The time it took the parties to perform certain actions

- 24) In Manambu culture, it seems that violence is seen as:
- A. Stemming from deep-seated aggressive drives present within individuals.
  - B. Deriving ultimately from forces which are external to the individual.
  - C. An expected result when encountering strangers.
  - D. All of the above
  - E. None of the above
- 25) According to Simon Harrison, the Manambu use masks and body-paint:
- A. As part of love magic
  - B. To help them become possessed by the spirits of dead ancestors
  - C. Both of the above
  - D. None of the above
- 26) When, in the early 1920's, the Australian Naval and Military Expeditionary Force made a punitive expedition against a Manambu village, this was interpreted by the villagers:
- A. As a reprisal for their own earlier aggression against white Australians
  - B. As a head-hunting raid organised by a white Australian tribe
  - C. As an attack for which their Nyaule neighbours were primarily responsible.
  - D. All of the above
  - E. None of the above.
- 27) Max Gluckman's key insight could be formulated as follows:
- A. Legal systems must be able to accommodate change while preserving a sense of continuity with the past.
  - B. The legitimacy of a legal system is weakened by ambiguous laws.
  - C. A legal system in which the interpretation of the meaning of the same law changes over time will tend to lose its own legitimacy.
  - D. All of the above
  - E. None of the above
- 28) The *Kuta* used to decide cases on the basis of:
- A. The opinion of the British Governor or his representative.
  - B. The consensus of all the counsellors present at the sitting.
  - C. The opinion of the most senior counsellor present.
- 29) One major similarity between Gluckman's research and that of Sally Falk-Moore is:
- A. Both anthropologists carried out fieldwork in African societies
  - B. Both anthropologists tackled the ways in which legal systems preserve their legitimacy.
  - C. Both of the above
  - D. Neither of the above.

30) Falk-Moore observes that custom means:

- A. A set of traditional rules handed down from one generation to another
- B. Contemporary usages and practices
- C. The residual category of local norms claiming tradition as legitimation that refer to matters on which there has been no legislation or binding judicial ruling by the central state, yet which the state is willing to acknowledge and enforce.
- D. All of the above
- E. None of the above.

31) According to Sally Merry, U.S. small claims courts:

- A. Gave an adequate opportunity for working class litigants to obtain justice
- B. Usually failed to supply the kind of justice working class litigants desired.

32) The processes of cultural domination described by Merry operate:

- A. Through formal rituals which alienate litigants
- B. Primarily by re-classifying the parties' legal claims

Short Answer Questions

33) The anthropological term for the practice of judging other cultures according to the criteria of one's own culture is:

\_\_\_\_\_

34) Malinowski compared *Kula* valuables to trophies and also to:

\_\_\_\_\_

35) Which other forums apart from the court, did the Tanzanian villagers observed by Caplan use to settle their disputes?

\_\_\_\_\_

36) Complete this sentence: "Thomas Hobbes claimed that a short and violent life is normal for people living in..."

\_\_\_\_\_

37) Evans-Pritchard mentions various elements that make it possible for a dispute to be settled by direct negotiation through a leopard-skin chief. Name one of them:

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FACULTY OF LAWS

LL.B. - I YEAR

CVL1013 - INTRODUCTION TO LEGAL ANTHROPOLOGY

MONDAY 25<sup>TH</sup> JANUARY, 2010

6.00 P.M. - 7.00 P.M.

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*David E. Zammit*

*This test will consist of 30 "multiple choice" questions. All these questions must be tackled. Each question is of equal value and will count for 3.33% of the final test grade. You must assume that only one of the answers to each "multiple choice" question is correct. Circle the letter on the left side of the answer you believe to be more correct (e.g. (B)) making sure that it is clear to which answer your mark refers.*

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- 1) Which of the following statements best reflects a Functionalist understanding of delays in Maltese court litigation?
  - A Delays in Maltese court litigation compensate for the low cost of court litigation and the litigious character of Maltese people to ensure that only serious and valid claims will be prosecuted in court
  - B Delays in Maltese court litigation serve to ensure that despite the recent proliferation of lawyers coupled with increases in overall wealth and education, access to the courts remains largely restricted to a patrimonial elite
  - C Delays in Maltese court litigation reflect the mismatch between the adversarial procedures on which Maltese court procedure is formally based and the pervasive inquisitorial culture of the courts
  - D All of the above
  - E None of the above
  
- 2) Which of the following statements is an example of reification?
  - A "Society" is nothing more than a collection of individuals
  - B There is no reason for anthropologists to assume that in a particular social context the laws will reflect a coherent and consistent set of values
  - C Maltese society turns a blind eye to various practices that are formally illegal
  - D All of the above
  - E None of the above
  
- 3) A primary task of legal anthropology is:
  - A To analyze the local legal system
  - B To compare/contrast the local system with other local systems so as to extract nontrivial general principles
  - C To facilitate integration of the legal system into broader global networks through the promotion of mutual understanding
  - D All of the above
  - E None of the above
  
- 4) Which of these statements appears most correct?
  - A Claims made by informants about what they consider their law to be like are important primary data sufficient in themselves to convey a comprehensive understanding to an anthropologist of the nature of their legal system
  - B Claims made by informants about what they consider their law to be like are not sufficient in themselves to convey a comprehensive understanding to an anthropologist of the nature of their legal system

*David E. Jammit*

- 5) Charles-Louis Montesquieu stated:
- A. "A law ... may be said to be a rule laid down for the guidance of an intelligent being by an intelligent being having power over him....Laws or rules, properly so called, are a species of commands."
  - B. "The prophecies of what the courts will do ... are what I mean by the law."
  - C. "Laws should be so appropriate to the people for whom they are made that it is very unlikely that the laws of one nation can suit another"
  - D. All of the above
  - E. None of the above
- 6) From a Girardian perspective, the reason why gifts are generally reciprocated would have to be attributed to:
- A. The self-interest of the recipient
  - B. The influence of the "spirit of the gift" on the recipient
  - C. The desire of the recipient to imitate the actions of the giver
  - D. The recipient's attempt to imitate the desires of the giver
  - E. All of the above
  - F. None of the above
- 7) Bronislaw Malinowski:
- A. Disagreed with Emile Durkheim's concept of "mechanical" solidarity
  - B. Shared the same understanding of law as a distinctive way of imagining the real as Geertz
  - C. Identified law in the Trobriands in the same processes as Evans-Pritchard did
  - D. Explained Trobriand society in Marxist terms
  - E. All of the above
  - F. None of the above
- 8) According to Rene Girard, revenge in "primitive" tribal societies:
- A. Forms the basis of their legal systems
  - B. Is what their legal systems try to avoid
- 9) Girard argues that human desires:
- A. Can only be understood if we explore key characteristics of the object desired
  - B. Can only be understood if we realize that the person who desires is also a person who is embedded in various social relationships
  - C. Originate exclusively from distinctive individual psychological urges
  - D. All of the above
  - E. None of the above
- 10) Girard would agree with Emile Durkheim's contention that:
- A. In "primitive" tribal societies social homogeneity preserves social cohesion
  - B. In modern societies, social cohesion is promoted by treating all people equally
  - C. All of the above
  - D. None of the above
- 11) The "Islamic legal sensibility" described by Clifford Geertz:
- A. Focuses on establishing the correct interpretation of Islamic texts such as the Quran
  - B. Aims to bring the "facts of the case" in proper alignment with the written law
  - C. All of the above
  - D. None of the above

*David E. Gennit*

- 12) Girard claims that the most significant difference between Nuer society and ours lies in:
- A The different nature and function of religion in each society
  - B The nature of our capitalist economy
  - C The fact that Nuer are a state-less society
  - D All of the above
  - E None of the above

- 13) Legal Anthropologists generally argue:
- A That blood-feuds are a sign of social breakdown
  - B That blood feuds can express and structure society
  - C Both of the above
  - D None of the above

- 14) Evans-Pritchard claimed that Nuer law:
- A Applies with equal and invariant force to every member of the tribe
  - B Strictly speaking does not exist
  - C Is produced by the Council of Elders, which has the authority to adjudicate such matters and enforce its orders
  - D All of the above
  - E None of the above

- 15) The principle of Segmentary Opposition among the Nuer functions such that:
- A A killing usually gives rise to a feud which always takes place between the same segments of the Nuer tribe
  - B A killing may give rise to a feud and if this happens there is no mechanism by which feuds can be resolved
  - C In the event of a killing, particular segments and sub-segments of the tribe voluntarily decide which side to support in the ensuing feud
  - D All of the above
  - E None of the above

16) Imagine that three years ago a previously unknown community of indigenous people is discovered inhabiting the Amazon jungle. Anthropologists rushed off to interview them and document their language and customs. Which of the following would Llewellyn and Hoebel have considered as offering the best route for understanding their legal system?

- A An account by a native informant of their indigenous rules of inheritance
- B An ethnographic account written by a Peruvian anthropologist outlining the key practices and customs followed by members of the tribe in their daily life
- C An eye-witness description by a traveler of a dispute between two members of the community which he observed as it developed and was resolved over a period of a month

17) According to Llewellyn and Hoebel, the Cheyenne Indians:

- A Did not possess criminal law in the sense of sanctioning individuals who committed violent acts of homicide, theft, rape and so on.
- B Did not possess civil law
- C Follow norms which could be codified in a way which resembles our written law-codes
- D All of the above
- E None of the above

*David E. Zornick*





25) Malinowski claimed that:

- A. Trobrianders shared the same human nature as Europeans
- B. Trobrianders possessed a system of civil law
- C. Trobrianders possessed a system of criminal law
- D. All of the above
- E. None of the above

26) Malinowski's analytical concept of law:

- A. Emphasized the importance of external agents of social control
- B. Focused on group psychology and not that of the individual
- C. Does not adequately account for the existence of criminal law
- D. Ignores the importance of sanctions
- E. All of the above
- F. None of the above

27) Marx claimed that law:

- A. Is part of the economic base of all human societies
- B. Shapes human thought and in the process structures human societies
- C. Must be understood as driving social change through legal reform
- D. All of the above
- E. None of the above

28) Which of the following statements was *not* made by Karl Marx?

- A. "It is inherent in the especial character of law, as a body of rules and procedures, that it shall apply logical criteria with reference to standards of universality and equality"
- B. "The ideas of the ruling class are, in every age, the ruling ideas: i.e. the class which is the dominant *material* force in society is at the same time its dominant *intellectual* force."
- C. "It should not be forgotten that law has not, any more than religion, an independent history"

29) Lawrence Cohen's research on organ-trafficking in India:

- A. Draws upon a fundamentally Marxist understanding of law as an agent of mystification
- B. Demonstrates the ideological appeal of Malinowski's "reciprocity-based" model of law
- C. Echoes Rene Girard in drawing our attention to the paradox of widespread social conformity resulting from various, apparently voluntary, individual choices.
- D. All of the above
- E. None of the above

30) Which of these statements appears most correct?

- A. From a legal anthropological perspective, the distinction between civil law and criminal law has always been regarded as a distinction which is specific to the way in which law is structured in "Western" societies and which cannot be used to interpret "law-like phenomena" in other, "non-Western", societies.
- B. Legal anthropologists have decisively concluded that the emergence of law is intimately tied to the emergence of the state, so that law cannot exist in stateless societies.
- C. The distinction between "law" and "custom" is one which often tells us more about colonial and neo-colonial ways of structuring legal knowledge in the light of global geo-political realities than it does about intrinsic differences between the norms which are classified as "legal" or "customary" as the case may be.

*Said E. Jomint*

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CVL1013 - INTRODUCTION TO LEGAL ANTHROPOLOGY

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1. Malinowski's description of Trobriand law and society contrasted with Durkheim's theoretical predictions because he:
  - A showed how Trobrianders have law
  - B showed how Trobrianders have criminal law
  - C showed how Trobrianders impose sanctions on individuals who threaten public morality
  - D showed how Trobriand society is based on relationships of economic reciprocity
  - E all of the above
  - F none of the above
  
2. According to Max Gluckman, the concept of the "reasonable man" was used by Lozi judges:
  - A in order to determine who was at fault in the trial
  - B in order to evaluate the credibility of testimony given during the trial
  - C to refer to the way an ordinary average person would have acted
  - D to refer to how a rational person would have acted
  - E all of the above
  - F none of the above
  
3. Which of the following legal anthropologists seems to have come closest to avoiding "legal orientalism" in his work?
  - A Clifford Geertz
  - B Max Gluckman
  - C Paul Bohannon
  
4. The case study of "Trobriand criminal law" provided by Malinowski shows:
  - A How the violation of deeply held shared values was immediately punished
  - B How the *conscience collective* of the Trobrianders provoked them to punish law breakers
  - C How despite paying lip service to the incest taboo, the Trobrianders tolerated its infringement in daily life
  - D How isolating the offender through the creation of a public scandal in regard to his actions was necessary to activate the machinery of legal punishment

5. The choice of cattle by the Nuer both as sacrificial victims and for purposes of compensating a death is considered by Rene Girard as a choice dictated by the fact that:
- A Nuer consider cattle as almost identical to human beings
  - B Nuer would never confuse an animal with a human being
  - C Both of the above
  - D None of the above
6. While X sees the problem of social order almost exclusively in terms of the forces which will keep a society from falling apart, Y sees it in terms of finding the right balance between the forces of fission and fusion. Z on the other hand sees the problem in terms of how to cope with internally generate forces of fission. In this statement:
- A X is Max Weber, Y is Emile Durkheim and Z is E.P. Thompson
  - B X is Rene Girard, Y is Karl Marx and Z is Emile Durkheim
  - C X is Emile Durkheim, Y is Evans Pritchard and Z is Rene Girard
7. In the course of the "debate" as to whether to introduce divorce legislation in Malta, one hears statements like: (1) "Maltese society has changed and statistics show that people no longer expect to marry for life. Divorce, which already exists as a matter of fact, must therefore be formally introduced into the legal system"; or (2) "By not allowing divorce, Maltese law is sending a strong message to the society that marriage is an institution that must be valued and that requires a lifelong commitment." The understanding of the relationship between law and custom/social practice which motivates these statements:
- A Is close to that of Stanley Diamond in the case of statement (1) and to that of Karl Marx in the case of statement (2)
  - B Is close to that of Bronislaw Malinowski in the case of statement (1) and of Stanley Diamond in the case of statement (2)
  - C Both of the above
  - D None of the above
8. Malinowski and Rene Girard would disagree as to whether:
- A A basic role of law is to control certain "natural human propensities" and desires
  - B Human beings are fundamentally altruistic or fundamentally egoistic
  - C Reciprocity is the basis of law or of anti-social violence
9. It is possible to group anthropologists and social thinkers in terms of whether they see conflict as a normal aspect of human societies or not. Which, if any, of the following do *not* see conflict as normal?
- A Rene Girard
  - B Karl Marx
  - C Emile Durkheim
  - D None of the above see conflict as normal
  - E All of the above see conflict as normal
10. The Nuer Leopard-skin chief and a judge in the Maltese criminal court:
- A Each possess the power and the authority to issue final judgements
  - B Can both impose binding sanctions on criminals
  - C Both base their decisions on the retributive principle

11. Research by Conley and O'Barr indicates:
- A that patterns of socio-economic inequality are reflected in legal fora such as small-claims courts
  - B that patterns of socio-economic inequality are reproduced in the shape of the differing cultural competence of litigants before the small-claims court
  - C that legal processes have a relative autonomy such that socially marginal/powerless individuals have the same access to law as powerful ones
12. The "Islamic legal sensibility", observed by Clifford Geertz and Lawrence Rosen during litigation before the Moroccan *qadi's* courts, gives most importance to:
- A written documents which are seen as extensions of the sacred texts of the *Quran*
  - B judicial creativity in interpreting the legal texts and applying them to the facts
  - C identifying upright witnesses who can be relied upon to tell the truth
  - D identifying technical experts with scientific expertise
  - E all of the above
  - F none of the above
13. According to E.P.Thompson:
- A Laws are customs which have been authoritatively restated by legal institutions
  - B The production, interpretation and application of law is in the hands of an elite
  - C Malinowski and Marx were both wrong as law cannot be identified either with the customs of the peasantry or with the statutes of the ruling class
  - D Capitalist relations of production cannot be stated and defined without resort to legal concepts
  - E All of the above
  - F None of the above
14. Evans Pritchard and Malinowski:
- A each defined law in terms of moral obligations
  - B each saw law as relative to the position of individuals in the social structure
  - C each saw the basis of law as being force and the fear it inspires
  - D all of the above
  - E none of the above
15. In Weberian terms, the legitimacy of Maltese statute law is primarily:
- A Charismatic
  - B Traditional
  - C Rational/Bureaucratic
16. A crucial difference between gift exchange as defined by Malinowski and barter is:
- A Unlike gift exchange, barter usually requires high levels of mutual trust
  - B In gift exchange the giver usually knows what she will receive in return for the gift she gave
  - C Self interest is never part of the motivation of those who give gifts
  - D Barter gives rise to binding obligations. Gift exchange does not.
  - E In barter reciprocity is immediate, while in gift exchange it is delayed and denied
  - F All of the above
  - G none of the above

17. Durkheim would agree with the Natural law school that:
- A shared moral beliefs are relative truths that vary in different societies
  - B law may reflect a compromise between the different moral values of different groups
  - C law and morality are intertwined and inseparable
  - D all of the above
  - E none of the above
18. Suicide in tribal societies has been described by legal anthropologists:
- A as a crime, which is regarded with abhorrence everywhere
  - B as the self-administration of a legal sanction by the criminal
  - C as a purely individual decision which has no legal or political implications
  - D all of the above
  - E none of the above
19. Following the approach advocated by Llewellyn and Hoebel, the best way to study law in a particular society would be:
- A To study the norms which informants expressly invoke as authoritative
  - B To observe and codify the norms which informants follow in the routines of their daily life
  - C Both of the above
  - D None of the above
20. The Barotse *kuta* reached its decisions:
- A By a process that emphasised that decision-making authority was exclusively entrusted to a single judge
  - B By a process that emphasised the difference between legal truth and common sense
  - C By a process which diffused and distributed decision-making authority
21. Which of the following statements best reflects a Functionalist understanding of the recent increase in the number of law students in Malta?
- A The increase reflects the expansion of the Maltese economy, which has created a need for more lawyers in certain sectors
  - B The increase is part of an elite strategy of managing social discontent as it: (1) conceals unemployment by increasing the student population, (2) converts potential rebels into conservative upholders of the *status quo* and (3) given that most of these law students will not find jobs as sole practitioners, leaves unaffected the existing distribution of professional power
  - C The increase reflects the mismatch between the traditional expectations of most Maltese who still aspire to find work in the traditional professions and the actual needs of the economy
22. Which of the following is a positivist definition of law?
- A "A law...may be said to be a rule laid down for the guidance of an intelligent being by an intelligent being having power over him....Laws or rules, properly so called, are a species of commands."
  - B "The prophecies of what the courts will do...are what I mean by the law."
  - C "Laws should be so appropriate to the people for whom they are made that it is very unlikely that the laws of one nation can suit another"

23. Which, if any, of the following would be considered by Rene Girard as an example of a "preventive" measure against contagious violence?
- A The Nuer blood-feud
  - B A criminal trial before a US criminal court
  - C Relations of avoidance between Trobriand brothers and their sisters
  - D All of the above
  - E None of the above
24. Girard argues that the pursuit of human desires:
- A Leads inevitably to conflict
  - B Leads individuals to cooperate with one another and thus helps create law
  - C Leads to increased differentiation and social heterogeneity
  - D All of the above
  - E None of the above
25. The principle of segmentary opposition among the Nuer functions such that:
- A A killing usually gives rise to a feud which always takes place between the same tribal segments
  - B A killing may give rise to a feud and there is no mechanism by which feuds can be resolved
  - C In the event of a killing, particular segments and sub-segments of the tribe have a choice as to which side to support
  - D The particular segments of the tribe who will be involved in a blood-feud depends on the kinship relationship between the victim and the murderer
26. Legal anthropologists often argue:
- A That feuds are a sign of social breakdown
  - B That feuds express and structure social order
  - C Both of the above
  - D None of the above
27. Which of these statements appears most correct?
- A From a legal anthropological perspective, the distinction between civil law and criminal law has always been regarded as specifically characterising the way law is structured in "Western" societies and as inappropriate for understanding law in stateless societies
  - B Various legal anthropologists have treated the distinction between civil and criminal law as a useful analytical tool for understanding law in stateless societies and this because it was seen as a kind of sociological concept, albeit drawn from Western jurisprudence
28. By referring to the importance of the principle of reciprocity in Trobriand society, Malinowski meant to refer to:
- A The rule that equivalent gifts should be given in exchange for gifts received
  - B The rule that only those islanders who are already related can exchange gifts
  - C The rule that whatever is given to unrelated individuals should also be given to close family members
  - D All of the above
  - E None of the above

29. One significant contribution of legal anthropology to legal scholarship and practice has been:
- A Legal Realism
  - B The A.D.R. (Alternative Dispute Resolution) movement
  - C The concept of Customary law
  - D All of the above
  - E None of the above
30. A primary task of legal anthropology is:
- A To analyse the local legal system
  - B To compare/contrast the local system with other local systems so as to extract non trivial general principles
  - C To facilitate integration of the legal system into broader global networks through the promotion of mutual understanding
  - D All of the above
  - E None of the above



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FRIDAY, 28<sup>TH</sup> JANUARY 2011

1.00PM – 2.00PM

*This test will consist of 30 "multiple choice" questions. All of these questions must be tackled. Each question is of equal value and will count for 3.33% of the final test grade. You must assume that only one of the answers to each "multiple choice" question is correct. Circle the letter on the left side of the answer you believe to be more correct (e.g. **B**), making sure that it is clear to which answer your mark refers.*

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1. Malinowski's description of Trobriand law and society contrasted with Durkheim's theoretical predictions because he:
  - A showed how Trobrianders have law
  - B showed how Trobrianders have criminal law
  - C showed how Trobrianders impose sanctions on individuals who threaten public morality
  - D showed how Trobriand society is based on relationships of economic reciprocity
  - E all of the above
  - F none of the above
  
2. According to Max Gluckman, the concept of the "reasonable man" was used by Lozi judges:
  - A in order to determine who was at fault in the trial
  - B in order to evaluate the credibility of testimony given during the trial
  - C to refer to the way an ordinary average person would have acted
  - D to refer to how a rational person would have acted
  - E all of the above
  - F none of the above
  
3. Which of the following legal anthropologists seems to have come closest to avoiding "legal orientalism" in his work?
  - A Clifford Geertz
  - B Max Gluckman
  - C Paul Bohannon
  
4. The case study of "Trobriand criminal law" provided by Malinowski shows:
  - A How the violation of deeply held shared values was immediately punished
  - B How the *conscience collective* of the Trobrianders provoked them to punish law breakers
  - C How despite paying lip service to the incest taboo, the Trobrianders tolerated its infringement in daily life
  - D How isolating the offender through the creation of a public scandal in regard to his actions was necessary to activate the machinery of legal punishment

5. The choice of cattle by the Nuer both as sacrificial victims and for purposes of compensating a death is considered by Rene Girard as a choice dictated by the fact that:
- A Nuer consider cattle as almost identical to human beings
  - B Nuer would never confuse an animal with a human being
  - C Both of the above
  - D None of the above
6. While X sees the problem of social order almost exclusively in terms of the forces which will keep a society from falling apart, Y sees it in terms of finding the right balance between the forces of fission and fusion. Z on the other hand sees the problem in terms of how to cope with internally generate forces of fission. In this statement:
- A X is Max Weber, Y is Emile Durkheim and Z is E.P. Thompson
  - B X is Rene Girard, Y is Karl Marx and Z is Emile Durkheim
  - C X is Emile Durkheim, Y is Evans Pritchard and Z is Rene Girard
7. In the course of the "debate" as to whether to introduce divorce legislation in Malta, one hears statements like: (1) "Maltese society has changed and statistics show that people no longer expect to marry for life. Divorce, which already exists as a matter of fact, must therefore be formally introduced into the legal system"; or (2) "By not allowing divorce, Maltese law is sending a strong message to the society that marriage is an institution that must be valued and that requires a lifelong commitment." The understanding of the relationship between law and custom/social practice which motivates these statements:
- A Is close to that of Stanley Diamond in the case of statement (1) and to that of Karl Marx in the case of statement (2)
  - B Is close to that of Bronislaw Malinowski in the case of statement (1) and of Stanley Diamond in the case of statement (2)
  - C Both of the above
  - D None of the above
8. Malinowski and Rene Girard would disagree as to whether:
- A A basic role of law is to control certain "natural human propensities" and desires
  - B Human beings are fundamentally altruistic or fundamentally egoistic
  - C Reciprocity is the basis of law or of anti-social violence
9. It is possible to group anthropologists and social thinkers in terms of whether they see conflict as a normal aspect of human societies or not. Which, if any, of the following do *not* see conflict as normal?
- A Rene Girard
  - B Karl Marx
  - C Emile Durkheim
  - D None of the above see conflict as normal
  - E All of the above see conflict as normal
10. The Nuer Leopard-skin chief and a judge in the Maltese criminal court:
- A Each possess the power and the authority to issue final judgements
  - B Can both impose binding sanctions on criminals
  - C Both base their decisions on the retributive principle

11. Research by Conley and O'Barr indicates:
- A that patterns of socio-economic inequality are reflected in legal fora such as small-claims courts
  - B that patterns of socio-economic inequality are reproduced in the shape of the differing cultural competence of litigants before the small-claims court
  - C that legal processes have a relative autonomy such that socially marginal/powerless individuals have the same access to law as powerful ones
12. The "Islamic legal sensibility", observed by Clifford Geertz and Lawrence Rosen during litigation before the Moroccan *qadi's* courts, gives most importance to:
- A written documents which are seen as extensions of the sacred texts of the *Quran*
  - B judicial creativity in interpreting the legal texts and applying them to the facts
  - C identifying upright witnesses who can be relied upon to tell the truth
  - D identifying technical experts with scientific expertise
  - E all of the above
  - F none of the above
13. According to E.P. Thompson:
- A Laws are customs which have been authoritatively restated by legal institutions
  - B The production, interpretation and application of law is in the hands of an elite
  - C Malinowski and Marx were both wrong as law cannot be identified either with the customs of the peasantry or with the statutes of the ruling class
  - D Capitalist relations of production cannot be stated and defined without resort to legal concepts
  - E All of the above
  - F None of the above
14. Evans Pritchard and Malinowski:
- A each defined law in terms of moral obligations
  - B each saw law as relative to the position of individuals in the social structure
  - C each saw the basis of law as being force and the fear it inspires
  - D all of the above
  - E none of the above
15. In Weberian terms, the legitimacy of Maltese statute law is primarily:
- A Charismatic
  - B Traditional
  - C Rational/Bureaucratic
16. A crucial difference between gift exchange as defined by Malinowski and barter is:
- A Unlike gift exchange; barter usually requires high levels of mutual trust
  - B In gift exchange the giver usually knows what she will receive in return for the gift she gave
  - C Self interest is never part of the motivation of those who give gifts
  - D Barter gives rise to binding obligations. Gift exchange does not.
  - E In barter reciprocity is immediate, while in gift exchange it is delayed and denied
  - F All of the above
  - G none of the above

17. Durkheim would agree with the Natural law school that:
- A shared moral beliefs are relative truths that vary in different societies
  - B law may reflect a compromise between the different moral values of different groups
  - C law and morality are intertwined and inseparable
  - D all of the above
  - E none of the above
18. Suicide in tribal societies has been described by legal anthropologists:
- A as a crime, which is regarded with abhorrence everywhere
  - B as the self-administration of a legal sanction by the criminal
  - C as a purely individual decision which has no legal or political implications
  - D all of the above
  - E none of the above
19. Following the approach advocated by Llewellyn and Hoebel, the best way to study law in a particular society would be:
- A To study the norms which informants expressly invoke as authoritative
  - B To observe and codify the norms which informants follow in the routines of their daily life
  - C Both of the above
  - D None of the above
20. The Barotse *kuta* reached its decisions:
- A By a process that emphasised that decision-making authority was exclusively entrusted to a single judge
  - B By a process that emphasised the difference between legal truth and common sense
  - C By a process which diffused and distributed decision-making authority
21. Which of the following statements best reflects a Functionalist understanding of the recent increase in the number of law students in Malta?
- A The increase reflects the expansion of the Maltese economy, which has created a need for more lawyers in certain sectors
  - B The increase is part of an elite strategy of managing social discontent as it: (1) conceals unemployment by increasing the student population, (2) converts potential rebels into conservative upholders of the *status quo* and (3) given that most of these law students will not find jobs as sole practitioners, leaves unaffected the existing distribution of professional power
  - C The increase reflects the mismatch between the traditional expectations of most Maltese who still aspire to find work in the traditional professions and the actual needs of the economy
22. Which of the following is a positivist definition of law?
- A "A law...may be said to be a rule laid down for the guidance of an intelligent being by an intelligent being having power over him....Laws or rules, properly so called, are a species of commands."
  - B "The prophecies of what the courts will do...are what I mean by the law."
  - C "Laws should be so appropriate to the people for whom they are made that it is very unlikely that the laws of one nation can suit another"

23. Which, if any, of the following would be considered by Rene Girard as an example of a "preventive" measure against contagious violence?
- A The Nuer blood-feud
  - B A criminal trial before a US criminal court
  - C Relations of avoidance between Trobriand brothers and their sisters
  - D All of the above
  - E None of the above
24. Girard argues that the pursuit of human desires:
- A Leads inevitably to conflict
  - B Leads individuals to cooperate with one another and thus helps create law
  - C Leads to increased differentiation and social heterogeneity
  - D All of the above
  - E None of the above
25. The principle of segmentary opposition among the Nuer functions such that:
- A A killing usually gives rise to a feud which always takes place between the same tribal segments
  - B A killing may give rise to a feud and there is no mechanism by which feuds can be resolved
  - C In the event of a killing, particular segments and sub-segments of the tribe have a choice as to which side to support
  - D The particular segments of the tribe who will be involved in a blood-feud depends on the kinship relationship between the victim and the murderer
26. Legal anthropologists often argue:
- A That feuds are a sign of social breakdown
  - B That feuds express and structure social order
  - C Both of the above
  - D None of the above
27. Which of these statements appears most correct?
- A From a legal anthropological perspective, the distinction between civil law and criminal law has always been regarded as specifically characterising the way law is structured in "Western" societies and as inappropriate for understanding law in stateless societies
  - B Various legal anthropologists have treated the distinction between civil and criminal law as a useful analytical tool for understanding law in stateless societies and this because it was seen as a kind of sociological concept, albeit drawn from Western jurisprudence
28. By referring to the importance of the principle of reciprocity in Trobriand society, Malinowski meant to refer to:
- A The rule that equivalent gifts should be given in exchange for gifts received
  - B The rule that only those islanders who are already related can exchange gifts
  - C The rule that whatever is given to unrelated individuals should also be given to close family members
  - D All of the above
  - E None of the above

29. One significant contribution of legal anthropology to legal scholarship and practice has been:
- A Legal Realism
  - B The A.D.R. (Alternative Dispute Resolution) movement
  - C The concept of Customary law
  - D All of the above
  - E None of the above
30. A primary task of legal anthropology is:
- A To analyse the local legal system
  - B To compare/contrast the local system with other local systems so as to extract non trivial general principles
  - C To facilitate integration of the legal system into broader global networks through the promotion of mutual understanding
  - D All of the above
  - E None of the above

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UNIVERSITY OF MALTA

FACULTY OF LAWS

LL.B. – I YEAR

CVL1013 – INTRODUCTION TO LEGAL ANTHROPOLOGY

WEDNESDAY 5<sup>TH</sup> SEPTEMBER, 2012 9.15 A.M – 11.15 A.M

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FACULTY OF LAWS

LL.B. – I YEAR

CVL1013 – INTRODUCTION TO LEGAL ANTHROPOLOGY

WEDNESDAY 5<sup>TH</sup> SEPTEMBER, 2012 9.15 A.M – 11.15 A.M



This examination will consist of two sections, each counting for 50% of the final mark and to each of which you are expected to dedicate roughly one hour.

In SECTION ONE there are 5 'long answer' questions. You must choose ONE and write an essay in response. This essay should be written on a separate SCRIPT

In SECTION TWO there are 30 "multiple choice" questions; each of which has an equal value and will count for 1.67% of the final examination grade. You are expected to answer ALL the questions. You should do so by selecting the most accurate of the options given for the questions below and making selections directly on the answer sheet BELOW, by making an 'X' in the relevant BOX. There is no negative marking. You will not be given ANY credit unless (1) the ANSWER SHEET IS COMPLETED and (2) The ENTIRE exam (QUESTIONS AND ANSWERS) is returned.

**SECTION TWO- ANSWER SHEET (50% OF TOTAL MARKS)**

Q	A	b	c	d	e	f	g	h	i	i	Q	a	b	c	d	e	f	g	h	i	i	
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Please note that in the above table, the letter 'Q' stands for question.

## SECTION ONE

- (1) 'The way anthropologists have understood the relationship between law, economy, politics and culture varies depending on how law is understood.' Discuss.
  - (2) Legal anthropologists often appear undecided as to whether people are best described as rational calculating self-interested actors who will break the rules the moment they can get away with it or not. Could Rene Girard's theory of human nature contribute to resolving this dilemma?
  - (3) Despite their differences, Malinowski, Evans Pritchard and Durkheim can be considered as having been interlocutors in the same conversation. Explain.
  - (4) Evaluate the work of Max Gluckman in the light of his famous "debate" with Paul Bohannon. Explain and take sides in this debate.
  - (5) What, according to you, is the contribution legal anthropology can make to resolving "real world" problems?
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## SECTION TWO

- 1) **Malinowski's claim that law existed in Trobriand society requires that gift exchange:**
  - a) Is carried out for purely altruistic reasons
  - b) Must be considered as creating purely moral obligations where the only sanction, if they are disobeyed, resides in the conscience of the individual
  - c) Must impose binding sanctioned obligations on all the parties concerned
  - d) All of the above
  - e) None of the above
- 2) **Laura Nader observes that 'harmony ideology' in Talian litigation:**
  - a) Serves to empower the local community in regard to the state government
  - b) Was conceived as a tool to keep local communities docile and subservient in regard to the central state
  - c) Both of the above
  - d) None of the above
- 3) **E.P. Thompson attacked:**
  - a) The Marxist view that law is only part of the cultural superstructure
  - b) The view that law has only pliant instrumental functions
  - c) The view that law is a tool in the hands of the elite
  - d) The view that law in eighteenth century Britain is to be identified with and equated to the 'laws' (statutes) enacted by Parliament
  - e) All of the above
  - f) None of the above

- 4) According to Lawrence Rosen and Clifford Geertz, Islamic law as applied during litigation is:
- Rigidly interpreted and applied in the same way regardless of the 'facts'
  - Is treated as a code which needs to be deciphered by experts
  - Is not really 'applied' to the facts at all
  - All of the above
  - None of the above
- 5) Compared to the practice of the Moroccan courts presided over by the Qadi, the adjudicators of the US small claims tribunals studied by Conley and O'Barr:
- Focused on understanding the history of the relationships between the litigants
  - Were most responsive to litigants who told emotional narratives
  - Were most responsive to litigants whose narratives revolved around the rules which were at stake
  - All of the above
  - None of the above
- 6) Which of the following is *not* a characteristic focus of the 'processual' perspective in legal anthropology?
- The study of the history of disputes before they come to be 'resolved'
  - The study of the motives and choices of the disputing parties
  - The study of the social relations between the disputing parties
  - The study of law as a tool for preventing disputes arising between the parties
- 7) Max Gluckman's research emphasised:
- That many features of the judicial process and legal reasoning are invariant throughout the cultures of the world
  - That Lozi judges take great care to avoid ambiguous expressions in their legal pronouncements
  - That social norms enter judicial decision-making through the institute of the jury
  - All of the above
- 8) In 'The Cheyenne Way', Llewellyn and Hoebel:
- Imported their 'case study' methodology from legal scholarship
  - Tried to search for instances of 'hitch, dispute, grievance, trouble' in relation to the Cheyenne
  - Mainly relied on the memories of their Indian informants elicited through interviews
  - All of the above
  - None of the above
- 9) Girard argues that human desires:
- Can only be understood if we explore key characteristics of the object desired
  - Can only be understood if we realize that the person who desires is also a person who is embedded in various social relationships
  - Originate exclusively from distinctive individual psychological urges
  - All of the above
  - None of the above

- 10) Durkheim claimed that social cohesion in modern societies is primarily achieved:
- Through their economic structures
  - Through shared moral and religious beliefs
  - Through a shared commitment to democracy
  - All of the above
  - None of the above
- 11) Malinowski saw “primitive” law as:
- A perfectly unified system possessing only one kind of law
  - Composed predominantly of a form of criminal law
  - Existing despite the absence of a sanction for breach of the law
  - All of the above
  - None of the above
- 12) In ‘The Law of Primitive Man’, Hoebel:
- Tried to focus on particular cases to provide the reader with a sense of the rich variety of law in stateless societies and to illustrate his point that it is practically impossible to reduce this complexity to general abstract principles
  - Focused on showing how reciprocity is the foundation of ‘primitive law’
  - Emphasised that it is impossible to really bridge the gap that separates ‘law’ from ‘culture’
  - All of the above
  - None of the above
- 13) According to Girard, the fact that Nuer prefer to pay cattle as compensation for a homicide:
- Sheds light on the role of substitution as the basis of sacrifice
  - Can be explained in terms of the theory of anti-mimetic emulation
  - Shows how violence can never be channelled or diverted
  - All of the above
  - None of the above
- 14) “If we designate the sum total of rules, conventions and patterns of behaviour as the body of custom, there is no doubt that the native feels a strong respect for all of them, has a tendency to do what others do, what everyone approves of and, if not drawn or driven in another direction by his appetites or interests, will follow the biddings of custom rather than any other force”. This is a quotation from:
- Emile Durkheim
  - Rene Girard
  - Bronislaw Malinowski
  - None of the above
- 15) Which, if any, of the following are considered by Rene Girard to be ‘contagious’:
- Violence
  - Desire
  - Vengeance
  - All of the above
  - None of the above

- 16) Nuer society as described by Evans-Pritchard was:
- Violent and egalitarian
  - Hierarchically organised
  - Peaceful and law-abiding
- 17) Durkheim's theory of legal evolution:
- Asserts that in societies with an advanced division of labour, employment law would develop in a complex and sophisticated way
  - Predicts that criminal law would become an ever more important part of advanced legal systems
  - Claims that legal evolution would result in the declining importance of restitutive law and the rise in importance of repressive law.
  - All of the above
  - None of the above
- 18) Participant Observation is:
- A kind of "armchair theorising" practised by early anthropologists
  - Studying another society by personally immersing yourself in that society
  - A research method which requires the researcher to participate in observing others
  - All of the above
  - None of the above
- 19) The legal process among the Tiv aimed primarily:
- At repairing broken social relationships
  - At uncovering the truth of the matter at stake
  - Neither of the above
- 20) In Marx's analysis of the capitalist mode of production, law is said to operate:
- To obscure and mystify the true nature of existing social relationships
  - To present existing social relationships as normal, desirable and just
  - Instrumentally, as a tool used by some classes to improve their lot vis-à-vis others
  - To define key economic relationships in a stable way through legal doctrine
  - All of the above
  - None of the above
- 21) 'Sacrificial substitution implies a degree of misunderstanding. Its vitality as an instrument depends on its ability to conceal the displacement upon which the rite is based'. In this quotation, Girard is referring to:
- How sacrifice requires participants to conceal the fact that they do not always understand the ritual techniques involved
  - How sacrifice functions to substitute the violent feelings originally experienced by participants with peaceful emotions
  - The way sacrifice presupposes the substitution of a victim for other individuals who have angered the participants
  - All of the above
  - None of the above

**22) Paul Bohannon:**

- a) Attacked the tendency of anthropologists such as Max Gluckman of presenting their own "analytical systems" as if they corresponded to the "folk systems" of their informants
- b) Attacked Malinowski for stating that Trobrianders did not possess law
- c) Insisted that terms from Western jurisprudence should be used by legal anthropologists in order to situate the information they obtain about "non-Western law" in relation to the body of knowledge which already exists.
- d) All of the above
- e) None of the above

**23) In 'Crime and Custom in Savage Society', Malinowski:**

- a) Identified law with social control, seen as social regulation through external enforcement by the authorities
- b) Emphasised that Trobrianders had their own judicial system, centred on tribal courts
- c) Identified law with social regulation through internalised norms
- d) All of the above
- e) None of the above

**24) The anthropologist Robert Lowrie writes about the 'administering of justice' in tribal societies. Rene Girard:**

- a) Considers such terminology to be inappropriate
- b) Constructs his theory on the assumption that all societies have developed systems for administering justice
- c) Both of the above
- d) None of the above

**25) Bronislaw Malinowski:**

- a) Agreed with Emile Durkheim's concept of mechanical solidarity
- b) Shared the same understanding of the reasons for reciprocity in social interaction as Rene Girard
- c) Shared the same definition of law as Edward Evans-Pritchard
- d) Explained Trobriand society in Functionalist terms
- e) All of the above
- f) None of the above

**26) According to Girard, 'Primitive' religion has as its central aim to:**

- a) Respond to the threat of violence
- b) Explain the meaning of life
- c) Create community through shared beliefs and rituals
- d) Preserve patriarchy
- e) All of the above
- f) None of the above

- 27) **The principle of Segmentary Opposition among the Nuer functions such that:**
- a) A killing usually gives rise to a feud which always takes place between the same segments of the Nuer tribe
  - b) A killing may give rise to a feud and if this happens there is no mechanism by which feuds can be resolved, or even prevented from arising
  - c) In the event of a killing, particular segments and sub-segments of the tribe arbitrarily decide which side to support in the ensuing feud
  - d) All of the above
  - e) None of the above
- 28) **The view that laws are customs which have been authoritatively restated by institutions is one which was attacked by:**
- a) Bronislaw Malinowski
  - b) Stanley Diamond
  - c) Paul Bohannon
- 29) **Which of the following statements was not made by Karl Marx?**
- a) "It is inherent in the especial character of law, as a body of rules and procedures, that it shall apply logical criteria with reference to standards of universality and equality"
  - b) "The ideas of the ruling class are, in every age, the ruling ideas: i.e. the class which is the dominant material force in society is at the same time its dominant intellectual force."
  - c) "It should not be forgotten that law has not, any more than religion, an independent history"
- 30) **The distinction between criminal and civil law was treated as a fundamental analytical tool for making sense of 'non-Western' law by:**
- a) Emile Durkheim
  - b) Bronislaw Malinowski
  - c) Paul Bohannon
  - d) Laura Nader
  - e) All the above
  - f) (a) and (b) above
  - g) (a), (b), and (c) above
  - h) (d) and (c) above
  - i) (b), and (c) above
  - j) None of the above

