

1. Orientation: What Jurisprudence Is For

Start here if you want to know why jurisprudence matters before you memorise any thinker.

Core learning aim

- Jurisprudence is the reflective study of law: what law is, how it relates to morality, why it binds, how judges reason, and what law does in society.
- It is not just a list of theorists. Each theory is an answer to a recurring question: What makes law valid? What makes it legitimate? Why obey? Who benefits? What is a just legal order?
- A closed-book exam rewards conceptual clarity: if you understand the question a theory is trying to answer, you are far less likely to confuse theorists.

The recurring big questions

- What is law? Is it rules, commands, principles, social facts, or moral reasoning?
- How do judges decide cases? Mechanically from rules, or creatively through interpretation and policy?
- What is the relation between law and morality? Can an evil rule still count as law?
- Why should citizens obey the law? Consent, fairness, authority, coordination, or fear?
- What counts as justice? Equality, liberty, welfare, entitlement, desert, or recognition?
- Is law neutral, or does it reproduce social power, class domination, gender hierarchy, or racial ordering?
- Can international law really be law if there is no global sovereign?

How to study jurisprudence for a closed-book exam

- Learn each theory as a response to a problem, not as a floating bundle of quotations.
- For every thinker, know: (1) the target they are criticising, (2) the core idea, (3) one example, (4) two criticisms, and (5) the strongest reply.
- Use contrast pairs. Hart versus Dworkin. Natural law versus positivism. Rawls versus Nozick. Marxism versus liberal neutrality. Economic analysis versus corrective justice.
- When you revise, always ask: what would this theorist say about hard cases, unjust laws, punishment, property, or rights?

The minimum vocabulary to know cold

- Validity: whether a norm counts as law within a system.
- Legitimacy: whether law deserves moral or political respect.
- Formalism: adjudication by strict application of rules and precedent.
- Realism: the view that legal outcomes are shaped by human and social factors, not just formal logic.
- Positivism: legal validity depends on social sources, not moral merit.
- Natural law: law has an intrinsic connection with moral reason or justice.
- Interpretivism: law is an interpretive practice shaped by principles and coherence.
- Rule of law: government through general, public, stable norms rather than arbitrary power.

Memory anchors

- Question -> Theory -> Example -> Criticism -> Reply
- Ask of every chapter: validity, legitimacy, obedience, interpretation, justice, power.

Self-test questions

- Why is jurisprudence not the same as black-letter law?
- What is the difference between validity and legitimacy?
- Why do contrast pairs help more than isolated definitions?

2. Formalism and American Legal Realism

This chapter asks whether judges discover law from rules or create outcomes through human judgment.

Core learning aim

- Formalism treats law as a system of authoritative rules and reasoning methods that constrain judges to decide like cases alike.
- American Realism attacks the image of mechanical deduction. Realists argue that rules often underdetermine outcomes, so judges are influenced by facts, psychology, policy, and institutional context.
- The debate is not simply rule versus chaos. The deepest issue is how much determinacy legal materials really provide.

Formalist picture of adjudication

- Law is relatively determinate. Valid results flow from authoritative texts, precedents, and logical reasoning.
- Stare decisis matters because it promotes predictability, coordination, and equality: like cases are treated alike.
- Formalism values planability. Citizens and lawyers can orient conduct if rules constrain officials.
- The standard criticism is that legal language is not infinitely precise and precedents can be framed at multiple levels of generality.

Holmes and the realist turn

- Holmes shifts attention from abstract logic to prediction and experience. On his famous view, law is what courts will in fact do.
- This does not mean that law is random. It means the practical life of law lies in institutions, not in conceptual purity alone.
- Holmes is often treated as a precursor rather than a full realist, but he opens the door to scepticism about purely deductive adjudication.

Jerome Frank: fact scepticism

- Frank focuses on the instability of fact-finding. Even if the legal rule is clear, outcomes may vary because witnesses, judges, juries, and lawyers perceive facts differently.
- Fact scepticism highlights the trial process: credibility, memory, demeanour, social bias, and the incomplete reconstruction of past events.
- This matters because legal certainty depends not only on rules, but also on how facts are found.

Karl Llewellyn: rule scepticism

- Llewellyn argues that precedent is pliable. Lawyers can frame the same prior case narrowly or broadly, yielding different results.
- He famously showed that many interpretive canons have counter-canons. That does not abolish law, but it weakens the claim that method alone determines results.
- At the same time, Llewellyn did not think judges act arbitrarily. He saw recurring professional patterns and commercial norms that stabilise decision-making.

Strengths of realism

- It is more honest than naive formalism about the role of discretion, institutional constraints, and human judgment.
- It explains why hard cases are genuinely hard and why appellate judges disagree even when working from the same materials.
- It draws attention to the difference between the law on the books and the law in action.

Weaknesses of realism

- If overstated, realism threatens the rule-of-law ideal by making law seem indistinguishable from politics or personality.
- It can underplay the disciplining force of professional culture, precedent, reasons-giving, and institutional legitimacy.
- A theory that explains everything by discretion may struggle to explain why legal argument still matters so much.

How Dworkin responds

- Dworkin accepts that rules do not settle everything, but denies that judges are therefore unconstrained. He argues that principles embedded in legal practice guide decision.
- So realism is partly right about underdeterminacy, but wrong if it implies that judges simply invent outcomes.

Memory anchors

- Formalism = rule application; Realism = law in action; Dworkin = principles constrain discretion.
- Frank = facts; Llewellyn = rules; Holmes = prediction and experience.

Self-test questions

- Why is fact scepticism different from rule scepticism?
- What does realism explain better than formalism?
- Why does realism not automatically collapse into nihilism?