

Philosophy of Law Midterm Study Sheet, FALL 2021

Introductions and Syllabus

—No questions.

Philosophy of Law/*Regina v. Dudley and Stephens*

1. What was the main point offered in defense of the killing by Dudley and Stephens?
2. In what way was this case a novel use of that defense?

Jurisprudence and conceptual analysis

1. What is analytical jurisprudence?
2. What is the difference between interpretive normative jurisprudence and critical normative jurisprudence?
3. Be able to distinguish between questions that characterize analytical, interpretive normative, and critical normative jurisprudence.
4. What is the difference between *truism* and a *mere truth*?

Legal facts

1. What are legal facts?
2. What usually makes particular legal facts *legally valid* (i.e., “true”)?
3. What are two kinds of theories offering answers to the question about what *ultimately* makes legal facts true?
4. What is the main difference between legal positivism and natural law theories?

Possibility puzzle and central debate

1. What is a state of nature?
2. What is the possibility puzzle?
3. There are two general kinds of solutions that could solve the possibility puzzle. What are they?
4. Of the two positivist theories we discussed, which grounds ultimate legal authority in a person, and which grounds ultimate legal authority in a norm?

Positivism 1: Austin’s Sanction Theory of Law

1. What is the definition of law, according to Austin? (Know the simplest definition)
2. What, according to Austin, are rules? And what is a command?
3. What, according to Austin, is a sovereign?
4. Be able to distinguish norms that Austin would consider laws, from those he would not.
5. What is the major problem, discussed in class, with Austin’s account of rules?

Positivism 2: Hart on Law as the Union of Primary and Secondary Rules

1. What does it mean to take the *internal point of view* with respect to rules?
2. What are primary rules?

3. What are secondary rules?
4. Be able to distinguish primary and secondary rules.
5. We talked about 3 kinds of problems that would arise in a pre-legal world, even if everyone accepted social rules from an internal point of view. What is one of those three problems, and what secondary rule does Hart propose would be necessary to solve that problem?
6. What social fact makes it possible for the rule of recognition to exist?
7. What is law, on Hart's account?

Dworkin's Critique of Positivism

1. What is a "hard case"?
2. In what way was *Riggs v. Palmer* a "hard case"?
3. How have positivists suggested that judges should solve hard cases?
4. Why does positivism seem to require that judges must "create fresh legislation" in hard cases?
5. What is one major problem with the positivist solution to hard cases?
6. We discussed several major differences between rules and principles. What is one major difference? Explain.
7. Be able to distinguish basic examples of rules and principles
8. What does it mean to say that principles bind judges?