

Philosophy of Law Midterm Study Sheet, FALL 2024

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?

Analytical Outlines and Four Sentence Papers

No questions

Jurisprudence and conceptual analysis

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

Legal facts

7. What are legal facts?
8. What usually makes particular legal facts *legally valid* (i.e., “true”)?
9. Who usually makes legal norms valid?
10. What usually makes someone a legal authority?

Possibility puzzle and central debate

11. What is a state of nature?
12. What is the possibility puzzle?
13. There are two possible ultimate sources of law that could solve the possibility puzzle. What are they?
14. Why must law be based, ultimately, in a non-legal source?
15. What are two kinds of theories offering answers to the question about what ultimately makes legal facts true? What does each say?
16. Explain the major problem discussed in class for positivist solutions to the possibility puzzle.
17. Explain the major problem discussed in class for natural law solutions to the possibility puzzle.

Palmer v. Riggs

No questions.

Positivism 1: Austin’s Sanction Theory of Law

18. What is the definition of law, according to Austin? (Know the simplest definition)

19. What, according to Austin, are rules? And what is a command?
20. What, according to Austin, is a sovereign?
21. Be able to distinguish norms that Austin would consider laws from those he would not.
22. 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

23. What, for Hart, is a customary rule?
24. What does it mean to take the *internal point of view* with respect to rules?
25. What are secondary rules?
26. Be able to distinguish primary and secondary rules.
27. Be able to distinguish between rules of recognition, rules of change, and rules of adjudication.
28. What social fact makes it possible for the Rule of Recognition to exist?
29. What is law, on Hart's account?
30. In what way does Hart's account of rules improve on the major problem in Austin's account of rules?

Natural Law

31. What is the "functionalist" view about the concept of law?
32. How does the functionalist view help support the idea that "an unjust law is no law at all"? Explain.