

PHIL 3211 FINAL STUDY SHEET. Fall 2024.

Locke, “Of Property”

1. What was the “divine right of kings” theory of property ownership?
2. What did Dr. MacDougall call Locke’s theory of original acquisition, and what does it say?
3. According to Locke, what is the reason that it must be possible to acquire property in a state of nature?
4. In what way does someone who acquires private property actually increase the amount of common property still available?
5. What are two properties that make gold and silver more desirable than other goods people might work for, such as food and clothes?

Marx, “Estranged Labor”

6. What is capitalism?
7. What are the proletariat and the bourgeoisie?
8. In what way does capitalism result in the alienation of the laborer from the objects she produces?

Posner, “A theory of negligence”

9. What standard do courts usually use to determine whether a defendant has a “duty of care” in a negligence case?
10. What is the economic theory of torts, according to the definition discussed in class?
11. Be prepared to use the economic theory of torts to calculate whether a defendant has a duty of care in a few simple cases like those we looked at in class.
12. Why, according to the economic theory of torts, must the victim be compensated?
13. Be able to explain a major problem with the economic theory of torts.

Coleman, “Corrective justice and wrongful gain.”

14. What is distributive justice?
15. What, according to Coleman, does the principle of corrective justice require?
16. How does the corrective justice theory explain the traditional focus of torts on wrongings?
17. Does the corrective justice theory require that the injurer (specifically) compensate the victim in an accident (i.e. negligence case)? Why or why not?

Mill, On Liberty

18. What, according to Mill, is the purpose of criminal law?
19. What is a paternalist law?
20. What is Mill’s argument from *motivation* against paternalist laws?
21. According to Mill, when does an action cease to be self-regarding and become other-regarding?
22. Be able to use Mill’s distinction to distinguish between criminal laws he would think are justified and those that he wouldn’t.

23. Why does Mill think it is important to distinguish carefully between self-regarding actions and other-regarding actions?

Devlin, “The enforcement of morals”

24. What did the Wolfenden Report agree about with Mill?
25. What are some of the matters of private morality that Devlin brings up that few people would be willing to legalize?
26. Why, according to Devlin, might regulating some matters of private morality be necessary for preserving public order?

Barrett, Originalism

27. According to the interpretation of originalism promoted by Scalia and Barrett, when is the meaning of the Constitution “fixed”?
28. On the view of Scalia and Barrett, to what exactly does “original meaning” refer?
29. According to the originalist view, in the case of a conflict between the original meaning of the Constitution and subsequent Supreme Court interpretations of the Constitution, which meaning controls?
30. Explain one of the two arguments Dr. MacDougall offered in support of originalism.

Dworkin, The Moral Reading of the Constitution

31. What is an example of “abstract moral terms” contained in the Bill of Rights, discussed in class?
32. What is the Moral Reading of the Constitution?
33. Explain one of the arguments favoring the moral reading view over the originalist view.