
Legal Sociology

The following provides a sample solution in key words to the exam of 18 June 2019. Please note that points have only been awarded for statements made in direct relation to the question at issue.

Question 1

- (1) Eugen Ehrlich
 - (2) law made up by rules recognized as such within an association
 - (1) general fulfillment of legal obligations
- (1) Jhering
 - (1) coercion theory
 - (2) law made up by rules coerced through sanctions
- (2) distinction between legal and other social norms
 - (1) Jhering: coercion
 - (1) Ehrlich: psychological reaction to the transgression of a norm

Question 2

- (1) functionally differentiated society
 - (1) division of labour/specialization
 - (1) individualism/little collective consciousness
 - (1) mutual interdependence
 - (1) organic solidarity
 - (2) not enough to clarify cohesion
- (2) role of individual dignity

Question 3

- (2) organized coercion/chance that a norm will be enforced by a coercive apparatus
 - (2) “for the norm’s sake”/formal acceptance
- (1) interpretation too broad (no differentiation to brutal violence itself) and too narrow (sometimes no “staff of people” available for enforcement)
 - (1) coercion just one pole of Weber’s concept of law
 - (2) law as a legitimate order: normative propositions accepted by its addressees as binding

Question 4

a)

- (1) bureaucratization
 - (1) claims undergo an assessment process from the state/bureaucrats
- (1) monetarization
 - (1) entitlements take the form of monetary compensations
- (1) relationships get formalised
- (1) law as a means to achieve certain goals (law as a medium)
- (1) gaining and losing freedom (ambivalence)
- (1) influenced by Weber
 - (1) formalisation of relationships in society
 - (1) spontaneity, creativity, warmth, enchantment and chaos get lost

b)

- (1) no empirical evidence

c)

- (1) law entirely an institution of the lifeworld
- (1) law closely related to morality
- (1) colonisation of the law itself

Question 5

a)

- (1) between the artist and the group
 - (1) e.g. when the group claims that the artist selling the works was making use of traditional knowledge that is controlled by the group
- (1) between indigenous group and a non-indigenous claimant
 - (1) e.g. the non-indigenous third party may dispute that the group claiming collective rights fulfills the criteria of an indigenous group entitled to those rights
- (1) between two indigenous groups
 - (1) e.g. when both groups are claiming to have rights over the traditional knowledge or the traditional cultural expressions

b)

- (2) morality, religion, ceremony, art and causality are tightly interrelated in indigenous societies
- (2) morality, religion, ceremony, art and causality are rather autonomous and differentiated from each other in modern societies
- (1) art is functionally differentiated in modern societies
- systems theory
 - (1) building on Weber: art as a counterpower to the formalization of society and the following disenchantment
 - (1) autonomous system, whose function is making the contingencies of different worldviews visible (Luhmann)

c)

- (1) subsistence economy
 - (1) no production for markets, prohibition of overexploitation of resources and accumulation of personal wealth
- (1) economy based on capitalist markets in modern society
 - (1) reinvestment and innovation for the production of better and cheaper goods
- emergence of capitalism:
 - (1) rationalization of labor
 - (1) rationalization of the use of capital
 - (1) rationalization of law

Question 6

- (2) critique of the classic notion of the unity of law and nation state
- (2) to understand the lex mercatoria
 - break a double taboo
 - (1) private orders produce valid law
 - (1) law is valid also on a global level
- underlying theory of law
 - (1) law is operatively closed, law autonomously defines its boundaries by using the binary code legal/illegal
 - (1) second-order observation
- (2) linguistic turn: key concepts of sociology of law such as rule, sanction and social control lose their dominant position in favor of concepts such as speech acts, énoncé, coding, paradoxes etc.
- lex mercatoria
 - (1) is based on the linguistic turn and focuses on communicative processes and the binary code
 - (1) is based on self-validating contracts
 - (1) is established despite the absence of global political or global legal system
 - (1) is created on the periphery of law in structural coupling with economic processes
- (1) paradox of self-reference
- (3) ways of de-paradoxification
 - temporalization (+ explanation)
 - hierarchization (+ explanation)
 - externalization (+ explanation)