

## Review Question

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### 1. What is law?

It is hard to give a clear definition of law. There are many different ideas between the jurists. One of the jurists Lon Fuller said that the law is the enterprise of subjecting human conduct to the governance of rules. I think that the law is a kind of a contract between the members of the society to control itself and to keep the public order.

### 2. What is the function of law?

The function of the law can be defined as; "To maintain a system of social control while facilitating social life." Therefore the law guarantees the individuals' rights of freedom, equality and so on for facilitating their social lives, and also gives them the duties to follow the rules for social control.

### 3. List five forms of social control and describe how **they** operate? **A) Morals**

Morals can be defined as: "The standards of behavior" or "The principles of right and wrong." Morals can control the society by appealing to a person's conscience. For example, a person who tells a lie would have a guilty conscience and have some anguishes of heart.

#### **B) Ethics**

Ethics can be defined as: "The system of moral principles, rules of conduct." The people who live with him because he acts against ethics and rules would condemn a person who steals something. So people can overcome the temptation of stealing by ethics and in this way ethics control the society.

#### **C) Culture**

The concept of culture covers all the arts, beliefs, social institutions, science etc. which characterizes the community race, and so forth. So the law cannot be separated from the culture. The culture is one of the bases of the law.

#### **D) Tradition**

Tradition includes the opinion, belief, custom, etc, which are handed down from generation to generation. It can control the society very efficiently because it is more familiar to the people than the law. Many regulations come from the tradition and it can be also one of the principles of interpretation of the law.

#### **F) Manners**

Manners are habits and customs in social behavior. Manners are not compulsory, but people try to have good manners for the good human relationships.

These five forms of social control operate in the way that they can reach the area that the law cannot be reached.

### 4. Describe three views of the law and indicate the focus of each. Illustrate each view with an example.

**NATURAL LAW-** The legal system is to reflect fundamental and absolute principles of justice that are inherent in human life. Proponents of natural law don't believe that legal principles should be the product of reasoning. Rather they believe that law is derived from an absolute moral and ethical scheme. For example, the Murder is inherently wrong because it is universally regarded as a bad act.

**POSITIVIST PERSPECTIVE-** A law is truly a law if it has the form of a law, i.e. it can be enforced. A bad law is as much a law as a good one. 'The existence of law is one thing: its merit or demerit is another' said John Austin. For example, as the Article 241 in criminal law in Korea, the adultery is a crime. It restricts people's rights of freedom and sexual self-decision. There are no other countries punish the adultery as a crime. But in this view it should be punished because the statutes say so.

**SOCIAL SCIENCE-** The practicality of the results of the application of the Law is to be considered as primary. Consider the precedent setting case of Brown vs. Board of Education (1954) which found that racially segregated schools were illegal. This decision was based on the sociological studies which showed that Blacks learned more in integrated schools than in segregated schools, and therefore the existing law was unfair and had negative results. Sociological Jurisprudence is based on the belief that the law is human and therefore never absolute. It is based on experience, not logic.

#### 5. Socrates was convicted of sedition, specifically, corrupting the youth of Athens

Because of his basic tenet, 'Reject authority.' Although he pleaded innocent of the charges, he was sentenced to death. He voluntarily drank the poison, which was his sentence, even though his followers had bribed the guards to facilitate his escape: Socrates died willingly rather than break the law, even though he maintained his innocence. Given that he was the wisest man in Greece, what do you think his attitude toward the law was? What then could he have meant by the dictum, 'Reject authority.'

Socrates' attitude toward the law was like the positivist perspective. In other words, though the law was wrong and had faults, he believed that people should follow it so the 'Reject authority' means that people should overthrow the government who had the authority in order to withdraw the law and to make a justifiable law.

#### 6. What do you think of the legalization of Marijuana? Give three arguments, pro or con, using the three perspectives as discussed in class. Define each perspective and show why each argument fits its perspective.

I don't agree with the legalization of Marijuana because Marijuana is kind of narcotic. The legalization of it may make legal narcotic addiction because people can easily reach to it. Marijuana is poisonous like opium and paralyzes people's reasoning. And also the legalization is against people's general ideas and morals. But in medical use, or in experimental use, it can be justified.

Three arguments

Natural law: In this view the legalization of Marijuana may not be permitted. Because it is against people's morals, and ethics.

Positivist perspective: In this view the legalization of Marijuana is up to the legislature because it applies exactly what the law says.

Social science: In this view we must consider patients who need some drugs to relieve their pain and criminals who have already addicted, so the only way to remedy them is a rehabilitation program.