

**Philosophy 338**  
**Philosophy of Law**  
**2017**  
**Note Seven**

SAMPLE QUESTIONS FOR TEST #ONE The earlier intention, briefly mentioned in class on Thursday the 26<sup>th</sup>, to write a note in an effort to give some aggregate continuity to the first eight chapters of *ILRI*, and the corresponding online notes, now seems achievable by writing some sample questions for test #1. Sample questions aren't actual test questions, although it isn't ruled out that occasionally one or two of them might show up on a test paper. The chief purpose of the sample questions is to guide you in reviewing testable material and help you check how well you've been understanding it. If you have good answers to these questions, you are in good shape for our first test.

1. Kindly write a note in which you discuss the motivation for proceeding with our logico-epistemic enquiry into law in the ways set out under the guidance of the due diligence principle. Explain their relevance to the cultural-anthropologist state of mind recommended in the book's beginning. In your considered opinion are these convincing ways in which to proceed? Why? (Why not?) Be sure to give your supporting reasons.
2. What were the issues in the Tsilhqot'in case? What was the outcome and what reasons were given for it? In your opinion, was the reasoning and their decision derivationally secure? How, if at all, does this case bear on criminal law? Please state your reasons.
3. Please write a note on the interconnections between and among *stare decisis*, precedents, rules of law and casuistry. Relate these considerations to the three majority opinions in *R. v. Morgentaler* 1988, with particular reference to Justice Wilson's *ratio decidendi*.
4. Please cite the elements that make up Canada's Constitution, bearing in mind the respective impacts of *Reference Re Secession of Quebec* 1998 and *Reference Re a Resolution to Amend the Constitution*. How do the constitution's supporting principles and rules differ from its constitutional conventions? Please supply supporting reasons.
5. Kindly write a note on the place of generality in the common law and on its relationship to judge-made, case-based laws. Explain how the generality of a case-based rule of law is both implicit and tacit. What is the difference between a law's implicitness and its tacitness? Are the implicitness and inarticulacy of judge-laws subject to removal in favour of explicitness and articulation? Why? Why not? Be sure to provide your supporting reasons.
6. Please explain the three-trials structure of our logico-epistemic enquiry into the law. What is "Philosophy's Most Important Problem"? How does it bear on the three-trials structure? What is the normativity problem? How is it implicated in the three-trial arrangement? What role is played by the scepticism avoidance principle in solving the normativity problem? Please supply supporting reasons. For the purposes of this question the following is an adequate formulation of Philosophy's Most Difficult Problem: Some

premisses are advanced. They seem perfectly true to anyone who reads or hears them. Implications are then drawn from them in what everyone would regard as the perfectly correct way. Then – hey presto! – we arrived at a conclusion that is simply beyond rational belief! So what do we do short of seeking out a career in real estate?

7. What is semantic coercion in a juridical setting, and how does it relate to a Humpty-Dumpty semantics? Cite at least two cases that seem to have been decided at least in part by semantic coercion. With reference to the meaning-change evolution line, state the difference between natural meanings and coerced meanings. How does the distinction between natural and coerced meanings bear on a proper understanding of Lord Stanky's "living tree" constitutional doctrine? Please give your reasons.
8. Are women persons? Kindly discuss, with reasons, please.
9. Please write a note on judicial activism, with due attention to its involvement in the foundational and still-disputed discussions of the nature and purpose of the judiciary in common law. Can a legal system that can't agree on its own founding principles be considered a logico-epistemically reputable one? Why? (Why not?) Don't forget your reasons.
10. What is the proof standard at the common law bar of criminal justice? Is its undefinability cause for logico-epistemic alarm? Why? (Why not?) How does the principle of biconditional caution bear upon this matter? Does it bear to good effect? Why? (Why not?) Kindly reflect and comment upon the following question: "If it is logico-epistemically OK for judge-made laws to be unspeakable, why would it not also be logico-epistemically OK for the criminal proof standard to be undefinable?" Reasons, please.
11. Expound and assess the accuracy of the JTB definition of knowledge, making sure that you make reflective contact with the avoidance of scepticism principle. Should we give this principle more weight than the JTB definition? Why? (Why not?) What relevance would your answer have on the assessment of the law's logico-epistemic integrity? Reasons, please.