

Nature of Law

Spring 2007

Midterm

Answer **10** of the following 12 questions. Each question is worth 10 points. Be sure you answer all parts of the question completely.

1. What is Austin's definition of law? Explain each of the relevant parts of this theory (one or two sentences for each concept).
2. Explain **one** of Hart's objections to Austin. (You can choose any of the objections we discussed in class.) Be sure and explain the objection and *why* it is an objection to Austin.
3. For Hart, what is the distinction between primary and secondary rules? As part of your answer give an example of a primary rule and an example of a secondary rule.
4. What is Hart's example of the game Scorer's Discretion? How is it similar and different from baseball? What is this example supposed to show?
5. What is rule skepticism? What is formalism? Compare and contrast the two views of law.
6. What is Elmer's case (Riggs)? Why does Dworkin think this case presents a problem for Hart?
7. What are principles for Dworkin? How are they similar and different from Hart's rules?
8. What is the problem of disagreement (the semantic sting) presented by Dworkin? How is this a problem for Hart?
9. What, according to Dworkin, do judges do in cases that Hart considers "hard cases"? How does this differ from Hart?
10. What is the difference between conversational and constructive interpretation for Dworkin? Be sure and briefly explain each type of interpretation. Which does Dworkin use when interpreting social practices?
11. Who is Hermes (for Dworkin)? Briefly explain what Hermes is trying to do, and what Dworkin ultimately uses this example to show.
12. What is the "counterfactual test" for discovering intentions (mentioned and rejected by Dworkin)?

Extra Credit (10 points)

What is Natural Law Theory? In what ways is Dworkin similar to Natural Law theory and in what ways is he different?