

Master's Module Exam**Legal Sociology****25.06.2015, 13.00 – 15.00 Uhr****Duration: 120 minutes****Notes on the multiple choice questions**

- We strongly recommend that you transfer the solutions to the answer sheet (see below) shortly before the end of the exam. This is advisable, because it is possible that an answer to a question gives you reason to return to a previously answered question and to answer that question differently.
- Answers to the multiple choice questions **must be made on the multiple choice answer sheet according to the guidelines**. Only this answer sheet will be revised.
- Three choices are given for each question. Please indicate at each choice whether it is true or false. Each mark that is set correctly yields one point (i.e. there is a maximum of 3 points attainable with each multiple choice question). No points are deducted for missing or wrongly set marks.

Notes on the marking of the further questions

- When marking the exam, each question is weighted separately.

General notes

- Please check the number of question sheets both upon receipt and before submission of the exam. The exam contains 13 pages (including this cover sheet) and 46 questions.
- Please read all questions carefully before you start answering them.
- You can reach a maximum of 270 points:

| | | |
|-----------------------------------|-------------------|------------------|
| Part 1 (multiple choice) | 90 points | (33.33 %) |
| Part 2 (further questions) | 180 points | (66.67 %) |
| 2.01 | 15 points | (5.56 %) |
| 2.02 | 18 points | (6.67 %) |
| 2.03 | 12 points | (4.44 %) |
| 2.04 | 13 points | (4.82 %) |
| 2.05 | 10 points | (3.70 %) |
| 2.06 | 13 points | (4.82 %) |
| 2.07 | 9 points | (3.33 %) |
| 2.08 | 6 points | (2.22 %) |
| 2.09 | 7 points | (2.59 %) |
| 2.10 | 14 points | (5.19 %) |
| 2.11 | 10 points | (3.70 %) |
| 2.12 | 6 points | (2.22 %) |
| 2.13 | 7 points | (2.59 %) |
| 2.14 | 16 points | (5.93 %) |
| 2.15 | 13 points | (4.82 %) |
| 2.16 | 11 points | (4.07 %) |
| Total | 270 points | (100 %) |

We wish you a lot of success!

Part 2 (further questions)

(180 points)

- 2.01** ISP-led (ISP=Internet Service Provider) spam filters can have the effect of blocking emails by specific providers, or can use technologies that automatically filter content that violate copyright law.
- a. How do these situations confirm Eugen Ehrlich's concept of law and what would Ehrlich call this type of regulation? *(5 Points)*
 - b. Ehrlich's concept of law was radically different from the dominant concept at the time of his writing. Explain the differences between the concepts. *(10 Points)*
- 2.02** In his book "The Division of Labour in Society", Émile Durkheim analyses a shift from a segmented society to a society that is characterised by the division of labour.
- a. What does Durkheim consider to be the indicators of the increasing division of labour in society? *(4 Points)*
 - b. According to Durkheim, modernisation leads to an essential problem in society. Explain what this problem is, that Durkheim aims to resolve in his last book ("The Elementary Forms of Religious Life"). *(6 Points)*
 - c. In this context, Durkheim identifies two types of solidarity. Name and describe them. *(8 Points)*

- 2.03** In his research, Émile Durkheim focuses on social facts. This focus presupposes a specific concept of society.
- Explain how Durkheim's concept of society is different from that of Eugen Ehrlich (focus on the role of the individual within society). *(5 Points)*
 - Does Durkheim support or reject the idea of a social contract? What are his arguments? *(7 Points)*
- 2.04** Max Weber compared existing legal systems with "ideal" types of legal systems.
- Describe the method that he used in order to examine and compare various legal systems. *(4 Points)*
 - Based on this methodology, Weber classified legal systems into distinct categories, depending on how law is both made and found. Imagine the situation of an official who decides cases that are brought before him based on the Sharia, while simultaneously developing case law based on precedents. How would Weber classify this type of decision-making and why? *(6 Points)*
 - Name the other types of decision-making processes that David Trubek (in his interpretation of Weber) suggests, and indicate whether their degree of differentiation and generality is high or low. *(3 Points)*
- 2.05** Max Weber uses the term "rationality" with two different meanings. Explain the different contexts and explain the differences in the use of the term "rationality". *(10 Points)*
- 2.06** According to Jürgen Habermas, "the development toward a democratic welfare state can in fact be understood as the institutionalizing in legal form of a social power relation anchored in class structure."
- Name three results of the juridification processes leading to the welfare state that Habermas refers to in this quotation. (Keywords are sufficient.) *(3 Points)*
 - For Habermas, the last wave of juridification is rather ambiguous. Why is that? *(10 Points)*

- 2.07** According to Niklas Luhmann, the internal structure of the legal system includes a centre and a periphery.
- a. What are the specific features of the periphery according to Luhmann? *(3 Points)*
 - b. What is the advantage of a centre/periphery distinction compared with a hierarchical distinction when trying to understand issues of legal pluralism such as *lex mercatoria*? *(6 Points)*
- 2.08** According to Niklas Luhmann, law is a system of society, differentiated from politics as well as from morality.
- a. What is the law's function in society? *(3 Points)*
 - b. Why can the system of politics be described as the "functional mirror image" of the legal system? *(3 Points)*
- 2.09** Gunther Teubner raises the question of whether international organisations or transnational regimes can become suitable constitutional subjects, i.e. whether they are social institutions capable of having their own constitutions.
- a. Constitutional jurists would answer this question with a clear, resounding "no". What would their arguments be? *(4 Points)*
 - b. Nevertheless, Teubner states that constitutional norms have evolved in different transnational contexts. Name three examples showing empirical evidence for transnational constitutionalism (besides *lex mercatoria*). (Keywords are sufficient.) *(3 Points)*

- 2.10** According to Gunther Teubner, function systems are internally differentiated into two spheres.
- Use the example of the economic system and briefly explain what belongs to which sphere. *(4 Points)*
 - Why is the distinction between these two spheres essential to an understanding of the mutual relationship between formal and civil institutional arenas? *(10 Points)*
- 2.11** “Code is law” is the famous phrase coined by Lawrence Lessig to describe how the technological architecture of the Internet functions as a regulator.
- What makes code so powerful? *(3 Points)*
 - Why does the power of code raise concerns from a constitutional perspective when comparing code to law in “real space”? *(7 Points)*
- 2.12** “Constitutionalisation beyond the nation state occurs as an evolutionary process going in two different directions”.
- What are the two directions that Gunther Teubner refers to in this quotation? *(4 Points)*
 - Name two current examples of corporate constitutionalism. *(2 Points)*
- 2.13** When the author Neil Gaiman received his Hugo award, an automated copyright-violation analysis killed the broadcast.
- Apparently, automated filter technologies are not able to cope with exceptions of copyright. With regard to the example of Neil Gaiman, which is the most important of these exceptions? (Keywords are sufficient.) *(1 Point)*
 - Explain other negative effects that automated filter technologies can have (with regard to communicative freedom). *(6 Points)*

2.14 In practice, there are three types of disputes concerning ownership of traditional knowledge and traditional cultural expressions.

- a. What is the central problem when dealing with these three types of disputes? *(4 Points)*
- b. When a dispute between an indigenous community and a non-indigenous third party arises, what is the first question that needs to be clarified? *(3 Points)*
- c. Describe the “native title” doctrine as introduced by Australian case law. *(5 Points)*
- d. Explain why the “native title” doctrine is rather problematic from the perspective of indigenous peoples. *(4 Points)*

2.15 Article 21 of the Swiss Constitution guarantees the freedom of artistic expression as a fundamental right (“Freedom of artistic expression is guaranteed”).

- a. How does this guarantee create a paradox? *(3 Points)*
- b. According to Niklas Luhmann, paradoxes cannot be avoided. However, there are strategies to unfold them, including the introduction of asymmetry. What would this asymmetry look like when a legal case raises the question of whether “art” is “art”? *(5 Points)*
- c. As Gunther Teubner pointed out in his guest lecture, there is a fundamental paradox in every legal order regarding the justification of law. Describe what this paradox entails. *(5 Points)*

2.16 According to Gunther Teubner, the “fragmentation of international law” leads to certain consequences. Explain what these consequences are and what they can result in. *(11 Points)*

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| Total | Points |
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