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# Legal Sociology (MLaw)

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## Scheme for attribution of points

*Please note that the points for the expressions below could only be given if they were put into the correct context.*

### Question 1

#### 1.01 (46 points)

- (1) generally, problem of self-reference when distinction legal/ illegal is applied to itself
- (1) for Teubner, foundational problem of the law
- (1) *lex sportiva*: problem of contractual self-validation
- (1) national level: problem externalised to politics
- (1) legitimization through democratic procedures
- (1) *lex sportiva* operates on global level
- (1) no global political system
- alternative ways of de-paradoxification:
  - (1) time
  - (1) hierarchy
  - (1) externalisation

#### De-paradoxification strategy of hierarchy

- (1) statutes/ contracts internally distinguish between primary and secondary rules
- (1) primary rules impose obligations
- (1) secondary rules determine the operation of primary rules
- (1) creation of institutions that apply secondary rules
- (1) paradox concealed behind internal hierarchy of primary and secondary rules
  
- (2) DSD Regulations = primary rules
- (1) IAFF agreed upon secondary rules (1) with other athletics associations
- (2) secondary rules regulate CAS's competence and procedure to judge validity of primary rules
- (2) CAS decides upon organs of athletics associations
- (2) CAS hierarchically stands above athletics associations

### De-paradoxification strategy of externalisation

- (1) statutes/ contracts refer to external institution of arbitration that must judge validity of the former
- (1) paradox does not disappear – statutes represent bases of arbitration institutions' own validity
- (1) distinction between unofficial and official law
- (1) unofficial law = statutory/ contractual creation of duties and rights
- (1) official law issued by arbitration bodies
- (1) arbitration bodies enjoy independent existence despite relationship with other arbitration bodies and state courts
- (1) relationship between unofficial and official law allows for (1) reflexivity of *lex sportiva*
  
- (2) DSD Regulations = unofficial law
- (2) CAS judges validity of DSD Regulations
- (2) CAS in relationship with a state court
- (2) SFSC competent to check whether decision of CAS in conformity with ordre public
- (2) CAS decision = official law
- (2) validation of DSD Regulations externalized to CAS and SFSC
- (1) *lex sportiva*'s reflexivity guaranteed

### **1.02 (27 points)**

- (1) global non-state laws have (1) underdeveloped centre and highly developed periphery
- (1) arbitration located in the centre of the system of law
- (1) centre weaker than periphery because (1) arbitration weaker than state courts
- (1) structural coupling between law and other system in the periphery of the system of law
- (1) norms/ contracts of global non-state laws created in law's periphery
- (1) highly asymmetric processes of legal self-reproduction
- (1) underdeveloped centre created in developed periphery and stays dependent on it
  
- (2) *lex sportiva* = typical example of global non-state law
- (2) CAS located in centre of system of law
- (2) IAFF located in system of sports
- (2) structural coupling between the systems of law and sports in periphery of the system of law
- (2) norms of DSD Regulations and arbitration system based thereon are contractual
- (2) norms of DSD Regulations produced in the periphery of the system of law
- (2) CAS located in weak centre fully depends on DSD Regulations produced in strong periphery
- (2) DSD Regulations superior to arbitration system they regulate
- (2) *lex sportiva* = highly asymmetric process of legal self-production

## Question 2 (23 points)

### Champagne

- (1) functional differentiation = autonomous societal spheres
- (1) art = autonomous sphere of modern society
- (1) Indigenous societies: little differentiation between societal spheres
- (1) art tightly interrelated with religion, ceremony, morality
- (1) art = means of spirituality, not end in itself

### Durkheim

- (1) Aboriginal culture = totemic culture
- (1) distinction between emblematic and (1) religious function of totemic artefacts
- (1) emblematic function: totemic artefact = label for a clan
- (1) religious function: totemic artefacts used in ceremonies
  
- (2) bark paintings = totemic artefacts
- (1) fulfilment of emblematic function
- (1) fulfilment of religious function
- (2) bark painting represents artefact, not art (1) in understanding of functionally differentiated societies
- (2) bark paintings fulfil ritual/ religious function
- (2) prohibition to sell indicates that clan considers painting to be sacred
- (2) bark paintings must not be sold on the market of functionally differentiated society

## Question 3

### 3.01 (22 points)

#### Lines 1-7, 11-13

- (1) existence of different legitimate orders
- (1) customs and law = examples of legitimate orders
- (1) law distinguishable from customs in modern society: (1) in case of deviation from legal norms, (1) probability of physical or psychological coercion
- (1) coercive power applied by specific staff of people
- (1) only law can be externally guaranteed by probability of coercion
- (1) not only state law is law
- (1) physical legal coercion = state monopoly
- (1) state can use non-physical coercion (1) to guarantee enforcement of state law

#### Lines 3, 7-12

- (1) group of people can have other valid norms than legal norms
- (1) acceptance makes norms legitimate/ valid
- Weber's criteria for legitimate order:
  - (1) socially structured system
  - (1) set of normative propositions
  - (1) subjectively accepted as binding
- (1) imminent threat of sanctions not necessary
- (1) "unreflective habituation" = element of social order that is based on tradition, such as customs

- (1) legal norms based on formal logical rationality (1) in modern society

Lines 11-13

- (1) order probably law if (1) guarantee of likelihood of order's enforcement by staff of people is observable [i.e., empirically valid]

**3.02 (32 points)**

Parallels

- (2) characterising element of legal norms: (2) acceptance (Weber) or recognition (Ehrlich)
- (2) law's legitimacy lies within society
- (2) natural law is not origin of law in (1) modern society
- (2) state law must be able of being enforced
- (1) competent staff of people must (1) put state law into practice
- (1) there is law outside of state law

Differences

- (2) Ehrlich's understanding of law much broader
- (2) distinction of law from other norms, in particular from
  - (1) custom (Weber and Ehrlich)
  - (1) morality (Ehrlich)
  - (2) social norms (Ehrlich) or other legitimate norms (Weber)
- (2) no element of guaranteed enforcement in Ehrlich's concept of law
- (2) Ehrlich: a norm's overtone of feelings decisive for (2) reaction to norm violation:
  - (2) norm is a legal norm if (2) reaction to its violation is revolt