



Prof. Dr. Christoph Beat Graber

Spring Semester 2022

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## Legal Sociology (MLaw)

**20 June 2022**

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**Duration:** 90 minutes

- Please check at receipt of the exam the number of question sheets. The examination contains 3 pages (including this page) and 3 questions.

### Notes on marking

- When marking the exam each question is weighted separately. Points are distributed to the individual questions as follows:

Question 1	73 points	49 % of total points
Question 2	23 points	15 % of total points
Question 3	54 points	36 % of total points
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Total	150 points	100 %

**We wish you a lot of success!**



### Question 1

In 2009, the South African runner Caster Semenya became world champion in the 800 meters. Having outpaced her competitors by over two seconds and given her physical appearance, questions about Semenya's biological sex were raised. Subsequently, the International Association of Athletics Federations (IAAF) asked her to take a sex verification test. Although the results have never been disclosed, it shall be assumed that the athlete has the genetic variant "46 XY DSD". Women showing this genetic variant have higher testosterone levels than women without the variant.

Semenya's case ultimately led the IAAF to release the "Eligibility Regulations for the Female Classification (Athletes with Differences of Sex Development)" ("DSD Regulations") for athletes with the genetic variant "46 XY DSD" in April 2018. The DSD Regulations set the upper limit of testosterone an athlete can have to run against other women in athletics competitions. Since Semenya's testosterone levels were measured to exceed this upper limit, the athlete could not compete against other women in her strongest disciplines at international level anymore. In June 2018, she lodged an appeal against the DSD Regulations before the Court of Arbitration for Sport (CAS), which is based in the Swiss city of Lausanne. One year later, the CAS dismissed the appeal. Semenya then lodged a complaint before the Swiss Federal Supreme Court (SFSC), which represents the second instance in cases brought before the CAS. Its standard of review is limited to the assessment of the compliance with the *ordre public*. The SFSC equally dismissed Semenya's case, finding no violation of the *ordre public*.

(Total: 73 points)

**1.01 With reference to Gunther Teubner's theory of global legal pluralism, briefly explain the paradox of the *lex sportiva* generally and applied to the case at hand. What are the most pertinent de-paradoxification strategies in the case at hand?**

(46 points)

**1.02 How would Gunther Teubner characterise the *lex sportiva*, the emergence of its DSD Regulations and the arbitration system based thereon with the help of the systems theoretical distinction between centre and periphery? Briefly explain the theoretical foundations on which you base your argumentation beforehand.**

(27 points)

## Question 2

Last week you met a German friend who had just returned from a trip to Australia. She told you about a healing ritual she witnessed when visiting an Aboriginal clan. During the ritual, an Aboriginal (in the words of your friend: “an Aboriginal artist”) created a beautiful bark painting to honour the gods and to assure the well-being of the clan members. Fascinated by the ritual, your friend wanted to buy the painting as a memory, but the “artist” refused and explained that the clan’s chief had decided that none of their works depicting traditional objects could be traded as artworks. Given the (from her perspective) poor economic status of the clan, your friend could not understand why they did not use their paintings as a source of income.

2. **Explain the Aboriginal “artist’s” decision not to sell his bark paintings based on the theory of functional differentiation discussed in Duane Champagne’s text and based on Emile Durkheim’s description of Aboriginal culture. Briefly define the employed theoretical concepts in a first step.**

**(23 points)**

## Question 3

The following excerpt stems from Max Weber’s “Economy and Society: An Outline of Interpretive Sociology”, first published in 1922:

- 1 *“The broad mass of the participants act in a way corresponding to legal norms, not out of*  
2 *obedience regarded as a legal obligation, but either because the environment approves of the*  
3 *conduct and disapproves of its opposite, or merely as a result of unreflective habituation to a*  
4 *regularity of life that has engraved itself as a custom. If the latter attitude were universal, the*  
5 *law would no longer “subjectively” be regarded as such, but would be observed as custom. As*  
6 *long as there is a chance that a coercive apparatus will enforce, in a given situation,*  
7 *compliance with those norms, we nevertheless must consider them as “law.” Neither is it*  
8 *necessary [...] that all those who share a belief in certain norms of behavior, actually live in*  
9 *accordance with that belief at all times. Such a situation, likewise, has never obtained, nor*  
10 *need it obtain, since, according to our general definition, it is the “orientation” of an action*  
11 *toward a norm, rather than the “success” of that norm that is decisive for its validity. “Law,” as*  
12 *understood by us, is simply an “order” endowed with certain specific guarantees of the*  
13 *probability of its empirical validity.”*

*(Total: 54 points)*

- 3.01 **Explain in your own words the elements of Max Weber’s concept of law that are at issue in the excerpt.**

**(22 points)**

- 3.02 **Show parallels and differences between Max Weber’s legal concept, as defined in the present excerpt, and Eugen Ehrlich’s concept of law.**

**(32 points)**