Philosophy 338A
Philosophy of Law
2017
Note Fifteen

GUIDE QUESTIONS FOR TEST #2

This is a 70 minute test carrying 30 % of the course's final mark. You will be asked to answer THREE equally valued questions from a selection of FIVE. It is recommended that you manage your time accordingly.

The test coverage is *inclusive*, from chapters 1to 16, together with the online posts and class discussions. Emphasis will fall on material covered after the first test. But you are reminded that the book and notes display a good deal of thematic recurrence. Matters introduced earlier often have a way of showing up later. For example, the ideas of implicit and tacit awareness have been floating around our discussions from early to late (and as we'll see) later than that too.

There follow some questions designed to aid your preparation for this test.

1. Write a note on the role on the reliability or otherwise of eye-witness and expert-opinion evidence. When a witness's standing as an expert in a discipline or profession is challenged in court, on what basis can the presiding judge decide the question when (as typically) he lacks expert acquaintance with the discipline in question? In what way, beyond the fallibilities of human cognitive effort, is the reliability of eyewitness evidence of questionable quality? How are these frailties offset by a trial's procedures? How well do these offsets work in your opinion? Reasons throughout, please.

2. To what extent have criminal cross-examinations inherited the character of Aristotle's refutation arguments in *On Sophistical Refutations?* Are Aristotelian refutations of a thesis falsifications of it? Are successful impeachment-crosses of a witness's claim falsifications of it? If successful cross-examinations aren't falsifying, are the closing arguments of opposing counsel? Why? (Why not?) If not, how does it come to be the case that proof beyond a reasonable doubt arises in criminal trials?

3. Is bias that's hidden and unbidden susceptible of suppression? When a judge instructs a jury to sideline their bias when they hear and judge the case before them, is there any reason to think that jurors will be able to do so? If so, how can they do it if the bias is hidden? What is the current position of bias-science on these matters? Is the science either diagnostically or predictively credible? Why? (Why not?) If not, how would this matter for the logico-epistemic reliability of verdicts?

4. Expand and assess the assertion that probability plays no role in criminal trials. If it does, how would this impact on the question of whether trials are capable of meeting the criminal proof standard?

5. Explain and assess the role that implicity and tacity plays in the cognitive economies of

humanity. Describe the roles they play in the practices of common law. Are these features commonplace in either setting? Are they by and large more cognitively beneficial than not? Why? (Why not?)

6. In the classical probability calculus the right way to model the rational cognitive practices of human kind? Why? (Why not?) Whether yes or no, what are the problems that Bayesian epistemology is faced with? Is there a way of disarming these difficulties and preserving the integrity of the probability rules? Why? (Why not?)

7. How do the concepts of relevance operate in the criminal law, and how do they relate to the concept of materiality? How do they differ from how relevance is treated by EE-theorists? To what extent are the law's concepts the same as EE's? Explain the (hypothesized) role of irrelevance-filtration devices in relation to Gilbert Harman's Clutter Avoidance Maxim. If they exist, where do these devices operate, in the cognitive up-above or lower down? How would it matter either way?