

## Law 30: Chapter 9: Judgement Questions

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Answer the following questions in order to prepare for the exam completing the International and Domestic Law unit. You will occasionally be required to answer questions using a copy of the 1949 version of the *Geneva/Hague Conventions*.

### OVERVIEW

- 1). An American lawyer named Benjamin Ferencz was assigned to investigate Nazi atrocities. On page 418 Mr. Ferencz described how “it was impossible to tell whether the skeleton-like inmates lying near-naked in the dust were dead or alive. Those who could walk had been whisked away by panic-stricken SS guards. Their flight was made visible only by the trail of dead bodies strewn along the road. The bedraggled prisoners who could not keep pace with the retreat on the spot and left dead or dying.” Based on Ferencz’s description what specific provision(s) of the *Geneva Conventions* were ignored by the Germans?
- 2). On page 419 of *Chapter 9: Judgement*, the author points out four fundamental questions the Holocaust raises with respect to humanity and jurisprudence (the law). Select any bullet point of your choice and answer *all* of the questions raised.

### READING 1: DOGMA MAKES OBEDIENT GHOSTS

- 1). On page 420, the author describes how science came in to the service of the Nazis (creating the technology making efficient killing places like Auschwitz possible). For this reason some critics impugn (criticize) science and say it was responsible for the mass murder. However, a scientist and survivor of the death camps named Jacob Bronowski defends science against such criticism by actually arguing science, true science, would prevent such atrocities from happening. In your own words, paraphrase what Bronowski considered to be “the central dilemma of the 20<sup>th</sup> century.”
- 2). For the next question you might want to try to *Google* an answer and/or use your own personal understanding of science and the law. What is one thing science and the law have in common? Explain in detail.
- 3). What is dogma? And how does it close the mind, and turn individuals, groups, a nation into a “regiment of ghosts—obedient ghosts, or tortured ghosts”?

### READING 2: THE RULES OF WAR

- 1). Following the war the Allies were confronted with the task of bringing the Nazis accused of war crimes to justice; however, despite the existence of laws like the *Geneva* and *Hague* conventions these didn’t quite meet the needs of the International Military Tribunal in Nuremberg (1945). As a result,

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four new important clarifications of what constituted a war crime were created. What were these four clarifications (as presented on page 423)?

2). The International Military Tribunal at Nuremberg pronounced it was illegal to wage a “war of aggression.” Provide a definition for what a war of aggression is and then answer the following question: under what circumstances are wars *not* wars of aggression?

3). In 2003 the United States invaded the sovereign nation of Iraq. Is the American invasion of Iraq an example of a crime against peace, e.g. a war of aggression, etc. according to the standards established at Nuremberg?

4). The American Government, under the presidency of George W. Bush, argued the invasion of Iraq was not a war of aggression but a “pre-emptive war.” This idea of fighting a “pre-emptive” war was designed to avoid committing war crimes as set down by international law. Provide a definition of the so-called “pre-emptive war” (also known as the “Bush Doctrine”) and argue whether or not this approach to war constitutes a war crime as defined by existing international law.

5). In 1945, the United States dropped atomic bombs on two Japanese cities (Hiroshima and Nagasaki). Research the event and present an argument for whether or not they were “war crimes” as defined (and if they were war crimes what specific type of war crimes were they).

### READING 3: HUMANITY’S ASPIRATIONS TO DO JUSTICE

1). Robert H. Jackson, the chief prosecutor for the International Military Tribunal at Nuremberg, opened the proceedings with a speech. Jackson pointed out that the Nazis “[inflamed] and [gratified] hatreds towards those who were marked as “scapegoats.” Which article of the Hague/Geneva Convention was potentially being violated by the Nazis when they used their political influence in the 1930s to inflame German citizens to treat the Jews as scapegoats for all of the country’s problems?

2). Jackson also observed Germany “overran their neighbors. To sustain the ‘master race,’ in its warmaking, they enslaved millions of human beings and brought them into Germany...” Which provision of *Protocol II to the Geneva Conventions* was being violated by the Nazis when they enslaved civilians to work for them?

3). Jackson means essentially *two* specific things when he said, “We must never forget that the record on which we judge these defendants today is the record on which history will judge us tomorrow.” What were these two specific things? Be creative.

4). What did Jackson mean when he asserted "...that four great nations, flushed with victory and stung with injury, stay the hand of vengeance and voluntarily submit their captive enemies to the judgement of the law is one of the most significant tributes that Power ever has paid to Reason"?

#### **READING 4: OBEDIENCE TO ORDERS**

1). How would you respond to the questions Jodl's lawyer raised: "Is, therefore, the soldier, the gunsmith... guilty of complicity in the war?"

2). After the Civil War, Captain Henry Wirz, commander of the Confederate prisoner-of-war camp at Andersonville, Georgia, was convicted of cruelties resulting in the deaths of thousands of Union prisoners. Wirz argued he was only following orders. The evidence supported Wirz' claims; however, the judges convicted him because he followed orders *willingly* rather than under *duress*. What is the difference?

3). What is the "Nuremberg Defense" and why is it not admissible as a legitimate defense in an international court of law?

#### **READING 5: A MAN OF WORDS**

1). Julius Streicher was not a government official. He did not set policy nor carry out orders. His only weapons were his words. And he was punished for using those words to turn citizen against citizen. Should a person be held criminally responsible for his or her words? Explain.

2). In Canada, the *Charter of Rights and Freedoms* guarantee we have the right to freely express ourselves (and we also have freedom of the press); however, Canada also has enacted anti-hate legislation to prevent people from inciting hatred like Julius Streicher had during World War II. For this question do two things: firstly, identify the specific section of the *Charter* which guarantees freedom of speech and then identify the specific section of the *Criminal Code* which prohibits individuals from inciting hatred; secondly, based on your understanding of the issue answer the following question: is the freedom of speech an *absolute* right (one without limitations) or does it come with responsibility? Explain.

3). In 1984, James Keegstra was a secondary high school teacher from Eckville, Alberta. He taught his students Jews were evil, the Holocaust never happened, and a Jewish conspiracy to take over the world existed. He was charged under *Section 319(2)* of the *Criminal Code* for inciting hatred against an identifiable minority.

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Keegstra argued *Sections 319(2) and 319(3)* of the *Criminal Code* violated his freedom of speech (as protected under *Section 2(b)* of the *Charter*) and his right to be presumed innocent (*Section 11 (d)* of the *Charter*).

Look up the specific sections of the *Charter* and *Criminal Code* up online (see links below). Use information to form your own legal opinion on whether or not Keegstra's right to freedom of expression was in fact violated by sections *319(2)* and *319(3)* of the *Criminal Code*.

*To form a valid legal opinion you must always appeal to the relevant laws (not your personal value system).*

The following links will prove helpful:

- a). Crown vs. Keegstra ([https://en.wikipedia.org/wiki/R\\_v\\_Keegstra](https://en.wikipedia.org/wiki/R_v_Keegstra)).
- b). *Sections 319(2) and 319(3)* (<http://laws-lois.justice.gc.ca/eng/acts/C-46/section-319.html>).
- c). *Section 11(d)* of the *Charter* ([https://en.wikipedia.org/wiki/Section\\_Eleven\\_of\\_the\\_Canadian\\_Charter\\_of\\_Rights\\_and\\_Freedoms](https://en.wikipedia.org/wiki/Section_Eleven_of_the_Canadian_Charter_of_Rights_and_Freedoms))

### READING 6: BETRAYING THE CHILDREN

- 1). The word “veracity” essentially means *true*. Why did Alfons Heck refuse to accept the veracity of the films made in the concentration/death camps but accepted the confessions of guilt by the Nazi leaders as trustworthy?
- 2). Does the responsibility for making the Holocaust possible through education rest entirely with the leadership of the Hitler Youth? Or do the children bear some responsibility?
- 3). The previous question relates to the idea of *guilt* or *intention*. In law it is relatively easy to prove a crime has been committed; however, it is quite another thing to prove the *mens rea* (“guilty mind”) of the accused. In a paragraph, explain how and why the degree of *mens rea* (criminal responsibility) differs from adults to children.