

# Good law final examination critical thinking example

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## Question one

If the agents of the Environmental Protection Agency (EPA) were to walk into Skywalker's store and arrest him, it is our argument that the EPA can neither fine nor jail him for the alleged violation of the law. In answering this question in the negative, much consideration has been given to the wording and the text of the legal provisions creating the offence. It is my submission that there is no disclosure of an offence known to law as to attract any legal sanctions. In particular, the law stipulates that all glass top coffee tables are banned in the United States and any person producing a glass top coffee table after the effective date of the regulation passed by the EPA will be liable to pay a fine of \$5, 000 for every illegal coffee table and a jail term of ten days. This essentially means that the offence created by the law is that of producing glass coffee tables. It is clear from the facts of the case before us that Skywalker sold a total of five coffee glass tables after the effective date on the 13th of August. The selling of glass top coffee tables is not proscribed nor criminalized by the law. It may be the case that Skywalker has been in the business of manufacturing and selling coffee tables.

However, he has not been accused or found producing or manufacturing the tables. This being the case, he is not guilty of any crime as far as the law is concerned and is thus not liable to any sanctions either through incarceration or through the payment of fines. This position is consistent with the principle of legality applied in law which stipulates that statutes creating offences or penal statutes must be construed strictly. It further holds that offences must be clearly prescribed by the law and their sentence laid down. The meaning of producing glass top coffee tables cannot be stretched to

cover or connote the action of selling the coffee tables, as to fall within the definition of the offence. This being the case, it is our considered opinion that Skywalker is not guilty of any crime as per the EPA and cannot, therefore, be fined or jailed. Having found that Skywalker was not liable for any default on his part in fulfilling his legal obligations, it follows that he cannot be surcharged or jailed. Fair administrative action demands that individual's rights are not abridged by administrative agencies such as the EPA. Further, there must be the application of due process in law. Undoubtedly, the law as promulgated by the EPA falls short of the conditions of delegated legislation as to be constitutional and operational. It is clear that Skywalker only learnt of the change in legislation on the agency's website. Further, there was no notice nor was there any comments received from the public before the law was enacted. In answering the question as to whether there is any way through which Skywalker could be jailed, reference must be made to the circumstances attending his arrest. The EPA is vested with powers of arrest in the discharge of its functions. However, there does not arise any occasion where Skywalker would be jailed. This would only have occurred if Skywalker was found to be liable of the offence. Jailing would otherwise emanate if Skywalker was in defiance of any court order as he would be the subject of contempt proceedings and be committed to civil jail.

## **Question two**

Skywalker can sue the EPA for his arrest and challenge the regulation passed banning the production of glass top coffee tables for unconstitutionality.

Being the case that Skywalker can sue the EPA and challenge the regulation

passed, the first avenue of dispute resolution would be the adjudicatory department of the EPA. It is clear that the EPA has an adjudicatory department where claimants may file grievances whenever they are aggrieved by the actions of the agency. It is also clear that the EPA is a statutory body discharging public functions which is established by the Congress and charged with the responsibility of protecting the environment for the people of the United States. If dissatisfied with the internal dispute resolution mechanism of the agency, Skywalker may file for judicial review orders at the federal court of appeals since the statute establishing the agency was made by the Congress. A number of arguments may be advanced in favor of Skywalker. Firstly, Skywalker can challenge the constitutionality of the Environment Protection Agency (EPA). It is also clear that the director of the EPA is appointed by the president for a five year term which indicates that the EPA is an administrative agency. The EPA was established by Congress to ensure the protection of the environment of the people of the United States. It can be argued that the banning of glass top coffee tables is not within the mandate of the EPA. It is alleged that the use of glass top coffee tables does not ensure the safety of the coffee cups. It is difficult to establish any nexus between the protection of the environment and this duty of safety of coffee cups. As earlier noted, fair administrative action demands that the public gets adequate notice before time and also gets an opportunity to make their comments which are then considered before any legislation by an administrative agency take place. This is further reinforced by a statement on the EPA's website to the effect that the agency passes regulations through notice and comment. Nevertheless, this notice

and comment mechanism was not employed while enacting this regulation of banning the glass top coffee tables. In fact, Skywalker only learnt of the regulation through the media after a further research on the internet. It must be borne in mind that the glass top coffee table making business is the only livelihood of Skywalker that he depends on to take care of his family. The continued operation of the regulation that falls short of the requisites of proper legislation has the danger of ruining the business of Skywalker and thus substantially affecting his livelihood. Administrative law is in place to avert instances of individual rights being trampled down by administrative authorities and bodies by calling for due process of law in the discharge of their affairs. Information from the Federal Register also reveals that there were no findings that were made by the EPA on the danger posed by the glass top coffee tables before it decided to ban the tables. The role of the agency is to investigate this and take appropriate action. The agency cannot, and should not make decisions capriciously or arbitrarily without making the necessary inquiry. Since there are no findings to suggest that the glass top coffee tables were dangerous to the environment, the regulation banning their production is wholly unjustified and unconstitutional. As such, the method employed by the EPA in creating this regulation is invalid, thereby, constituting procedural impropriety which has a vitiating effect on the regulation. This being the case, Skywalker should file for certiorari orders at the federal courts to quash the regulation by way of judicial review so as to render it to be of no effect. The quashing of the regulation for unconstitutionality would ensure the maintenance of the status quo and

enable Skywalker to continue with his business without risking legal sanctions.

### **Question Three**

In the event that the EPA issued by Skywalker, it can raise a number of defenses in a bid to defeat the claim by Skywalker. At the outset, the EPA can assert its constitutionality and argue that it was within its powers to enact the regulation banning the production of the glass top coffee tables. The EPA is established by Congress with the principle role of ensuring the protection of the environment for the people of the United States. EPA could, therefore, argue that the danger occasioned by the failure to ensure safety of cups would be harmful to the environment of which it is created to protect. In the event that coffee cups are not safe, they are likely to break and create an environmental hazard or cause environmental pollution. In this breadth, the agency could argue that it is donated powers by Congress to ensure the maintenance and enforcement of national standards under a variety of environmental laws as well as the powers to slap fines and sanctions upon violators of stipulated regulations. As such, it was acting within its ambit of power in arresting Skywalker as well as enacting the regulation that is now impugned. The EPA could also set up the defense of ignorance of law is not defense to the claim by Skywalker that it did not know of the regulation that was passed. It could argue that it does not matter that Skywalker knew not of its existence as long as it was in operation. With respect to the publication of the regulation, the EPA could argue that its being displayed on the agency's website is sufficient

publication. It is clear that in the Federal Register states that the regulation would start taking effect after the 13th of August. It can, therefore, be claimed by EPA that the selling of the five coffee tables past the effective date of the regulation constituted a breach of the regulation and thus justified the action taken by the agency. The EPA could set up the defense that it interpreted the organic statute founding it as giving it the power to do all that is necessary to ensure the protection of the environment.

Consequently, the action to set up the regulation was within its powers and was necessary for the protection of the environment. The EPA could also submit that it matters not that the findings of the dangerous effect of the glass top coffee tables was not made. If anything, the EPA boasts of experts in various fields that are well versed with matters relating to the environment and that the agency acted upon their advice. On the issue as to the method that was used to pass the impugned regulation, the EPA could argue that there were no comments from the public with respect to the regulations. This being the case, it meant that the public were duly notified and satisfied with the regulation as it were, and that the EPA's action was within the ambit of proper and fair administrative action.

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