1) THE CLARIFICATION PRINCIPLE

- **the purpose of legal theory** is the clarification of the general framework of legal thought
  - to procure greater awareness and deeper insights about 'our' everyday, familiar, legal reality primarily by solving the manifold puzzles arising from 'our' shared beliefs about phenomena which are non-controversially perceived and classified as belonging to law

- clarification
  - focusing on the concept of law, but also on the related concepts of legal obligation, legal right, legal duty, legal power, legal rule, legal validity, legal sanction, nullity...
  - focusing on the connections of the abovementioned concepts with the more general concepts of rule, obligation, coercion, morality...
  - clarification can only be brought about by way of speculation on the conceptual webs revealed by both ordinary and specialist usages of legal words

- **jurisprudence (philosophical study of law)**
  - **legal theory**
    - 3 basic standards:
      - generality of scope
      - concern with structure
      - descriptive (value-neutral and explanatory elucidation of law's conceptual apparatus)
  - **legal policy**
    - evaluative, prescriptive
    - Bentham's 'censorial jurisprudence'; Austin's 'science of legislation'
    - a) evaluation from the standpoint of acceptability of a legal system to any rational person
      - must contain rules concerning the basic conditions of social life (violence, property, contract)
      - the rules must satisfy the procedural requirements (general, determinate, publicly promulgated, not retroactive) and principles of natural justice (impartial judges and fair trials)
    - b) evaluation from the standpoint of the principles drawn from some moral or political philosophy (what is good and just for the members of a society to be granted by law)
      - evaluation can lead to recommending the status quo, promoting legal reform, etc.

- **doctrinal study of law, legal history, legal sociology**
• subject-matter of legal theory
  o in a trivial sense: law
  o in a non trivial sense: a linguistic phenomenon
    ▪ sentences, words, and concepts, variously connected to institutional structures, collective practices, and psychological attitudes

2) THE CONCEPTUAL ANALYSIS PRINCIPLE

• analysis of legal language and legal concepts
• solving 'familiarity puzzles'
• bridging the gap between (superficial) knowing and (thoughtful) understanding
• linguistic tools
  o a theory of natural languages
    ▪ the meaning of words and sentences is determined by their use
    ▪ natural languages are fairly efficient tools of human communication, even if their words and sentences are characterized by indeterminacy (ambiguity and vagueness)
  o a theory of definitions
    ▪ several forms of definitions (*per genus et differentiam specificam*, contextual definition, central-case definition)
    ▪ contextual and central-case definitions more suitable to define legal terms
    ▪ a good definition is an explanatory definition
      • it instructs us about how the term is used and about the thing to which the term refers!
      • definitions 'may make explicit the latent principle which guides our use of a word, and may exhibit relationships between the type of phenomena to which we apply the word and other phenomena'
    ▪ rejection of 'definitional fallacy'
      • no theory should be 'built on the back' of definitions
  o a theory of concepts
    ▪ concepts are a matter of either convention or stipulation
    ▪ stipulated concepts are neither true or false
      • stipulations are to be assessed in terms of whether they are pragmatically justified
    ▪ legal-theoretical concepts should be stipulated concepts informed by an overall explanatory goal
• 'weak' stipulations: not departing altogether from ordinary concepts, but providing improved, puzzle-solving, versions of them

• hermeneutic tools
  o distinction between the 'internal' and 'external' points of view as to social systems of norms
    ▪ an observer should also take into account the participants' normative concepts and use of normative language in order fully to understand their normative structures as they themselves understand them
  o distinction between descriptive statements about a normative system ('external' factual statements about the rules and about the rule-oriented actions and attitudes of a normative system's officials and subjects) and normative statements grounded on (what is taken to be) the content of the system ('internal' statements of what duties, rights, liabilities, etc. one has under that system)

• metaphysical tools
  o the principle of methodical distrust
    ▪ familiarity with words and objects often goes along with confusion and delusion
    ▪ thus: 'common sense' views about the law must be subject to relentless critical scrutiny if they are to serve as adequate starting points for fruitful philosophical inquiries
  o anti-reductionism
    ▪ resisting the tendency to present legal systems as structurally simple phenomena, to overlook, disregard, or underappreciate their actual complexity
  o philosophical imagination
    ▪ suitably devised thought-experiments may throw much light on our actual conceptual and institutional structures, by comparing them to alternative imaginary situations