**Tutorial 5: Week 6 (Week of May 8)**

1. What is the distinction between primary and secondary rules?
2. What is the rule of recognition? Discuss the following passages:

The statement that a rule exists may now no longer be ... an external statement of the *fact*that a certain mode of behaviour was generally accepted as a standard for practice. It may now be an internal statement applying an accepted but unstated rule of recognition and meaning (roughly) no more than ‘valid given the system’s criteria of validity. In this respect ... a RR is unlike other rules of the system. The assertion that it exists can only be an external statement of fact. For whereas a subordinate rule of a system may be valid and in that sense ‘exist’ even if it is generally disregarded, the RR exists only as a complex but normally concordant practice of the courts, officials, and private persons in identifying the law by reference to certain criteria. Its existence is a matter of fact. (CL 107)

There are therefore two minimum conditions necessary and sufficient for the existence of a legal system. On the one hand those rules of behaviour which are valid according to the systems ultimate criteria of validity [the rules of recognition] must be generally obeyed, and, on the other hand, its rules of recognition specifying the criteria of legal validity and its rules of change and adjudication must be effectively accepted as common public official standards of behaviour by its officials. (CL 113)

1. "[I]f there is a competing but equally authoritative premise that leads to a different conclusion - then there is a choice in the case; a choice to be justified; a choice which *can* be justified only as a matter of policy - for the tradition speaks with a forked tongue."  Karl Llewellyn 'Some Realism about Realism' (1931) *Harvard Law Review*' 1222, 1252
   * + What does Llewellyn mean?  Why might one characterise legal realism with the phrase “the law is what the judge had for breakfast’
2. If the law*is what the judge says it is*, can they make a mistake?  See Hart's discussion at the top of p.139 of *The Concept of Law.*