1. A. The theory of legal positivism applies to this statement because the law was interpreted based on the written facts of the constitution and the history of the situation as it relates to the judiciary system. The idea that we as citizens have the right to overturn an execution after being found innocent is not in the constitution. Though pointing out that notion completely ignores the idea of moral standers and justice; at the same time it firmly follows what governs the democracy we as Americans live under. Bases for the argument in this statement relays on a product of human construction.

B. as the text book explains legal positivism is “contends that law is law” and therefore all other outside emotions or moral notions passed down from generations are ignored and instead that written and descriptive law is followed. In this statement the message was clear the judicial body is to be followed according to laws already in place regardless of personal ideas. This statement further resembles the theory of legal positivism when definitive words like emphatically and duty are used to describe the power of the “judicial department”

C. this statements carefully outlines all situation through the world that allow for “safeguards” in situation dealing with suspects, law-enforcement and possible forced confessions. This situation closely resembles the theory of positivism for obvious reasons. Once
again the overriding theme in this situation is factual law and not understood law interpreted as moral code. The very idea of upholding and making it clear rights of a citizen to a legal counsel and police interrogation shows a regard for the sixth and fifth amendments of the constitutions. This respect for the constitution is positivism in its purest form.

D. “Entirely irrelevant for constitutional purposes” this statement waste no time showing the clear resemblance of the natural law theory. Under the natural law theory the law is often interpreted differently from what was expressly written to reflect an underlying moral standard or code. This revised interpretation of the law is noticed when the thoroughly set aside to prove a point and justice the need to see the law in a different law. This use of natural law bound to come about with the advancement of technology. With the progression of society comes even more justification in some-part for the natural law.

E. in one of the most famous Supreme Court cases, Brown vs. Board of Education, the use natural was event and much need in a time of laws were on the books that did not have the best interest of all citizens in mind. The moral of code of “every man created equal” resonated throughout the halls of the Supreme Court in this case. This statement resembles the natural law theory before the actual laws on the books made segregation completely legal. However various laws at time were not equally legislated and therefore were not equally representing of the general public. Therefore the Supreme Court took it upon them to apply a correct interpretation of the 14th amendment.

2. There are many differences between the common law and civil law systems that have clearly divided the two but at the same time have similar in nature. The first major difference
between the two is that common law was law developed from custom, which pre-dates most written Anglo-Saxon laws and continuing to be used by courts after there were written laws. On the other hand civil law was developed out of the Roman law of Justinian's Corpus Juris Civilis coming from a broad legal principles and the interpretation of historical writings. The systems further differed because Common law relies on precedents set by the courts. Civil systems tend to be organized into legal codes and are less reliant on precedent. Lastly the two differ in criminal matters. The primary difference is that English common law places the burden of proof on the State, while systems based on the civil code tend to place that burden on the defendant.

3. The main reason for the three branches of government is to provide balance in our democracy. The idea of checks and balances did not become as evident until the 20th century when the power of judicial review was added the powers of the judicial branch. The first of many differences between judicial policy making and legislative policy making is that essential judicial branch can only change policy due the rulings on cases brought before them; whereas the legislative branch can pass and make laws, with approval of the president, almost unilaterally. Another difference is that the general public has little to no affect on the selection the members of the judicial branch as opposed to the legislative branch were the people have a direct affect on the selection of officials. Lastly since there many more members in the legislative branch than there are in the judicial branch, the individual power of the judge is greater which makes his or hers effect on policy making greater.

4. Each year billion of dollars are poured into interest groups across the country to advance their own political agenda. As seen in the mid 60’s with the civil rights movement, it is in the best interest of the interest group to pursue the change needed through the courts if the judges in that area or on the U.S. Supreme Court have political views that fall in line with the cause at
hand. However it is in the best interest for the interest group to peruse change through the legislative process if election year is approaching and the supported is a sensitive issue in public favor.

5. It is my earnest belief that judges should have to right to judicial review and be allowed to overturn laws found to be unconstitutional. This fundamental process and power of the judges is what I believe gives the “checks and balance” system able to check and balance. The idea judicial review has struck down many unconstitutional practices allowed by the legislative and executive branch. The practice of few unelected people wielding so much power under the judicial branch is and will always have a place in democracy. We as voters and citizens vote into the office the president that nominates them, and the congress that confirms them. The amount of power the voters have as it relates to indirectly influencing the selection of judges coupled with the vital role the judicial branch places in the “checks and balance” system; the judicial ability is not only an important but effective system.

6. Many Americans mostly those involved in politics have mixed and contrasting feelings about the elections of judges in the American judicial system. those who are in favor of electing judges feel as those electing judges will hold them accountable to the for the decision they make. This accountability would become a reality every November during elections. Those appose to election of judges disagree agree for the same reason the opposite disagree'. They feel as though judges will be too accountable to the often fickle public opinion and will not judge in an unbiased manner therefore undermine the system of “check and balances”. Personally I believe the idea of electing judges is not a wise decision. The practice of judges being selected and
serving for life has its pros and cons. However, in the long run, shielding judges from having to answer to the public preserves the idea that they are making their own personal decisions without outside influence.

7. A. in this situation it’s most likely that courts would not hear this case. The simple reason being, that this situation is a clear matter of political question. The issue of whether or not the American ports can be used by nations in conflict with allies is by far a question of foreign policy. These questions of foreign policy can only be solved by those members of the legislative or the executive branch. This issue is not a matter of the courts and can therefore not be decided by the courts by way of legal precedents.

B. For reasons of standing the pharmaceutical company would have no place to sue the FDA for damages incurred while in the process of complying with FCC regulations. The FDA did not force the pharmaceutical companies to be out line in certain regulation. Therefore the responsibility to comply with these regulations falls on the pharmaceutical companies and not the FDA. The courts after hearing this case would certainly move to dismiss because the pharmaceutical companies have no standing in federal court or any court for that matter.

C. This issue of the FDA placing new guidelines and regulations on the cosmetic industry is sure to have affects in there near future. With that said one cannot assume these effects as immediate loss and attempt to hold the FDA accountable. Under the idea of ripeness in the legal field one party cannot bring suit against the opposite party if the perceived damages are hypothetical and speculative. For that reason of ripeness, I believe the courts would surely strike now this suit brought by the cosmetic company.
D. Under the law every citizen has the right to a speedy trial, ample legal representation and other basic rights. In this situation the defendant was convicted of felony burglary and has completed his sentencing for incarceration. Due to the legal ramifications the idea of mootness comes into play when the defendant attempts to file a petition for Habeas Corpus to review the legality of the evidence in his conviction. The problem is the defendant is too late and would be rejected by the courts because the legal significance of his Habeas Corpus petition is moot because his case has been previously decided.

8. A. In my opinion the courts would most likely fall in line with the federal government. Ultimately the courts would decide that state X’s injunction against the federal government to prohibit the enforcement of their sanctions against the manufacturing and the medical use of the schedule one drug, marijuana. Based on the “necessary and proper clause” in the constitution, the united government did not have to adhere to state X’s laws against federal sanctions. The Supreme Court would feel by the U.S. government creating sanctions against schedule one drugs, they were doing what was necessary and proper to manage the safety of the public

B. The Court would argue that civil sanctions could be given to television network as punishment for using offensive words dealing with sexual context. It would be ruled that the words do not have to obscene to warrant sanctions. There is no control that a specific network can have over the behavior in specific households despite the time-frame or warning of place on certain programs. Therefore the only way to truly curtail any obscene words broadcasted over the air ways to simply not allow them.
Extra credit:

1. Do you every feel as though you were in the position to hear the original case and the not simply the appeal?

2. Are there times when you have to hear a case that was argued between two different of two different skill levels and the superior lawyer won the case even though the opposite side was clearly right?

Citations:

http://www.experiencefestival.com/a/civil%20law%20legal%20system%20-%20civil%20vs common%20law/id/1233371