

American Legal History – Survey (379-001)

Professor Ross E. Davies (rdavies@greenbag.org; 703-993-8049; Room 410)

3 credits

Prerequisites and Priorities: You must have successfully completed your first year of law school before taking this course, or have permission from the instructor. This course is a prerequisite for all American Legal History seminars taught or co-taught by Professor Davies, beginning with the Fall 2009 term.

Classes: Wednesdays, from 11:15 a.m. to 2:00 p.m., in Room 221.

Office Hours: TBA

Required Texts:

Required: Lawrence M. Friedman, *A History of American Law* (3d ed. 2005). Do **not** buy an earlier edition: buy the **third** edition. TBA: I will assign supplemental readings to expand on or clarify topics underrepresented in the primary text.

Reading assignments:

Page numbers refer to the Friedman book. Assignments are subject to change based on the pace of the course and the whim of the instructor. **Fair warning:** The reading is not light and the expectations for participation are high. Because the class meets just once per week and we therefore must move quickly and without slowing to accommodate those who are unprepared for class, enrolling implies the following commitments: (1) you will do the reading and think about it every week and (2) you will be prepared to participate in every meeting of the class (I will call on people from time to time, although this will not be a strictly Socratic course – more a mix of lecture and prompted discussion). To avoid problems, please do the reading well ahead of time. Having sounded these cautionary notes, I will say that the Friedman book is good, and I will do my best to select supplemental readings of comparable quality. I predict you will enjoy the reading, and enjoy talking about it.

Aug. 26: pages ix-xx, 3-61

Sept. 2: pages 65-119

Sept. 9: pages 121-139

Sept. 16: pages 140-166

Sept. 23: pages 167-206

Sept. 30: pages 207-225

Oct. 7: pages 226-249

Oct. 14: pages 259-292

Oct. 21: pages 293-328

Oct. 28: pages 329-366

Nov. 4: pages 366-389

Nov. 11: pages 390-433

Nov. 18: pages 434-462

Dec. 2: pages 463-500

Dec. 14: EXAM

Purpose of the course: This is a profession-specific civics class for lawyers. It is about roots, about the evolution of American law and legal institutions from colonial times to the end of the 19th century. We will talk only briefly and occasionally about the 20th and 21st centuries. By the end of the course you should have anecdotal knowledge of, and a comprehensive appreciation for, the development of courts and their relations with legislatures, executives, interest groups, and the general public; of legislation, regulation, and doctrine; of legal education; and of the organized bar – up to about the year 1900. This course is practical only in the sense that it will give you some small sense of where the roots of modern legal institutions, laws, and practices lie and where the corpses of those that (quite usefully) failed to outlive their usefulness are buried, and at least a few examples of the adage that “there is no new thing under the sun” and its associated reminder that all too often “there is no remembrance of former things.” On the other hand, it is not a particularly theoretical course either. The author of the primary text, Lawrence Friedman, is the leading living figure in the “law & society” school of legal studies, which emphasizes the interaction between social and political developments and developments in law and legal institutions, but that is not why we are using his book. It just does the best job of telling the story of American legal history in one volume. We will use Friedman’s narration as the basis for coming to our own conclusions about what happened in American law between 1600 and 1900, and why. Finally, this course is not an introduction to modern American law or government; rather, I expect students to have an understanding of those subjects sufficiently deep and current to enable me to make analogical and passing references to modern topics without having to spend class time or office hours explaining them.

Grades: Your grade will be based on a closed-book, closed-notes, test consisting of a mix of multiple-choice and short-essay questions, on which you will be invited to demonstrate that you have learned something of the facts, circumstances, and significance of various important figures, events, and trends in the development of American law. Your grade in the class may be adjusted up or down one step from your test grade based on class participation. A recent exam (given in the Spring 2009 term) is attached.

Student Exam Number _____

Do you intend to graduate in May 2009? Circle one: YES NO

Final Exam

American Legal History (379-001), Spring Semester 2009

Exam date: May 1, 2009

Professor Ross E. Davies

Telephone numbers at which you can reach me during the exam: extension 38049 and 202-550-0000.

INSTRUCTIONS: PLEASE READ THEM!

- You have 2 hours to complete this exam.
- Do not turn to the next page until instructed to do so.

A few rules and tips to follow once the exam starts:

- a. The first thing to do is count your pages – you should have 10 pages (including this one).
- b. You may scribble anything you want, anywhere on the exam, but only your legible answers written on the lines provided will be considered for your exam grade (plus the extra credit explained below, if you earn it).
- c. Legibility: You are responsible for legibility of writing and for comprehensibility of abbreviations. You are allowed one line of text per line provided. *Please do not squeeze in more than one line of written text per line provided.* You will receive credit for only one line of writing per line provided. You may use white-out and squeeze words in above stricken-through words.
- d. Extra credit: You will get 1% extra credit if you (a) write your exam number in the space at the top of each page and (b) circle “YES” or “NO” in response to the question asked at the top of this page.
- e. Closed book: You are permitted to bring writing implements to the exam room – nothing else. No notes, books, note cards, outlines, study aids, tarot cards, and so on. And no electronics. No laptops, no cell phones, no pdas, and so on. And, finally, no writing implements that contain any features that make them functionally equal or similar to any of the banned items. Leave them in your locker, or at home.
- f. Politeness and isolation are required. Which means that you are forbidden to:
 - communicate with any person in any way during the exam (except to ask a question of the proctor or me);
 - disrupt administration of the exam; or
 - communicate anything of any sort about this exam to anyone who has not yet taken the exam.
- g. When you leave the examination room, your first stop must be the Records Office, where you must turn in your completed exam.

Please take a few minutes to read through the exam, and take a few more to think before answering. Seriously: Take a deep breath, relax, think, and then give your best answer to each question. Reading carefully and thinking clearly are good, because the correct answers are based on the material we have covered in class and on the assigned reading, not intuition and not outside reading or life experience. Do not imagine additional facts for any question.

Part One = 20% of your exam grade.

Part Two = 20% of your exam grade.

Part Three = 60% of your exam grade.

PART ONE

1. In *United States v. Hudson and Goodwin*, . . .
 - a. . . . the court rejected the idea of a federal common law of bankruptcy.
 - b. . . . the court rejected the idea of a federal common law of contract.
 - c. . . . the court rejected the idea of a federal common law of crime.
 - d. . . . the court rejected the idea of federal common law of property.
 - d. . . . the court rejected the idea of federal common law of tort.

2. In the famous *Harvard College* case, . . .
 - a. . . . the court created an exception to the rule in the *Dartmouth College* case.
 - b. . . . the court created the business judgment rule.
 - c. . . . the court created the prudent investor rule.
 - d. . . . the court created the pre-existing duty rule.
 - e. . . . the court created an exception to the rule in the *Charles River Bridge* case.

3. The American Bar Association was founded in, . . .
 - a. . . . 1818.
 - b. . . . 1838.
 - c. . . . 1858.
 - d. . . . 1878.
 - e. . . . 1898.

4. Nat Turner . . .
 - a. . . . was a “hanging judge” in the old West.
 - b. . . . was the first reporter of decisions for the Supreme Court of the United States.
 - c. . . . was a leader of the Salem witch trials.
 - d. . . . was a leader of a slave rebellion.
 - e. . . . was founding editor of the first American legal periodical.

5. By the late 19th century, the only State in which absolute divorce was unavailable was . . .
 - a. . . . Alabama.
 - b. . . . Georgia.
 - c. . . . North Carolina.
 - d. . . . South Carolina.
 - e. . . . Virginia.

6. Jesse Root's "republic of bees" . . .
- . . . was a hive of republican virtue.
 - . . . relied on the innate commitment to liberty of the individually small and weak to cooperate to break free of British oppression.
 - . . . placed the interests of the community above the interests of the individual.
 - . . . extracted its law from innumerable flowers but was independent of them.
 - . . . swarmed to attack those who opposed the rights of man.
7. The influence in the United States of the European civil law tradition . . .
- . . . was notable in its limitation to Louisiana and neighboring States.
 - . . . was notable in federal law governing the disposition federal lands.
 - . . . was notable in the spread from West to East of laws governing rights in natural resources.
 - . . . was notable in its persistent complication of matters of descent and inheritance.
 - . . . was notable in its hostility to slavery.
8. The political security if the Supreme Court of the United States was enhanced by the impeachment and failed attempt to remove from office of . . .
- . . . Salmon Chase.
 - . . . Samuel Chase.
 - . . . William Cushing.
 - . . . John Marshall.
 - . . . Lemuel Shaw.
9. West Publishing Company's first regional reporter was the . . .
- . . . Atlantic Reporter.
 - . . . Northeast Reporter.
 - . . . Northern Reporter.
 - . . . Northwest Reporter.
 - . . . Southeast Reporter.
10. In *Pollock v. Farmer's Loan & Trust Co.*, . . .
- . . . the Supreme Judicial Court of Massachusetts amended the charter of the Farmer's Loan & Trust Co.
 - . . . the Supreme Court of the United States upheld the constitutionality of the Sherman Antitrust Act.
 - . . . the New York Court of Appeals upheld the constitutionality of the state regulation of usurious interest rates.
 - . . . the Supreme Court of the United States declared the income tax unconstitutional.
 - . . . the Supreme Court of the United States declared a New York law establishing maximum interest rates unconstitutional.

PART TWO

1. What was manumission, and why was it important?

2. What was a sturdy beggar, and why were sturdy beggars important?

3. What was *In re Debs*, and why was it important?

4. Who was Myra Bradwell, and why was she important?

5. Who was Thomas Cooley, and why was he important?

6. Where did the mechanic's lien come from, and why was it important?

7. Who was William Cushing, and why was he important?

8. What was a common law marriage, and why was it important?

9. Why were free railroad passes important?

10. What was the Litchfield school, and why was it important?
