

American Legal History – Survey (379-001)

Professor Ross E. Davies (rdavies@greenbag.org; 703-993-8049; Room 410)
2 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 autumn 2009 term.

Class size: Unlimited.

Classes: Wednesdays from 12 noon to 1:50 p.m., in Room 221.

Office Hours: TBA

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.

Jan. 7: pages ix-xx, 3-61

Jan. 14: pages 65-119

Jan. 21: pages 121-139

Jan. 28: pages 140-166

Feb. 4: pages 167-206

Feb. 11: pages 207-225

Feb. 18: pages 226-249

Feb. 25: pages 259-292

Mar. 4: pages 293-328

Mar. 18: pages 329-366

Mar. 25: pages 366-389

Apr. 1: pages 390-433

Apr. 8: pages 434-462

Apr. 15: pages 463-500

TBA: **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.