Readings in American Law: The 1790s (395-001) – Autumn 2012 (3 credits)

Professors Ross E. Davies (rdavies@greenbag.org; 703-993-8049) and Gregory F. Jacob (gjacob@omm.com; 202-383-5110)

Classes & office hours: Wednesdays, 12 noon to 2 p.m. in Room 412. Note: The course is scheduled for noon to 1:50, but we will extend every class session to 2 p.m. to make up for the fact that we will not meet on Oct. 10. Office hours by appointment.

Texts: 
† = buy; * = on Google; ‡ = in law databases; Ô = at gutenberg.org; © = obscure, I will provide.

James Kent, Autobiographical Sketch of Chancellor Kent, 1 Southern Law Review 381 (1872)‡
James Kent, Kent’s Introductory Lecture, 3 Columbia Law Review 330 (1903)†
New-York Gazette and General Advertiser, Sept. 1, 7, 13, 19, & 28, 1798‡
[New York] Spectator, Sept. 1, 5, 8, 12, 15, 19, 22, 26 & 29, 1798‡
Venture Smith, A Narrative of the Life and Adventures of Venture, a Native of Africa (1798)Ô
Zephaniah Swift, A System of the Laws of the State of Connecticut intro, bk. 1, bk. 2, bk. 3 ch. I-XIII (1795)*
United States Reports (volume 3) (1799)‡
Virginia Reports (volume 1), front matter, 30, 123-24, 139-40, 239-45, 266-392 (1798)*
William Wyche, A Treatise on the Practice of the Supreme Court of Judicature of the State of New-York in Civil Actions (1794)*

Assignments: Read the assigned material by the first date next to which it appears, and be prepared to discuss it in class on that date. Long before the first discussion of the U.S. Reports, each student will be assigned one case from that volume on which to make a short oral presentation and lead a discussion on one of the dates on which that assignment is covered (students are free to express their preferences for particular cases at any time). Assignments are subject to change based on the pace of the course and the whim of the instructor. As should be obvious, you must read the Elkins & McKittrick book before the semester begins. It will make pleasant summer reading.

Sept. 12: NY Gazette/NY Spectator Oct. 10: no class Nov. 7: U.S. Reports

For each class session, please:
(a) Read the assigned material. You should stay an assignment or two ahead of schedule, just in case.
(b) Leave all electronics outside the classroom or, if you must bring them with you, keep them closed and stowed during class. This means, of course, that you must buy (or print out) and bring to class an ink/toner-on-paper version of the reading. No e-readers.
(c) Note and follow in-class instruction. That means, among other things, if you miss a class session you are responsible for acquiring from a classmate notes about what happened in a missed session. Make arrangements in advance as a precaution against unanticipated absences. There is a strong tradition in law of sharing notes with colleagues in need. Be a part of that tradition, but do not abuse it.
(d) Look up words you do not know. Use Black’s Law Dictionary (9th ed.) for legal terms and a good general dictionary – the OED (online or 2d ed.), American Heritage (4th ed.), or whatever works for you – for everything else.

Purpose of the course: What is the point of reading and talking about a bunch of stuff from some bygone era? Actually, there are at least three points: (1) to gain deeper understanding and appreciation of an important period in legal history; (2) to practice the careful study of law in context; and (3) to enjoy one of the most enriching of lawyerly activities – reading about law and then probing its meaning and function with engaged colleagues. There is a lot of reading, and pre-class thinking, but if you like those activities you will like this course, because there isn’t much else required (given that the quizzes described below will be pretty easy for anyone who does the reading).

Grades: Your grade is based on closed-book quizzes and participation. Quizzes (7 of them) count for 1/3 of the grade. A short quiz consisting of a few (ten or so) straightforward factual questions about obvious topics in the assigned reading is given at the start of the first session in which we discuss new material (except the NY newspapers and the U.S. Reports). The questions are designed merely to determine whether you have, in fact, done the reading and paid attention. They are easy to answer for anyone who has done the reading but are likely unanswerable by someone who has not. There are no make-up quizzes: miss a class in which a quiz is administered, miss that quiz. Skipping class in order to avoid a quiz can be costly for two reasons: (1) grades are based mostly on class participation and someone who doesn’t show up will find it hard to participate, and (2) a student’s lowest quiz score is excluded from the final grade calculation, but only if he or she has taken all quizzes. Participation counts for 2/3 of the grade. Let us be clear about this up front: Evaluation of participation in the course is inevitably largely subjective, which means that if you do not like the participation grade you receive there will be no basis for challenging it. Having said that, you are unlikely to get a bad grade if you come to every class prepared to make useful contributions, do in fact make those contributions, and respectfully listen to and comment on the contributions of others. It is in part because of those expectations that there is an electronics ban for this course. No one will be able to google whatever we are talking about in class and then read something off a computer screen, passing it off as his or her own thought. All of us will have to read and reflect and perhaps even do a little bit of our own research before class in order to be confident that we will have something useful to share. What a wonderful thing that will be!

On the first day of class we will discuss in detail the kinds of things that ought to be involved in both (1) preparation for our weekly discussions, and (2) the U.S. Reports presentation and discussion.

Intellectual property: I own all course content I create, regardless of form. You may share copies of that content with classmates during the course, but other than that you must keep all of it in any format to yourself forever. Recording of class sessions is forbidden.