

LEGAL HISTORY
FINAL EXAM SPRING 2009

INSTRUCTIONS

- (1) You have three hours to complete the exam.
- (2) It is open book. You may bring in the casebook and any notes or outlines that you create. You may not bring in any other materials. You may write your exam either by hand, or on a computer using the Blue Book program.
- (3) If you write by hand, please write in ink, and write on only one side of the paper.
- (4) There are two parts to the exam. The first part counts for one third of the final exam score. Each of the three sub-parts of the first part count for one-third of the first part score (or one ninth of the final exam score). The second part counts for two thirds of the final exam score.
- (5) Part I contains three different groups of question. The first calls on you to define, briefly, a concept. You should answer two of the three questions from that group. Use no more than half a page in writing your answer to each question. The second contains five quotations from texts we have read this semester. For each quotation, simply identify the author and the document from which the excerpted quotation comes. The third contains two questions. Answer one of the two questions from the third set. You may use no more than two pages in answering the question you pick.
- (7) Part II is self-explanatory. Pick one of the two questions in Part II to answer. You may use such space as you need in answering the question.
- (8) Good luck, and have a great summer.

I. SHORT ANSWER QUESTIONS

(A) Pick two of the following three questions. Your answer for each question is limited to one-half of one page.

- (1) What were the essential provisions of the Married Women's Property Act?
- (2) What was the "Hoar Substitute"?
- (3) What is the purported conflict between Restatement §75 and Restatement §90?

(B) Please identify the authors of the following five passages, and identify the text from which the passage comes.

- (1) The distresses of the people are now great, but if we examine them particularly, we shall find them owing, in a great measure, to the conduct of some practitioners of the law. Seven-eighths of the causes which are now in their hands might have been settled by impartial referees. Why cannot the disputes of the merchant, &c. be adjusted by reference, rather than by a long tedious court process? Or why should we engage lawyers who are wholly unacquainted with all mercantile concerns? Is it to swell the cost and then by a rule of Court have them finally determined by referees, which is generally the case? ... If we look through the different counties of the Commonwealth, we shall find that the troubles of the people arise principally from debts enormously swelled by tedious law-suits.
- (2) The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in

determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what the law is, we must know what it has been, and what it tends to become. We must alternately consult history and existing theories of legislation. But the most difficult labor will be to understand the combination of the two into new products at every stage. The substance of the law at any given time pretty nearly corresponds, so far as it goes, with what is then understood to be convenient; but its form and machinery, and the degree to which it is able to work out desired results, depend very much upon its past.

(3) This battle with Mr. Covey was the turning point in my career as a slave. It rekindled the few expiring embers of freedom, and revived within me a sense of my own manhood. It recalled the departed self-confidence, and inspired me again with a determination to be free. The gratification afforded by the triumph was a full compensation for whatever else might follow, even death itself. He only can understand the deep satisfaction which I experienced, who has himself repelled by force the bloody arm of slavery. I felt as I had never felt before. It was a glorious resurrection, from the tomb of slavery, to the heaven of freedom. My long-crushed spirit rose, cowardice departed, bold defiance took its place; and I now resolved that, however long I might remain a slave in form, the day had passed forever when I could be a slave in fact.

(4) First, as to *corporeal* inheritances. If a man builds his house so close to mine that his roof overhangs my roof, and throws the water off his roof upon mine, this is a nuisance, for which an action will lie. Likewise, to erect a house or other building so near to mine, that it obstructs my ancient lights and windows, is a nuisance of a similar nature. But in this latter case, it is necessary that the windows be *ancient*; that is, have subsisted there time out of mind; otherwise there is no injury done. For he hath as much right to build a new edifice upon his ground, as I have upon mine:

since every man may erect what he pleases upon the upright or perpendicular of his own soil, so as not to prejudice what has long been enjoyed by another; and it was my folly to build so near another's ground.

- (5) The senate is, by its constitution, too homogeneous with the house of delegates. Being chosen by the same electors, at the same time, and out of the same subjects, the choice falls of course on men of the same description. The purpose of establishing different houses of legislation is to introduce the influence of different interests or different principles. Thus in Great Britain it is said that their constitution relies on the house of commons for honesty, and the lords for wisdom; which would be a rational reliance, if honesty were to be bought with money, and if wisdom were hereditary.

(C) Pick one of the following two questions. Limit the length of your answer to two pages.

- (1) Discuss the significance of Judge Chase in the controversies of his time.
- (2) What was the role of law in the colonial and revolutionary era in the movement for independence from Great Britain?

II. ESSAY QUESTION

Pick one of the following two questions to answer. You may use as much space as you need in writing your answer.

- (1) Discuss the role of economic/industrial development and of economic theory in the evolution of American law.

- (2) Identify three United States Supreme Court decisions that we have read this semester that marked a moment of significant change/development in American law or legal history. Explain your choices.