

HISTORY OF AMERICAN LAW

FINAL EXAMINATION

Instructions

Question One

INSTRUCTIONS:

READ EACH ITEM OF THESE INSTRUCTIONS CAREFULLY

1. The examination for this course is a take-home exam that consists of two essays. Attached you will find Question One. You may work on this question at any time during the rest of the semester. The second question will become available on 8 December at 10:00 a.m. and will be due by 3 p.m. on 12 December. The absolute, non-negotiable deadline for turning in both questions is 3:00 PM on 12 December. **There will be no extensions beyond the 3:00 PM on 12 December; I will not accept late work. If you turn in your answers late, you flunk the course.**
2. There will be no right and no wrong answers. The exam questions call for a broad synthesis of the course materials, with particular attention to the collection of documents. The best answers will be well-written, intelligent essays with coherent theses. The best answers will be thickly laced with specific examples from the material, especially the primary documents.
3. Your essay should *argue a position*, that is, make a point or a series of points. The fastest way out of the top part of the curve is to not make an argument. The themes may be ones that Professor Russell has developed in the course or, better yet, ones that you have found on your own. The very best imaginable answer will teach Professor Russell a great deal. Your responses should avoid summarizing a lot of facts or conclusions, but should formulate and cogently defend a proposition (or set of propositions) about subjects covered in the course.
4. You should *support and illustrate* your argument with specific examples drawn from the course materials, lectures. You may also use examples from other courses that you have taken in the law school, but if you don't use material from this course, you should not expect a high grade. There is no need to be absolutely comprehensive, that is, to look for examples from every nook and cranny of the course, but the strongest answers will display an easy familiarity with the material.
5. For each of the two questions, students are expected to write from 1,500 to 2,100 words, which is roughly from 5 to 7 pages in standard, typed and double-spaced format. **Your answer**

may exceed neither 7 pages nor 2,100 words. Most word processors include a feature that counts words. You need not write a full 7 pages or 2,100 words for each question.

6. All of the work on this examination must be your own. With regard to Question One, you may consult freely with others, but be sure that the final work-product represents your own thoughts in your own words. Any words or ideas of others (whether written or spoken, but especially if written) that you end up using should, of course, be cited to source. You should not feel that you need to do any reading whatsoever outside the assigned materials.

7. There is no reason to use any particular citation form nor indeed to be compulsive about citation form. Indeed, for the purposes of this exam, Professor Russell regards the style of your citations as entirely unimportant. Do not, for example, feel that you should open up *A Uniform System of Citation* (the *Harvard Law Review* Bluebook) in order to write your essay. For example, if you refer to material from the lecture, do not include any citation at all. If you wish to cite from Friedman, *History of American Law*, use a simple, parenthetical citation in the body of your essay, such as (HAL, p. __). Cite the documents using only the author's name or a brief title. If you remember something from the reading and wish to refer to it but cannot remember just where it was that you encountered it, do not waste time trying to find the exact page, just skip the citation. However, if you refer to sources that were not part of the course reading, be sure to include a citation that is sufficient to allow Professor Russell to identify the source.

8. When you pick up Question Two during the exam period, you will have an examination number. Be sure to put your exam number on the first page of both of your answers. For the sake of convenience and safety, you may wish to put your number on each page. Do not put your name anywhere on your essays.

9. For Question Two, the rules regarding collaboration are different. You will have a weekend to complete Question Two. Once you have picked up the examination, you may not discuss it with other students until after 3:00 p.m. on 12 December.

10. If you have questions about these instructions or about the first question, you should not hesitate to ask Professor Russell.

11. Good Luck and Thank You.

QUESTION ONE

Legal History of Slavery

A number of my professional colleagues have suggested to me that the legal history of slavery is not a topic that deserves much emphasis.

I have heard this most often from law professors who are not themselves legal historians. While they might grudgingly concede that the legal history of slavery could be a worthy topic within a history department, they do not see why students should study this history within law schools or why legal historians generally should spend much time on the question of slavery.

After all, my colleagues have suggested, American slavery is long dead as an institution, and there seems to be no chance that it will be revived in the United States. Slavery was so obviously an injustice that dwelling on it in the classroom or in published articles will only serve to inflame racial tensions. In short, they can see no reason to spend a lot of effort on the slavery question.

Draft an essay in which you respond to their concerns. Think broadly about the disadvantages or benefits of studying the legal history of slavery. An obvious question, of course, is whether the study of slavery's legal history sheds any light on our contemporary situation. But you might also wonder whether the study of slavery helps us to better understand other, non-slavery historical topics. Be sure, in your answer to consider any differences that you might see between slavery in the 17th century and slavery as it developed in the 19th century.

END OF QUESTION ONE