

ENGLISH LEGAL HISTORY
L6600
Final Examination – December 2007
Professor Eben Moglen

This examination consists of 3 pages.
Please check *now* to see that your copy of
the examination is not missing any pages.

IF YOU ARE A CANDIDATE FOR GRADUATION IN JANUARY 2008,
WRITE ON THE TOP OF YOUR FIRST PAGE “CANDIDATE FOR
GRADUATION, JANUARY 2008.”

This examination contains three essay questions. You are required to
write on any *two*. In order to ensure general adherence to reasonable limits
on time and quantity, the following restrictions apply:

1. Total working time is not to exceed 12 hours.
2. No more than 6 hours is to be spent on any single essay.
3. No essay is to exceed 1,500 words (six double-spaced typewritten
pages, or the longhand equivalent).

Each of the following questions can be excellently answered in an essay
referring only to the assigned reading and the substance of lectures. Other
research is *not* categorically forbidden, but anyone incorporating the fruits of
such research in an essay will be held to a higher standard of factual accuracy
and comprehensiveness. In short, additional research is discouraged.

Submission of essays will be deemed to be a pledge that you have adhered
to the stated time restrictions. Any essay which exceeds the space limitation
may be rejected *in toto*. We all do better by avoiding arms races. Write
well, and don't worry.

Question I

The primary mechanism in the development of the common law is the triumph of plaintiffs' expedients at the expense of theoretical coherence. Abetted sometimes by the self-interest of the courts, plaintiffs' counsel—in the fertility of their disregard for integrity of design or consistency of principle—bequeathed to their successors a system incoherent and adaptive in equal portions.

Comment, with specific reference to the development of the land law.

Question II

Far more than the fabled 'rise of the middle class,' the struggle of the aristocracy to maintain social and political predominance against the Crown is depicted in the history of the English land law between 1285 and 1560.

Comment.

Question III

The mythology of the common law places the English love of jury trial before all other considerations. But the real mechanism of growth and change in English law over the centuries is the paradoxical ambivalence felt about the jury at every stage.

Comment, with specific relation to the development of doctrine in the law of contract.

Question IV

The miserable history of crime in England can be shortly told. Nothing worth-while was created. ... So far as justice was done throughout the centuries it was done by jurors and in spite of savage laws. The lawyers contributed humane but shabby expedients, which did not develop into new approaches. ... The kind of discussion by which law develops as an intellectual system is a luxury in the context of preserving elementary order. In murder and theft there are no competing general interests to accommodate. It is the constable and the hangman who can do something about them, not the lawyer. Until relatively modern times the lawyer was not even allowed to play any real part; and if he had been, few defendants could have paid him. The criminal law became segregated as one of the dirty businesses of society. It cannot even be called a failure of the common law because, until the age of reform, it was nobody's business to try.

Comment.

END OF EXAMINATION