



The University of New Mexico

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Semester I, 2007

UNM School of Law
Final Examination
Two Credits

Professors Bobroff & Fritz
Friday, December 7, 2007
1:30 p.m. to 4:30 p.m.

Instructions

1. This is a **LIMITED OPEN BOOK EXAMINATION**. You may use the course materials, handouts and materials distributed during the course by the Professors or Tutors, and any notes or outlines that you have participated in creating.
2. There are two parts to the exam. Part One consists of two questions for which you have a choice of answering either question: **just answer ONE question** in Part One. Part Two consists of a single question that you must answer. Both Parts of the exam are equally weighted.
3. **Most important:** This exam was deliberately written to be answered in two hours, indeed, with time to spare. Thus, you should feel free to leave after that period of time. The extra hour is given *solely* to remove the time pressure and anxiety of the ticking clock that *some* of you might experience. The extra time is intended to take that aspect out of the process. *Thoughtful, organized, and focused responses are much stronger than stream-of-consciousness, and repetitive answers that show less organization and thought. Please keep this in mind.*
4. On each blue book, write the subject, professor's name, and your exam number. **DO NOT WRITE YOUR NAME ON THE BLUE BOOKS.**
5. For students typing their exams: Type or write the information that would appear on the front of the blue book at the top of the first page of your answer. Put your exam number on each typed page.

Good luck and have a Happy Holiday season!

Part One

(Please answer *only one* of the following two questions)

1. The following passage from William Simon's article "The Ideology of Advocacy: Procedural Justice and Professional Ethics" is one possible description of "law" and its function.

"Ends are natural, individual, subjective, and arbitrary. Social norms result from the random convergence of individual ends. By contrast, it is possible to construct a system of rules which is artificial, impersonal, objective, and rational. The best way to provide order is to create a sovereign (e.g., monarch, legislature, party) which is neutral toward the various ends of the citizens and which acts through rules. Rules will give a regularity to social life and thus eliminate uncertainty. The rules will define for each citizen a private sphere of autonomy. Within this sphere, he need not account to anyone for his actions. So long as he remains within his sphere, he need not fear coercion by the sovereign."

What are the assumptions and implications of this view and how does it compare to different visions of "law" (both "western" and "non-western") that you have encountered in this course?

2. You've now spent nearly three months reading appellate judicial opinions. Yet, in the first week of this course you encountered some of your first appellate opinions, including one drawn from the Michigan Supreme Court and two from appellate courts in France and Germany. At the time, much about those three judicial opinions was unclear and confusing to you.

But now you have the benefit of hindsight. With that hindsight answer the following:

What about the Michigan opinion is typical about the nature of appellate judicial opinions in the common law tradition? In addition,

What do you now appreciate was going on in the French and German opinions that was not apparent the first time you read them?

Part Two

3. The following passage comes from a speech by Oliver Wendell Holmes in 1897 entitled "The Path of the Law."

"The rational study of law is still to a large extent the study of history. History must be a part of the study, because without it we cannot know the precise scope of rules which it is our business to know. It is a part of the rational study, because it is the first step toward an enlightened skepticism, that is, toward a deliberate reconsideration of the worth of those rules. When you get the dragon out of his cave on to the plain and in the daylight, you can count his teeth and claws, and see just what is his strength. But to get him out is only the first step. The next is either to kill him, or to tame him and make him a useful animal. It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past."

What is Holmes saying in this passage and how does it reflect his description as being a "transitional" figure between the Langdellians and the Legal Realists?