

ST. MARY'S UNIVERSITY SCHOOL OF LAW

AMERICAN LEGAL HISTORY
Professor Michael Ariens

FINAL EXAMINATION
SPRING 2001

INSTRUCTIONS

1. This examination consists of one (1) page, excluding this page, and two (2) equally weighted questions. Please write your examination number on your bluebook immediately.
2. This examination must be completed within three (3) hours. If you do not hand in the examination when I inform you that the examination period is completed, I will leave without collecting your examination, and you will receive a failing grade.
3. If you identify yourself in any way in your examination, you will receive a failing grade, and you will be in violation of the Code of Student Conduct.
4. You may use your assigned or recommended texts, your notes, any outline and any other materials you believe may be helpful, except things that make noise. You must use black or blue ink when writing your answers, and your answers must be contained in one (1) sixteen (16) page bluebook, which will be provided to you at the examination. You may write on every line on one side of the page, or every other line on both sides of the page. If you are typing this examination on a computer or otherwise, you are limited to no more than five (5) single-spaced pages. After you have completed typing your answers, you must have your examination answers *printed*.
5. At the end of the examination, please return your bluebook and this cover page, both signed with your secret number, to the proctor. You may keep your examination if you wish.

I HAVE NEITHER GIVEN NOR RECEIVED UNAUTHORIZED AID IN TAKING THIS EXAMINATION, NOR HAVE I SEEN ANYONE ELSE DO SO.

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QUESTION I

"Like King Arthur's Merlin (the magician who lived backward in time, growing younger and younger as the days passed), our understanding of the past requires us to relive historical events through a kind of reverse chronology. For example, we can't understand Reconstruction until we understand *Lochner v. New York*, and we can't understand *Lochner* until we understand 'the switch in time that saved nine,' and we can't understand the 'switch in time' until we understand *Brown v. Board of Education*, and so on. This counterintuitive notion underlies the difficulty of placing into context both the facts and meaning of American legal history. Understanding 'what happened then' requires both a sensitivity to the social, economic, cultural and intellectual conditions of that time, and an understanding of the present." Take an important event in American legal history (e.g., Reconstruction, *Lochner*, *Brown*, or some other event of your choosing), and discuss whether, and if so, how this is true.

QUESTION II

"The entire course of American legal thought represents a series of wrong turns, of inapt questions leading to unintelligible answers. This is a fatal consequence of an obsession with turning Oliver Wendell Holmes and Christopher Columbus Langdell into prophet and demon, with our protagonists occasionally changing roles. The fixation on Holmes and Langdell by their intellectual heirs has resulted in intellectual skirmishes both futile and largely devoid of meaning, for it posits a dialectic that is nonexistent. The ritual slaying of elders that is a constant in American jurisprudential thought has led us down the wrong path." Discuss.

END OF EXAM