

FINAL EXAM
COMPARATIVE LAW
PROF. REYNOLDS
SPRING1995

INSTRUCTIONS

This is a take home exam. You may use your textbook and personal notes from class. You may not discuss the exam with any other person. There are five questions and you are to select two of them to answer. Your answers must be confined to one bluebook. You may write on both sides of the page. If you type your answers, you are limited to the use of twelve, double-spaced typewritten pages. Your answers must be turned in no later than 6:00 P.M. on Monday May 8, 1995. I will be in my office to receive your answers from 1:00 to 6:00 P.M. on that day.

I

From a traditional theoretical viewpoint our common law system is vastly different from a civil law system. Discuss this traditional viewpoint in the light of the comparative law course you just completed. Include in your answer a consideration of the problem of relation of theory and practice.

II

One of the goals of the comparative law course was to encourage critical thought about our common law system through comparison with civil law systems. Discuss and explain what features, institutions, or practices of civil law systems might be used to reform or transform our legal system. What difficulties might be involved in making such changes.

III

Recently, one of my colleagues said, in a condescending tone, that it was a shame that civil law countries had never developed institutions such as our courts of equity, which were separate from the common law courts and were able to make equitable corrections of the positive law e.g. torts contracts, property, etc. Criticize this statement from a civil law perspective. Include examples and illustrations in your answer.

IV

Compare, explain and discuss fully the "concept of interpretation" and its implementation by common law and civil law judges. Include in your discussion the notion of a "the politics of interpretation".

V

The constitutional revolution led by republicans under Nixon, Reagan, and Bush and boisterously continued by Gingrich which involves, deregulation of property and business interests, a revival of states rights arguments, and a diminished concern for the interests of minorities can be seen as an attempt to return to 19th Century laissez-faire ideology. Discuss how this approach relates to the social, political, legal and economic changes in western societies that have brought about the establishment of the modern regulatory state (welfare state) in Europe and

the U.S. in the 20th Century and the destruction and demise of the distinction between public and private law and the demotion of private law as the essence of law in western societies. Include in your answer a consideration of the impact of the development of the European Community and its supra-national law on the matters under discussion.