Anonymous Number Capital University Law and Graduate Center Legal Systems FINAL EXAMINATION Dean Rodney K. Smith Spring 1990

In taking this examination, you may consult the materials in our texts, either with notes or materials that you yourself have substantially prepared. You should not consult, during the exam period, with any person about this examination or about your answers.

The essay is worth seventy (70) points. Answers to the essay questions must be submitted in clearly legible form. Your answers must be double-spaced. There is no length limitation on your answer, but you should take time to think about and carefully organize your answers. You should answer all questions fully, raising and responding to counter-arguments as well as developing your own position fully in light of what you have learned in our Legal Systems course. You should do so with analytic and organizational care and clarity. Additionally, inclusion of wholly extraneous material will result in a lowering of your grade. Since I value organizational and analytical clarity, as well as an effective writing style, I reserve the right to award extra points for effective writing.

The multiple choice and true/false questions are worth two (2) points each, for a total of twenty (20) points. You should select the answer that is most nearly correct. Please write the answer in a clear and legible fashion in the blank provided for that purpose (the blank between the number of the question and the wording of the question). If I cannot discern your answer, no credit will be given.

Good luck and have a happy holiday.

Multiple Choice and True-false questions (20 Points)

Please answer the following multiple choice and true/false questions. Please select the answer that is most nearly correct. Each question is worth two (2) points, for a total of twenty (20) points.

Multiple Choice Questions:

1. In its strong versions, legal realism

A. Asserts that judges decide cases as a product of their emotional or intuitive reactions to the facts of individual cases, rather than through a process of reasoning or with results that could be justified by reasoning.

B. Treats law as a system of rules that dictate the results judges must reach in particular law

cases by deductive reasoning.

- C. Treats law as a dynamic institution, recognizing that the common law is a product of sociological and philosophical factors that present significant problems of importance.
- D. None of the above.
  - 2. Which of the following statements are true regarding the civil law?
- A. It grew out of ancient Roman law.
- B. It was adopted by the American states during and after the war of Independence.
- C. It had its roots in medieval England.
- D. None of the above.
  - 3. What Federal Judicial Circuit is the State of Ohio in at the present time?
- A. the 5th
- B. the 11th
- C. the 6th
- D. the 1<sup>st</sup>
  - 4. Which of the following are intrinsic aids to determining legislative history?
- A. Canons of statutory construction.
- B. Committee reports.
- C. Both of the above.
- D. Neither of the above.
- 5. Which of the following factors, according to Bodenheimer, support the stare decisis principle?
- A. It tends to operate as a curb on the arbitrariness of judges.
- B. It introduces a modicum of certainty and calculability into the planning of private and business activities.
- C. It facilitates the dispatch of judicial business.
- D. All of the above.

True/False Questions (place a T for true or an F for false in the space provided):

To make a judgement of importance, the analogical and deductive forms of legal reasoning must be supplemented by a workable method of legal interpretation.

A major issue in San Antonio Independent School District v. Rodriguez was whether the Texas system of financing public education impinged upon a constitutionally protected fundamental right, requiring rigorous scrutiny by the Court.

- -Analogical reasoning requires three steps: (1) identifying a proper base point, or precedent; (2) identifying factual similarities and differences between a basepoint and a problem situation, or analyzing the facts to compare and contrast the precedent with the problem case; and (3) determining whether the factual similarities or differences are more important under the circumstances, or deciding whether to follow or distinguish the precedent.
- -The Supreme Court has held that, in determining the retroactivity of new rulings in criminal procedure with respect to final judgements, particular weight should be given to the question whether the now rule affected the very integrity of the fact-finding process and presented the clear danger of convicting the innocent.
- --Under the jus sui generis rule, "when particular words of description are used, followed by general words, the latter are to be limited in their meaning so as to embrace only a class of things indicated by the particular words."

## Essay Question (70 Points)

With the bar exam and law school successfully behind you, your dream of becoming a lawyer has come true. On the first day of your practice, a senior partner in your firm comes to you with a problem that she wants you to help resolve. You are excited and sit in rapt attention as the senior partner states the facts of the problem.

Your firm's client, Robert Anselxq, a male, recently lost his domestic partner, Michael Lutz, also a male, in a terrible automobile accident.

Michael was killed when a car driven by Sally Sauced swerved into his lane and caused a head-on collision. Evidently, there is no question regarding Sauce's liability in this regard.

Robert, your client, had indicated that he and Michael had lived as partners for fourteen wonderful years. He added that a statement of domestic partnership was on file in their home city of West Hollywood, California. He stated that he and Michael were and have been, since they began living together fourteen years ago, in full compliance with the requirements of ordinance No. 22 (a copy of which is attached). Upon questioning, Robert also noted that he and Michael had a very active sexual life, although he stressed that they were faithful to one another, having no other sexual partners during their fourteen-year domestic partnership.

Your senior partner added that Robert was extremely distraught over the loss of Michael, and noted that he would now have to find full-time employment. It is clear that Robert will suffer fairly definite economic and emotional damage due to the death of Michael, who was the primary income source in their domestic partnership. Robert wondered if he would be able to receive any

compensation for the loss of his special relationship with Michael.

Based on these facts, your senior partner would like for you to respond the following questions:

Whether Robert, who shared a cohabitant relationship or domestic partnership with the decedent, may recover damages for loss of consortium, under California law, as described in the materials for this class. (In answering this question, you should discuss, where relevant, matters included in this course, including but not limited to reasoning forms [analogical or deductive]; (ii) problems of importance; (iii) issues regarding theories of interpretation, precedent and legitimacy.) (50 points)

What effect, if any, do you believe should (and will) be given to Ordinance No. 22, as related to Robert's loss of consortium claim? (10 points)

What practical advice, related to the pursuit of this action, would you recommend that we (the firm) give to Robert? (10 points)

What other comments might you offer regarding the litigating of the loss of consortium claim in this case?