

1971

Jurisprudence: Final Examination (August 1971)

William & Mary Law School

Repository Citation

William & Mary Law School, "Jurisprudence: Final Examination (August 1971)" (1971). *Faculty Exams: 1944-1973*. 260.
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FINAL EXAMINATION

Jurisprudence

August, 1971

Mr. Bahr

The examination consists of four questions of varying weight, totaling 100 points. Each problem states the weight to be given to such problem and a suggested time limit. The suggested time limits are based solely on a proportion of the total time for the entire examination equal to the percentage weight given to individual problems. Answer all questions. Do not put your name on your bluebook. Be sure that your examination number appears on all bluebooks used.

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I. Weight: 30 - Time: 54 minutes

In the case of Carpenter v. Scott, 13 R.I. 477, 479 (1881), the court said, by Matteson, J.:

"Under it (the conditional sale) the vendee [purchaser] acquires not only the right of possession and use, but the right to become the absolute owner upon complying with the terms of the contract. These are rights of which no act of the vendor [seller] can divest him, and which, in the absence of any stipulation in the contract restraining him, he can transfer by sale or mortgage. Upon performance of the conditions of the sale, the title to the property vests in the vendee, or in the event that he has sold, or mortgaged it, in his vendee, or mortgagee, without further bill of sale....These rights constitute an actual, present interest in the property, which, as we have seen above, is capable of transfer by sale or mortgage."

Analyze and discuss.

II. Weight: 20 - Time: 36 minutes.

"Even if sometimes bewildered by technical detail, plagued by woodenness of administration, or outraged by cynical lawyer's trading on the fact that a given matter turns "not on justice, but on law," no man can wrestle long with the things of law without becoming aware that under the very things which sometimes bewilder, plague or outrage him there pulses an urge for right, or decency, or justice: a drive toward an ideal attribute which men may well conceive as a proper and indeed the proper ultimate objective of all law and of all legal institutions. The concept of Natural Law seems to me an expression informed by this urge and directed to its greater realization; yet an expression only partially effective, because baffled in part as it moves toward realization, baffled by the very legal technique which its objective is to criticize and remedy."

Discuss.

III. Weight: 30 - Time: 54 minutes

". . . the fact that judges and officials are not wholly free and must not be wholly free, divides on analysis and closer examination into two facts. The one fact is concerned with the control, the restraint, the holding down, of judges and officials; the other fact is concerned with the allowing to them of a limited degree and a limited kind of leeway, and the putting on them of a duty to exercise their utmost skill and judgment within that leeway. Both of these facts must be seen, and both must be reckoned with, by any Jurisprudence which aims to cover the plain facts and the settled policies of our legal system. For there are two kinds of judicial or other official freedom which come into question, and the two kinds are very different. It is a fact in our legal system that judges are by no means free to be arbitrary, and our vital need that they shall not be free to be arbitrary has been caught into those rationales or doctrines about "laws and not men," and about "rules determining cases." But it is also a fact that our legal system does adjust to the individual case and to changes in our conditions and institutions; and that fact means that judges and other officials are free to some real degree to be just and wise, and that we have a vital need that judges and other officials shall continue to be to some real degree free to be wise and just. That fact happens, however, not to have been caught into an equally familiar, equally sharp, or equally precious rationale or doctrine. Yet it needs to be; it is no less a vital part of our legal system and of our judges' duty. There is the law, which we know as impersonal, and think of as clear;

there is the right outcome, which we feel as also impersonal, and think of as hard to find, but capable of being found, and the office of the judge is to fulfill the demands of both, together."

Discuss

IV. Weight: 20 - Time: 36 minutes

"Run through the branches - or the budding twigs - of the newer Jurisprudence, then, and you will see each one growing and hardening to become a good spoke of the wheel: the branch of logical analysis, that of philosophical postulates, that of ethical values, that of the psychology and experimental logic of judicial decision, that of reconversion of the concepts and principles of any field of case-law, that of inquiry into the facts about the life under law and of law's effects on that life, that of the nature and work of legal institutions, that of working principles of each one of the legal crafts, that of the general philosophy of law, that of battle upon extravagant dictum - each seeks to supplement the other in dealing with law's jobs of here and now. And no particular writing comes into perspective until one notes which, and how many, of such spokes it is addressed to."

Discuss