

# Final Exam Questions

1992

Remember to read the [Instructions](#).

## 1992 QUESTION ONE

In *An Invitation to Law and Social Science Desert, Disputes and Distribution* (1986) [on reserve], Richard Lempert defined a legal system as "autonomous" if it is "independent of other sources of power and authority in social life. . . . To prosecute, an award of damages, or the reapportionment of a state legislature, is in an autonomous system influenced by the rules of the legal system. These rules determine not only the consequences of social action, but also . . . its meaning. . . . meaning that legal consequences follow. . . ."

"If the law is to be autonomous . . . it must in the ideal case be fully independent of society's other moral and political forces. [The] legal system should be autonomous [too] in one further sense. It must be *self-legitimizing*, for to be autonomous, the ethical forces for authority is to be vulnerable to the reach of such forces on decision making. A legal system is autonomous if its rules and rulings are accepted because they are legal. . . ."

". . . [T]he situation of the law, as we know it in Western society, is one of partial autonomy. Law is not fully independent of social order, but this does not mean that the law must be in essence a tool of the dominant class's interests. . . . of those in high office, or the obedient servant of some moral majority. . . ."

Lempert and Sanders state that some systems are more autonomous than others. A system is more autonomous if it is more embedded in law acquires meaning through the law's own canons of construction rather than by reference to the social order. "the more general the applicability of legal language, the less close will be the tie between the legal norm and the social group. Thus a system that forbids anyone from forging a check is more autonomous than one that protects only the interests of a particular group. . . . another way, a legal system characterized by generally applicable rules is likely to be more autonomous than one characterized by specific enactments."

In the light of what you have learned in this course, (a) how "autonomous" is the American legal system, either in terms of Lempert and Sanders set out, or in terms of other criteria which you think better fit their initial definition; (b) how has the American legal system remained stable over time, or has it gotten greater or less great? And does "autonomy" mean anything? If so, which branches of law are more "autonomous" and which are less?

**END OF QUESTION ONE**

## 1992 QUESTION TWO

Answer either Question A or Question B.

Do not answer both questions.

### QUESTION A

A. The *Laws & Libertyes* (1648) of the Massachusetts Bay Colony included a section entitled "Bakers" (*Documents*, p. 460) that regulated the baking of bread. In *Lochner v. New York* (1905, *Documents*, p. 460), the United States Supreme Court overturned the regulation. In what ways did the relationship of law and economic activity change or not change from the *Laws & Libertyes* to *Lochner*?

### QUESTION B

B. In *Calder v. Bull* (1798, *Documents*, p. 119), Justices Chase and Iredell have a disagreement. What is the nature of the disagreement? Identify other instances in the legal history of colonial North America and the United States to 1954 in which the disagreement between Chase and Iredell has arisen. What does the struggle over this problem reveal about the legal history of the United States?

END OF QUESTION TWO