

American Legal History (379-001) — Autumn 2016 (3 credits) (rev. ed. Sept. 19)

Professor Ross E. Davies (rdavies@greenbag.org; 202-550-0000).

Classes: 2:00-3:20 p.m., Tues. and Thurs., in Room TBA. Classes will run to 3:20 p.m., rather than 3:15, in order to make up for (1) the cancelled class on Sept. 29 and (2) a snow day. Office hours are open to all, right after class, in the classroom.

Sketch and purpose of the course: This is a profession-specific civics course for lawyers. It is about roots, about the evolution of U.S. law and legal institutions from colonial times to the turn from the 19th century to the 20th. We will talk only briefly and occasionally about the 20th and 21st centuries. It is not a very theoretical course. The author of our text, Lawrence Friedman, is a leading figure in the “law & society” school, which emphasizes the interaction between social and political developments and developments in law and legal institutions, but that is not why we are using his book. He just does the best job of touching on many aspects of U.S. legal history in one coherent and well-written volume. We will use Friedman’s narrative as a starting point for coming to our own conclusions about what happened in U.S. law between 1600 and 1900, and why.

Learning outcomes: By the end of this course you should have anecdotal knowledge of, and a comprehensive appreciation for, the development in the U.S. of: (1) courts, legislatures, executives, and associated public and private legal institutions, and their relations with each other; (2) legislation, regulation, and doctrine; (3) legal education; and (4) the bar. You should also have some sense of where the roots of modern legal institutions, laws, and practices run and where the dead limbs of those that (quite usefully) failed to outlive their usefulness have fallen, plus at least a few examples of the adage that “there is no new thing under the sun” and its associated reminder that all too often “there is no remembrance of former things.”

Other outcomes: You will learn some inspiring and entertaining things about some admirably good lawyers. U.S. legal history is an important and endlessly interesting topic. If you like history or law you stand a pretty fair chance of having some fun.

Reading: Lawrence M. Friedman, *A History of American Law* (3d ed. 2005). Do not get an earlier edition. The numbers next to each date refer to the pages in Friedman you should be prepared to discuss — and be quizzed on — in class on that date.

*Aug. 18: ix-xx, 3-61	Sept. 8: nothing new	Sept. 29: no class	*Oct. 20: nothing new	Nov. 10: nothing new
*Aug. 23: 65-119	*Sept. 13: 167-206	*Oct. 4: 253-278	*Oct. 25: 293-328	*Nov. 15: 367-389
Aug. 25: nothing new	Sept. 15: nothing new	Oct. 6: nothing new	Oct. 27: nothing new	Nov. 17: nothing new
*Aug. 30: 120-139	*Sept. 20: 207-225	Oct. 11: no class	*Nov. 1: 329-349	*Nov. 22: 390-433
Sept. 1: nothing new	Sept. 22: nothing new	*Oct. 13: 279-292	Nov. 3: nothing new	Nov. 24: no class
*Sept. 6: 140-166	*Sept. 27: 226-249	Oct. 18: 463-500	*Nov. 8: 350-366	*Nov. 29: 434-462

Class sessions: Each Tuesday class (and the Aug. 18 and Oct. 13 Thursday classes) will begin with 10 minutes for a short multiple-choice quiz (8 or 10 questions). Quiz days are marked with an asterisk (the Oct. 18 class will be the *Bradwell v. Illinois* moot at the Newseum, from 7:00 to 8:20 p.m.; if you attend you will be excused from the Oct. 20 quiz). The quizzes are designed simply to determine whether you have, in fact, done the reading, paid attention, and thought about it. For someone who has done the reading reasonably carefully the quizzes are nothing to fear, but for someone who has not done the reading they will be, well, painful. We will spend the rest of our class time talking about the reading, using quiz questions as starting points and relying, I hope, on your micro-papers and other research as well.

Research: Starting with the second week of class, you should do no more than 30 minutes of outside research each week testing the quality of Friedman’s work, and come to class prepared to share your findings. This is a purely honor-based assignment. I will not be collecting anything from you or actively attempting to detect shirking. As you read, note points where you are confused or skeptical. (The question all good lawyers are constantly asking, as they read and watch and listen, is: “Oh really?”) Follow up on something — one specific, substantive, constructive, concern related to the law as dealt with in Friedman. Thus, for example, if he refers to a “Republic of Bees” (see, e.g., p. 65), that is not a reason to do research about honey. But if he refers to developments in tort law (see, e.g., p. 350), and you find something about bees and trespass in 19th-century America (see, e.g., C.G. Addison, *1 A Treatise on the Law of Torts* 458 (1876)) that supports or complicates a point he makes, that would be good. Please do not overdo it — the 30-minute limit is genuine — but do not underdo it either. You should be prepared to talk about what you did or did not find, though it is unlikely you will be asked to do so every week. Think about it this way: Our class is a meeting of professionals who share their expertise and research, not a book club where we share reactions and casual thoughts.

Writing: On the first day of class students will be divided into two groups of roughly equal size. The members of the two groups will take turns (one week on, one week off) writing up their researches in Word documents and emailing them to the entire class (including me). Again, please do not overdo it. You need not come up with anything big or groundbreaking, and you should only write between 250 and 500 words (including footnotes). What we need are short, well-written additions — clever or dull, exotic or mundane — that will help us understand what we’re reading. This part of the coursework is as much about developing habits (reading with an eye for things that ought to be looked into, and then doing the looking) and techniques (searching, sorting, analyzing, and explaining in writing) as it is about substance. **Guidelines and deadlines:** First, your topic must be unique — no echoing, amplifying, duplicating, or piggybacking on a classmate’s — which makes it a good idea to read and write promptly (and to read your classmates’ papers as they appear in your email!). Second, your paper must be received by the entire class (including the me) no later than 12 noon on the Monday before the readings will be discussed. You are responsible for making sure it arrives on time. I will send a confirming reply email as soon as I receive it. If you do not receive a reply from me by the deadline, call my cell phone (202-550-0000) at 12 noon, dictate the entire paper into my voicemail, and then by 8:00 p.m. that day deliver hard copies to my mailbox and all your classmates’ mailboxes at the law school. (The idea, obviously, is to provide a backstop if you and I have email problems, and to deter the internet from eating your homework.)

Grades: Quizzes count for 1/2 of the grade. There are no make-ups: Miss a class in which a quiz is administered, miss that quiz. Taking all the quizzes is good because for students who take all quizzes the lowest score is excluded from final grade calculations. **Participation counts for 1/2 of the grade.** Let’s be clear about this up front: The evaluation of participation is subjective, which means that if you do not like your participation grade there will be no basis for challenging it. Having said that, you are unlikely to get a bad participation grade if you write good papers, come to class prepared to make useful contributions and do in fact make them from time to time, and respectfully listen to and comment on the contributions of others. The papers are not graded separately. They are included in class participation. You are responsible for attending the number of class sessions required by our school’s regulations (they are available on the school website, and you are responsible for knowing and following them) to be eligible for course credit. Failure to bring your current reading, notes, and research to class will affect your grade. It is important that all of us have hands-on access to our work during class.

Friendly advice:

- Stay an assignment or two ahead of schedule, just in case.
- Note and follow in-class instruction. If you miss a class, you must get notes from a classmate. Make arrangements in advance as a precaution against unanticipated absences. There is a strong tradition in law of sharing notes with colleagues in need. Be a part of it.
- Look up words you don’t know. Use a good dictionary or two. Interesting or important words are good quiz candidates.

Intellectual property: The instructor owns all course content, regardless of form. You may share copies with classmates during the course, but other than that you must keep all of it in any format to yourself forever.

I have read and do understand the rules of this course, and I know that following them is part of class participation. I will follow them.

Name (print): _____ Signature (scribble): _____ Date: ___/___/___