

Exam No. _____

LAW AND SOCIAL SCIENCE: A COMPARATIVE PERSPECTIVE

**2007 Summer Institute of International and Comparative Law
Cornell Law School & the Université Paris I Panthéon-Sorbonne**

Final Examination

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INSTRUCTIONS

1. This is a closed-book examination. You may not use the reading materials or your notes.
2. There are 2 questions. Please check now to make sure that your test booklet includes both questions.
3. The number of points given for each question in grading is given at the top of each question:
Question 1: 60 points
Question 2: 40 points
4. Read and re-read each question carefully and thoughtfully. Note what the question asks you to do. Think before outlining. Outline (that is, organize your thoughts) before writing. Answer each question clearly and concisely. Budget and allocate your time appropriately.
5. Address all significant issues raised by the question, even if you think one particular issue is most significant.
6. If you believe that a question cannot be answered without additional facts, make and state additional factual assumptions, and the reasons that you feel they are necessary. Do not, however, simply assume away difficult facts or issues.
7. Citation to relevant legal authority is proper but not necessary.
8. Good luck!

Question 1 (60 points)

As a new lawyer practicing in Germany, you receive a phone call from one of your clients, Lucky Louie (LL). Louie is very upset. He has just learned that he will be charged with assault in two different countries, the common law country England and the civil law country Germany. It seems he is not so lucky!

Louie, a citizen of the United States, is in Germany recuperating from his term of service as an American soldier in the Iraq War. During the war, he saw very heavy action in a number of battles in which many fellow soldiers were killed. Louie was wounded in the leg, and discharged from service. He has recovered from his physical injuries, but now he is often depressed or agitated, and has gotten into trouble by assaulting people who look to him like Iraqi men.

One month ago, in a Berlin café, he became suspicious of two Armenian men sitting at another table who stared at him. Louie got up from his table, began an argument with the men, and punched one of them, in front of many witnesses. That has led to one set of assault charges in Germany. On vacation in England, he engaged in a similar fight with a man who seemed to be following him. Now he is facing charges in England too.

But perhaps Louie is lucky that you are his lawyer!

Write a memo to a senior lawyer in your firm, including the following points:

- (1) Briefly, for background purposes, compare and contrast the trial procedures and legal approaches to assault prosecutions in the common law country of England and the civil law country of Germany. Identify how you might attempt to promote Louie's case effectively in each of these two legal systems.
- (2) Describe what type of expert evidence might aid the decision makers in the case. Compare, describe, and evaluate in detail how expert evidence would be used under the two legal systems.
- (3) Are your client Louie's chances better in England or in Germany, or will the assault trial's location make no difference? Please explain.

Question 2. (40 points)

One of the challenges of dealing with expert testimony about social science is that the decision makers often know little about social science. There are concerns that judges, juries, and lay assessors do not understand scientific testimony, or do not use it appropriately in their decision making.

These concerns have led to proposals in some common law countries for the use of expert juries, with jurors who are highly educated or especially qualified to hear a complex case.

Write an essay taking a position either FOR or AGAINST the use of expert decision makers in cases with complex social science testimony.

In your essay, use the material on the historical development of the use of expert witnesses, as well as what you have learned about the decision making of judges, juries, and lay assessors, to support your conclusion.