This examination consists of three pages. Please check now to see that your copy of the examination is not missing any pages.

IF YOU ARE A CANDIDATE FOR GRADUATION IN JANUARY 2003, WRITE ON THE TOP OF YOUR FIRST PAGE “CANDIDATE FOR GRADUATION, JANUARY 2003.”

This examination may be picked up and dropped off between 10:00 and 4:00 in room 107 from December 11 to December 20, 2002. Examinations must be picked up and delivered in person. Mail submission of examinations is not permitted.

This examination contains three essay questions. You are required to write on any two. In order to ensure general adherence to reasonable limits on time and quantity, the following restrictions apply:

1. Total working time is not to exceed 12 hours.
2. No more than 6 hours is to be spent on any single essay.
3. No essay is to exceed 1,500 words (six double-spaced typewritten pages, or the longhand equivalent).

Each of the following questions can be excellently answered in an essay referring only to the assigned reading and the substance of lectures. Other research is not categorically forbidden, but anyone incorporating the fruits of such research in an essay will be held to a higher standard of factual accuracy and comprehensiveness. In short, additional research is discouraged.

Submission of essays will be deemed to be a pledge that you have adhered to the stated time restrictions. Any essay which exceeds the space limitation may be rejected in toto. We all do better by avoiding arms races. Write well, and don’t worry.
Question I

The life of the common law has been in the abuse of its elementary ideas. If the rules of property give what now seems an unjust answer, try obligation; and equity has proved that from the materials of obligation you can counterfeit the phenomena of property. If the rules of contract give what now seems an unjust answer, try tort. ... If the rules of one tort, say deceit, give what now seems an unjust answer, try another, try negligence. And so the legal world goes round.

Please discuss, with specific reference to the development of one or more aspects of trespass on the case.

Question II

The miserable history of crime in England can be shortly told. Nothing worth-while was created. ... So far as justice was done throughout the centuries it was done by jurors and in spite of savage laws. The lawyers contributed humane but shabby expedients, which did not develop into new approaches. ... The kind of discussion by which law develops as an intellectual system is a luxury in the context of preserving elementary order. In murder and theft there are no competing general interests to accommodate. It is the constable and the hangman who can do something about them, not the lawyer. Until relatively modern times the lawyer was not even allowed to play any real part; and if he had been, few defendants could have paid him. The criminal law became segregated as one of the dirty businesses of society. It cannot even be called a failure of the common law because, until the age of reform, it was nobody’s business to try.

Comment.
Question III

“Procedure creates substance.”

Explain, with specific examples from the law of real property, the extent and limits of this principle in the historical development of English substantive doctrine.