Mathematics/Law 220

Answers to the Quiz of November 6, 2012

In general, the quizzes were very good. The rough translation into letter grades: <5 wrong = A; 6-8 = A-; 9-12 = B+; 12-14 = B; >14 = B-.

1. Officer Scott made a motion for summary judgment with the trial court, arguing that he was entitled to a qualified immunity in the lawsuit against him. When the motion was denied, he took an interlocutory appeal to the Court of Appeals. Define each of these three terms.

summary judgment: if there is no material issue of fact, the court decides the outcome of the trial as a matter of law (without submitting the case to the jury).

qualified immunity: the defendant (Scott) is immune from suit unless it can be shown that he violated Harris's 4th amendment rights. (That is the "qualified" part, which you needed to mention. Further technicalities – the test is an "objective reasonableness" test, followed by an inquiry into whether the right was clearly established. These matters are discussed in the opinion, pp. 3-4 and 8-11; but almost nobody went into this level of detail.)

interlocutory appeal: an appeal from a judicial motion before the trial has concluded (see Opinion, fn.2). Ordinarily appeals can be taken only after the final judgment in the trial court; but sometimes (as here) an exception is made.

2. (a) Why did the Court of Appeals "take [Harris's] view of the facts as given"?

This is the common-sense legal rule. Scott is the moving party; so the court assumes that everything alleged by his opponent (the non-moving party) is true. That way, (1) even assuming the best possible case for Harris, Scott would still win; and (2) Harris can't argue that he was unfairly not allowed to prove his version of the facts.

(b) In the opinion of the Supreme Court, should the Court of Appeals have done so?

Ordinarily, yes. But only if there exists "a genuine issue of material fact." Since in this case there exists a video contradicting Harris's version, that condition is not satisfied, and the Court of Appeals decided the matter incorrectly (in the opinion of SCOTUS).

3. If an issue arises at trial, what difference does it make whether it is classified as an issue of fact, or an issue of law?

Facts are (ordinarily) decided by the jury; law is (ordinarily) decided by the judge. (In some unusual circumstances – e.g. "constitutional facts," as discussed by Kahan et al. – the rule is a bit different; hence the "ordinarily.")

4. (a) Name two instances where the question of <u>reasonableness</u> arose in the case of Scott v. Harris.

(1) Did *Officer Scott* meet the "objective reasonableness" standard of the 4th Amendment?

(2) Could a *reasonable jury* have found that Scott violated Harris's constitutional rights?

These are really the only two instances, and it was important to spot both. The reasonableness of Harris is not at issue in this case.

(b) Is the question of reasonableness a question of fact, or a question of law?

This is the heart of the case. Issue #2 – the reasonableness of a *jury* – is a question asked by the judges; so it is a question of law (even though it involves a judgment about how a jury would evaluate matters of factual evidence). Issue #1 – the reasonableness of Officer Scott – is precisely what divides Justice Stevens from his colleagues. (See fn. 8 on p. 8 of Justice Scalia's opinion for the Court.) Stevens thinks that a reasonable jury could find that Scott acted unreasonably. So he thinks this is a jury question, and hence a question of fact. The majority, in contrast, thinks that, once the facts have been established, the question of reasonableness is (as they say in the footnote) "a pure question of law." (But note that on p. 10 the majority also says that "in the end we must still slosh our way through the factbound morass of 'reasonableness.'") In other words, the Justices of the Supreme Court disagree among themselves on the answer. That was the point I wanted you to see.

5. What are the two principal theories of the purpose of the jury?

(1) to find the <u>truth</u>;

(2) to provide <u>democratic input</u> (or to express societal values, or the like).

The basic point: jury trial does not exist solely to find out what happened. It also has a social legitimating function.

6. What practical difference does it make whether a court judgment is based on the interpretation of a congressional statute, or instead on the interpretation of the US Constitution?

If the court misinterprets a statute, Congress can change the statute (by a simple majority vote). But if the Supreme Court rules on a constitutional matter the only recourse is to amend the Constitution (which is much harder).

7. (a) What is the ordinary standard of proof in a civil trial? What is the standard of proof in a criminal trial?

Civil: preponderance of the evidence (= more likely than not, i.e. higher than 50%).

Criminal: beyond a reasonable doubt. (There is no accepted numerical figure; some people say 98%; others, 90%; others, much less.)

(**b) In a civil trial, the jury is asked to determine what? In a criminal trial, the jury is asked to determine what? (You can answer each question with a single word.)**

Civil: Liability.

Criminal: Guilt. (NB – not "guilt *or innocence*." There is no jury verdict of "innocent" – just "not guilty (beyond a reasonable doubt)," which is very different. So "guilty or not-guilty" is OK; but "guilty or innocent" is not. I did not take off points for this slip.)

8. According to John Langbein, why did the practice of judicial torture arise in the Middle Ages?

Easy; see the article.

9. Briefly sketch the analogy he draws between medieval torture and modern plea-bargaining. List five factors that in his view are responsible for the replacement of jury trial with plea-bargaining. Does the continental European approach mitigate any of these factors?

The analogy: If you set the standard of proof too high, you will end up by subverting the unworkable rules. So the relevant factors are not generalized features of trial, but factors that set the bar too high, that make conviction difficult. Langbein lists some on p. 21, and others were mentioned in class. For example: 5th Amendment; exclusionary rule; complex rules of evidence; the lawyerization of the process, with ample opportunity for challenges and appeals; the reasonable doubt standard; the right to confront accusers; the costliness of trials.

10. What are the principal differences between accusatory and inquisitorial trial procedures?

Accusatory: the prosecution is in the hands of the victim (or the victim's family); the judge is a neutral arbiter; the main objective is to provide a forum that will keep a private feud from spreading.

Inquisitorial: the prosecution is in the hands of the state, representing the interests of the wider society; the judge is supposed to find out what happened; if the defendant violated the criminal prohibitions laid down by society, then punishment is to follow (even if the victim is willing to forget the entire matter).

11. (400 words maximum, i.e. no more than about two pages). What are the principal differences between proof in mathematics and proof in law? What are the principal similarities? What difficulties arise in the one field that do not (or not to the same extent) in the other? Feel free to illustrate with examples from the class.

Here there was no single right answer; so unless you said something demonstrably false, you will have received full credit for the thoughtful answer that almost everybody provided.