

**Grading Guides for Past Examinations in
Comparative Contract Law: American and European**

Prof. Gregory E. Maggs
The George Washington University Law School

Updated: August 30, 2015

This document includes the grading guides for past examination that I gave on July 16, 2009. I do not have the grading guide for the July 27, 2006 examination. I did not teach the course in any other years.

EXPLANATION OF GRADING THE
FINAL EXAMINATION IN

Comparative Contract Law: American and European

Professor Gregory E. Maggs
George Washington University Law School

This examination was graded on the basis of points. Problem I was worth 20 points, while problems II and III were each worth 10 points. I determined American "letter grades" or German "notes" based on the distribution of scores on the examination. Out of a total possible 40 points, the high score was 39 points, the median score was 32, and the average score was 28 points.

Part I. (20 points)

This question asked you to identify and discuss two specific areas in which European contract law affords greater freedom of contract than American contract law, and two specific areas in which American contract law provides greater freedom of contract than European contract law. On your score sheets, I awarded points as follows:

- A. first area where European law affords more freedom (5 points)
- B. second area where European law affords more freedom (5 points)
- C. first area where American law affords more freedom (5 points)
- D. second area where American law affords more freedom (5 points)

This question had many possible correct answers. For example, a correct answer might assert that European contract law affords greater freedom in the area of gratuitous promises and penalty clauses, while American law affords greater freedom of contract in allowing revocation of unaccepted offers and in breaking off negotiations.

I determined how many points to award based on the general quality of the answers. In accordance with the instructions in the question, I specifically considered whether the areas cited in the answers were correct instances where one legal system affords greater freedom of contract than the other, whether the discussion of these areas illustrated the differences with hypothetical examples, and whether the discussion of these areas addressed possible justifications for the differences between the two systems.

Part II. (10 points)

This question asked you to identify two instances in which American contract law and European contract law have significantly different rules for addressing particular legal issues but the differences ultimately have few practical consequences. On your score sheets, I awarded points as follows:

- A. first area where different rules have few consequences (5 points)
- B. second area where different rules have few consequences (5 points)

This question also had many possible correct answers. For example, a correct answer might assert that the difference in default rules on when an acceptance is effective has few practical consequences because in practice parties typically change the American default rule. Similarly, although

European law, unlike American law, does not generally permit parties to void promises induced by a non-fraudulent misrepresentation, these promises generally would be voidable under European law on grounds of unilateral mistake.

I determined how many points to award based on the general quality of the answers. In accordance with the instructions in the question, I specifically considered whether the two instances cited were correct illustrations of how differing rules might provide similar results, whether the discussion of these instances provided hypothetical examples, and whether the discussion explained the reasons for how similar results might occur.

Part III. (10 points)

This question asked you to identify and discuss two ways in which American contract law and European contract law differ from each other in using formalities. I awarded points as follows:

- A. first way the two laws differ in using formalities (5 points)
- A. second way the two laws differ in using formalities (5 points)

This question also had many possible correct answers. For example, a correct answer might have explained that American contract law tends to require a writing much more frequently than European law because of a greater concern that plaintiffs might have falsely alleged that promises were made when they in fact were not made. Similarly, American law requires a basis for enforcing promises (i.e., consideration or reliance) both for evidentiary reasons and to identify promises for which enforcement has more societal importance, while European law does not have these formal requirements for the enforceability of promises.

I determined how many points to award based on the general quality of the answers. In accordance with the instructions in the question, I specifically considered whether the two ways cited were correct illustrations of how differing uses of legal formalities, whether the discussion provided hypothetical examples, and whether the discussion gave possible justification for each legal system's approach.