**Alternate Case Problem Answers**

*Chapter 1*

**The Legal Environment**

**1–1A. *Sources of law***

The U.S. Constitution is the supreme law of the land. A law in violation of the Constitution, no matter what its source, will be declared uncon­sti­tutional and will not be enforced. In this problem, the court determined that a Massachusetts state statute was in conflict with the U.S. Constitution. The Constitution takes priority, so the statute will not be enforced.

In the actual case on which this problem is based, the trial court held that the statute violated the Constitution, and the U.S. Court of Appeals for the First Circuit affirmed this holding. Under the statute’s definitions of large and small wineries, most of the small wineries were in state, and all of the large wineries were out-of-state. The court found that the purpose of the statute was to “ensure that Massachusetts’ wineries obtained an advantage over their out-of-state counterparts.”

**1-2A. *Rulemaking***

The U.S. Court of Appeals for the District of Columbia Circuit held that the Administrative Procedure Act (APA) required the Occupational Safety and Health Administration (OSHA) to conduct a notice and comment rulemaking proceeding before issuing the Directive. “Under the APA, an agency seeking to promulgate a rule must first provide the public with notice of, and an opportunity to comment upon, a proposed version of it.” Because OSHA did not conduct this proceeding, the court vacated the Directive. The court explained that “to the extent that participation in the [Comprehen­sive Compliance Program] requires more than adherence to existing law, the Directive imposes upon employers more than the incidental inconveniences of complying with an enforcement scheme; it has a substantive component.” The court acknowledged that OSHA could reissue the Directive after observing the required procedures.

**1-3A.  *Rulemaking procedures***

The United States Supreme Court ruled in favor of the Atomic Energy Commission. The Congress has set forth detailed procedural requirements in the Administrative Proce­dure Act. Courts may not go beyond these proce­dures and require agencies to con­form to a new set of requirements. Courts may only enforce the statutory law, and Congress in­tended that the discretion of the agen­cies themselves should be used in de­termining when additional procedures should be employed in difficult cases.

**1-4A. A Question of Ethics**

**1.** Here, you have to analyze the nature of the trade-off being made—that is, what rights are being traded off to obtain other rights? Obviously, the rights of the vessel own­ers and crew are significant. Costs would have to be incurred to renovate crews’ quarters to accommodate female passengers. The male crew members would have to modify their habits, given the presence of females on board the ship. Disruption in “normal” proce­dures aboard the vessel would almost certainly occur, at least to some extent. In this and many other similar situations, rights of business owners and employees or potential em­ployees must be sacrificed to implement the goal of equal employment opportunity. If women are not allowed on the ship, they are being denied equal employment op­portunity by the NOAA. Creating exceptions to the policy of equal employment opportunity simply because it causes inconvenience or economic disadvantages for employers or business owners would only perpetuate employment inequality and frustrate the purpose of equal employment opportunity laws and the policy underlying them.

**2.** The reasoning applied to question 1 applies here also. There is no per­ceptible reason (at least, to the authors of this manual) that the fact a voyage may last three months instead of two weeks would alter the fundamental nature of the issue.

**3.** Although the presence of a female in the common areas of the vessel may affect the male crew’s customary habits and practices, neither the Constitution nor case law in­terpreting constitutional provisions holds, or has ever held, that males have a constitu­tional right to exclusively male company in the workplace.