

Unit 1 – The Legal Environment

Chapter 1 – Introduction to Law

Chapter Overview

Chapter Theme

The principles discussed in this book are practical. Neither the book nor the course is a theoretical exercise. The law will affect students, regardless of their careers, whether they want it to or not. The more students understand the law, the more they can use it productively.

Approaching the Teaching of Law

Whether teaching in an undergraduate or MBA program students generally fall into one of four categories: (1) those who do not intend law as a career but approach the material with an open mind; (2) those in whom the course kindles a strong interest in law, who for the first time consider law as a career; (3) those who enter the course with a strong interest in law and plan to attend law school; and (4) those who are in the course only because their program requires it. The instructor's job is to try to engage students in all four categories. Students in categories (2) and (3) may be more willing to explore the nuances of legal principles and see connections between legal topics. Students in categories (1) and (4) may respond most favorably to practical applications of the law, such as understanding the law governing employment or landlord/tenant relationships.

Issues for Discussion

Complexity

It is often frustrating to students, citizens, and even lawyers that law is so complex. Anglo-American legal history consists, in part, of a clash of powerful, competing interests: property ownership, ethics, raw power, business practices, personal responsibility, social mores, and the need for predictability, to list a few. To understand the interplay of these forces is to understand why law is complicated.

Ambiguity

A related point is that many students—indeed, many non-lawyers—dislike the law's ambiguity. They want to learn “the law” as a set of rules with unvarying application, and are uncomfortable with the “what if” scenarios through which lawyers learn to apply legal principles. Students must learn that law acquires meaning only through application. If students, especially those in categories (1) and (4) above, leave the

course with greater understanding of why the law is ambiguous, why a lawyer's first response to a question about the law is often "it depends," then the instructor should consider it a success.

Note: *Some case citations appear here; footnotes appear in text only.*

Competing Interests

From a newspaper article about a legal issue, students should identify two or more *competing* interests. In an article about tobacco litigation, they might compare the tobacco companies' property interest in a profitable commodity, the companies' obligation to divulge what they knew concerning nicotine, the personal responsibility of those who chose to smoke, the state's interest in reducing medical costs, the companies' right to free speech (advertising), the federal government's interest in regulating smoking, and the state's obligation to protect children. The more important the legal issue, the less likely there is a simple solution to make everyone happy.

Experience with Lawyers

If one is teaching graduate students or others who have actual business experience working with lawyers, it can be an excellent introduction to the course to elicit the pros and cons of those experiences. One fun way to do so is to ask students "why lawyers are great" and "why lawyers are frustrating." Typical reasons given for "why lawyers are great:" "They help me avoid getting into trouble;" "They help to get me out of trouble;" and, "I can blame things on them." Typical reasons given for "why lawyers are frustrating: "They are expensive;" "They make everything too complicated;" "They are slow;" "They don't respond to my questions;" "They tell me what I don't want to hear;" and, "They don't know how to give "yes or no" answers."

1-1 EXPLORING THE LAW

1-1a The Role of Law in Society

The strong reach of the law touches nearly everything we do, especially at work. At work, a mid—level manager might face issues of negotiating a contract with a game developer (contract law), researching to see whether similar games already exist which might diminish her ability to market the new game (intellectual property law), harassment of a subordinate by a coworker (employment law), a worker complaining of long hours (administrative law), and she may consider investing her own money in her company's stock, but wonder whether she will get into trouble if she invests based on inside information (securities law).

Law is also essential. Every society of historical record had some legal system. Our legal system is largely based upon other English model, but many other societies contributed ideas.

Not only do Americans litigate – they watch each other do it. Every television season offers at least one new courtroom drama. Almost all of the states permit live television coverage of real trials. The most heavily viewed event in the history of television was the O.J. Simpson murder trial.

The law is a big part of our lives, and it is wise to know something about it.

1-1b Origins of Our Law

It would be nice if we could look up “the law” in one book, memorize it, and then apply it. But the law is not that simple, and *cannot* be that simple, because it reflects the complexity of contemporary life. In truth, there is no such thing as “the law.” Principles and rules of law come from *many different sources*.

Also, ours is a nation born in revolution, and created, in large part, to protect the rights of its people from the government.

English Roots

England in the 10th century was a rustic agricultural community with a tiny population and very little law or order. The king used a primitive legal system to maintain a tenuous control over his people. England’s “shire reeves” (sheriffs), collected taxes, apprehended criminals, and acted as mediator between feuding families. This method of resolving disputes was a precursor to mediation, discussed in Chapter 3.

When cases came before an Anglo-Saxon court, the parties were often represented by a clergyman, a nobleman, or by themselves. There were few professional lawyers.

In 1066, the Normans conquered England. William the Conqueror made a claim never before made in England: that he owned all of the land. The king then granted sections of his lands to his noblemen, as his tenants in chief, creating the system of feudalism. Land became the most valuable commodity in all of England.

In 1250, Henry de Bracton (d. 1268) wrote a legal treatise that still influences us. Written in Latin, titled, *On the Laws and Customs of England*, it summarized many of the legal rulings in cases since the Norman Conquest. De Bracton was teaching judges to rule based on previous cases, helping to establish the idea of precedent. **The doctrine of precedent, which developed gradually over centuries, requires that judges decide current cases based on previous rulings. The accumulation of precedent, based on case after case, makes up the common law.**

Key words:

Precedent: The tendency to decide current cases based on previous rulings.

Common law: Judge-made law.



Case: Oculist's Case¹ LI MS. Hale 137 (1), fo. 150, Nottingham, 1329

Facts: The defendant, attempting to heal the plaintiff, left him blind in one eye. The plaintiff has sued in trespass, a forerunner of today's tort action. The defendant made a procedural argument, claiming that the plaintiff should have brought an action of covenant.

Issues: Did the plaintiff bring the wrong type of suit? Assuming the defendant's care was defective, could he be liable in any type of action?

Holding: The court ignores the procedural point and reaches the merits. It holds that because the plaintiff voluntarily submitted himself to the defendant's care, the latter cannot be liable, even if his conduct caused the harm. The court distinguishes a deliberate attack, which would be actionable, from this accidental harm, where it finds no liability. More importantly, the court bases its judgment on a previous medical case involving accidental death. That case was dismissed, so this one should be as well: precedent begins to take hold.

¹ J. Baker and S. Milsom, *Sources of English Legal History* (London: Butterworth & Co., 1986).

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Question: What is a procedural argument?

Answer: A procedural argument focuses on *how a dispute should be resolved*. In this case, the lawyer is arguing that the court should not even hear the case because the plaintiff has filed the wrong type of suit.

Question: Why did the defendant's attorney make a procedural argument?

Answer: To avoid reaching the merits. The defendant may or may not be able to show that he exercised "reasonable care" (or whatever standard a fourteenth-century court might have applied), but he is clearly better off if he can avoid the issue altogether.

Question: Is it good to allow procedural arguments?

Answer: Some procedural arguments are undoubtedly useful. An assertion that a federal court lacks jurisdiction ought to be resolved before trial, as should an argument that the defendant never received adequate notice of the claims against him. However, when a court becomes entangled in prolonged procedural arguments, it may cause society to conclude that lawyers are using tricky devices to avoid justice, diminishing respect for law.

Question: In a lawsuit today, would the plaintiff need to demonstrate that the defendant *deliberately* harmed him?

Answer: No. In a negligence case, the plaintiff need only show that the defendant failed to act as a reasonable person.

Law in the United States

The colonists brought with them a basic knowledge of English law, some of which they were content to adopt as their own. Other parts, such as religious restrictions, were abhorrent to them. Many had made the dangerous trip to America precisely to escape persecution, and they did not want to recreate those difficulties in a new land. Finally, some laws were simply irrelevant or unworkable in a world that was socially and geographically so different.

During the 19th century, the U.S. changed from a weak, rural nation into one of vast size and potential power. Changing conditions raised new legal questions. In the 220th century, the rate of social and technological change increased, creating new legal puzzles. To begin to understand these issues, we need to understand the sources of contemporary law.

1-2 Sources of Contemporary Law

1-2a United States Constitution

America's greatest legal achievement was the writing of the U.S. Constitution. Any law that conflicts with the U.S. Constitution is void. The Federal Constitution establishes:

Branches of Government

The Founding Fathers sought a division of government power, not wanting all power centralized in anyone. The Constitution divides legal authority into three pieces:

Legislative power is the ability to create new laws; it is balanced by executive power of the veto and judicial power of interpretation and determination of validity. Article I creates Congress, comprised of a Senate and a House of Representatives.

Executive power is the authority to enforce laws; it is balanced by the legislative power to override a veto and to impeach and the judicial power to interpret. Article II makes the president the Commander-in-Chief.

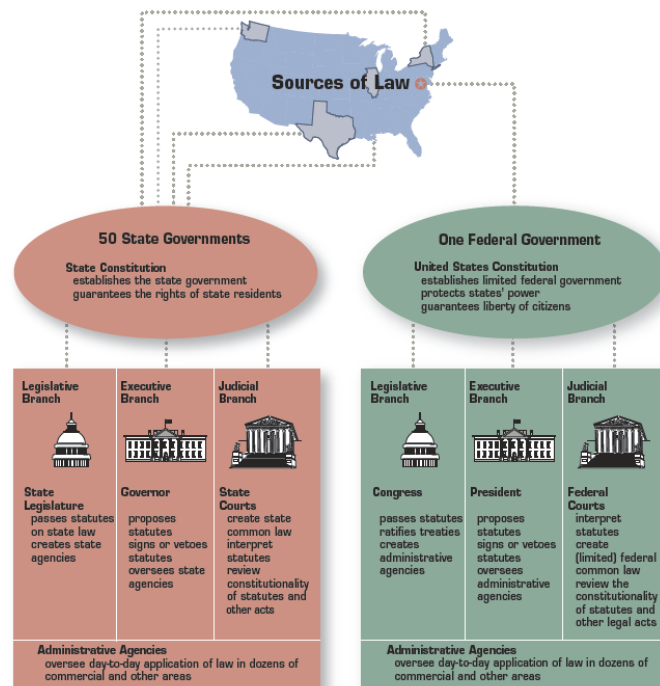
Judicial power is the power to interpret laws and determine their validity; it is balanced by the executive power to appoint justices and legislative power to approve justice nominees. Congress can also amend the Constitution with the approval of the states. It is often every bit as important as the ability to create laws in the first place. For instance, the Supreme Court ruled that privacy provisions of the Constitution protect a woman's right to abortion, although neither the word "privacy" nor "abortion" appears in the text of the Constitution.² At times, courts void laws altogether. In 2016, the Supreme Court struck down a Texas law regulating abortion clinics and the doctors who worked in them. The Court found that those rules created an undue burden for Texas women by causing many clinics to close and making abortions unreasonably difficult to obtain.

Checks and Balances

The authors of the Constitution also wanted to give each part of the government some power over the other two branches. They wanted to create a system that, without broad agreement, would tend towards in action. The president can veto Congressional legislation. Congress can impeach the president. The Supreme Court can void laws passed by Congress. The president appoints judges, but they must be approved by the Senate. Congress can override the Supreme Court by amending the Constitution. The

² Roe v. Wade, 410 U.S. 113 (1973)

president and Congress influence the Supreme Court by controlling who is placed on the court in the first place. Many of these checks and balances will be examined in more detail starting in Chapter 4.



Federal Form of Government. Principles and rules of law come from many sources. The government in Washington creates and enforces law throughout the nation. But 50 state governments exercise great power in local affairs. And citizens enjoy constitutional protection from both state and federal government. The Founding Fathers wanted this balance of power and rights, but the overlapping authority creates legal complexity.

Fundamental Rights

The Constitution also grants many of our most basic liberties, generally found in the amendments to the Constitution. The First Amendment guarantees the rights of free speech, free press, and the free exercise of religion. The Fourth, Fifth, and Sixth protect the rights of any person accused of a crime. Other Amendments ensure that the government treats all people equally, and that it pays for any property it takes from a citizen.

1-2b Statutes

Statute: A law created by a legislature.

The Constitution gives to the Congress the power to pass laws on various subjects. A proposed law is called a bill; a bill created by a legislature that has become law is called a **statute**.

1-2c Common Law

The collective body of court decisions throughout history comprise the common law. Judges of all courts below the Supreme Court will refer to previous cases (precedent) to rule on present cases. **The principle that precedent is binding on later cases is called *stare decisis*, meaning, “let the decision stand.”** But note that precedent is binding only on *lower* courts, which can be quite beneficial. In 1896, the Supreme Court decided that segregation was legal under certain conditions.³ In 1954, faced with the same issue, the court changed its mind.⁴

1-2d Court Orders

Sometimes judges issue court orders on a particular person or entity. This may be an order to do something or an order to refrain from some action.

1-2e Administrative Law

Administrative agencies are created by Congress or by an order of the President. Their purpose is to carry out the day-to-day work of enforcing the statutes passed by Congress. Agencies have the power to create regulations, which are as binding as laws.

1-3f Treaties

The President may make treaties (agreements) with foreign nations, but these treaties must be ratified by a 2/3 vote of the U.S. Senate. After ratification, treaties are binding on all citizens.

1-3 Classifications

1-3a Criminal and Civil Law

Criminal law: Criminal law prohibits certain behavior for the benefit of society.

Civil law: Civil law regulates the rights and duties between parties.

Criminal law concerns behavior so threatening that society outlaws it altogether. The government itself prosecutes the wrongdoer. The victim is not in charge of the case, although she may appear as a witness.

³ Plessy v. Ferguson, 163 U.S. 537 (1896).

⁴ Brown v. Board of Education of Topeka, 347 U.S. 483 (1954).

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The government will seek to punish the defendant with a prison sentence, a fine, or both. If there is a fine, the money goes to the state, not to the injured party.

Civil law is different, and most of this book is about civil law. **The civil law regulates the rights and duties between parties.** It does not involve guilt or punishment, two legal concepts with which students are likely most familiar. Chapter 7 addresses criminal law. Some conduct involves both civil and criminal law, as we will see in the *Pub Zone* case.

1-3b Law and Morality

Law and morality are clearly different yet obviously related. Often the law duplicates what all of us would regard as a moral position. But we have had laws that we now clearly regard as immoral. Finally, there are legal issues where the morality is less clear.

Ethics

The season between Valentine's Day and Mother's Day is big business for the Colombian flower industry. The country supplies 75 percent of all cut flowers sold in the United States during these months.

Leo owns a flower production facility near Bogotá, Colombia, where he employs hundreds of workers. He pays his workers less than \$1 per hour, a rate consistent with Colombian minimum wage laws. Colombian law does not allow employees to work more than 56 hours per week, with various daily breaks. Employers must give minimum wage employees one rest day per week or face penalties.

Leo's employees anxiously await the high season's production increase and the chance for overtime pay, which is 25 percent over the base rate. Many count on this extra

money for survival. Iris is one of Leo's most loyal and efficient employees. This year, Iris has a serious problem: Her daughter needs a complicated surgery that will cost more than \$300, which is more than Iris's monthly salary. If she does not pay for the surgery in advance, the girl will likely die. To raise this large amount of money, Iris asks that Leo allow her to work 140 hours a week during high season—that is, 20-hour days, 7 days a week. She is willing to work through her breaks and give up her rest day, working through her exhaustion.

What are Leo's legal and moral obligations? What would you do?

1-4 Jurisprudence

Jurisprudence: The philosophy of law.

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What is law? That question is the basis of a field known as jurisprudence? What is the nature of law? Can there be such a thing as an “illegal” law?

1-5a Legal Positivism

Sovereign: The recognized political power, whom citizens obey.

Law is what the sovereign says it is. The **sovereign** is the recognized political power, whom citizens obey. Both state and federal governments are sovereign. A legal positivist holds that whatever the sovereign declares to be the law *is* the law, whether it is right or wrong. The primary criticism of legal positivism is that it seems to leave no room for questions of morality.

Many states allow citizens to pass laws directly at the ballot box (voter referendum). California passed Proposition 187, designed to curb illegal immigration into the state by eliminating social spending for undocumented aliens. The law forbade public schools from educating illegal immigrants and required a principal to inquire into the immigration status of all the school’s children, and report undocumented students to immigration authorities. Several San Diego school principals rejected the new rules, stating that would neither inquire into immigration status nor report undocumented aliens.

Some San Diego residents castigated school officials. Others applauded their positions. Ultimately, a federal court ruled that only Congress had the power to regulate immigration and California’s law was unconstitutional and void.

1-4b Natural Law

St. Thomas Aquinas argued that an unjust law is no law at all and need not be obeyed. It is not enough that the sovereign makes a command. The law must have a moral basis. Therefore, the fundamental rule of all laws is that “good is to be done and promoted, and evil is to be avoided.” This sounds appealing but vague.

1-4c Legal Realism

Legal realists claim it does not matter what is written as law. What counts is who enforces that law and by what process it is enforced. Our personal biases determine which contracts will be enforced and which ignored, and why some criminals receive harsh sentences while others get off lightly, and so on.

SUMMARY OF JURISPRUDENCE	
Legal Positivism	Law is what the sovereign says.
Natural Law	An unjust law is no law at all.
Legal Realism	Who enforces the law counts more than what is in writing.

Bonus Discussion Questions, Theories of Jurisprudence

Ask students to identify examples of legal positivism, natural law, and legal realism from their own experience. They may find that they do not ascribe consistently to only one of these theories. For example, many undergraduate students are legal positivists with regard to, say, a landlord's obligation to maintain minimum levels of habitability required by the state sanitary code, but not with regard to laws prohibiting persons under **21** from purchasing alcohol. Students from different socio-economic classes may disagree as to the legality of racial profiling by police. By exploring examples such as these, students gain deeper understanding of the meaning of the theories of jurisprudence and may understand their own views of the law more objectively.

1-5 Working with the Book's Features

1-5a Analyzing a Case

Cases are the heart of the law and an important part of this book. Reading them effectively takes practice. This chapter's opening scenario is fictional, but the following real case involves a similar situation. Who can be held liable for the assault? See the step by step description in the text.

Analysis

Plaintiff: The party who is suing.

Defendant: The party being sued.

The case name is “Kuehn v. Pub Zone.” Karl Kuehn is the plaintiff, who is suing. The Pub Zone is the defendant, and is being sued. The next line gives the legal citation, which indicates where to find the case in a law library. We explain in the footnote how to locate a book if you plan to do research.⁵



Case: Kuehn v Pub Zone C364 N.J. Super, 301, Court of New Jersey, 2003

Facts: Maria Kerkoulas owned the Pub Zone bar, frequented by many motorcycle gangs, and knew from her own experience and conversations with police that some of the gangs, including the Pagans, were dangerous and prone to attack customers for no reason. Kerkoulas posted a sign prohibiting any motorcycle gangs from entering the bar while wearing “colors,” that is, gang insignia. Based on her experience, she believed that gangs without their colors were less prone to violence.

Rhino, Backdraft, and several other Pagans pushed past the bouncer wearing colors and approached the bar. Although she saw their colors, Kerkoulas served them one drink. They later moved towards the back of the pub, and Kerkoulas believed they were departing. In fact, they followed a customer named Karl Kuehn to the men’s room, where without any provocation they savagely beat him, causing serious injuries.

Kuehn sued the Pub Zone. The jury awarded him \$300,000 in damages. The trial court judge overruled the jury’s verdict and granted judgment for the Pub Zone, meaning that the tavern owed nothing. The judge ruled that the pub’s owner could not have foreseen the attack on Kuehn, and had no duty to protect him from an outlaw motorcycle gang. Kuehn appealed.

Issue: Did the Pub Zone have a duty to protect Kuehn from the Pagans’ attack?

⁵ If you want to do legal research, you need to know where to find particular legal decisions. A citation is the case’s “address,” which guides you to the official book in which it is published. [See the text for the entire footnote.]

Holding: Yes. Whether a duty exists depends upon an evaluation of a number of factors including the nature of the underlying risk of harm, the opportunity and ability to exercise care to prevent the harm, the comparative interests of, and the relationships between or among the parties, and, based on considerations of public policy and fairness, the societal interest in the proposed solution.

Since the possessor [of a business] is not an insurer of the visitor's safety, he is ordinarily under no duty to exercise any care until he knows or has reason to know that the acts of the third person are occurring, or are about to occur. He may, however, know or have reason to know, from past experience, that there is a likelihood of conduct on the part of third persons in general which is likely to endanger the safety of the visitor, even though he has no reason to expect it on the part of any particular individual.

The totality of the circumstances presented in this case give rise to a duty on the part of the Pub Zone to have taken reasonable precautions against the danger posed by the Pagans as a group. There was no reason to suspect any particular Pagan of violent conduct, but Kerkoulas knew the gang collectively had engaged in random violence. Thus, Kerkoulas had knowledge, as the result of past experience and from other sources, that there was a likelihood of conduct on the part of third persons in general that was likely to endanger the safety of a patron at some unspecified future time. A duty to take precautions against the endangering conduct thus arose.

Question: What kind of case is this, civil or criminal?

Answer: Civil.

Question: What is the difference?

Answer: In a civil suit, one party is suing the other. In a criminal prosecution, the government is seeking to punish someone for conduct that society will not tolerate.

Question: Who is the *plaintiff* (the party who is suing) and who the *defendant* (the party being sued)?

Answer: Kuehn is the plaintiff and Pub Zone is the defendant.

Question: What is the key issue in this civil suit?

Answer: Whether Pub Zone had a duty to protect Kuehn.

Question: Why does Pub Zone claim it had no duty to Kuehn?

Answer: Pub Zone argued that the attack was unforeseeable and that Pub Zone was not responsible for guaranteeing the personal safety of its patrons.

Question: What did the trial court conclude?

Answer: Although the jury found in favor of Kuehn and awarded him \$300,000 in damages, the trial court judge overruled the verdict and damage award and granted judgment for Pub Zone.

Question: What did the appellate court decide?

Answer: That Pub Zone *did* have a duty to protect Kuehn. The court reinstated the jury verdict and damage award.

Question: Why did the court decide that Pub Zone had a duty?

Answer: Kerkoulas' sign prohibiting patrons from wearing gang colors, and the Pub Zone's practice of calling police when patrons violated this rule, showed the Pub's awareness of the risk of violence of such gangs. Kerkoulas also knew that the Pagans had participated in past acts of random violence. Thus, Pub Zone had a duty to take precautions against such violence.

Question: What should Pub Zone have done to satisfy its duty?

Answer: Enforce its existing rules. Despite Pub Zone's policy against gang colors, Kerkoulas allowed the Pagans to remain in the bar and drink. Train bouncers and all other staff to be aware of patrons from whom such violence is foreseeable. If such patrons refuse to leave the club when asked, Pub Zone should be consistent in calling the police to address the problem.

1-5b Exam Strategy

This feature gives the student practice analyzing cases the way lawyers do – and the way they *must* on tests. Law exams are different from most others because you must determine the issue from the facts provided. See below for an example.

1-5c You Be the Judge

Many cases involve difficult decisions for juries and judges. Often both parties have legitimate, opposing arguments. Most chapters will have a feature called, "You Be the Judge," in which the facts of a case are presented, but not the court's holding. We leave it to the students to debate and decide which position is stronger, or add their own arguments to those given.



You Be the Judge: Del Lago Partners, Inc. v. Smith⁶

Note: There are two reasons for using this case. First is to introduce students to the “You Be the Judge” feature. There is one such case in almost every chapter. The text provides the facts and issue and then, in place of the court’s holding, gives competing arguments for the two sides. The text’s authors wrote the arguments, often based on majority and/or dissenting opinions in the case. Since students do not have the “answer,” they are forced to think for themselves.

An instructor can use these cases in many ways:

Divide the class in two and assign each side to argue for one of the parties.

Have students vote on the outcome before and after revealing the court’s holding.

Require students to prepare a short paper giving their own “holding.”

Have one or two students argue each side before the “court” (the professor and remaining students).

The second reason for using this case is that it builds on the issue of negligence introduced in the *Kuehn v Pub Zone* case, above. This time, the court confronts not only the question of whether a duty is owed, but also whether the injury was foreseeable.

Facts: It was late night at the Del Lago hotel bar. Bradley Smith and 40 of his closest fraternity brothers had been partying there for hours. Around midnight, guests from a wedding party made a rowdy entrance. One of Smith’s friends brashly hit on a young woman in the wedding party, infuriating her date. Verbal confrontations ensued. For the next 90 minutes, the fraternity members and the wedding party exchanged escalating curses and threats, while the bartender looked on and served drinks. Until... the inevitable occurred. Punches were thrown. Before Smith knew it, someone placed him in a headlock and threw him against a wall.

As dozens fought, the bar manager fumbled to call hotel security, but realized he did not even have the phone number. When security eventually arrived, the free-for-all had ended ... and Smith had suffered a fractured skull, among other serious injuries.

⁶ 307 S.W.3d 762, Supreme Court of Texas, 2010.

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Smith sued Del Lago for negligence. He argued that the hotel was liable because it knew that the brawl was imminent and could have easily prevented it by calling security or ejecting the angry drunks. The lower court agreed. The hotel appealed.

You Be the Judge: *Did the hotel have a duty to protect Smith from imminent assault?*

Argument for the Plaintiff-Appellant (Hotel): Your honors, my client did nothing wrong. The Del Lago staff did not create the danger. Smith was a grown man who drank voluntarily and joined the fight knowing that he was at risk for injury. The hotel did not owe a duty to someone who engages in such reckless behavior. And let's face it: Accidents happen, especially at a bar late at night. Moreover, a bar owner cannot possibly monitor the words exchanged between patrons that may lead to a fight.

The law has developed sensibly. People are left to decide for themselves whether to jump into a dangerous situation. Smith made his decision, and Del Lago should not be held accountable for his poor choices.

Argument for the Defendant-Appellee (Smith): Your honors, Del Lago had a moral and legal duty to protect its guests from this obvious and imminent assault. When a business has knowledge of something that poses an unreasonable risk of harm to its patrons, it has a duty to take reasonable action to reduce or eliminate that risk. The hotel knew that a fight was going to break out, and should have taken the proper precautions to protect its guests from that foreseeable danger.

During the 90 minutes of escalating tensions, the bar staff continued to serve alcohol, ignored the blatant risks, and did not even call security. When the bar staff finally decided to call for help, they did not even have the number. It was too little, too late. The establishment had already breached its duty of care to protect its guests from foreseeable harm.

Holding: The court of appeals affirmed the judgment of the Court of Appeals, upholding the decision of the jury.

Question: Did the hotel owe a duty to the patron who was injured?

Answer: Yes, in this case, the hotel owed a duty to the patron because it had reason to know that an imminent risk of harm existed.

Question: How did it breach this duty?

Answer: For an hour and a half, the hotel knowingly served rowdy and drunk rivals who were engaged in repeated and aggressive verbal and physical confrontations, which resulted in a full-scale brawl. The staff observed, but did nothing to reduce the hostility, which was unreasonable in the circumstances. Injury was foreseeable.

Question: What is the key issue in this civil suit?

Answer: The key issue is whether the injury to a patron was foreseeable.

Question: What factors impose a duty of care upon such an establishment?

Answer: When the establishment knows or has reason to know of an unreasonable risk of harm. In this case, the hotel had actual and direct knowledge that a violent brawl was imminent between drunk, belligerent patrons, and had ample time and means to defuse the situation.

Question: Did the hotel breach its duty?

Answer: Yes, despite escalating verbal disputes and shoving between the groups over the course of 90 minutes, the hotel took no action, continued to serve drinks and did not call security until it was too late.

Chapter Conclusion

We depend upon the law to give us a stable nation and economy, a fair society, and a safe place to live and work. But while law is a vital tool for crafting the society we want, there are no easy answers about how to create it. In a democracy, we all participate in the crafting. A working knowledge of the law can build a successful career – and a solid democracy.



Multiple Choice Questions

1. The United States Constitution is among the finest legal accomplishments in the history of the world. Which of the following influenced Franklin, Jefferson, and the rest of the Founding Fathers?

- A. English common-law principles
- B. The Iroquois' system of federalism
- C. Both A and B
- D. None of the above

Answer: C. Both English common law and the Iroquois' system of federalism shaped the Constitutional framers' ideas.

2. Which of the following parts of the modern legal system are "borrowed" from medieval England?

- A. Jury trials
- B. Special rules for selling land
- C. Following precedent
- D. All of the above

Answer: D. Countless parts of our modern system originated in merry olde England.

3. Union organizers at a hospital wanted to distribute leaflets to potential union members, but hospital rules prohibited leafleting in areas of patient care, hallways, cafeterias, and any areas open to the public. The National Labor Relations Board (NLRB), a government agency, ruled that these restrictions violated the law and ordered the hospital to permit the activities in the cafeteria and coffee shop. What kind of law was it creating?

- A. A statute
- B. Common law

- C. A constitutional amendment
- D. Administrative regulation

Answer: D. The NLRB, as an agency, creates regulations. Congress creates statutes, and judges shape the common law.

4. If the Congress creates a new statute with the President's support, it must pass the idea by a _____ majority vote in the House and the Senate. If the President vetoes a proposed statute and the Congress wishes to pass it without his support, the idea must pass by a _____ majority vote in the House and Senate.

- A. simple; simple
- B. simple; two-thirds
- C. simple; three-fourths
- D. two-thirds, three-fourths

Answer: B. >50% to pass initially (a simple majority), 2/3 if an override is necessary.

5. Dr. Martin Luther King, Jr., wrote "An unjust law is no law at all." As such, "One has ... a moral responsibility to obey unjust laws." Dr. King's view is an example of:

- A. legal realism
- B. jurisprudence
- C. legal positivism
- D. natural law

Answer: D. It is an example of the natural law theory of jurisprudence.



Case Questions

1. Lance, an Internet hacker, stole 15,000 credit card numbers and sold them on the black market, making millions. Police caught Lance, and two legal actions followed, one civil and one criminal. Who will be responsible for bringing the civil case? What will be the outcome if the jury believes that Lance was responsible for identity thefts? Who will be responsible for bringing the criminal case? What will be the outcome if the jury believes that Lance stole the numbers?

Answer: The civil cases will be brought by the victims of identity theft, and the outcome of a successful case against Lance would be some type of monetary award for damages suffered. The criminal case will be brought by state prosecutors and the outcome would be imprisonment for Lance.

2. As *The Oculist's Case* indicates, the medical profession has faced large number of lawsuits for centuries. In Texas, a law provides that, so long as a doctor was not reckless and did not intentionally harm a patient, recovery for "pain and suffering" is limited to no more than \$750,000. In many other states, no such limit exists. If a patient will suffer a lifetime of pain after a botched operation, for example, he might recover millions in compensation.

Which rule seems more sensible to you – the "Texas" rule, or the alternative?

Answer: Answers will vary.



3. **You Be the Judge: WRITING PROBLEM** Should trials be televised? Here are a few arguments to add to those in the chapter. You be the judge.

Arguments against Live Television Coverage: We have tried this experiment and it has failed. Trials fall into two categories: Those that create great public interest and those that do not. No one watches dull trials, so we do not need to broadcast them. The few that are interesting have all become circuses. Judges and lawyers have shown that they cannot resist the temptation to play to the camera. Trials are supposed to be about justice, not entertainment. If a citizen seriously wants to follow a case, she can do it by reading online news reports, or the daily newspaper.

Arguments for Live Television Coverage: It is true that some televised trials have been unseemly affairs, but that is the fault of the presiding judges, not the media. Indeed, one of the virtues of television coverage is that millions of people now understand that we have a lot of incompetent people running our courtrooms. The proper response is to train judges to run a tight trial by

prohibiting grandstanding by lawyers. Access to accurate information is the foundation on which a democracy is built, and we must not eliminate a source of valuable data just because some judges are ill-trained.

Answer: For most of the “You Be the Judge” writing problems we provide the case citation and holding. For this question, of course, there is no definitive answer.

4. Leslie Bergh and his two brothers, Milton and Raymond, formed a partnership to help build a fancy saloon and dance hall in Evanston, Wyoming. Later, Leslie met with his friend and drinking buddy, John Mills, and tricked Mills into investing in the saloon. Leslie did not tell Mills that no one else was investing cash or that the entire enterprise was already bankrupt. Mills mortgaged his home, invested \$150,000 in the saloon—and lost every penny of it. Mills sued all three partners for fraud. Milton and Raymond defended on the ground that they did not commit the fraud, only Leslie did. The defendants lost. Was that fair? By holding them liable, what general idea did the court rely on? What Anglo-Saxon legal custom did the ruling resemble?

Answer: The partners are indeed liable. *Bergh v. Mills*, 763 P.2d 214 (Wyo. 1988). That is the essence of a partnership: all partners are liable for the acts of any partner committed in the partnership's normal business. This is the general idea of collective responsibility. It relates to the "tithing" of English legal history, in which all tithing members were legally responsible for the conduct of the others.

5. The father of an American woman killed in the Paris terrorist attacks sued Twitter, Facebook, and YouTube, alleging the sites knowingly allow ISIS terrorists to recruit members, raise money, and spread extremist propaganda. The sites defended themselves by saying that their policies prohibit terrorist recruitment and that, when alerted to it, they quickly remove offending videos. What type of lawsuit is this – criminal or civil? What responsibilities, if any, should social media sites have for the spread of terrorism?

Answer: The case is a civil case, but answers will vary as to the scope of the responsibilities social media sites should have for the spread of terrorism.



Discussion Questions

1. In the 1980s, the Supreme Court ruled that it is legal for protesters to burn the American flag. This activity counts as free speech under the Constitution. If the Court hears a new flag burning case in this decade, should it consider changing its ruling, or should it follow precedent? Is following past precedent something that seems sensible to you: always, usually, sometimes, rarely, or never?

Answer: Answers will vary.

2. When should a business be held legally responsible for customer safety? Consider the following statements, and consider the degree to which you agree or disagree:
 - a. A business should keep customers safe from its own employees.
 - b. A business should keep customers safe from other customers.
 - c. A business should keep customers safe from themselves. (Example: an intoxicated

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customer who can no longer walk straight.)

d. A business should keep people outside its own establishment safe if it is reasonable to do so.

Answer: Answers will vary.

3. In his most famous novel, *The Red and the Black*, the French author Stendhal (1783–1842) wrote: “There is no such thing as ‘natural law’: this expression is nothing but old nonsense. Prior to laws, what is natural is only the strength of the lion, or the need of the creature suffering from hunger or cold, in short, need.” What do you think? Does legal positivism or legal realism seem more sensible to you?

Answer: Natural law should be a question in the back of our minds throughout the course, because it is a reminder of morality, and law without morality is despotism. Nonetheless, Stendhal is obviously correct that both strength and need help to create law. The important thing for this course is continually to apply moral principles to the rules you study, and make your own determinations about whether natural law really plays a role.

4. Before becoming a Supreme Court justice, Sonia Sotomayor stated in a speech to students: “I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life.” During her Senate confirmation proceedings, this statement was heavily probed and criticized. One senator said that the focus of the hearings was to determine whether Judge Sotomayor would “decide cases based only on the law as made by the people and their elected representatives, not on personal feelings or politics.” (Sotomayor convinced many of her critics, because the Senate confirmed her by a vote of 68–31.) Should judges ignore their life experiences and feelings when making judicial decisions?

Answer: Answers will vary.

5. The late Supreme Court Justice Antonin Scalia argued that because courts are not elected representative bodies, they have no business determining certain critical social issues. He wrote:

Judges are selected precisely for their skill as lawyers; whether they reflect the policy views of a particular constituency is not (or should not be) relevant. Not surprisingly then, the Federal Judiciary is hardly a cross-section of America. Take, for example, this Court, which consists of only nine men and women, all of them successful lawyers who studied at Harvard or Yale Law School. Four of the nine are natives of New York City. Eight of them grew up in east-and west-coast States. Only one hails from

the vast expanse in-between. Not a single South-westerner or even, to tell the truth, a genuine Westerner (California does not count.) Not a single evangelical Christian (a group that comprises about one quarter of Americans), or even a Protestant of any denomination. To allow [an important social issue] to be considered and resolved by a select, patrician, highly unrepresentative panel of nine is to violate a principle even more fundamental than no taxation without representation: no social transformation without representation.

Do you agree?

Answer: Answers will vary.

Suggested Additional Assignments

Research

Students should pick up an issue of any newspaper and find *ten* articles dealing with legal issues. The articles might refer to contract disputes, negligence suits, international trade agreements, statutory debates in Congress, environmental conflicts, employment issues, and so on. If researching articles in the classroom, make the search competitive—time how quickly students can find ten articles, or see who can find the most articles in two minutes. Students should select an article that interests them and be prepared to discuss it.

Poll

At the beginning of a course, it can be useful to get a feel for student attitudes about law and lawyers. The instructor might copy and distribute this poll on the first day, have students collate the responses, and chart the results on the board as a prelude to discussion.

	Strongly Agree: 5	4	Neutral: 3	2	Strongly Disagree: 1
1. A system of laws is essential in a democratic society.					

2. The American legal system is one of the best in the world.					
3. Lawyers are among the most dishonest people in the United States.					
4. Lawyers are paid too much.					
5. Being on a jury is a waste of time.					
6. Juries frequently award absurdly high judgments					
7. It is fairly easy to manipulate the legal system.					
8. The legal system often abuses large corporations.					
9. Other nations do a better job than the United States of resolving disputes.					
10. The typical business executive has more integrity than the average lawyer.					