

## CHAPTER 1: LAW AND LEGAL REASONING

### LECTURE OUTLINE

1. Discuss the Twisdale case that opens this chapter. It provides an interesting vehicle for discussing the functions of law and legal interpretation.
  - a. Have your students identify the various functions of the law and then discuss which specific functions are furthered by this antiretaliation aspects of the Civil Rights statute.
  - b. In the context of legal interpretation, the court found that Twisdale did seem to be protected based on the literal language of the statute. However, it looked beyond the plain meaning to reject his claim. Specifically, the court believed that interpreting the law in a manner that would protect him from retaliation would undermine the purpose of the statute. It is conceivable that the court is motivated by public policy concerns as well.
  - c. What do your students think of courts who do look at intent and public policy? Use this as a lead-in for a discussion of legal jurisprudence.
2. Question students about their definitions of “law.” Make certain they understand the importance of law in all aspects of our lives.
3. Discuss the various *functions* that law serves in society. You might do this by having the students identify some of them.
  - a. Discuss the conflicts that arise between and among the various functions of law. For example, there often are conflicts between the goals of individual freedom and achieving social justice. Note the problems that arise when there is no clear consensus on what is just.
  - b. Ask the students if they think that law ever is “overused.” They are likely to cite numerous examples. For instance, this might be a time to talk about the product liability cases that are regularly in the headlines. Perhaps the case involving the woman who burned herself with coffee from McDonald’s would be appropriate here.
  - c. Have the students discuss what it means to have the law maintain order. You might ask students if maintaining order means maintaining the status quo. This can lead to a discussion of legal realism and views that law is used by those in power to retain their power.

4. There is a tendency for people to think of law as imposing duties without considering how it establishes and preserves rights. Talk about how our system tries to match rights with corresponding duties.
  - a. Explain how duties, rights, and privileges make up *substantive law*.
  - b. Explain that *procedural law* provides the framework within which substantive laws are created and enforced. Point out that Chapters 2 and 4 offer a more detailed discussion of procedural law.
5. Ask the students to think of an example of a duty imposed by substantive law that might violate some moral or ethical belief. This might be a good time to talk about the various schools of legal jurisprudence. Have them speculate how a legal positivist would differ from a legal sociologist or natural law theorist in handling such situations.
6. Contrast criminal law with civil law.
  - a. Point out that society considers it much worse to be convicted of a crime than to be held civilly liable. Explain how, as a result, there are more exacting procedural safeguards to protect a defendant in a criminal trial than in a civil trial.
  - b. Note the difference between compensatory damages and punitive damages. Discuss the current uproar over punitive damages and the Supreme Court's attempt to rein them in. See *State Farm Mutual Automobile Insurance v. Campbell*, 123 S.Ct. 1513 (U.S. Sup. Ct. 2003) (establishing guideposts for calculating punitive damages). Punitive damages are discussed further in Chapter 6.
  - c. Point out that often one can be subject to sanctions under both criminal and civil laws without violating the proscription against "double jeopardy." Find out if the students think that punitive damages in a civil trial, coupled with fines in a criminal trial, constitute a type of double jeopardy.

### *Marinello v. United States*

Marinello was charged with the crime of corruptly impeding the due administration of the Tax Code after he engaged in several activities that underreported his taxable income. However, the U.S. Supreme Court overturned his criminal conviction because Marinello was unaware that he was under IRS investigation at the time of his activities. Citing the need to construe criminal statutes narrowly, the Court ruled that the particular statute—the Omnibus Clause—did not cover all activities that underreported income. The Court believed that the statute covered a narrower range of activities aimed directly at thwarting the activities of investigations when the taxpayer knew or should have known an investigation was underway.

*Points for Discussion:* This case is placed in the text as an example of the general rules underlying criminal law. Specifically, a person generally cannot be convicted of a crime unless he or she violates a statute. However, such statutes must be objectively clear to a reasonable person. This Government's interpretation of this statute was believed to grant the Government too much discretion in determining what constituted a crime.

7. The brief introduction to our legal system should be a review for most students.
  - a. The constitutional law material is more heavily discussed in Chapter 4. An argument can be made for it to be presented immediately following this chapter. However, we believe students should first review Chapter 2's discussion of the dispute resolution system.
  - b. Talk about the role of the courts in determining the constitutionality of legislation. Do they believe this gives the courts too much power?
  - c. Explain the relationship between state laws and federal laws. Make certain the students understand that state laws may not violate the federal constitution and must be consistent with federal statutes.

*Henry Schein v. Archer & White Sales*

The Federal Arbitration Act provides that parties may, through their power to contract, agree that their disputes will be arbitrated. In addition, the Act allows those same parties to agree that an arbitrator, rather than a court, will determine whether that arbitration clause applies to any particular dispute they may have. However, several federal appellate courts carved out a "wholly groundless" exception to the latter rule by which they allowed courts to conclude that arbitration was not appropriate when the court believed the claim of arbitrability was groundless. In this case, the U.S. Supreme Court, citing both the statute and Supreme Court precedent, ruled that the "wholly groundless" exception was impermissible because it contradicted the statute.

*Points for Discussion:* This case is an example of the limits on the judiciary's discretion under the common law. It illustrates that in the hierarchy of laws, legislative law is superior to judge-made law. It also illustrates the role of precedent in interpreting statutes.

8. The material on statutory interpretation can be extremely important in laying the foundation for how lawyers think. More importantly, it teaches students valuable critical thinking skills. Take the students through the process for interpreting statutes. You may discuss statutory interpretation and legal jurisprudence together. Note how positivists often have problems moving beyond the "plain meaning" of words while natural law theorists and legal sociologists are accused of ignoring them.

*Bostock v. Clayton County, Georgia*

Employers argued that Civil Rights Act's prohibition against discrimination based on sex did not protect employees who were fired because they were homosexual or transgender. The employers asserted that the law should not be expanded to protect these employees because the legislators who originally enacted the statute would not have envisioned it being extended in this way. The U.S. Supreme Court disagreed. It found no ambiguity in the plain meaning of the statute—the Court believed the statutory language clearly prohibited such discrimination because it was based on sex.

*Points for Discussion:* Explain how the court refused to look beyond the plain meaning of the statute, concluding that it would be wrong to attempt to glean the intent of each legislator who voted for the law. Discuss whether this opinion is truly legal positivist in nature. Explore how it might have undertones of legal sociology.

9. Discuss the concept of *stare decisis*.
  - a. Note how *stare decisis* promotes stability.

#### *Stewart v. Justice*

Restaurant owners asked the court to enjoin enforcement of an executive order requiring restaurant employees and customers to wear masks. The court upheld the Mask Mandate, reasoning that it was reasonably designed to protect the health of the public from the spread of the COVID virus.

*Points for Discussion:* Use this case to explain the process of *stare decisis*. Note how the court, in the absence of clear precedent dealing with COVID restrictions, looked for guidance to a smallpox case decided by the U.S. Supreme Court more than 100 years ago. You might also use this case to discuss executive orders and their place in the hierarchy of legal rules. Explain how executive orders may not violate constitutional protections. This case is also connected to Chapter 4 and its discussion of due process.

- a. Note how *stare decisis* permits change.
- b. Explain how the rule against *ex post facto laws* does not apply to instances where the court has reinterpreted a statute. Discuss how this can pose problems for people who relied on the original interpretation.
- c. Discuss the power of higher courts to overturn precedents and the risks that arise when this occurs.

#### *South Dakota v. Wayfair*

Two long-standing U.S. Supreme Court decisions long had interpreted the Commerce Clause to prevent states from levying sales taxes on sales unless the seller had a physical location in the tax-assessing state. South Dakota asked the Court to overturn those precedents and permit states to impose taxes on online sales to in-state consumers. The Supreme Court agreed with South Dakota, concluding that the precedent cases were no longer appropriate for the changed dynamics of the national economy in light of the Cyber Age.

*Points for Discussion:* This case is designed to demonstrate the conditions under which a court will deviate from *stare decisis* and overturn a previous holding. Courts generally are reluctant to overrule a precedent out of concern that others have relied on the prior holding. However, stressing that *stare decisis* is not an “inexorable command,” the Court felt an obligation to overturn the prior holding when, as here, the precedent not only fails to reflect realities of society, but actually is harmful to the States. Ask the students to speculate about other areas where, in light of the realities of modern life, old precedents may be out of date. Is personal privacy one of those areas?

10. The materials on jurisprudence are designed to illustrate how peoples' values shape their interpretation of the law. You might recommend that students examine each decision in the chapter and indicate what school of jurisprudence the judge appears to represent. Have them analyze a case from the point of view of each of the schools of thought.
  - a. Contrast the legal positivist with a natural law thinker. Emphasize that students should not confuse natural law with any particular religion. Discuss the *Rochin* case referred to in the section on Natural Law. Discuss why a court might feel compelled to explain that its decision is not based on natural law.

### *Sesay v. Attorney General*

Sesay was kidnapped by rebels and forced, at gunpoint, to carry their weapons and supplies. After escaping, he entered the United States and requested asylum. This request was refused because the applicable immigration statute does not allow the granting of asylum to individuals who have knowingly afforded material support to terrorists. The court refused to overrule the denial of asylum because the immigration statute did not contain a duress exception.

*Points for Discussion:* It is not clear that this court adheres to legal positivism. However, the court's unwillingness to consider the fact that Sesay was forced to assist the rebels certainly takes on the appearance of a positivist decision. The court makes clear that despite an inequitable result, Congress or the Executive Branch (not the courts) must address this issue. This illustrates the harshness that may attend legal positivist decision. Explain how a legal sociologist court might reach a different result.

- a. Explain how legal sociologists often have a social agenda and, accordingly, make decisions that promote that view of how the world should be ordered. Discuss the *Buck*

- v. *Bell* case that is referenced in the section on Sociological Jurisprudence. Explain how this case arose at a time when societies, following the advice of geneticists, believed that the human stock could be strengthened by weeding out weaker members. (This was part of the impetus for Nazi Germany's pursuit of a master race.) In the final line of the decision, in support of its ruling that Carrie Buck could be sterilized, the court said: "Three generations of imbeciles are enough." How do your students feel about this statement? How do they feel about the case?
- b. Students have a more difficult time comprehending legal realism. You might explain realism as a way of examining the suspected motivations of other decision makers or law enforcers. Rather than accept the decision maker's explanation of her decision at face value, the realist reads between the lines to see if there is a hidden agenda. You may ask students if they believe that a person is able to shed his or her personal biases upon becoming a judge.
11. The concept of *preventive law* is central to a course designed for business students. The interest of business people in law ordinarily is strictly instrumental—to use their knowledge of the law to reach business objectives. Explain how knowledge of the law can avoid losses as well as permit opportunities.

**ANSWERS TO QUESTIONS AND PROBLEM CASES**

1. Some of the primary functions of law are to keep the peace, enforce standards of conduct, maintain the status quo, facilitate planning, and promote social justice.
2. Courts make law in three ways: (1) through *interpretation*, (2) by “finding” the *common law*, and (3) through *judicial review*.
3. The court’s failure to consider the equitable problems involved with this outcome makes it appear to be a legal positivist decision. Rather than trying to remedy what appears to be an unfair result, the court confined its analysis to a literal reading of the statute. This sounds like the thinking of a legal positivist. *Bowles v. Russell*, 127 S.Ct. 2360 (U.S. Sup. Ct. 2007).
4. No. The testimony by the FDA official should not have been admitted into evidence. If there is a requirement that the FDA’s approval must be obtained before a “best when purchased by” date may be changed, it would, to be a lawful predicate of a criminal conviction, have to be found in some statute or regulation, or at least in some written interpretive guideline or opinion, and not just in the oral testimony of an agency employee. It is a denial of due process of law to convict a person of a crime because he violated some bureaucrat’s secret understanding of the law. The idea of secret laws is repugnant. People cannot comply with laws the existence of which is concealed. *United States v. Farinella*, 558 F.3d 695 (7th Cir. 2009).
5. This is not a legal positivist court. The court looked beyond the plain meaning of the statute, concluding that not every tangible object falls within the meaning of the law. When a court looks at the context of a law, it is examining the purpose of the law (and sometimes the policies that might be implicated by enforcing or dismissing the complaint). This sounds like a legal sociologist. *Yates v. United States*, 135 S.Ct. 1074 (U.S. Sup. Ct. 2015).
6. The court will use the process of statutory interpretation to decide this question. It will begin by looking at the plain meaning of the word “vessel” to see if floating home clearly falls within that term. If the plain (dictionary meaning and common usage) does not conclusively decide the case, the court will look into the legislative history in order to determine the intent of Congress when it enacted the statute. Here the court concluded that the statutory intent applies to an “artificial contrivance capable of being used *as a means of transportation on water*.” Consequently, in our view, a structure does not fall within the scope of this statutory phrase. A court might also look beyond this purpose inquiry to determine if there are public policy arguments for or against finding the floating home to be a vessel within the meaning of the statute. It ultimately concluded that there were policy arguments against labeling the craft as a vessel. Adopting a version of the “anything that floats” test would place unnecessary and undesirable inspection burdens upon the Coast Guard. *Lozman v. City of Riviera Beach*, 133 S.Ct. 735 (U.S. Sup. Ct. 2013).

7. If this were a criminal case, a court would be unlikely to develop a theory of contributory infringement because of the need for certainty in the application of criminal statutes. However, if a civil remedy was sought, the court would have more latitude to craft a remedy under its common law powers. It could thereby employ a liberal interpretation of the reach of the Lanham Act. This is just what the court did. It cited past cases where liability for contributory infringement had been found. Goodfellow was found liable because he knew or had reason to know of the infringement and facilitated those activities by providing space for the offending individuals to continue their violations. *Coach v. Goodfellow*, 2013 U.S. App. LEXIS 10976 (6th Cir. 2013).
8. The court will use the process of statutory interpretation to decide this case. It must determine if her behavior “delivered” the cocaine to the child. Because there is some ambiguity in that language, the court will examine the legislative history of the statute to see if the purpose of the law was designed to encompass behavior such as Jennifer’s. It might also look at public policy to see if society would be better off if she was punished under this particular statute. *Johnson v. Florida*, 602 So.2d 1288 (Sup. Ct. Fla. 1992).