

Online Instructor's Manual with Testbank  
*for*

# **Introduction to Law**

**Fifth Edition**

**Yvonne Ekern  
Joanne Banker Hames**

Pearson

Boston Columbus Hoboken Indianapolis New York San Francisco

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# MODEL SYLLABUS AND COURSE OUTLINE

## Introduction to Law

### Instructor:

Telephone/E-mail:

Web Page:

Office:

Office Hours:

### Course Description (Use description found in school catalog)

This course covers the structure and function of the American legal system. Major areas of substantive law are introduced to students. An overview of both civil and criminal procedure is also provided. Legal vocabulary and the process of legal analysis are emphasized.

### Course Objectives

When students complete this class they should:

- Understand the structure and function of the American legal system
- Understand and be able to use legal terminology
- Be able to analyze a basic factual problem in light of statutory or case law
- Be able to explain basic court procedures used in civil and criminal cases
- Develop a basic understanding of major areas of substantive law
- Know how to read and brief a case
- Know how to read and analyze a statute

### Text

*Introduction to Law 5<sup>th</sup> Ed.*, by Hames and Ekern, Prentice Hall

### Instructional Methods

A variety of instructional methods are used including lecture, case study from text, small group discussion and writing exercises, individual writing exercises, Internet assignments, speakers, and videos.

### Student Evaluation

Students are evaluated on the following: midterm and final examinations, written homework assignments, classroom written assignments, and classroom participation.

Grading Scale     (Insert your grading scale.)

Instructor Policies  
exams, etc.)

(List any specific policies that you have, i.e., late assignments, missed

### **Course Schedule (Quarter)**

<b>Week</b>	<b>Topic/Assignment</b>
1.	Chapter 1 Introduction to Law <u>Assignment:</u> (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)
2.	Chapter 2 The U.S. Legal System Chapter 3 The Courts and Legal Personnel <u>Assignment:</u> (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)
3.	Chapter 4 Finding the Law: Legal Research Appendix IV Basic Citation Reference Guide Appendix V <i>Marvin v. Marvin</i> cases <u>Assignment:</u> (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)
4.	Chapter 5 Using the Law: Analysis and Legal Writing <u>Assignment:</u> (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)
5.	Chapter 6 Constitutional Law <u>Assignment:</u> (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)

6. Midterm Examination  
Chapter 7 Tort Law  
Chapter 8 Family Law  
Assignment: (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)
7. Chapter 9 Wills, Trusts, and Probate  
Chapter 10 Contract and Property Law  
Assignment: (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)
8. Chapter 11 The Business Environment: Agency, Employment, Business Organizations, and Bankruptcy Laws Assignment: (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)
9. Chapter 12 Civil Procedure Before Trial  
Assignment: (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)  
Chapter 13 Alternative Dispute Resolution  
Assignment: (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)
10. Chapter 14 Criminal Practice: Criminal Law and Juvenile Law  
Chapter 15 Criminal Law: Procedure  
Assignment: (Select various assignments from Featured Web Site, Around the World, Questions for Review, Questions for Analysis, Assignments and Projects, and Skills Assessment.)
11. Chapter 16 Rules of Evidence  
Assignment: (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)  
Chapter 17 The Trial  
Assignment: (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)
12. Final Exam

## Course Schedule (Semester)

Week	Topic/Assignment
1.	Chapter 1 Introduction to Law <u>Assignment:</u> (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)
2.	Chapter 2 The U.S. Legal System Chapter 3 The Courts and Legal Personnel <u>Assignment:</u> (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)
3.	Chapter 4 Finding the Law: Legal Research Appendix IV Basic Citation Reference Guide Appendix V <i>Marvin v. Marvin</i> cases <u>Assignment:</u> (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)
4.	Chapter 5 Using the Law: Analysis and Legal Writing <u>Assignment:</u> (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)
5.	Chapter 6 Constitutional Law <u>Assignment:</u> (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)
6.	Chapter 7 Tort Law <u>Assignment:</u> (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)

7. Chapter 8 Family Law  
Assignment: (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)
8. Midterm Examination  
Chapter 9 Wills, Trusts, and Probate  
Assignment: (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)
9. Chapter 10: Contract and Property Law  
Assignment: (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)
10. Chapter 11 The Business Environment: Agency, Employment, Business Organizations, and Bankruptcy Laws  
Assignment: (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)
11. Chapter 12 Civil Procedure Before Trial  
Assignment: (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)
12. Chapter 13 Alternative Dispute Resolution  
Assignment: (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)
13. Chapter 14 Criminal Law: Procedure  
Assignment: (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)
14. Chapter 15 Criminal Law and Juvenile Law  
Assignment: (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)
15. Chapter 16 Rules of Evidence  
Assignment: (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)

16. Chapter 17 The Trial  
Assignment: (Select various assignments from Technology Corner, Questions for Review, Application and Analysis Problems, Assignments and Projects, and Skills Assessment.)
17. Review
18. Final Exam

# CHAPTER 1

## INTRODUCTION TO LAW

### CHAPTER OVERVIEW

This chapter introduces students to the nature of law along with a brief overview of its historical origins and philosophical theories. It explains some of the more common categories of law, including the sources of law, the distinction between substantive and procedural law and the differences between criminal and civil laws.

### CHAPTER OBJECTIVES

When you complete this chapter you should be able to

- Define the term *law*.
- List some of the historical origins of law.
- Explain the basic concepts of a civil law legal system.
- Explain the basic concepts of a common law legal system.
- List and describe three major philosophical theories of law.
- List three important categories of law.
- Explain the purpose of substantive laws.
- Explain the purpose of procedural laws.
- Provide examples of substantive criminal laws and substantive civil laws.
- Compare and contrast procedures in a criminal case with procedures in a civil case.

### LECTURE OUTLINE

#### Case File

#### 1-1 Introduction

What Law Is  
Historical Origins  
Philosophical Theories

#### 1-2 Categories of Laws

Source of Law  
Substantive and Procedural Laws  
Criminal and Civil Laws  
*Substantive Criminal and Civil Laws*  
*Criminal and Civil Procedures*  
*Court Procedures*

#### Chapter Case

*Roper v. Simmons*, 543 U.S. 551 (2005)

#### Case Summaries

*Exxon Shipping Co. v. Baker*, 554 U.S. 471 (2008)  
*Maples v. Thomas*, 565 U.S. \_\_\_, 132 S. Ct. 912 (2012)  
*Marshall v. Marshall*, 547 U.S. 293 (2006)

## LIST OF CHANGES/TRANSITION GUIDE

The new edition has revised the applications (Applications 1.1 - 1.6). The case summary in Application 1.6 in *People v. Sirhan Sirhan* was been deleted and replaced with a case summary for *Maples v. Thomas*, 565 U.S. \_\_\_, 132 S. Ct. 912 (2012). in Application 1.3.

## ADDITIONAL ASSIGNMENTS AND CLASS ACTIVITIES

For a possible in-class class activity, consider holding a mock constitutional convention for a new country that has recently gained its independence. Then have a class debate on whether the country should adopt a civil law system or common law system discussing the advantages and disadvantages of each system.

## SKILL BUILDING

Chapter 1 skills assessment, case questions, assignments, and projects give students the opportunity to build the following skills:

- Critical Analysis
- Written Communication
- Oral Communication
- Factual Research



## CASE SUMMARY, CASE QUESTIONS, AND SUGGESTED ANSWERS

### *Roper v. Simmons*, 543 U.S. 551 (2005)

In this landmark case the U.S. Supreme Court ruled that the death penalty was could not be imposed on a juvenile. The Court placed great emphasis on its prior decision, *Atkins v. Virginia*, 536 U.S. 304, in which it held that mentally retarded individuals were not subject to the death penalty. The Court also referred to the changes in state law and the international community toward abolishing the death penalty for juveniles.

1. What role did societal values play in the Court's decision in this case?

#### **Suggested Answer:**

The court placed great emphasis on the fact that many states had already abolished the death penalty for minors and that in those states still having the death penalty, it was seldom applied. The court talks about evolving decency and current values.

2. What role did the Eighth Amendment play in the Court's decision in this case?

#### **Suggested Answer:**

The case involves an interpretation of the Eighth Amendment. The Court says it must be interpreted according to its text, as well as by considering its tradition, precedent and due recognition for its purpose and function.

### **Application and Analysis Problems**

1. A landlord owned and leased rental units. Prospective tenants agreed to rent a unit but when the landlord found out they were not married she told them she could not rent to them because it would violate her religious beliefs. The prospective tenants filed allegations against landlord with Fair Employment and Housing Commission. Was the landlord allowed to refuse to rent in this situation, or was her refusal a violation of the discrimination laws? See *Smith v. Fair Employment & Hous. Com.*, 12 Cal. 4th 1143 (1996).

#### **Suggested Answer:**

The landlord in *Smith* was not allowed to refuse to rent. The court stated that the landlord's religious beliefs "may not permit her to rent to unmarried cohabitants, but the right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes conduct that his religion prescribes.'" (p. 1161)

2. Plaintiff, a lesbian patient, sued defendant clinical physicians, alleging that they discriminated based on sexual orientation, in violation of a state's civil rights laws, by refusing to perform an intrauterine insemination. The civil rights laws prohibited discrimination based on sexual preference. The physicians claimed that their constitutional rights to free speech and exercise of religion exempted them from the provisions of the civil rights laws. Are the physicians correct? See *North Coast Women's Care Medical Group, Inc. v. San Diego County Superior Court*, 44 Cal. 4th 1145, 2008 Cal. LEXIS 10093 (2008).

#### **Suggested Answer:**

The court in *North Coast Woman's Care Medical Group* stated that California has a civil rights law that prevents a business from discriminating based on sexual orientation. Because this is a valid and neutral law, the doctors had no first amendment constitutional right to discriminate.

3. A high school hockey game resulted in a scuffle between off-duty police officers and an assistant coach and his wife. As a result of the scuffle, the coach and his wife were arrested for assaulting the police officers. At a trial they were acquitted. Later they filed a complaint against the two police officers claiming they violated their civil rights. Was the action against the police officers for a violation of civil rights civil or criminal? Explain your answer. See *Coon v. Joseph*, 192 Cal. App. 3d 1269, 237 Cal. Rptr. 873 (1987).

#### **Suggested Answer:**

The action against the officers was civil. It was an action resolving a private dispute, not involving the state or any criminal law.

4. Three young men were assaulted because of their race. The assailant was arrested and charged with several offenses, including assault with a firearm, civil rights violations and brandishing a weapon . Was the civil rights violation civil or criminal? Explain your answer. See *People v. Lashley*, 1 Cal. App. 4th 938, 2 Cal. Rptr. 2d 629 (1991).

**Suggested Answer:**

This is a criminal case. It resulted from the commission of a crime and was brought by the state (the People), not the victim.

**Assignments and Projects**

1. Find and summarize 3 recent news articles dealing with law.

**Suggested Answer:**

Student responses will vary.

2. Oliver Wendell Holmes, Jr. was a famous Supreme Court Justice who had definite views on legal philosophy. Research this individual's life and philosophical beliefs on the Internet. Summarize your findings.

**Suggested Answer:**

Student responses will vary.

**Skills Assessment**

1. Review the summary of *U.S. v. Morrison* in Appendix VII. Is this a civil case or a criminal case? Explain.

**Suggested Answer:**

This is a civil case resulting from a civil lawsuit filed by a rape victim under 42 U.S.C. § 13981.

2. Consider the following two examples and determine whether each is criminal or civil.
  - a) Foreman drives a car (somewhat ineffectively) after consuming five martinis in one hour. Foreman is not involved in any accident and no one is injured as a result of the driving.
  - b) Meyers, while driving a car, is momentarily distracted by the two children sitting in the backseat who are fighting with each other. Meyers does not notice that the car in front of his suddenly and unexpectedly stopped. The vehicles collide and the occupant of the first car is injured.

**Suggested Answer:**

- a. This would be criminal, since no accident of injuries resulted.
  - b. A civil suit could result from the accident since Meyers is negligent and causes injuries. There is also the possibility of a traffic infraction.
3. Answer the following questions after reading the excerpt from *Ropers v. Simmons* found in Chapter 1.
- a. Was this a civil case or a criminal case?
  - b. With which sources of law was the Court most concerned?
  - c. What historical factors did the Court consider?
  - d. What philosophical issues did the Court consider?

**Suggested Answer:**

- a. Criminal case
- b. Eighth and Fourteenth Amendment
- c. The Court looked at recent history and examined how state legislatures and the international community had been eliminating the death penalty for juveniles.
- d. The Court considered the humanity of the death penalty, the national and international consensus against the imposition of the death penalty on juveniles and weighed the nature of the penalty against the immaturity and lack of judgment of juveniles.

# CHAPTER 2

## THE U.S. LEGAL SYSTEM

### CHAPTER OVERVIEW

The purpose of this chapter is to give the introductory student an overview of the U.S. legal system. Included is a discussion of the concept of federalism. All branches of the federal and state governments are discussed. The three major sources of our laws, constitutions, case law and statutory law, are defined and explained. **OBJECTIVES**

When you complete this chapter you should be able to

- Explain the concept of federalism.
- Describe the power of the federal government to make laws and identify the source of that power.
- Discuss the limits on the right of the states to make laws.
- Explain the difference between exclusive and concurrent jurisdiction as related to the law-making process.
- Explain how the Supremacy Clause relates to the law-making power of the states.
- Identify and describe the function of each branch of the federal government.
- Describe role of the U.S. Constitution and state constitutions.
- Explain how the concept of precedent or stare decisis operates today.
- Compare and contrast case law and statutory law.
- Outline the legislative process for the enactment of laws.

### LECTURE OUTLINE

#### Case File

#### 2-1 Introduction

#### 2-2 Federalism – The Relationship Between Federal and State Government

Powers of the Federal Government

Powers of the State Government

Exclusive and Concurrent Powers of Federal and State Governments

Conflicts Between Federal and State Laws – The Supremacy Clause

The Supremacy Clause and the Bill of Rights

#### 2-3 The Federal Government and the Legal System

Executive Branch

Legislative Branch

Judicial Branch

#### 2-4 State Governments and the Legal System

Local Governments

#### 2-5 Sources of U.S. Law

Constitutional Law

The Federal Constitution

State Constitutions

Case Law

Case Law—The Factual Controversy

- Case Law—Interpretation of Constitutional and Statutory Law
- Case Law—The Power to Invalidate Statutory Law
- Case Law—*Stare Decisis* Today
- Statutory Law
  - The Legislative Process—The Federal Government
  - The Legislative Process—State Governments
  - Publication of Statutory Law
  - Administrative Regulations
- Chapter Cases
  - Katzenbach v. McClung*, 379 U.S. 294 (1964)
  - National Federation of Business v. Sebelius*, 567 U.S. \_\_\_, 132 S. Ct. 2566 (2012)
  - Texas v. Johnson*, 491 U.S. 397 (1989)
- Case Summaries
  - United States v. Lopez*, 514 U.S. 549
  - Heath v. Alabama*, 474 U.S. 82 (1985)
  - PGA Tour, Inc. v. Martin*, 532 U.S. 661 (2001)
  - District of Columbia v. Heller*, 128 S. Ct. 2783 (2008)
  - Tennessee v. Garner*, 471 U.S. 1 (1985)
  - Arizona v. United States*, 567 U.S. \_\_\_, 132 S. Ct. 2492 (2012)
  - Ohio v. Robinette*, 519 U.S. 33 (1996)
  - State v. Robinette*, 80 Ohio St. 3d 234 (1997)

## LIST OF CHANGES/TRANSITION GUIDE

New case summaries have been added for *National Federation of Business v. Sebelius*, 567 U.S. \_\_\_, 132 S. Ct. 2566 (2012) and *Arizona v. United States*, 567 U.S. \_\_\_, 132 S. Ct. 2492 (2012).

## ADDITIONAL ASSIGNMENTS AND CLASS ACTIVITIES

For a possible in-class class activity, have students discuss the case *National Federation of Business v. Sebelius*, 567 U.S. \_\_\_, 132 S. Ct. 2566 (2012). Divide the class in two groups and have each side present oral arguments in the case. Then listen to the oral arguments in the case from the U.S. Supreme Court found on <http://www.oyez.org/>.

## SKILL BUILDING

The skills assessment, case questions, assignments, and projects give students the opportunity to build the following skills:

- Factual Research
- Critical Thinking
- Communication



## CASE SUMMARIES, CASE QUESTIONS, AND SUGGESTED ANSWERS

### ***Katzenbach, Acting Attorney General v. McClung*, 379 U.S. 294 (1964)**

This case involved the application of the Civil Rights Act of 1964 to a small family-run restaurant, Ollie's Barbecue. Ollie's refused to serve blacks on the premises. As a result this action was brought. Since the Civil Rights Act applied only if a business was involved in interstate commerce, the Court had to decide if a small family-owned business was so involved. The record showed that part of the supplies bought by the restaurant was transported in interstate commerce, even though the restaurant operated solely within a state. The court held that there was a sufficient connection with interstate commerce to apply the Civil Rights Act.

1. This case deals with the validity of the Title II of the Civil Rights Act of 1964. Why is the Court discussing the interstate commerce clause of the U.S. Constitution?

#### **Suggested Answer:**

Since the power of Congress to make laws is restricted to those matters authorized in the Constitution, the Civil Rights Act must have some connection with a power given to Congress under the U.S. Constitution. The Interstate Commerce Clause gives Congress the power to regulate interstate commerce. In answering this question, students should demonstrate that they know Congress cannot make any law it wants to.

2. Does a small, family-owned business really have a substantial impact on interstate commerce? Why or why not?

#### **Suggested Answer:**

This question really calls for the students' opinion and analysis. Although the Court felt that Ollie's Barbecue did have a sufficient impact, students might not agree.

3. Why is the result in this case different from the result in *United States v. Lopez* (Application 2.1)?

#### **Suggested Answer:**

This question calls for analysis by the students. They should compare this situation to *Lopez*. The issue in *Lopez* is what effect the restriction of possession of guns has on interstate commerce. (The *Lopez* case held that Congress did not have the power to make such a law.) A major difference is that Ollie's Barbecue actually was involved in commerce whereas the defendant in *Lopez* was not. This is probably more important than the interstate issue.

### ***National Federation of Business v. Sebelius*, 567 U.S. \_\_\_, 132 S. Ct. 2566 (2012)**

In this landmark U.S. Supreme Court case, the U.S. Supreme Court again refused to recognize the Commerce Clause as empowering Congress to act with respect to mandatory

health insurance, although it did uphold the right of Congress to act under its power to tax. The court upheld the individual mandate provision in the Affordable Care Act, also known as Obamacare, as a valid tax under the power of Congress to tax.

**Suggested Answer:**

An argument could be made that the individual mandate indeed affects the current health insurance industry which is a large commercial enterprise. The Constitution grants Congress the power to “regulate Commerce.” Art. I, § 8, cl. 3. The health care industry crosses state borders and has an effect on interstate commerce.

2. Do you agree that the taxing power gave Congress the right to enact this law?

**Suggested Answer:**

This question calls for a student opinion. Student answers will vary.

***Texas v. Johnson*, 491 U.S. 397 (1989)**

In this case the defendant, Johnson, was found guilty in a Texas trial court for violating a state law making it a crime to burn the American flag. He did this at the Republican national convention held in Texas. Johnson appealed, and eventually the U.S. Supreme Court granted certiorari. The question was whether burning the flag was protected under the First Amendment Right to Free Speech. The Supreme Court held that it was.

1. What gave the United States Supreme Court, a federal court, the right to review a Texas state law?

**Suggested Answer:**

The fact that a U.S. Constitutional right was asserted gave the Supreme Court federal jurisdiction.

2. Suppose that Johnson had burned a Texas state flag instead of the U.S. flag.
  - a. Would the U.S. Supreme Court have jurisdiction to hear the case?
  - b. If the Supreme Court did hear the case, do you think the decision would have been any different from this case?

**Suggested Answer:**

The Supreme Court could hear the case and the result would probably be the same because the real issue was the Right to Free Speech under the U.S. Constitution, not whether the criminal law was state or federal.

3. In which court was Johnson first tried? List all of the courts that heard this case in the order in which they heard it.

**Suggested Answer:**

The case was first tried in a Texas trial court. The Court of Appeals for the Fifth District of Texas at Dallas affirmed Johnson's conviction, 706 S.W. 2d 120 (1986), Texas Court of Criminal Appeals reversed, 755 S.W. 2d 92 (1988), and the U.S. Supreme Court granted a hearing.

**APPLICATION AND ANALYSIS PROBLEMS**

1. Petitioners brought suit against respondent after a catheter ruptured in the patient's coronary artery during surgery, killing him. The catheter received "premarket" approval from the FDA pursuant to a federal law regulating medical devices. The law prohibited states from imposing any requirements on the product different from or in addition to those required by the FDA. The lawsuit against the company manufacturing the catheter was based on the state common law related to negligence. Could the widow pursue her lawsuit in state court, or did the federal law preempt the state common law of negligence? See *Riegel v. Medtronic, Inc.*, 128 S. Ct. 999 (2008).

**Suggested Answer:**

In *Riegel*, the Supreme Court held that the MDA's (federal law regulating medical devices) pre-emption clause bars common-law claims challenging the safety or effectiveness of a medical device marketed in a form that received premarket approval from the FDA. Therefore, Petitioner's common-law claims were pre-empted because they were based upon New York "requirement[s]" with respect to Medtronic's catheter that were "different from, or in addition to" the federal ones, and that relate to safety and effectiveness.

2. After the *Lopez* case, the statute in question was amended to read:  
It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.  
Is this law within the power of Congress to enact?

**Suggested Answer:**

Answers will probably vary on this. The lower courts are not in agreement.

3. The U.S. Constitution prohibits cruel and unusual punishment. Is it a violation of the U.S. Constitution to sentence someone to death for rape of a child? See *Kennedy v. Louisiana*, 129 S. Ct. 2641 (2008).

**Suggested Answer:**

The Supreme Court held it was a violation of the Eighth Amendment.

4. In 1994, a federal law was enacted giving victims of gender-motivated violence (i.e., sexual assault) the right to sue for civil damages. Do you think such a law is constitutional? See the case summary of *U.S. v. Morrison* in Appendix VII.

**Suggested Answer:**

The Supreme Court held that the Commerce Clause does not provide Congress with authority to enact this federal civil remedy. There was no commerce involved in the facts of the case.

5. A conflict between state and federal criminal law arose in the case of *United States v. Oakland Cannabis Buyers Cooperative*, found in Appendix VII. Explain how the court resolves the problem.

**Suggested Answer:**

In this case, the Court said federal law controlled. Specifically, the federal Controlled Substance Act did not provide for a medical necessity defense and that, therefore, California law authorizing medical use of marijuana was not a defense to the statute.

6. Discuss the relationship between case law and statutory law as illustrated in the case of *United States v. Playboy Entertainment Group, Inc.*, found in Appendix VII.

**Suggested Answer:**

The case illustrates the power of Judicial Review and the right of the courts to review the constitutionality of statutory law. The Telecommunications Act of 1996 was challenged by Respondents. The Supreme Court agreed with the lower court that the act was unconstitutional in violation of the First Amendment.

## ASSIGNMENTS AND PROJECTS

1. Read the excerpt of the case, *Tennessee v. Garner* in Appendix VII. Answer the following questions:
  - a. Which constitutional provisions apply to this case and how do they apply?
  - b. What statutory law is the Court interpreting in this case?
  - c. Did the Court strike down the Tennessee statute? Quote the language that applies.
  - d. What common-law rule was mentioned by the Court?
  - e. Why did the Court not follow the common-law rule?
  - f. In this case, the Court held that the use of deadly force in arresting an individual is a violation of the Fourth Amendment. Rambeaux is accused of using excessive force (not deadly). Does this case apply to Rambeaux? Why or why not? Quote language from the case that supports your position.

**Suggested Answer:**

**[Summary of Case:** In this case a young burglary suspect was shot and killed by a police officer while attempting to flee the scene of the crime. He was not armed. The father of the victim filed a civil lawsuit against the police officer and the state. The officer was acting in accordance with a state law that authorized the use of deadly force under this circumstance. At trial, the court found in favor of all defendants. The Court of Appeals reversed, stating that the use of force in this case violated the U.S. Constitution because it was unreasonable. The Supreme Court agreed with the Court of Appeals. The use of force in making an arrest must be reasonable. The use of deadly force is generally limited to situations where the perpetrator posed an immediate and serious threat to those around him. In reaching its decision the Court explores the history of this area of law, commenting on the common-law rule that one could shoot a fleeing felon and explaining why the rule is no longer appropriate. Answers to the specific questions in the text follow.]

a. Fourth Amendment—The shooting was part of the arrest, and the Fourth Amendment states that arrests must be reasonable. Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution also apply here.

b. Tenn. Code Ann. § 40-7-108 (1982).

c. The Court did not strike down the Tennessee statute in its entirety, only as applied in this type of situation. “It is not, however, unconstitutional on its face. Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape and if, where feasible, some warning has been given. As applied in such circumstances, the Tennessee statute would pass constitutional muster.”

d. The Court discusses the common-law rule that one could use deadly force against a fleeing felon.

e. The common law was no longer needed. The common-law rule occurred at a time when the killing of a resisting or fleeing felon resulted in no greater consequences than those authorized for punishment of the felony of which the individual was charged or suspected. Courts have also justified the common-law rule by emphasizing the relative dangerousness of felons.

Neither of these justifications makes sense today. Almost all crimes formerly punishable by death no longer are or can be. And while in earlier times the gulf between the felonies and the minor offences was broad and deep, today the distinction is minor and often arbitrary. Many crimes classified as misdemeanors, or nonexistent, at common law are now felonies. These changes have undermined the concept, which was questionable to begin with, that use of deadly force against a

fleeing felon is merely a speedier execution of someone who has already forfeited his life. They have also made untenable the assumption that a “felon” is more dangerous than a misdemeanor.

There is an additional reason why the common law rule cannot be directly translated to the present day. The common-law rule developed at a time when weapons were rudimentary. Deadly force could be inflicted almost solely in a hand-to-hand struggle during which, necessarily, the safety of the arresting officer was at risk. Handguns were not carried by police officers until the latter half of the last century. Only then did it become possible to use deadly force from a distance as a means of apprehension. As a practical matter, the use of deadly force under the standard articulation of the common-law rule has an altogether different meaning—and harsher consequences – now than in past centuries.

f Yes, this case would apply to *Rambeaux*. “A police officer may arrest a person if he has probable cause to believe that person committed a crime. *United States v. Watson*, 423 U.S. 411 (1976). Petitioners and appellant argue that if this requirement is satisfied the Fourth Amendment has nothing to say about how that seizure is made. This submission ignores the many cases in which this Court, by balancing the extent of the intrusion against the need for it, has examined the reasonableness of the manner in which a search or seizure is conducted. It is plain that reasonableness depends on not only when a seizure is made, but also how it is carried out.” *Rambeaux* is accused of using excessive force in making an arrest. How he made the arrest is an issue. This case would apply.

2. A group of concerned parents in the City of Elmwood wants to see a curfew imposed on anyone under age eighteen. How can they get such a law imposed? (Review the section in this chapter dealing with the sources of law.)

**Suggested Answer:**

They would have to try to get local authorities to pass a law. Since there is no existing controversy, there can be no court case.

3. Peter, Paul, and Mary are 16-year-olds who live in Elmwood, a city with a 10 p.m. curfew for anyone under the age of 18. They think the law is unfair and violates their constitutional rights, and they want it changed. How can they go about doing this? (Review the section in this chapter dealing with the sources of law.)

**Suggested Answer:**

They could try to get the city legislative body to repeal the law. Alternatively, they could file a lawsuit, but they would probably have to violate the curfew and be cited for it.