

Chapter 2

Introduction to Law and the Legal Environment of Business

Introduction

To promote an environment in which instructors and the students have a question-asking attitude, instructors should present each chapter as one that address several questions.

Chapter Two addresses these questions:

- How can the legal environment of business be defined?
- How can law and jurisprudence be defined? Do alternative definitions of law exist?
- Where does law come from?
- What are the classifications of law?
- What are the global dimensions of the legal environment of business?

Chapter Two is significant because it provides background information that influences the way students think about cases and legal ideas. When instructors teach this chapter, they should emphasize the significance of considering alternative perspectives.

Achieving Teaching Excellence

Creating a Student-Centered Classroom That Promotes Students' Intellectual Development

Instructors probably chose this textbook over others in part because they wanted to encourage students to engage in critical thinking about the law. This goal is important. To achieve this goal, instructors will want students and their intellectual development to be the focus of what happens in class.

First, this section explains alternative perspectives on how to conduct class. Second, this section will explain why a specific type of student-centered classroom is likely to help instructors achieve their goal of encouraging their students to engage in critical thinking.

In *The University Teacher as Artist*, Joseph Axelrod describes different teaching styles. Axelrod classifies these teaching styles. One major category includes didactic styles. Didactic teaching styles do not encourage inquiry by the student. The other category includes evocative styles. These styles require student inquiry when completing the tasks the instructor has

assigned.

Axelrod explains that didactic teaching styles stress either knowledge acquired by memorization, or skill mastery through repetition and practice. Evocative modes stress student inquiry and discovery. A teaching style that encourages critical thinking is an evocative style.

Within the category of evocative styles, different teaching styles emphasize different components. Some styles focus on the teacher, some on the learner, and some on the subject matter. A teaching style that stresses critical thinking is an evocative style that focuses on the learner and his or her understanding of course material. Axelrod would call this style a student-centered style rather than an instructor-centered style. A critical thinking approach assumes the teacher will create a classroom environment in which the students' intellectual development is the focus of classroom attention. A teacher who uses this approach would be likely to say what a professor in Axelrod's book says, "I train minds." Promoting critical thinking is one way to train students' minds.

Now the question arises as to how instructors will know whether they have created a student-centered classroom that emphasizes intellectual development. First, they will be talking less and listening to their students more. Second, they will be emphasizing on higher-order thinking skills rather than asking their students to recite principles and facts. Third, instructors will be observing how students are doing at grasping the critical thinking model. They should not be watching instructors to see what a good critical thinker they are. Fourth, class time will be spent working with the material, rather than making sure they have "covered" everything.

Reference:

- Joseph Axelrod, *The University Teacher as Artist* (Jossey-Bass, Inc., Publishers 1973).

Chapter Overview, Topic Outline, and Discussion Questions

Chapter Overview

This book is about the legal environment in which the business community operates today. Although the book concentrates on law and the legal variables that help shape business decisions, it has not overlooked the ethical, political, and economic questions that often arise in business decision making. This chapter is especially concerned with legal variables in the context of critical thinking. In addition, it examines the international dimensions of several areas of law.

Instructors who want to encourage students to work with the material in class sometimes realize they cannot always "cover" all the material in the book. After several years of not covering everything, instructors should be comfortable knowing that the material actually encourages students to work in class and is understood by most of them. Instructors can choose

parts of each chapter that are especially challenging or confusing. This is the material that deserves the most attention in class. Some chapter material is easy, and students pick it up well on their own.

In Chapter Two, the material that is the most challenging or confusing falls into these subsections:

- Definition of Law and Jurisprudence
- Classifications of Law

After presenting a topic outline for Chapter Two, this section provides discussion questions that help students increase their understanding of the material presented in the two sections listed above.

Topic Outline

- I. Definition of the Legal Environment of Business
- II. Definition of Law and Jurisprudence
 - A. Natural Law School
 - B. Positivist School
 - C. Sociological School
 - D. American Realist School
 - E. Critical Legal Studies School
 - F. Feminist School
 - G. Law and Economics School
- III. Sources of Law
 - A. The Legislature as a Source of Statutory Law
 - 1. Steps in the Legislative Process
 - B. The Judicial Branch as a Source of Case Law
 - 1. Case Law Precedents and the Internet
 - C. The Executive Branch as a Source of Law
 - 1. Treaty Making
 - 2. Executive Orders
 - D. Administrative Agencies as a Source of Law
- IV. Classifications of Law
 - A. Criminal Law and Civil Law
 - B. Public and Private Law
 - C. Substantive and Procedural Law
 - D. Cyberlaw
- V. Global Dimensions of the Legal Environment of Business
- VI. Summary

Discussion Questions for Chapter Two

1. In answering the question “What is law?”. Why is it appropriate to answer, “It depends?”

The question “What is law?” is not as straightforward as it appears. Most people would give an answer that shows their understanding and acceptance of the positivist school of jurisprudence. However, a person’s answer to the question “What is law?” depends on which school of jurisprudence the person prefers. For instance, a positivist thinker might say that law is a set of rules created by the legislature that people must follow or they will be punished or fined. A critical legal studies scholar might say law is an institution that protects those in power. Students should notice the difference in those two answers. Given the wide range of beliefs about the definition of law, it is wise to say the answer to the question depends on the school of jurisprudence a person prefers.

2. How would an individual decide which school of jurisprudence a particular judge prefers?

This question triggers many reminders. First, a judge, legal scholar, or thinker might agree with more than one school of jurisprudence, or with some elements of more than one school of jurisprudence. For instance, feminist legal scholars and critical legal scholars share some beliefs. It could be possible to agree with both of those theories to some extent. Second, judges, legal scholars, and thinkers rarely announce their preferred school of jurisprudence. To determine the view a judge prefers, an individual would need to read their legal decisions and scholarly writings carefully. An individual can infer their views from their writings or what they say in public about a particular decision.

3. Which schools of jurisprudence probably have the fewest followers within the legal community?

Probably, critical legal studies and feminist views of jurisprudence have the fewest followers. Both evaluate the legal system in a structural way; they question the very structure of law as a societal institution. Most followers of these schools are legal scholars rather than judges or practicing attorneys. People engaged in the daily practice of law might want some kind of incremental legal reform, but they are unlikely to question law in a structural way or advocate major changes.

4. Create a fact situation that could result in both a civil and a criminal lawsuit.

Instructors should encourage students to be creative with this one. For instance, a bank robber was injured while committing a bank robbery. After collecting the money, it exploded in his pockets because a device attached to the money was poorly designed. The robber would be prosecuted for the crime of bank robbery, and could sue the manufacturer of the exploding device under civil law. (This was a real case. The robber sued the manufacturer from jail, and lost.) A more realistic and common example would be one in

which someone engaged in driving while under the influence of alcohol, caused a car accident, and injured someone. The driver would be prosecuted under criminal law, and the injured parties could sue the driver civilly.

5. Explain how a court's decision (case law) might lead to changes in legislation (statutory law). Are there any situations in which this has happened?

A legislature (either state or federal) might be so concerned about a judge's decision that it enacts a law that in effect reverses the judge's decision. One example is the Civil Rights Act of 1991, which changed several decisions the U.S. Supreme Court had rendered. Congress was changing the Supreme Court's decisions by changing statutory law.

Answers to Critical Thinking about the Law Questions, Review Questions, Review Problems, and Case Problems

Suggested Answers to Critical Thinking about the Law Questions

1. Learning about relevant laws regarding business helps one understand what the law is, but does not help one evaluate legal arguments. The critical thinking questions that help one evaluate legal arguments are:

- Does the legal argument contain significant ambiguity?
- What ethical norms are fundamental to the court's reasoning?
- How appropriate are the legal analogies?
- Is there relevant missing information?

The question about ethical norms most clearly addresses the ethical component of the legal environment of business. Knowing the ethical norms that are fundamental to a court's reasoning helps one decide whether to accept or reject the court's conclusion.

2. Knowing the school of thought the judge prefers helps one critically evaluate a judge's reasoning because one can determine the assumptions the judge makes. For instance, if one knows the judge prefers the critical legal studies view of jurisprudence, one knows the judge would favor structural change in the legal system—he or she does not have to tell them. One would also know the judge is likely to prefer a definition of justice defined as to treat all humans identically, regardless of class, race, gender, age, and so on. The critical legal studies movement strives to point out how the legal system perpetuates inequality.
3. One might want to ask the lawyer whether their mutual respect for a particular school of jurisprudence will bring about the action they want. For instance, mutual respect for natural law might yield interesting discussions between people and their attorney, but it will do little to help them pursue the landlord. One would also want to ask the lawyer basic questions about competence, the lawyer's area of expertise, whether the lawyer has time to take on a case of this nature, and the lawyer's fee.

Answers to Review Questions

- 2-1. According to the positivist school: a) law is the expression of the will of the legislator or sovereign, which must be followed; b) morals are separate from law and should not be considered in making legal decisions; and c) law is a closed logical system in which correct legal decisions are reached solely by logic and the use of precedents. In contrast, the feminist school is based on jurisprudence that reflects a male-dominated executive, legislative, and judicial system in which women's perspectives are ignored and women are victimized. Most adherents of the feminist school, believing that significant rights have been denied to women, advocate lobbying legislatures and litigating in courts for changes in laws to accommodate women's views.
- 2-2. The critical legal theorist school and the feminist school of jurisprudence are similar because both evaluate the legal system. Both find major inadequacies in the legal system. Critical legal theorists think the legal system protects economically privileged individuals; feminist scholars think the legal system protects the rights of men.
- 2-3. The federal courts and most state courts make up the judicial branch of government. They are charged by their respective constitutions with interpreting the constitution and statutory law on a case-by-case basis. Most case interpretations are reported in large volumes called reporters. These constitute a compilation of our federal and state case law, which can serve as precedent for future judicial decisions.
- 2-4. Statutory law is made by legislatures. Case law is made by judges.
- 2-5. If the president vetoes a bill passed by the House and the Senate, the bill can become a law if two-thirds of the House and Senate membership vote to override the veto.
- 2-6.
- a. Public law is a classification of law that deals with the relationship of government to individual citizens. Private law is generally concerned with the enforcement of private duties.
 - b. In criminal law, a prosecutor aims to prove beyond a reasonable doubt that the defendant committed a crime and should be punished. In civil law, a private individual or business tries to show by the preponderance of the evidence that another private individual or business is liable and should have to compensate the plaintiff.
 - c. Felonies are punishable by incarceration in a state penitentiary. Misdemeanors are usually punishable by shorter periods of imprisonment in a county or city jail.

Answers to Review Problems

- 2-7. Justice A belongs to the positivist school of jurisprudence. One knows that because this justice is unwilling to look beyond statutes and case precedents in interpreting the law.
- 2-8. Justice B is a natural law thinker. One knows that because this justice is willing to ignore man-made law and rule based upon something higher—the laws of nature.
- 2-9. Justice C is a sociological thinker. This justice bases her decision on contemporary community customs or thought.
- 2-10. A judge who follows the natural law school of thought would hear out the case and, based on the evidence presented, would make his or her decision. These value judgments would remain unchanged as there is an absolute source of law. Therefore, the decision made in this case would be dependent on the merits of the case.
- 2-11. *Precedent* refers to case law courts follow. Judges interpret legislation on a case-by-case basis. These cases establish a line of authoritative cases on a particular subject that must be followed by lower courts. Here, the precedent tells Marshall his legal rights. The attorney can predict that Marshall will win a lawsuit to collect the reasonable value of his work.
- 2-12. No, the California court does not have to follow decisions from North Dakota and Ohio. The California appellate court must listen to higher courts in California, but not higher courts in other states. The California court might consider the North Dakota and Ohio case law, but it is not required to do so.

Answers to Case Problems

- 2-13. Students should note that ethical issues such as the one raised in this case do not get resolved necessarily by exploring the legal issue that brought the case before the court in the first place. Rather than focusing on whether the practices of Myspace qualify as copyright infringement, the court concentrated on whether Myspace's counsel should be disqualified because of its past association with Universal Music Group. The court ruled that Myspace's counsel should not be disqualified as long as it met several conditions. In this case, the court focused on which should hold more weight, the current client of the law firm, Myspace's, right to counsel of its choice or the former client, Universal Music Group's, right to maintain its confidentiality. Using a sociological approach, the court used California Rules of Professional Conduct Rule 3-310 and decided it was most important to preserve the public's trust in the integrity of California attorneys and the bar. The goal of this court was to uphold community customs and assume that the law firm would act ethically. If another school of thought had been used, such as the natural or positivist approach, the verdict may have been different. A judge using natural philosophy might focus on how it is unreasonable or unnatural for a law firm to represent

opposing clients, whereas a judge using positivist philosophy might concentrate solely on the words within the law and not on its affects on the public.

- 2-14. Yes, Vermont's marriage license law violates same-sex couples' rights under the Vermont Constitution. The court ruled that the State had failed to provide a reasonable and just basis for excluding same-sex couples from benefits incident to Vermont's civil marriage license. The court indicated that a parallel "domestic partnership" system would meet Vermont's constitutional guarantee of "the common benefit, protection, and security of the law."
- 2-15. The Supreme Court ruled that the Federal Arbitration Act does not permit courts to invalidate a contractual waiver of class arbitration on the ground that the plaintiff's cost of individually arbitrating a federal statutory claim exceeds the potential recovery.
- 2-16. The Supreme Court ruled in favor of the individual workers. Now, employees have the burden of proof and can therefore argue that there is no "reasonable" factor than age involved in their termination.
- 2-17. A&M Records won. The works at issue in the case were copyrighted, the plaintiffs would be likely to prove vicarious infringement, and the "safe harbor" provision of the Digital Millennium Copyright Act protects A&M.
- 2-18. The court ruled that Roommate.com was immune from the Fair Housing Act charges, because of Section 230 of the Communications Decency Act. Section 230 states that "interactive computer services" acting as "service providers" are not responsible for information that has been provided by another "information content provider." In this case, Roommate.com was seen as both a service provider and an information content provider, but the court emphasized that in close cases, the ruling should be in favor of Section 230 immunity. The court could have focused on Roommate.com being a service provider or an information content provider and based on its interpretation, the verdict would differ. In this case, the court focused on Roommate.com as a service provider and used a broad interpretation of Section 230 immunity. Not all judges would view such a ruling as prudent.

Thinking Critically about Relevant Legal Issues

- 1. The issue here is framed in a very optimistic, naturalistic way. In an essay, one would focus on the benefits of this type of thinking and the best way to ensure complete objectivity. The conclusion would contain an account of how many problems and squabbles over objectivity would cease if the naturalistic approach was taken.
- 2. The author here seems to value justice, defined as moral absolutes that make clear what is

good. The author may also value tradition, as what the author assumes is that what is “good” is what is conventionally right.

3. Good here means what is conventionally right. Evil means what is wrong. Both of these terms are ambiguous and take away from the argument. Again, the author assumes that all people are thinking the same way and live in the same environment.
4. Students would probably make a more realistic argument, citing differences in areas across the country in culture, religion, and so on. Sometimes absolute, conventional good *is not* synonymous with right.