

CHAPTER 1: INTRODUCTION TO LAW AND LEGAL REASONING

LAW IS "MAN MADE"

IT CHANGES OVER TIME TO ACCOMMODATE SOCIETY'S NEEDS

LAW IS MADE BY LEGISLATURE

LAW IS INTERPRETED BY COURTS TO DETERMINE 1)WHETHER IT IS "CONSTITUTIONAL" 2)WHO IS RIGHT OR WRONG

THERE IS A PROCESS WHICH MUST BE FOLLOWED (CALLED "PROCEDURAL LAW")

I. Thomas Jefferson: "The study of the law qualifies a man to be useful to himself, to his neighbors, and to the public."

II. Ask Several Students to give their definition of "Law."

A. Even after years and thousands of dollars, "LAW" still is not easy to define

B. What does law Consist of? Law consists of enforceable rule governing relationships among individuals and between individuals and their society.

1. Students Need to Understand.

a. The law is a set of general ideas

b. When these general ideas are applied, a judge cannot fit a case to suit a rule; he must fit (or find) a rule to suit the unique case at hand.

c. The judge must also supply legitimate reasons for his decisions.

C. So, How was the Law Created. The law considered in this text are "man made" law. This law can (and will) change over time in response to the changes and needs of society.

D. Example. Grandma, who is 87 years old, walks into a pawn shop. She wants to sell her ring that has been in the family for 200 years. Grandma asks the dealer, "how much will you give me for this ring." The dealer, in good faith, tells Grandma he doesn't know what kind of metal is in the ring, but he will give her \$150.

1. Grandma needs cash to buy medicine and therefore accepts the \$150.

2. The ring turns out to be solid gold and is really worth \$25,000.

3. Question. Can Grandma get the ring back or recover the difference between 25,000 and 150 or is she merely out of look.

a. Ask was there a bargain for exchange

b. Was the ring purchased in good faith without knowledge of its value

THIS IS WHAT WE WILL ENCOUNTER IN THIS COURSE

III. Schools of Legal Thought

- A. Background. When we look at the development of law, there are several things they have had a major influence. Some of the more important element are customs, history, and logic.
- B. The "Problem". The major problem is that philosophers disagree on what are the major factors.
- C. Outcome. This disagree has lead to 2 different schools of thought on what the major factors are:
1. The Traditional Approach. The first school of thought is the "traditional approach." The traditional approach looks to the past to discover what the principles of the current law should be.
 - a. Strict Decisions are followed. Followers of this school look to prior decisions which are on point and will usually follow them to the letter.
 - b. Example. Homer left the neighbor's house and was obviously intoxicated. The neighbor knew Homer was intoxicated but kept serving him drinks and then allowed him to drive. Homer lost control of his car and killed a 6 year old child. Homer has no money or insurance.
 - (1) The child's parents want to sue the "Neighbor" for negligence as a social host.
 - (2) Case Was recently decided stating that social host are not liable for their guest.
 - (3) Under the traditional approach, parents lose. The court will follow prior decisions.
 2. The Sociological Approach. The second school of thought is called the "sociological approach." Under this approach, social forces and needs are the primary factors.
 - a. The key to this approach is that historical cases don't drive future law. Under this approach, as society changes, the law should also change.
 - b. Earlier Illustrated Case. Under this approach, the social host issue would probably have a different outcome.
 - (1) Why? Because the court would see this as a public safety issue and would put the (1) put the burden on individuals contributing to the occurrence and (2) provide a financial outlet for those who have been injured.

IV. COMMON LAW

- A. Background. First, common law is still alive and well in many aspects. This is the law that is common to the entire realm or population.
1. As the text states, common law includes some aspects of statutory and case law dating back prior to the American Revolution.
 - a. What is Case Law. Case law is merely the rules of law announced in court decisions. Case law may consist of interpretations of statutes, regulations and provisions in the

constitution.

(1) You will hear the terms "precedent" and "stare decisis" when case law is discussed.

(A) Precedent is merely a prior case which is similar in legal principle or fact.

(B) Stare Decisis is the practice of deciding new cases with reference to former cases.

b. What is Statutory Law. In its simplest terms, statutory law consists laws enacted by state legislatures and at the federal level, by Congress

Example 1: Rape Statutes.

Example 2: Divorce Statutes

Example 3: Business Incorporation Statutes

III. REASONING

A. Background. A judge cannot merely render an opinion on an issue and stop there. He must articulate a legitimate reason why he has ruled in such a manner.

B. One form of Reasoning is "Syllogism" (Sine ism). This is deductive reasoning using a major premise, a minor premise and a conclusion.

1. Example. For example, if an individual is charged with the crime of false imprisonment, the judge will:

a. State that the law requires that the person confined is not free to leave and he must also know of his confinement.

b. The plaintiff in this case was unaware of his confinement

c. Therefore, there is no false imprisonment.

C. Justification for the Ruling. A judge has a wide variety of resources to rely on when rendering his opinion. They include:

1. **Previous case law and legal principles**

2. **Statutes**

3. **Society's values**

4. **Customs and Course of dealings**

SOURCES OF LAWS

V. LET'S LOOK AT "CONSTITUTIONS"

A. First Paragraph on Constitutions is "critical". Review

1. The federal and states have separate constitutions
2. The US Constitution is Supreme. Any law in violation of this will be declared unconstitutional and will not be enforceable.
 - a. Therefore, State statutes and regulations which conflict with the US Constitution will not be enforceable.
 1. IF the state constitution does not conflict with the US Constitution, then it is the supreme law within that state's borders.
3. What are some of the things the US Constitution does?
 - a. The Constitution gives the federal government the power to regulate interstate commerce (i.e. commerce between or among states)
 - b. The Constitution also details out how the powers are to be divided between the three branches of government (i.e. the judicial, legislative and executive branches).

B. NOTE, THE CONSTITUTION IS NOT BLACK AND WHITE AS TO ITS POWERS.

1. Supreme Court Appointments. One of the key duties of the President is to make appointments to the Supreme Court.
 - a. Why is this so Critical. This is critical because the Supreme Court gets to interpret the Constitution.
 - (1) So? Once the Supreme Court interprets a controversial issue, then this becomes the law of the land **UNLESS CONGRESS PASSES SOME LAW THAT WILL ELIMINATE THE GRAY AREAS**

VI. WE ALSO HAVE STATUTORY LAW. This is law passed by Congress and various state legislatures.

VII. ANOTHER BODY OF LAW IS ADMINISTRATIVE AGENCY REGULATIONS. This is law created by an Administrative Agency. Administrative Agencies are created by the executive or legislative branches of government.

VIII. The Uniform Commercial Code.

- A. The UCC will Follow in Most of Your Business Dealings.
- B. What is the UCC? The UCC primarily deals with the sale of goods and was designed to assist in commercial business transactions. **THIS WILL BE DISCUSSED IN GREATER DETAIL IN FUTURE CHAPTERS.**

IX. Brief Look at the Classification of Law.

- A. THREE DISTINCTIONS WILL BE MADE
 1. Distinguish between Substantive and Procedural Law
 2. Distinguish between Public and Private Law
 3. Distinguish between Civil and Criminal Law

B. Distinction between Substantive and Procedural

1. Substantive Law governs the behavior of all of us in ordinary life.
 - a. It regulates the creation and exchange of property and contracts.
 - b. It also defines what creates a criminal issue and a tort claim
2. A working definition of procedural law is the rules and principles that govern the behavior of courts and lawyer in dealing with disputes.
 - a. Procedure helps answer the following questions:
 - (1) What does one have to say to get a court to pay attention?
 - (2) From whom a may a person with a grievance seek relief?
 - (3) How can I obtain information from my adversary?

C. Public versus Private Law

1. One Sentence. Public law addresses the relationship between persons and their government, while private law looks at dealings between to persons.

D. Criminal versus Civil Law

1. Civil Law spells out the duties that exist between persons or between citizens and their government.
 - a. One Example would be whether there was a valid contract between two parties.
2. Criminal Law looks at crimes against the public. Criminal law is always public. In such a case, the government is attempting to penalize guilty persons.
 - a. Examples of Criminal Offenses include (1) Burglary, (2) Murder, (3) Rape and (4) Assault and Battery

IX. REMEDIES AT LAW VERSUS EQUITABLE REMEDIES

A. Remedies at Law are usually monetary remedies.

1. Their Purpose is to return the parties to an equal footing.

B. Sometimes, remedies at law is inadequate. This is when Remedies in Equity come into play.

C. Equitable Remedies come into play when:

1. Damages cannot make the injured party whole.
2. Damages are speculative and uncertain
3. Insolvency of the person committing the act
4. The harm is so major it can not be fully compensated by money.