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# LEGAL HERITAGE AND THE DIGITAL AGE

*“Where there is no law, there is no freedom.”*

John Locke

## I. Teacher to Teacher Dialogue

One of the most common dilemmas facing instructors of business law is the issue of topic choice. By the very nature of the subjects we teach, the breadth of materials is so wide that choosing what to focus on in the limited classroom time we have with our students can be a most daunting task. This problem is especially exacerbated when the topics we are dealing with are all of deep interest and can stand alone as separate courses.

In this chapter, for example, we are asked to introduce students to topics ranging from the definitions and purposes of law to how our system affects business decisions, to some of the most important provisions found in the U.S. Constitution. Any one of these subparts can provide the raw materials for an entire course at the law school level. Our job must start with a self-evident, but sometimes forgotten, point: this is *not* law school. We are here not to train future lawyers but rather students who need to know enough about these issues to recognize that they *are* issues. The technical legal problems they may be facing later will ultimately need to be resolved using law and other practitioners.

The plus side of this dilemma is that because we have such a diverse menu to select from, we are able to pick and choose our areas of emphasis. For example, if your particular teaching and research interests lie in the area of ethics and the schools of jurisprudential thought from which they are derived, then by all means, **run with it!** Rather than trying to be all things to all people, it is better to focus your efforts on your strengths. This does not mean that you can shortchange the other material. All key objectives of the chapter should be fully outlined and incorporated in both your lecture and materials outline. But if you have a particular interest and expertise in, for example, the Law and Economics School of jurisprudential thought, then use them as focal points of comparison in the evolutionary process that seeks to distinguish the older schools of jurisprudence from newer approaches to these issues. In any event, remember that philosophical studies of what law is and what its role is in the larger scheme of things have always posed questions virtually impossible to answer. This chapter represents attempts by great thinkers to answer the unanswerable. It would be far too presumptuous for us to think that we can teach, in a few hours, what the great philosophers of the world have tried to do over hundreds of years. Perhaps this is an early lesson in what wisdom is really all about: the more we know of history, the more we know of our own limitations. If we can get that point across, the course is off to a good start.

## II. Chapter Objectives

1. Define law.
2. Describe the functions of law.
3. Explain the development of the US legal system.
4. List and describe the sources of law in the United States.
5. Discuss the importance of the U.S. Supreme Court's decision in *Brown v. Board of Education*.

## III. Key Question Checklist

- What is law?
- Once you have identified the kind of societal expectation of behavior, what standard of behavior is most appropriate? Does law codify the standard? Do one or more of the schools of jurisprudence support the standard?
- What are the sources of law in the United States?
- What body of law and/or ethical standards apply?
- How would you apply these standards to the facts?

## IV. Text Materials

The first chapter's objective is an introduction to the historical underpinnings of jurisprudential thought. This would include not only the functions of law listed in the summary, but also an early opportunity to introduce the role of ethics based on the various schools of jurisprudence discussed.

### ***What is Law?***

Laws consist of rules that regulate the conduct of individuals, businesses, and organizations, forbidding undesirable activities.

**Definition of Law** – Law is a group of rules promulgated by a controlling authority, with legal consequences for lack of compliance.

**Functions of the Law** – Laws are created to keep the peace, shape morals, promote social policies, maintain the status quo, facilitate change or planning, promote compromise, and/or to maximize individual freedoms.

**Fairness of the Law** – The American legal system is, overall, a comprehensive and fair system. Yet it is occasionally misused and abused.

**Flexibility of the Law** – U.S. law has evolved and grown as a reflection of changes in society, technology, and commerce. The same general principles that were established on still exist. The modifications exhibit the flexibility and maturity of our system to be able to adapt to the changing commercial, social, and ethical environments.

**Critical Legal Thinking** – The law in the U.S. is permitted to grow and change over time as our social values change as a society. Having some vagueness to the law, allows it to adapt more easily.

**Landmark U.S. Supreme Court Case: *Brown v. Board of Education***

This case discusses the application of law where the Supreme Court overturned the “separate but equal” doctrine that condoned separate schools for black children and white children.

**Critical Legal Thinking:** The states must treat all individuals in the same manner as others that are in similar positions or situations, without favoring residents or any other group. Equal application is the important idea here.

**Ethics:** Separate but equal cannot be applied when it comes to education, so the decision in *Brown v. Board of Education* was wrong. The Brown decision was based on the idea of granting political and civil equality to African Americans, but left out social equality. The U.S. Constitution was drafted to reflect changing social, economic, technical, and intellectual ideas. This is what makes the Constitution unique, as it slowly adapts to the changing world around us.

**Case 1.1 *POM Wonderful LLC v Coca-Cola Company***

134 S.Ct. 2228, 2014 U.S. Lexis 4165 (2014), Supreme Court of the United States

**Facts:** POM grows pomegranates and makes juices as does Coke. Coke was basically mislabeling certain juices as pomegranate juice but the actual pomegranate content was really low. POM thought this to be unfair competition and filed suit accordingly.

**Issue:** Can a private party bring an unfair competition lawsuit under the Lanham Act?

**Decision:** Yes, the Lanham Act is available to private parties.

**Ethics Questions:** Yes, it seems that Coca-Cola was trying to trick consumers.

## ***Schools of Jurisprudential Thought***

There are several different philosophies about how the law developed, ranging from the classical natural theory to modern theories of law and economics and critical legal studies.

The different schools of jurisprudential thought include the Natural Law School, based on the moral theory of law; the Historical School, with its recognition of the social traditions and customs that have developed over time; the Analytical School, where law is shaped by logic; the Sociological School, where law is applied to advance sociological goals; the Command School whose laws are established by the ruling party rather than the society as a whole; the Critical Legal Studies School, who claim that laws are there only to maintain the status quo; and the Chicago School, or Law and Economics School, which promotes market efficiency.

**International Law: *Command School of Jurisprudence of Cuba***

Cuba is a one party communist dictatorship that has been ruled by one family since 1959. Cuba’s legal system is based on communist theory and the Command School of jurisprudence.

## ***History of American Law***

**English Common Law** – English common law, the primary basis for U.S. law, was based on judges issuing opinion when deciding a case. These opinions became the basis for precedent used by later judges.

The historical underpinning of U.S. law can be further reinforced with some discussion of the ties between the country’s political history with that of the legal traditions of England and other

countries. This portion of the chapter material can be used to introduce students to a broad overview of the roles that the world's major legal systems play in the world economy. For example, the role of the Law Merchant and its influence on international trade is critical to understanding most international rules on import/export laws today. The origins of the Law Merchant, in turn, are traceable in large part to the Roman civil law. In the end, the U.S. legal system represents the “Cuisinart” effect. There are ingredients from English common law, Roman civil law, and Judeo-Christian canon law all thoroughly processed into a bread of law. The individual ingredients are all present, but each is no longer independently identifiable.

**Law Courts** – These were established following the Norman Conquest of England in 1066 to administer laws in a uniform method. Law Courts emphasized form over substance.

**Chancery Courts** – These courts were established to serve when Law Courts provided inadequate remedies; they provided equitable solutions. These courts reviewed the merits of the case, rather than the procedural aspects.

**Merchant Courts** – Law Merchant courts were developed as a separate entity to solve commercial disputes in the Middle Ages. They were not merged into the regular court system in England until the early 1900s.

### **Landmark Law: *Adoption of English Common Law in America***

All the states of the United States of America, except Louisiana, base their legal systems primarily on the English common law. Currently, the law of the United States is a combination of law created by the judicial system and by congressional legislation.

### **Global Law: *The Civil Law System of France and Germany***

The Romano-Germanic civil law system dates back to 450 B.C., when Rome adopted a set of laws based on civil codes that applied to all Romans. The sole source of civil law in a country is the application of code or statutes. Court decisions do not have the force of law.

## ***Sources of Law in the United States***

**Constitutions** – One of the goals of this chapter is to introduce students to the role of the U.S. Constitution and its pivotal role in the ultimate distribution of powers between the federal government and the states vis-à-vis the control of business conduct in the U.S. This section also explains the three branches of the federal government: the legislative, executive, and judicial branches.

**Treaties** – The Constitution establishes that only the president, upon the advice and consent of the Senate, can enter into treaties with foreign powers.

**Federal Statutes** – Statutes are written laws that establish and enforce certain courses of conduct. Congress enacts federal statutes, whilst state legislatures enact state statutes. Ordinances are adopted by local governmental bodies.

### **Contemporary Environment: *How a Bill Becomes Law***

The U.S. Congress is composed of two chambers, the U.S. House of Representatives and the U.S. Senate. Thousands of bills are introduced in the U.S. Congress each year, but only a small percentage of them become law. First, a bill must be sponsored by a member of the U.S. House of

Representative or the U.S. Senate. Then, it is referred to the appropriate committee for review and study. Bills that receive the vote of a committee are reported to the full chamber, where they are debated and voted on. If the bill receives a majority vote from the full chamber, and a subsequent second chamber, then it is forwarded to the president's desk. The bill becomes law when it is signed by the president.

**State Statutes** – State legislatures enact state statutes. Such statutes are placed in code books. State statutes can be assessed in these hardcopy code books or online.

**Ordinances** – State legislatures often delegate lawmaking authority to local government bodies, including cities and municipalities, counties, school districts, water districts, and such. These governmental units are empowered to adopt ordinances. Ordinances are also codified.

**Executive Orders** – The executive branch of the government is empowered to issue executive orders.

**Regulations and Order of Administrative Agencies** – Agencies are created to interpret and enforce statutes enacted by both federal and state Congresses.

**Judicial Decisions** – Judges issue written decisions explaining their legal reasoning. Doctrine of *stare decisis* establishes past court decisions as a precedent for future decisions.

**Priority of Law in the United States** – The U.S. Constitution and treaties take precedence over all other laws, followed by federal statutes and federal regulations. Federal law takes precedence over conflicting state law, which has precedence over local laws. Similarly, state constitutions take precedence over state statutes and regulations.

**Critical Legal Thinking** – This concept gives the law consistency so that citizens are treated fairly and similarly. Without *stare decisis*, our judges may have too much untampered authority.

## ***Digital Law***

The electronic age arrived before new laws were written that were unique and specific for this environment. Courts have applied existing laws to the new digital environment by requiring interpretations and applications. In addition, new laws have been written that apply specifically to this new environment. The U.S. Congress has led the way, enacting many new federal statutes to regulate the digital environment.

**Critical Legal Thinking** – a method of thinking that consists of investigating, analyzing, evaluating, and interpreting information to solve a legal problem.

**Socratic method** – a process of asking a series of questions and answers and a give-and-take inquiry and debate between a professor and students.

**IRAC method** – examines a law case by issue, rule, application, and conclusion.

### **Case 1.2 Voting Rights Act *Shelby County, Texas v. Holder***

133 S.Ct. 2612, 2013 U.S. Lexis 4917 (2013), Supreme Court of the United States

**Facts:** The 15<sup>th</sup> Amendment makes it unlawful for states to alter the rights of citizens as to voting. In 1965, a statute was passed to address this issue in a more fulsome manner. The 1965

VRA basically also put a lockdown on the ability of certain Southern states to change any districts.

**Issue:** Is the coverage provision of the VRA legal?

**Decision:** No, it is unconstitutional. This was a close decision of 5-4.

**Ethics:** Students will have differing opinions on this issue.

## V. Key Terms and Concepts

- Administrative agencies—Agencies (such as the Securities and Exchange Commission and the Federal Trade Commission) that the legislative and executive branches of federal and state governments are empowered to establish.
- Administrative rules and regulations—Used by administrative agencies to enforce statutes. These rules and regulations have the force of law.
- Analytical School—School of jurisprudence maintains that the law is shaped by logic.
- Bill—Many bills are introduced each year at the U.S. Congress, out of which a few are passed as law.
- *Brown v. Board of Education*—A landmark Supreme Court case in which a unanimous decision reversed prior precedent and held that the separate but equal doctrine violated the Equal Protection Clause of the Fourteenth Amendment to the Constitution. The decision led to the banning of school segregation.
- Chamber—The U.S. Congress is composed of two chambers, the U.S. House of Representatives and the U.S. Senate.
- Civil Law—A code of laws applicable to Romans. Also known as the Romano-Germanic civil law system.
- Code book—Federal statutes are organized by topic into code books.
- Codified law—Federal statutes that have been organized into code books.
- Command School—School of jurisprudence that believes that the law is a set of rules developed, communicated, and enforced by the ruling party rather than a reflection of the society's morality, history, logic, or sociology.
- Committee—Bills from either of the two chambers of the U.S. Congress are reviewed and studied by an appropriate committee. The committee may reject the bill, report it to the full chamber for a vote, not act on it, or send it to a subcommittee for further study.
- Conference committee—Committee made up of members of both the U.S. House of Representatives and the U.S. Senate.
- Constitution of the United States of America—The supreme law of the United States.
- Court of Chancery (equity court)—Court that granted relief based on fairness. Also called equity court.
- Critical Legal Studies School—School of Jurisprudence that proposes legal rules are unnecessary and are used as an obstacle by the powerful to maintain the status quo.
- Critical legal thinking—The process of investigating, analyzing, evaluating, and interpreting information to solve legal issues or cases.
- English common law—Law developed by judges who issued their opinions when deciding a case. The principles announced in these cases became precedent for later judges deciding similar cases.
- Executive branch (president)—A branch of the U.S. government that has the power to enforce the law. The President of the United States constitutes the executive branch of the government.
- Executive order—An order issued by a member of the executive branch of the government.

- Federal statute—Written laws, enacted by the U.S. Congress, that regulate foreign and interstate commerce.
- Fourth Amendment to the U.S. Constitution—Protects against searches and seizures without probable cause.
- French Civil Code of 1804 (the Napoleonic Code)—One of the models used by countries that adopted civil codes. Also known as the Napoleonic Code.
- German Civil Code of 1896—One of the models for countries used by countries that adopted civil code. Such codes act as the sole source of law in most civil law countries.
- Historical School—School of jurisprudence that believes the law is an aggregate of social traditions and customs that have developed over the centuries.
- IRAC method—A critical legal thinking method for analyzing court cases. The acronym IRAC stands for issue, rule, application, and conclusion.
- Judicial branch—A branch of the U.S. government that has the power to interpret and determine the validity of the law. Also known as the courts.
- Judicial decision—A decision about an individual lawsuit issued by federal and state courts.
- Jurisprudence—The philosophy or science of law.
- Law—That which must be obeyed and followed by citizens, subject to sanctions or legal consequences; a body of rules of action or conduct prescribed by controlling authority and having binding legal force.
- Law and Economics School (Chicago School)—School of jurisprudence that believes that promoting market efficiency should be the central goal of legal decision-making. Also called Chicago School.
- Law court—A court that developed and administered a uniform set of laws decreed by the kings and queens after William the Conqueror; legal procedure was emphasized over merits at this time.
- Law Merchant—Rules based on based on common trade practices and usage that were applied by merchants around England and Europe in the Middle Ages, to solve commercial disputes. Also known as “law of merchants.”
- Legislative branch (Congress)—A branch of the U.S. government that has the power to enact the law. Also known as the U.S. Congress.
- Merchant Court—The separate set of courts established to administer the “law of merchants.”
- Moral theory of law—Theory that proposes that the law should be based on morality and ethics.
- Natural Law School—School of jurisprudence that postulates that the law is based on what is “correct.”
- Order—A decision of an administrative agency.
- Ordinance—Laws enacted by local government bodies, such as cities and municipalities, counties, school districts, and water districts.
- Precedent—A rule of law established in a court decision. Lower courts must follow the precedent established by higher courts.
- Romano-Germanic civil law system—Legal system that dates back to 450 BCE when Rome adopted the Twelve Tables, a code of laws applicable to the Romans. Commonly known as civil law.
- Sociological School—School of jurisprudence that asserts that the law is a means of achieving and advancing certain sociological goals.
- *Stare decisis*—Latin for “to stand by the decision.” Adherence to precedent.

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- State Constitution—Constitutions that establish the legislative, executive, and judicial branches of state government and establish the powers of each branch.
- State Statute—Statute enacted by state legislatures and placed in code books.
- Statute—Written law enacted by the legislative branch of the federal and state governments that establishes certain courses of conduct that covered parties must adhere to.
- Subcommittee—Studies bills sent by the committee. After review, the subcommittee may either let the bill die or report it back to the full committee.
- Treaty—A compact made between two or more nations.
- U.S. Congress—Branch of the government that creates federal law by enacting statutes.
- U.S. House of Representatives—A chamber of the U.S. Congress.
- U.S. Senate—A chamber of the U.S. Congress.