UNIT I: THE LEGAL SYSTEM AND BASIC PRINCIPLES OF LAW

1

INTRODUCTION TO LAW

GENERAL COMMENTS

This chapter is designed to stimulate the interest of your students in learning about law. To do so, we provide comparisons to the past and give examples of the evolution of rules and requirements. The goal is to prompt the student to consider the role of the law in resolving conflicts within a society that has changed so much in such little time. We try to show that our legal system has not changed very much; only that the rules of law have changed and continue to evolve. Thus, we paint a brief picture of society at the beginning of the twentieth century with which students can compare their own lives and the lives of their families. Hopefully, the picture painted will stimulate interest in the role of law in a diverse and changing society, and how our legal system will be expected to cope with the dynamic changes that most assuredly will occur in the early years of this century.

We discuss a garden variety of societal issues in 1900 to call student's attention to how completely different life is now. Our legal system coped well with the changes of the twentieth century and has empowered itself in the process. We attempt to make students think about the role of the essentially unelected legal branch in shaping our society. To the extent legislatures and executives avoid the controversial issues existing in the 1900s as well as now, people look elsewhere, including to the judicial branch for answers. We define the judicial branch of government to include members of the legal profession, and thereby expand the dimensions of its role in everyday life. There are no cases and controversies, and no judicial proceedings and new rules of law, without the involvement and influence of lawyers. The conclusion is compelling: our society ultimately may depend upon the judicial branch for most of the significant decisions in the new century. How the legal system works ought to be of interest to students who are concerned with their careers, families and opportunities in general, and whose own careers likely will be at their peak within the next twenty-five years.

Next, we present a thumbnail sketch of the history of U.S. common law in sufficient detail to give the student a perspective of the ancient and medieval sources of our legal system. We also begin a discussion on legal reasoning by introducing the common-law principle of *stare decisis*. This section of Chapter 1 may or may not excite the average student, but an understanding of our common law is dependent upon at least a sketchy understanding of its origins including a discussion of the alternatives presented to a court when applying the doctrine of *stare decisis.*

We follow the ancient sources with modern sources of law, dramatizing the evolution of the law

we inherited from England to the modern law of our nation. Classifications, modern definitions, and legal terms are introduced, as well as the distinction between law and ethics, as exampled when David Cash, Jr. refused to render aid to a small child being assaulted by another person in the bathroom of a gambling casino. We believe these kinds of examples, some already known in a general way to students, can be used to rivet the attention of students in the first week of classes.

We provide a brief introduction to ethics and ethical reasoning to allow those professors who wish a dialog on the relationship or law and ethics to first clearly make the distinction, and then continue a discussion of this relationship throughout the book.

The case of *Eric J. v. Betty M. raises* a troubling topical issue — the duty to act. The law is clear and largely uniform throughout the states, but troubling to many. The case allows a discussion on the limits of the law and the importance of ethics. Hopefully you can blend in a discussion of the introductory legal concepts, and also use ethical reasoning to test student reaction to the legal rule regarding duty to act. Compared to cases we have used in the past, this is a not a case we expect you have seen before. The issue in this case is, of course, one that was very important to the parties to the case, but not one that directly touches the lives of many of the students. Our intent is to raise important ethical issues without tripping student hot buttons the first week of class.

We have also used the case of *Eric J. v. Betty M.* to provide an exercise in case briefing. In Appendix A of the text you will find a discussion of the importance of a brief, and suggestions on how to brief a case as well as a sample brief. Our book has always depended more on examples than actual court cases but we encourage professors to add or use their own favorite cases.

CHAPTER SUGGESTIONS

1. This chapter is introduced during the first day of class when students are acclimating to the professor, the course syllabus, and to each other. The first week, before any variety of collaborative teaching methodology can be established, is an effective time to reach back to the beginning of the 20th century, painting a picture of relative simplicity of society compared to now. Females could not vote nor obtain a legal abortion in 1900 — today they can. Cocaine could be purchased in a drug store in New York City in the early 1900s. Times change and the laws change. Can our students see females winning the legal right to comparable pay in employment or do they expect females will fall further behind? Do new changes in affirmative action portend a change in civil rights generally? Should society discriminate against older workers by replacing them with less costly new employees? Should the government encourage or discourage the use of off country job centers for American companies? Should pornography be banned from the Internet? Less grand: should spam or pop up ads be banned? Can the law be effective in any such ban? Shall we permit web sites that advocate, promote, and provide kits for murder? Should access to dangerous chemicals and biological agents as well as instructions on how to use them to kill be allowed? Should gene alteration to produce only thin people be endorsed by law, or alteration to allow for choice of a fetus's gender? Virtually any question beginning with "Should the law change... (insert some simplified issue)?" is excellent. The goal in the first or second meeting of the semester is, of course, to stimulate the students to anticipate learning more about the law and legal system. The earlier our students begin sharing their opinions in class on controversial issues, the easier it becomes for their classmates to realize that a standard of objectivity is essential. That standard is, of course, a law.

2. (1) In addition to, or as an alternative to, the broad questions suggested above, we assign designated specific legal terms for subsequent oral definition. (2) Our experience suggests that all students assigned terms have become involved with the content of the chapter. (3) Answers are shorter, and directly from the textbook. (4) We have had success in forwarding questions (with page references) to a number of students via e-mail a day or two before class. The effect is very positive. It circumvents a phenomenon that some students experience: becoming speechless when they hear their name called in class. (5) A definition question could be: define X term. Distinguish it from a related concept. Provide an example of the definition as it would be used differently than in the text.

3. Finally, we have found that relating current events to issues under discussion is very helpful. Appellate court opinions lag behind current events by many years, and lose some of their vitality to students. We never fail to find current events that relate to the subjects in the chapter and topics under discussion.

4. One method to begin class is to give the student a 10 or 20 question multiple choice test using questions that you might give them on a final. This pre-test will give both the students and the professor some idea of what they know and what they will learn. Discussing the correct answers immediately after having given the examination explores the variety of topics and learning the will occur over the academic term.

FOR CRITICAL

ANALYSIS ***Eric J. v.***

Betty M.

1. This question asks students to apply the chapter discussion of ethics to an actual problem. Try to encourage the analysis before the students make a value judgment.

2. The duty to act is a substantive rule and a necessary requirement to prove the tort of negligence. The case is one of civil law, as the mother is suing on the child's behalf. The case is a California or state rather than federal case.

3. No contest means the person is not contesting the charges. In a criminal proceeding it has the same effect as a guilty plea, except that the plea cannot be used to prove responsibility in a later civil proceeding.

ANSWERS TO QUESTIONS AND PROBLEMS

1. You do not have to predict many years into the future before your predictions get risky. It will be interesting to hear what students think will happen regarding current terrorist threats and the variety of existing ways to harm large numbers of people. More mundane topics such as spam and even identify theft should be interesting to speculate about.

2. Statutory law is prospective and can be broadly created. Common law is specific and retroactive. Jeremy Bentham's famous criticism of the common law helps illustrate this contrast. He referred to the common law as "Dog Law" because it was after the fact. Something is done and then a person may well be punished for it and told they should have behaved differently. Some strengths of common law are flexibility, adaptability, and its usual

connection with community values. Weaknesses of common law are that it is often incomplete, vague and finding the rules requires reading cases.Strengths of statutory law include the ability to be comprehensive, prospective, and democratic. In theory, statutes are easier to read. Weaknesses include poorly written statutes, influence of vested interests in statute drafting, and failure to anticipate problems.

The term "common-law marriage" suggests that the marriage is one recognized by the court law or common law rather than statutory law. Modernly, many common law doctrines have statutory recognition. Texas common-law marriage is such an example; §2.401 of the Texas Family Code provides the current standard for the Texas common-law marriage referred to as an informal marriage.

3 This question gives the student the opportunity to apply some of the classifications and definitions mentioned in the chapter.

Civil law deals with the duties that exist between persons or between persons and the government (excluding the duty to refrain from committing crimes).
Criminal law has to do with wrongful conduct that offends, injures, or threatens society as a whole.
Public law addresses the relationship between persons and their government.
Private law addresses direct dealings between persons.
Substantive law defines duties, establishes rights, and prohibits wrongs.
Procedural law consists of all the legal rules for processing civil and criminal cases through the court system and for otherwise enforcing legal rights.

a: Makes it illegal for anyone under the age of 23 to possess a can of aerosol spray paint unless licensed by the state to do so.

criminal law — The statute is a criminal law statute. The term "illegal" means to so act would be in violation of a penal statute. The public is the injured party and would bring the action. *public law* — All criminal law is public law, as it relates to the relationship between individuals and their government.

substantive law — The statute is substantive law, because it defines and prohibits a wrong and defines an individual's duty to act.

b: Establishes an application form and sets a filing fee to obtain a spray-paint-possessor's license.

civil and criminal — This statute could be characterized as either or both. The statute provides for obtaining a license from government. However, there is no requirement that everyone have a license and no punishment simply because one does not have a license. The primary thrust of the statute is providing for this service by government, and it is a civil law. However, possessing spray-paint without a license is also a criminal offense. Selling to another person who does not have a license is a criminal act, too.

public — The statute requires obtaining a license from government. Any characterization as a criminal statute also mandates that it is public law.

procedural — The statute established the mechanism for obtaining a right to something (spray- paint possessor's license).

c: Defines the tort of spray-paint trespass and indicates the circumstances under which victims can sue and recover damages from spray-painting violators.

civil — The statute provides rights and duties between individuals.

private — The government's only involvement is through the court forum for disputes, and as a potential enforcer for private parties.
substantive — Defines a new duty which, if breached, creates a right in an injured plaintiff.

d: Provides that owners whose properties are wrongfully spray-painted can sue in small claims court for damages not to exceed $25,000. *civil* — The statute provides the means for enforcement of rights and duties between individuals.
private — The government's only involvement is through the courts as a forum for disputes
and as a potential enforcer for private parties.
procedural — The statute provides the means and jurisdiction to hold accountable the violators of c. the tort of spray-paint trespass.

e: Makes it a misdemeanor to sell or give a spray-paint can to any unlicensed person under age of 23.
criminal — The statute provides for a misdemeanor, a criminal act.
public — All criminal law is public law.
substantive — The statute defines a new duty which, if breached by one selling spray-paint to
an unlicensed person, creates a criminal penalty.

4. **Majority opinion** — A written opinion by a judge outlining the views of the majority of the judges of the court deciding the case.
Concurring opinion — A written opinion wherein a judge agrees (concurs) with the result reached by another judge, but does so for different reasons than those stated by the other judge.
Dissenting opinion — A written opinion by a judge or judges who vote contrary to, and in disagreement with, the majority opinion and holding of the court.

5. Technically yes, practically no. As a practical matter, every person with any kind of significant legal problem is well advised to engage the services of an attorney. Self-help legal books are widely available. They can be very helpful to consumers, but most do not address serious legal issues. The same is true for legal information available on the Internet. Consumers without attorneys can, and do, obtain justice in small claims courts, but again, when the disputes are substantial, virtually nobody makes the mistake of going to court without legal representation.

6. *Exclusively a crime:* Choice d (statutory rape). Although a good argument can be made for battery as Monica being a minor cannot consent to the seduction whether crime or tort.
Both a crime and a tort: Choices a (armed robbery and conversion, possibly assault), b (rape and battery), and c (theft and conversion).
Exclusively a tort: Choice e (negligence). If the carelessness is gross enough vehicular manslaughter is possible.
Neither a crime nor a tort: Choice f.

As good arguments can be made for alternate answers this question is good vehicle for introducing the importance of specific facts and analysis in making legal arguments. The lack of clear answers in the law is often what we as teachers enjoy it takes the students some getting used to.

7. Appellate courts would be concerned with issues (a) and (e). The other issues are matters to be decided by either jurors or attorneys. For example, issue (b) is a matter for jurors, to either believe or disbelieve a witness. Issue (c) also is a matter that is exclusively for the jurors. Issue (d) is a matter for lawyers, to decide what evidence to produce, what witnesses to call, what questions to ask, etc.

8. This is, of course, an open-ended discussion question. The most commonly cited solution to our overburdened Court is the establishment of some sort of specialized division of the Supreme Court.

   The students should recognize that today our Supreme Court is not necessarily obligated to hear and decide any more cases than in earlier years. By selecting those cases that bear upon evolving problems, such as those related to the Internet and elder law, precedents can be established that guide our law and policy makers regardless of what population is being served. Thus, a good argument can be made that our Constitution with its nine Justices not only is alive, but also is quite well. You might also introduce the question of whether a Supreme Court justice is required to be a lawyer.

   Any discussion should include Mandy's personal responsibility as well as the responsibility of others. A distinction can be drawn between those she was with and those she causally met. Any inquiry should determine what people knew about the drug and whether her behavior suggested she had actually taken it. It is unlikely anyone is liable but the facts can elicit a wide open discussion contrasting legal and moral duty.

9. In the United States, any judge offering an opinion about the case to the press would be violating his duty as a judge. A judge's responsibility is to hear evidence in court with all parties present and not to prejudge what he or she is to hear. Also any judge is expected to not comment on any specific litigation before the court except in court or specifically to involved parties not the public. As to the rest of the question, the student should make and justify his or her answer. This question should provide an interesting discussion of duty-based religious ethics. Whether apostasy is a criminal act mentioned in the Koran is argued vehemently within Islam.

   Whether anybody reads all the published appellate decisions that continually flow is not critical. Because the opinions are in the public domain, they create visible laws that serve as precedents for new cases with comparable issues. No secret laws can be made to surface at select times to apply to select persons. Availability on the Internet obviously increases the access of cases to everyone including the public.

   Law books are public reference books and available for all to read. The reality, however, is that lawyers and judges are the principal readers, because they need to relate these decisions to current disputes

   Not infrequently, legal researchers look backward for parallels in logic if not for direct precedents. For example, in 1998 the Supreme Court reviewed the treatment of private guards in medieval England when considering whether private prison guards should be immune from lawsuits by prisoners.