CHAPTER 1

**INTRODUCTION TO LAW**

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**LECTURE OUTLINE**

Use opening ***CONSIDER 1.1*** to pique students' interest.

**1-1 Definition of Law (See PowerPoint Slides 1-1 and 1-2)**

* Aristotle – law is reason unaffected by desire
* Holmes – law embodies the story of a nation's development through many centuries
* Blackstone – that rule of action which is prescribed by some superior and which the inferior is bound to obey
* *Black’s Law Dictionary –* a body of rules of action or conduct prescribed by the controlling authority, and having legal binding force
* Rules enacted by a government authority that govern individuals and relationships in society

**1-2 Classifications of Law**

1-2a Public versus Private Law (See PowerPoint Slide 1-3)

* Public law or statutory law (discussed later in chapter)
* Private law – contracts, employer regulations

1-2b Criminal versus Civil Law (See PowerPoint Slide 1-4)

* Criminal law – carries fine and/or imprisonment, governmental enforcement
* Civil law – individual enforcement, liability

1-2c Substantive versus Procedural Law

* Substantive laws – gives rights and responsibilities
* Procedural laws – means for enforcing substantive rights

1-2d Common versus Statutory Law (See PowerPoint Slide 1-5)

* Common law
* Began in England (1066)
* Exists today – nonstatutory law
* Exists also in court decisions – *stare decisis*, “let the decision stand,” or following case precedent
* Statutory law
  + - Passed by some governmental body
    - Appears in written form

1-2e Law versus Equity (See PowerPoint Slide 1-6)

* In common law England, remedies were separated into legal and equitable remedies
* Legal = money
* Equitable = injunctions, specific performance
  + Separated the remedies so that courts of chancery could give remedies when courts of law could not
  + Today all courts are authorized to award legal or equitable remedies

**1-3 Purposes of Law (See PowerPoint Slide 1-7)**

1-3a Keeping Order

* Examples: Traffic laws, criminal laws (kidnapping, murder), trespass laws, property laws
* Safety – USA Patriot Act
* Reporting requirements
* Search warrants

1-3b Influencing Conduct

Examples: Disclosure statutes for securities, antitrust laws, negligence and standards of normal (acceptable) or liability‑free conduct

1-3c Honoring Expectations

Examples: Contracts, landlord/tenant, securities investment, property ownership

1-3d Promoting Equality

Examples: Title VII (employment discrimination laws), Age Discrimination Act, Pregnancy Discrimination Act, bussing, antisegregation statute, Social Security system, antitrust laws

1-3e Law as the Great Compromiser

Examples: Union/management laws and regulations, contract interpretations, divorce property settlements, probate distributions

**1-4 Characteristics of Law (See PowerPoint Slides 1-8 and 1-9)**

1-4a Flexibility

Examples: On-line transactions and fax machines have made us revisit when a contract acceptance occurs

1-4b Consistency

* Allows businesses to rely on law for planning

1-4c Pervasiveness

Point out brief to students and how to do and use case briefs (See Exhibit 1.1 and PowerPoint Slide 1-10).

**CASE BRIEF 1.1**

|  |
| --- |
| *Yates v. U.S.*  135 S.Ct. 1074 (2015)  *FACTS:* John Yates, a commercial fisherman, caught undersized red grouper in federal waters in the Gulf of Mexico. To prevent federal authorities from confirming that he had harvested undersized fish, Yates ordered a crew member to toss the suspect fish into the sea. Yates was charged with obstruction of justice through destruction of the small red grouper fish.  *DECISIONS BELOW:* Yates was convicted and appealed. His conviction was upheld. He appealed to the U.S. Supreme Court.  *ISSUE ON APPEAL:* Is the release of fish back into the sea obstruction of justice?  *DECISION:* A split court held that the fish were not “tangible objects” for purposes of the obstruction of justice statute. The court held that the statute was passed to cover files and electronic records and not tangible objects such as fish. The court held that the statute was passed in the wake of financial and ethical collapses in companies and was not intended to have generic application. It was directed at electronic files and documentation, not tangible objects such as fish. |

**Answers to Case Questions**

1. *Explain what Mr. Yates did and why.* He had his crew throw the small fish back because it was a violation of federal law for him to have those fish.
2. *Describe the terms used in the statute at issue and the history of the statute.* The three nouns in the statute were record, document, and tangible object. The statute was passed after the Enron collapse as a means of increasing the penalties for destruction of documents in financial fraud cases. The intent was to cover all forms of documents – computer, disk drives, print-outs, etc.

3. *Why does the dissent think the majority made the decision it did?* The dissent believes that principles of statutory construction cannot support the decision so that it must be the court’s disagreement with Congress over a poorly drafted statute that carries excessive penalties and gives prosecutors too much discretion. The dissent worries about over-criminalization, but argues that it is not the court’s role to rewrite statutes.

***ANSWER TO ETHICAL ISSUES (Yates):*** Yates had been caught violating the law. He escaped criminal conviction, but if he had simply retained the fish, he might have had to pay a fine, but would not have faced prosecution. The issues of definitions and all the litigation resulted only because he destroyed the evidence, not because of penalties related to a violation of the fishing laws.

***ANSWER TO CONSIDER 1.2:*** Walk the students through the case analysis in the text. *U.S. v. Katakis,* 800 F.3d 1017 (9th Cir. 2015).

***FOR THE MANAGER’S DESK – THE COVER-UP VS. THE CRIME:*** Discuss the importance of simply facing the music when a business manager is caught breaking the law. Even in the consider, the destruction of the e-mails resulted in the case and all the litigation. The cover-up is always worse than the crime.

Before destroying any documents: (1) check with a lawyer; and (2) undertake destruction of records only with a planned strategy for managing records and don't destroy if anything is pending.

**1-5 The Theory of Law: Jurisprudence (See PowerPoint Slide 1-11)**

1-5a The Theory of Law: Positive Law

1-5b The Theory of Law: Natural Law

* There is law that is controlling above statutory law. For example, slavery may have been legal, but it violated natural law because of the violation of human rights.

1-5c The Theory of Law: The Protection of Individuals and Relationships

* Justice Oliver Wendell Holmes – our relationships with others and what they can or cannot tell us to do

1-5d The Theory of Law: The Social Contract

* Law is based on the common agreements we have about how society should operate
* Law serves to enforce the social contract

***ANSWER TO CONSIDER 1.3:***

1. General Taguba and Thomas Taguba would follow natural law: torture is wrong even if commanding officers order it.

2. Under the theory of positivist law, the employee should just do what those in charge say she should do. Under natural law, no one needs to obey a law that is wrong. If a law is unjust (order is unjust), civil disobedience is proper. Natural law is superior – we cannot harm others. Under Pound’s view, those who exert force decide; so secretary must obey.

3. Under one view, if a law is unjust, it need not be obeyed. Positive law, on the other hand, dictates that we follow the law – we must obey the law of those who are in charge. Holmes says we obey tax laws because we have to associate with one another. On the other hand, ignoring tax laws could hurt a business. Natural law would be the classic summary of “Render unto Caesar that which is Caesar’s and unto God that which is God’s.”

4. Speeding is an example of the norm shifting. That is, there is a law, but few people are following the law and the result is that the law becomes meaningless. Some philosophers fear that disregard of the law on an individual basis means that we introduce anarchy – the law has no effect. Others would follow the normative standard of doing what is acceptable to others.

5. Mr. Yates does not follow positive law – he understood the law and was ordered to comply, but ignored the law enforcement official. The protection of fish was the purpose of the law, but Mr. Yates seemed to believe that his rights are superior to those of the fish, so much so that laws could be ignored.

**1-6 Sources of Law (See Exhibit 1.2 in text for overview and PowerPoint Slide 1-12)**

1-6a Constitutional Law (See PowerPoint Slide 1-13)

* At federal and state level
* Establishes government structure
* Establishes individual rights

1-6b Statutory Law at the Federal Level (See PowerPoint Slide 1-14)

* Enactments of Congress – United States Code

Cite or citation = U.S.C. (e.g., 15 U.S.C. §77)

Examples: Sherman Act, National Labor Relations Act, Occupational Health and Safety Act, the USA Patriot Act, and all treaties

* Executive orders = presidential orders
* Administrative agency regulations – Code of Federal Regulations

Cite or citation = C.F.R. (e.g., 12 C.F.R. §226)

1-6c Statutory Law at the State Level (See PowerPoint Slide 1-15)

* Enactments of state legislatures – state codes

Uniform laws are part of state codes

Cite = Nevada Revised Statutes – N.R.S.

Examples: Uniform Commercial Code, Uniform Partnership Act, Uniform Limited Partnership Act

* State administrative agency regulations

Cite: various

1-6d Local Laws of Cities, Counties, and Townships

* Ordinances – zoning, traffic, curfew
* County or city

1-6e Private Laws (See PowerPoint Slide 1-16)

* Contracts
* Leases
* Employer regulations

1-6f Court Decisions

* Language in statute unclear
* Court provides interpretation or clarification of the law

***BUSINESS STRATEGY − STRATEGY FOR SMALL BUSINESSES AND LEGAL ISSUES:*** Use trade associations to follow the issues.

**1-7 Introduction to International Law**

1-7a Custom (Country-By-Country Basis) (See PowerPoint Slide 1-17)

1-7b Treaties

* Bilateral – between two nations
* Multilateral – among three or more nations
* Geneva Convention – prisoners of war
* Vienna Convention – diplomatic relations
* Warsaw Convention – air travel

1-7c Private Law in International Transactions (See PowerPoint Slide 1-18)

1-7d International Organizations

1-7e The Doctrines of International Law

* Expropriation
* Confiscation of nationalization
* Taking of private property by a government

***FOR THE MANAGER’S DESK − WHEN WORLDWIDE SOCCER INVOLVES BRIBERY:*** FIFA, an NGO, and corruption for World Cup and match sites.

1-7f Trade Laws and Policies (See PowerPoint Slide 1-19)

* Tariffs
* Treaties, e.g., GATT, NAFTA

1-7g Uniform International Laws

* Contracts for the International Sale of Goods (CISG)
* For uniformity in international contracts

1-7h The European Union (EU) (See PowerPoint Slide 1-20)

* Group of European countries (other countries are affiliated)
* Barrier-free trade; uniform laws; ease in transaction negotiations and execution
* Uniformity in currency, job safety, immigration, customs, licensing, and taxation
* Euro currency

***BIOGRAPHY – UBER: THE IMPORTANCE OF LAW IN A DEVELOPING BUSINESS***

Issues with approvals, extensive regulation, and labor law.

**ANSWERS TO CHAPTER QUESTIONS AND PROBLEMS**

1. Gunderson will be incorporated under state legislative law. He will have to make tax elections under federal law. Local zoning laws will affect issues such as where the corporation can operate, signs, etc. His employees will be affected by state compensation laws, federal labor laws, and federal pension plan regulations. In short, there really is not a set of laws that will *not* affect his business.

2. Jeffrey will be going through a criminal procedure; if a fan sues him, it will be a civil process.

3. This is a private law. However, the rule affects players who have been holding their putters to their chests and have won championships using that method of play. The judicial challenge would be in the United States and would be based on whether the private law violated some right, such as a constitutional protection.

4. a. Civil law – rights among and between individuals; remedies of damages and injunctions

Criminal law – establishes societal standards of conduct; jail and fines as punishment

b. Substantive law – establishes rights and duties

Procedural law – establishes process for enforcement of laws and rights

c. Common law – non-codified law; in court cases

Statutory law – codified law

d. Private law – contracts, leases, rules of workplace

Public law – laws passed by some governmental agency

1. The judge in the case ordered the two men to sell the baseball and split the proceeds. The areas of law involved are private law (stadium rules), property law (probably state court decisions), and perhaps municipal laws. Some additional background:

On October 7, 2001, Barry Bonds hit his 73rd and record-breaking home run at PacBell Park in San Francisco. The event was historical and takes its place among the following markers in baseball:

* 1927 – Babe Ruth hits 60 home runs
* 1961 – Roger Marris hits 61 home runs
* 1998 – Mark McGwire hit 70 home runs

When the ball headed into a crowd, positioned in a standing-room-only arcade section of the stadium, Alex Popov had his glove, no, his arm up, and he was poised to catch the ball in a softball glove he had brought along to the game. Videotape shows that the ball did indeed make it into the tip of his glove’s webbing. But, at that moment, the crowd around him, forming a throng, caused him to lose his balance. The ball then dropped to the ground and there was a mad scramble among the throng to retrieve the ball. No witness and no videotape are clear on whether the ball was securely in the possession of Mr. Popov. Patrick Hayashi emerged from the stampede with the ball. The federal judge in the case describes the behavior of the mob as violent and illegal. Popov sued to get the ball back.

At the trial, the tape of cameraman Josh Keppel was played and 17 witnesses testified. The witnesses all had different versions of what happened, different vantage points, and some had made prior inconsistent statements with their testimony at trial.

Following a trial that concluded in November 2002, Judge Kevin McCarthy ordered the parties to make arrangements to sell the baseball by December 31, 2002 and split the proceeds. The proceeds were estimated to be about $1,000,000, but it was sold at auction in June 2003 for $450,000.

Judge McCarthy indicates that Popov must have had possession of the ball prior to the mob descending in order to have title and no testimony offered at the trial was clear on whether he had firm and actual possession.

6. This would and has been a focus for city ordinances. Regulations have included requiring permits and safety regulations on tying boats and floats together. Additionally, there are more safety personnel added with the funds from issuing permits. At the state level, the penalties for drunkenness could be expanded to include operation of rafts and boats.

7. Is a horse and buggy a motor vehicle? This is an illustration of statutory interpretation role of the courts. What the court determines here in terms of the definition of a “vessel” and whether a horse and buggy qualifies, controls whether there will be any recovery for the injured family or whether the obligation will be discharged in bankruptcy.

The court’s opinion in pertinent part appears below:

The bankruptcy court did not analyze this question because it found that “Plaintiffs acknowledge that a horse and buggy is not a motor vehicle.” (Bankr.Ct. Order 4, DE 2-13.) While the appellants' brief before the bankruptcy court did not explicitly state that they were conceding that a horse and buggy is not a “motor vehicle,” their entire argument was directed at establishing that a horse and buggy qualifies as a “vessel.” A party may waive an argument either explicitly or implicitly if it is not raised at the proper time. See *In re Kontrick,* 295 F.3d 724, 735 (7th Cir.2002). However, where an appellant “raises a pure issue of law on which factual development in the bankruptcy court would cast no light, the waiver [can] be forgiven.” *Matter of Reese,* 91 F.3d 37, 39 (7th Cir.1996). The appellee does not argue that the appellant waived her argument that a horse and buggy is a motor vehicle, nor does he argue that he suffers any undue prejudice by having the Court consider the argument. The Court will therefore consider the appellants' argument that a horse and buggy is a “motor vehicle.”

The appellee provides two definitions for “motor vehicle.” Under Indiana law, a “motor vehicle” is “a vehicle that is self-propelled.” Ind.Code § 9-13-2-105. While an Indiana statute can shed some light on the ordinary meaning of a term, it does not say much about what the term means in a Congressional statute. For that, the appellee's second definition is much more helpful. Congress has conditioned federal funds to the states on the states' enactment and enforcement of repeat intoxicated driver laws. 23 U.S.C. § 164. The statute conditioning these funds defines “motor vehicle” as “a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail line or a commercial vehicle.” 23 U.S.C. § 164(a)(4). This statute is helpful in discerning the definition of “motor vehicle” in the Bankruptcy Code section excepting claims arising from the intoxicated operation of a motor vehicle because both statutes provide means of protecting people from impaired drivers.

The appellants again look to various dictionaries in support of their argument that the most accurate definition of “motor vehicle” is much broader than the appellee's. They argue that there is no question that a buggy is a vehicle, and after surveying various dictionaries, they contend that “motor” refers to “any use of energy to create motion, including through the use of muscular movement.” A horse uses energy to create motion, a buggy is a “vehicle,” so the appellants conclude that a horse and buggy is a “motor vehicle.” This analysis suffers the same defects as the appellants' attempt to characterize a horse and buggy as a “vessel.”

First, the appellants' definition is far broader than what the term “motor vehicle” is ordinarily understood to mean. Under the appellants' analysis, a person is a motor since he or she uses energy to create motion, just as a horse does, and a skateboard or bicycle would then constitute a “motor vehicle.” Yet no one would seriously argue that the everyday usage of the term “motor vehicle” includes skateboards and bicycles. The appellants' definition of “motor vehicle” also renders the terms “vessel” and “aircraft” superfluous, since without some sort of energy, those objects cannot move.

Just as with “vessel,” it is again helpful to look elsewhere in the United States Code to determine how best to define “motor vehicle” in the Bankruptcy Code section at issue. Congress's definition of “motor vehicle” as “a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways” reflects the plain meaning of the term. 23 U.S.C. § 164(a)(4). This definition is not entirely inconsistent with the definitions provided by the appellants' dictionaries, but it does not suffer the fatal flaw of being so broad as to be almost meaningless, which the appellants' definition does. A horse does not use mechanical power, and a horse and buggy is therefore not a “motor vehicle.”

C. Legislative History and Absurdity Doctrine

The appellants argue that since various dictionaries define “vessel” and “motor vehicle” in different ways, the statute is ambiguous and the Court must therefore look to legislative history to determine whether a horse and buggy qualifies as a “vessel” or a “motor vehicle.” But the fact that a term can be used in various ways does not mean it is ambiguous when the term's context illuminates which particular usage is appropriate. Given the context of the statute at issue, the terms “vessel” and “motor vehicle” are not ambiguous, at least as applied to a horse and buggy. The Court then need not, and should not, look to the legislative history to interpret otherwise unambiguous terms. This is particularly true given the many pitfalls entailed in a review of legislative history.

[T]he authoritative statement is the statutory text, not the legislative history or any other extrinsic material. Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms. Not all extrinsic materials are reliable sources of insight into legislative understandings, however, and legislative history in particular is vulnerable to two serious criticisms. First, legislative history is itself often murky, ambiguous, and contradictory. Judicial investigation of legislative history has a tendency to become, to borrow Judge Leventhal's memorable phrase, an exercise in “looking over a crowd and picking out your friends.” Second, judicial reliance on legislative materials like committee reports, which are not themselves subject to the requirements of Article I, may give unrepresentative committee members-or, worse yet, unelected staffers and lobbyists-both the power and the incentive to attempt strategic manipulations of legislative history to secure results they were unable to achieve through the statutory text.

Finally, the appellants' rely on the absurdity doctrine to argue that interpreting “vessel” and “motor vehicle” as not meaning “horse and buggy” leads to the absurd result that the appellee can escape their negligence claims. While there is an argument that such a result is unjust, the appellants fail to demonstrate how the result is *absurd.* Congress did not enact a statute that made all negligence claims that arise from intoxicated behavior non-dischargeable. They limited the nondischargable claims to those that arise from the intoxicated operation of a motor vehicle, vessel, or aircraft. Under the Court's reading of the statute, the appellants are left in the same position as all other creditors whose claims arise from the negligent behavior of intoxicated debtors but are dischargeable in bankruptcy.

If this result can be said to be absurd, it is an absurdity that only Congress can remedy. Perhaps Congress should never allow any negligence claims to be discharged (or at least those caused by intoxication), or perhaps Congress should make even more claims dischargeable in order to allow more people the fresh start afforded by bankruptcy protection. This is a policy debate that is most appropriately resolved by an elected legislature, not the courts. This Court is only empowered to decide whether a horse and buggy is a “vessel” or a “motor vehicle.” It is neither.

Because the horse and buggy is not a vessel, the debt is dischargeable in bankruptcy. Discuss with the students whether the intent was to keep those off the road who were intoxicated, regardless of the type of vehicle they were in. The extent of the injuries indicates that a horse and buggy can cause just as much damage as an intoxicated driver of a regular vehicle. *Young v. Schmucker,* 409 B.R. 477 (N.D. Ind. 2008).

8. Laws involved with Paris: DWI – state criminal laws; Driver’s license – state laws, regulations of the Department of Motor Vehicles; Procedural laws for court process and commutation; U.S. Constitution for trial and process; California Constitution and statutes for whether governor can commute sentence; California laws would appear on the pyramid under state laws and state constitution and state regulations; Governor could commute sentence if authorized under California law.

These are criminal laws. They could be misdemeanor or felony charges, depending upon the nature of California laws. The laws that contain the provisions on DUI and DWI are substantive laws. The laws that determine her sentencing, hearing, and other process rights are procedural laws. Civil laws would be involved only if she had injured someone or property of another whilst driving DUI or DWI. The laws could be local traffic laws (ordinances) or state statutes. They could also be county laws. The procedural laws that apply to the court and judge sentencing her could be local, county, or state courts. The laws would be enacted by the state legislature or the city council or county commissioners, depending on their level. These are public laws. Conceivably, a pardon is possible. Such would be an executive order at a state level.

9. a. Traffic law on speeding – substantive laws; governs what constitute traffic violation

b. Small claims court rules – procedural laws; governs how the court proceeds

c. Evidence – procedural law for trials

d. Labor law – has both substance and procedure

e. Securities – has both substance and procedure

10. The layers of law involved are:

a. State laws.

b. State regulations.

c. Federal regulations.

d. Court system and procedural laws.

e. Food labeling laws which can be state laws, federal laws, and federal and state regulations.

**ECONOMICS, ETHICS, & THE LAW: THE COST OF CORPORATE WRONGDOING**

a. Violations of laws and regulations have an immediate impact on a company’s share price. In the case of product liability, the result can be bankruptcy.

b. The authors found that for five years after the legal or regulatory misstep there was a continuing downward impact on earnings, asset growth and returns.

c. The market is forgiving and share price does rebound after the initial impact, but other financial factors remain depressed. Companies have difficulty recovering.

d. The financial costs are that the market capitalization decreases, risk increases, and the cost of raising funds goes up – even with private lenders because the company is perceived as a higher risk.  The stock price suffers because investors are wary.  The company may be undervalued temporarily but it is difficult to overcome the market perception once there is trouble at the company.  Other financial costs include the penalties and the litigation.

**INTERACTIVE/COOPERATIVE LEARNING EXERCISES**

1. Ask students to find a copy of a local ordinance that has affected them.

2. Have students bring in a copy of a lease, sales contract, or credit agreement and list the following: What laws are involved in the contract (list any statutes specifically mentioned)? How will disputes on the contract be resolved?

3. Ask students to analyze the following hypothetical situation in light of their studies of jurisprudence.

Emma Frank is a cashier at Grocery Bin. Emma is on warning because she has made too many errors at her register. The Walters’ family has a large order Emma checks through for them. She fails to charge them for a large cut of meat. Mrs. Walters notices it and returns to Emma to pay for it. Emma explains, “Just take it. If I have to ring it through I’ll need my supervisor’s approval and I’ll be fired.”

If you were Mrs. Walters, what would you do?

**SUPPLEMENTAL READINGS**

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