Chapter 1
Introduction to Law
Here’s a question: what is Law? If you’ve already started reading chapter 1, and I hope you have, then you might have noticed that, number one, there are no definitions in the margins of this textbook; and number two, there is no definition of law anywhere in chapter 1. In fact, there is no definition of law anywhere in your book. There’s a glossary in the back, but there’s no entry for law.

So what do you think: What is law? (class discussion)

Now we’re going to do our first small group assignment. Break into groups. Recommended size is 2 to 4, but if you want to do it by yourself that’s OK, too. Four is the max.

Each group will need AT LEAST one textbook or textbook printout.
Before the Norman conquest in 1066, justice in England was administered primarily by county courts, presided over by both the local bishop and the local sheriff, or “shire reeve.” So the church had an important role and substantial influence in the legal system.

In 1154, Henry II became the first Plantagenet king. Henry created a unified system of law "common" to the country, ending local control and the legal peculiarities of the individual English counties. He developed the practice of sending judges from his own central court to hear the various disputes throughout the country. His judges would resolve disputes on an ad hoc basis according to what they interpreted the customs to be. The king's judges would then return to London and often discuss their cases and the decisions they made with the other judges. These decisions would be recorded and filed. In time, a rule, known as stare decisis (also commonly known as precedent) developed, which is where a judge would be bound to follow the decision of an earlier judge; he was required to adopt the earlier judge's interpretation of the law and apply the same principles promulgated by that earlier judge if the two cases had similar facts to one another. It was through this system that the law gradually became more consistent across the country. Hence the expression “common law.”

The House of Plantagenet ruled until 1485.

Henry de Bracton published his famous “On the Laws and Customs of England” in 1250, about 100 years after the establishment of the House of Plantagenet.
Stare Decisis:
Also known as *the doctrine of precedent*, its literal meaning in Latin is “Let the decision stand.”
The doctrine of precedent says that similar types of cases should have similar legal outcomes.

It says that if the facts of this case are the same as the facts of a past case ruled upon by an appellate court in our jurisdiction, which usually means “our state” but could mean “our federal court circuit,” then the current trial court must reach the same conclusions of law.

The current trial court need not reach the same conclusions of fact, but they must reach the same conclusions of law. Conclusions of law are answers to issues of law. Issues of law are questions that begin with the words “Does the law require that” and end with the words “under the facts established in this case.”

If our legal system did not follow the doctrine of stare decisis, then common law would not be a separate source of law. The old Roman system of law in ancient Rome was a system based on legal codes. Common law was not a source of law in that system. Our system is based on the English system of law, in which common law is a MAJOR source of law. Such a system is called a “common law system.”
The definition of precedent in your textbook on page 6 is a little funny. I would like to clear it up by giving you TWO definitions of precedent…(read slide.)
Two Types of Legal Rules

1. **Substantive rules:** Rules that state (list) things people legally can’t do and/or things people legally must do in a wide variety of settings.

2. **Procedural rules:** Rules that govern the behavior of the participants in the civil litigation and criminal prosecution processes.

Your book doesn’t do a great job of explaining the difference between substantive legal rules and procedural legal rules on pages 6-7, so I would like to spend more time on that here in lecture in an attempt to make it clearer.
You can’t murder someone anywhere. You can’t murder them on the street and you can’t murder them in a courtroom. Substantive rules are rules that are applicable in a wide variety of settings.

Examples of Substantive Legal Rules

1. You can’t murder people.
2. You can’t rape people.
3. You may not drive faster than 35 miles per hour on Stevens Creek Boulevard. If you do, and you’re caught, the fine will depend on your speed. (Et cetera, et cetera.)
Examples of Substantive Legal Rules

4. You can’t punch people in the nose for no good reason.

5. You have to be careful when you drive a car, and you have to pay compensatory damages to any victims you injure while negligently driving a car.
Examples of Substantive Legal Rules

6. If you have income above a certain amount, you must pay both federal and state income taxes on that income, according to certain (detailed) rules and schedules.
Examples of Procedural Legal Rules

1. Any evidence the state obtains against you (for use in a criminal trial) by searching your home without a search warrant when one is required shall be inadmissible in a court of law.

2. However, you or your attorney must file a “motion to suppress” (the evidence) on a timely basis for the above rule to be applicable.

1. Procedural rules govern the actions of the police investigating a criminal lawsuit.

2. They also govern the actions of the judge and the things the defendant’s attorney must do in order to secure his or her client’s legal rights in these cases.
Examples of Procedural Legal Rules

3. If you are the defendant and you fail to appear at a hearing to which you have been called, the judge is permitted to enter a “default judgment” against you.

4. If you file a civil lawsuit after the “statute of limitations” on the harm done to you has run out, and if the defendant files a timely motion to dismiss on that basis, then the court must dismiss your case.

2. They govern the actions of the defendant and the options of the judge in certain situations,

3. And the required actions of both the plaintiff and the judge in other situations.
Examples of Procedural Legal Rules

7. The jury instructions the judge MUST read to the jury at various points during the trial.

8. All the rules of evidence, including what types of questions may and may not be asked of witnesses during a trial.

9. Rules judges must follow in deciding whether to grant motions.
Examples of Procedural Legal Rules

10. Rules appeals courts must follow in deciding whether to grant an appeal; and if the appeal is granted, whether to affirm or reverse the trial court’s ruling.

11. (Medieval England) What type of *writ* the plaintiff must bring to the court for each type of case.

11. And a writ was what? (Answer: A document from the government ordering the court to hear the plaintiff’s case. It was like permission to use taxpayers’ money to have your case heard.)

By the way, England’s medieval period ran from about 476 A.D. to about 1453 A.D.
The Oculist’s Case (1329)

What were the facts that led to this case?

What are facts?

They are generally either

1. Things which occurred in the past, or
2. Actual properties of things, either past or present.

The Oculist’s Case summary appears on page 7. It was heard in England toward the end of the medieval period.

Usually, the first question we want to answer when trying to understand a case is “what were the facts that led to this case?” In law, the word “facts” generally means either “things which occurred in the past” or “actual properties of things, either in the past or the present.”
The FACTS that led to this case were as follows. Both the plaintiff and the defendant agree as to these facts.

READ SLIDE.
In law, issues of fact are questions about the facts. For example, if a contract has a hard-to-read cursive signature at the bottom of it, and the defendant claims that’s not her signature but the plaintiff says that IS the defendant’s signature, then one of the issues-of-fact in that case would be “is that or is that not the defendant’s signature?"

In The Oculist’s Case, one of the issues of fact is “Did the herbs and/or other medicines cause the patient’s blindness, or was the blindness caused by the original illness?”
Issues of law are generally Questions about what the law requires in a given situation. Issues of law are generally asked and answered by the judge. As students of the law, it is important for you to learn how to identify both the issues of law and the issues of fact for a given case, and to be able to distinguish between the two.

In most of the case summaries in this book, the central legal issue will be listed as part of the case summary format. However, for The Oculist’s Case, the central legal issue is not listed.

The central legal issue for The Oculist’s Case is probably “Does the law require that this doctor pay a sum of money to this patient under the facts that have been established in this case?”
The Oculist’s Case (1329)

What was the central legal issue in this case?

Answer:

✓ Does the law require that this doctor pay a sum of money to this patient under the facts that have been established in this case?

So, to summarize: READ SLIDE. Then say:

To say that “facts have been established” is to say either that both the plaintiff and defendant AGREE on the facts, or that the finder of fact, which is usually a jury, is persuaded based on the evidence that a particular assertion by one of the parties is correct.

Most real cases have both a central legal issue and a number of subsidiary legal issues.
The Oculist’s Case (1329)

What subsidiary legal issue is raised by the attorney for the defense, Mr. Launde?

This case had one subsidiary legal issue in addition to the central issue. What was it?
The Oculist’s Case (1329)

What subsidiary legal issue is raised by the attorney for the defense, Mr. Launde? Answer:

✓ Does the law require that the judge dismiss this case on the basis that the plaintiff has obtained the wrong kind of writ?

Answer: Does the law require that this judge dismiss this case on the basis that the plaintiff has obtained the wrong kind of writ?

Specifically, Attorney Launde argues that the plaintiff SHOULD HAVE BROUGHT A BREACH OF CONTRACT lawsuit against the defendant, rather than a “trespass to person” case. The old English expression for breach of contract was “breach of covenant,” and the new, modern law expression for “trespass to person” is “tort case.”

This type of argument is called a PROCEDURAL ARGUMENT. A procedural argument is an argument of the form “The opposing side did not follow the required PROCEDURES for resolving legal disputes, therefore my client should win this lawsuit.”

Is the judge persuaded by Attorney Launde’s procedural argument?

How would you be able to tell whether the judge had been persuaded by Attorney Launde’s procedural argument?

The answer is that the defendant would have won the case, and the judge would have given, as his reason, the exact argument that Attorney Launde put forth.
Here is the case summary from your textbook. It is found on page 7.

We can only DEDUCE from what we are given that Judge Denum was unpersuaded by Attorney Launde’s procedural argument. If he had been persuaded, his opinion would have said “case dismissed by reason that plaintiff has brought the wrong kind of action in this case, and has no legal remedy under the action brought,” or words to that effect.

What he DOES say is rather peculiar. As the textbook puts it, Judge Denum’s decision is written in a very “informal” style. He rather casually mentions that he came across two similar cases and that his decision today would be similar to the decisions reached in THOSE cases. This is because the idea of precedent is just beginning to take hold in England in 1329. Judge Denum decides the current case in a way that is consistent with the two earlier cases because it makes sense to him. In modern law in both England and the United States, judges are REQUIRED to make their rulings consistent with the prior case decisions of appellate court judges within their court system.
There are four main sources of contemporary law.

READ SLIDE.

Let’s go through each one.

ADVANCE SLIDE.
First, it establishes the federal government with its three branches. It caused that government to be born out of nothingness into the world the day it was ratified by the states.

Second, it declares that any powers not given to the federal government by the Constitution itself fall to the states or the people. If the framers of the constitution forgot to put it on the list of FEDERAL powers, then by default the federal government is NOT PERMITTED to regulate that particular area of human behavior. Either the states may regulate it or no one will regulate it.

And third, it guarantees the people certain rights. Most of these guarantees are found in the AMENDMENTS to the constitution. Did you know that the constitution was originally ratified WITHOUT any amendments? The first TEN amendments are called “the bill of rights,” and were added about 2 years later. We will learn more about that in chapter 5.
The Federal Constitution

✓ What does “the Federal Constitution is the supreme law of the land” mean?

✓ Does the complete text of the U.S. constitution appear in your textbook?

The Federal Constitution is the “supreme law of the land.” What does that mean? It means that if there is a conflict between the U.S. constitution and any law from any of the other 6 sources, the U.S. constitution will win.

Does the complete text of the U.S. constitution appear in your textbook?

Yes. You will find it in appendix A of your textbook. Check it out sometime. It’s not very long. You might find it kind of interesting.

1. State constitutions are similar to the federal constitution, in that they cause a new government to be born into existence when they are ratified. Thus, the fact that each state in the United States HAS a constitution is PROOF that our system of government is one of FEDERALISM, in which multiple sovereigns share concurrent and overlapping authority to govern the citizens of a given country.
2. What are statutes? Who has the authority to write and pass them?

Statutes are laws passed by a legislative body. A legislative body is a body of government whose job it is to pass new laws. That's all they do. All day long. Other governmental bodies have other jobs. Legislative bodies SPECIALIZE in creating new laws. At the federal level in the United States, the legislative body is called the United States Congress. It is composed of two houses: a Senate and a House of Representatives. At the state level, in California, the legislative body is called the California Legislature. It too is composed of two houses: the Senate and the Assembly.
So common law comes from APPELLATE COURT JUDGES, whereas statutory law comes from LEGISLATURES. That is why we say these are different SOURCES of law.

What gives the past decisions of appellate courts binding legal power?

The answer is “the doctrine of stare decisis.”
Finally, last among our five MAIN sources of law is ADMINISTRATIVE LAW. These are regulations published by federal and state administrative agencies. Federal and state administrative agencies are bureaucratic departments of the government assigned the task of regulating a narrow range of human behavior. For example, the Internal Revenue Service is a federal agency assigned the task of collecting federal income taxes from all individuals and businesses in the United States. They are not allowed to publish regulations that limit the size of the fish that people are allowed to catch in America’s lakes and rivers, but they are CERTAINLY allowed to publish new regulations specifying how people must or may prepare their tax returns. The California Department of Fish and Game, on the other hand, is a STATE agency which is allowed to write and publish new regulations on the number and size of various types of fish that people are permitted to catch, per day, in various rivers, lakes, and other bodies of water throughout California. But they would NOT be permitted to publish new regulations governing how people must prepare their tax returns.

Agencies must also go through certain PROCEDURES before new regulations they have written can become effective, and we will learn a bit more about THOSE in chapter 4.
1a. Can state governments make treaties with other nations?

No. It says right in the U.S. Constitution that only the federal government can make treaties with other nations, or with Indian tribes.

1b. Who within the federal government is permitted to make treaties? Are members of Congress permitted to make treaties?

The answer is: only the President of the United States may make treaties with other nations on behalf of the United States.

1c. If the President makes a new treaty, is that it? Does anyone else have to approve that treaty?

Do you know? The answer is that the U.S. Senate must ratify each treaty made by the President. If the Senate disagrees, then the President may go back to that country and try to negotiate a NEW treaty with different terms. But the President is powerless to override the Senate if they choose not to ratify a given treaty with given terms.

What are Executive orders?

They are orders issued by the President or a governor in pursuit of the fulfillment of their duties. President Roosevelt’s order to round up Japanese Americans and put them in internment camps during WWII was an executive order. Not one which most Americans are very proud of. Also, we’re going to learn about Youngstown Sheet & Tube in chapter 5. That was the first time a court ruled on the legality of an executive order. Before that, U.S. Presidents had always kept them pretty non-controversial, and so nobody was quite sure how far he could go with them, because a President had never been legally challenged regarding the constitutionality of an executive order. Executive orders are not supposed to create NEW law. They are supposed to play a more subsidiary role of helping the President to carry out the laws that Congress has passed.

We’ll learn a LITTLE more about executive orders in chapter 5.
What are principles of equity? In medieval England, common law rules were technical and rigid, and the remedies available in common law courts were very limited. As a result, separate equity courts evolved to hear cases that the common law courts could not resolve fairly. These courts were overseen by the Lord Chancellor, a powerful member of the King’s Council. The Court of Chancery, as it was called, had unique, flexible powers; and they specialized in LEGAL EQUITY; that is, in finding some way to produce a FAIR solution based on the facts presented to them by the parties. This more creative use of a court’s power became known as a court’s EQUITY powers. Today, in most states, there is no separate court of Chancery. But there are separate PRINCIPLES OF EQUITY that will be applied by the judge if the plaintiff is seeking one of the EQUITABLE REMEDIES. Some of these principles can be expressed as LEGAL MAXIMS. Legal maxims, if you ever hear about those, generally apply to equity proceedings only.

An example of a legal maxim is “where there is a right, there must be a remedy.” This maxim was invented when the equity courts were new. They used this maxim to justify their invention of new and creative remedies to solve problems of justice.
1. What’s wrong with this sentence?: “The court found Sheila guilty of breaching the contract.”
   The answer is that breach of contract is a civil wrong, not a criminal one. You can NEVER be found GUILTY of breaching a contract. You can be found LIABLE for breach of contract, but you cannot be found GUILTY for it, and it is not the same thing. Guilty and not guilty are verdicts found in ONLY IN CRIMINAL TRIALS.

2. Which is this course mostly about, do you think: criminal law or civil law?
   The answer is civil law. More than half this course is contracts and contracts are all civil law. We only do one chapter on criminal law: chapter 7.

3. Can the same person stand trial twice for the same act?
   The correct answer is Yes. As we shall learn in chapter 5, one of the protections we get from the U.S. Constitution is that a person can never stand trial in CRIMINAL COURT for the same act in the world more than once. But that does not prevent the person from being prosecuted by the government for their violations of criminal law; and, in a separate court proceeding, being sued by one or more persons for the INDIVIDUAL HARMs caused by their violation of the criminal law. That’s what happened to O.J. Simpson. He had to stand trial twice for the murder of Nicole Brown Simpson. Once was a criminal trial in which the charge was murder, and the other time was a wrongful death lawsuit filed by the parents of Nicole Brown Simpson in civil court. These two trials CAN NOT be combined into one, because the burdens of proof are different, and the procedures used are different between criminal courts and civil courts.
Here is an overview of some of the important differences between criminal law and civil law in the United States today.

Criminal laws outlaw acts that are deemed to harm the entire society. Rape and murder are deemed criminal acts. The theory here is that if one person in our community is raped or murdered, the person who did it has harmed all of us. Criminal behavior is behavior so reprehensible that just the knowledge that it is occurring in our community harms us.

Civil laws outlaw acts that harm just one or more individuals. On this slide I have said “only one or a few are harmed,” but actually, it could be hundreds, or even thousands of people that are harmed and it might still be a civil lawsuit. A civil wrong is most often a one-on-one wrong – like hitting a pedestrian with your car, or punching someone in the nose, or getting into a contract with someone and then not doing any of the things you promised you would do in the contract, but occasionally you will have class action civil lawsuits where hundreds of people who were harmed by the same act collectively sue the person or persons who harmed them.

In a CRIMINAL lawsuit, the plaintiff – the one bringing the lawsuit or requesting the court hearing – is always an entity of the government. It can be a STATE government or the United States FEDERAL government. In a CIVIL lawsuit, the plaintiff is almost always an individual, or a group of individuals. There are a few exceptions where the government is the plaintiff in a civil proceeding. We will learn one of those exceptions in chapter 5.

One of the biggest differences between civil and criminal law is that, generally speaking, filing a civil lawsuit is the only way to get money to compensate you for the harms you suffered when the defendant committed a civil wrong against you. In rare cases, the defendant in a criminal lawsuit may be ordered to pay reparations to the victim, but generally speaking any victim of a crime will have to file their own civil lawsuit in order to obtain any money from the person who harmed them.

The verdicts guilty and not guilty are ONLY FOUND in CRIMINAL lawsuits. In civil law, the corresponding verdicts are liable and not liable.

The expression “burden of proof” has two meanings. It can mean “WHO must prove that the defendant broke the law,” or it can mean “how thoroughly must the jury be convinced that the law has been broken?” The answer to the first question is always “the plaintiff.” But the answer to the second question differs between criminal law and civil law.

In criminal law, the plaintiff – also known as the prosecution – must persuade the jury BEYOND A REASONABLE DOUBT that the law has been broken and that the defendant is the person who broke it. In civil law, the plaintiff need only convince the jury that the law has been broken “by a preponderance of the evidence.” This means “the majority of the evidence.” This COULD be interpreted to mean “51% or more of the evidence” or “the jury was 51% convinced or more.” Courts generally DISLIKE percentages like this, but for beginners like you, thinking of the preponderance of the evidence as being 51% of the evidence or more is a good way to think about it.

There is no specific percentage for “beyond a reasonable doubt,” but it has often been paraphrased as “proof that is entirely convincing.” That sure sounds like something in the 90%-plus range to me. Is it 95%? 97%? 98%? 99%? No one knows. Each criminal jury has to decide for themselves whether the evidence they have seen has convinced them “beyond a reasonable doubt” that the defendant is guilty. But clearly it requires proof that is far more convincing than that which is required to win a civil trial.
Here are a few examples of criminal wrongs and civil wrongs in American society today. Burglary is breaking into someone else’s home or business for the purpose of committing a crime there, such as stealing something. Larceny is stealing something that was not in your possession. Embezzlement is stealing something that WAS lawfully in your possession. Notice that possession and ownership are not the same thing. If you are a bank teller or a retail cashier, the money in your cash drawer is in your possession, but it doesn’t belong to you. If you slip some of it into your purse or pocket, you have committed embezzlement, not larceny. Assault is acting in a way that causes someone to expect that you will seriously injure them in a few seconds, such as swinging your fist toward someone’s nose. Battery is deliberately injuring someone via a physical contact with their body, either with your fist, or with an object, such as a stick, rock, baseball bat, or bullet. So in the preceding example, if your fist actually makes contact with the person’s nose, then you have committed battery against them, but if you stop your fist a quarter inch from their nose, you have not committed battery, but you have still committed assault against them.

Negligence means harming someone by accident, like if you’re driving while talking on your cell phone and you hit someone who was crossing the street in a crosswalk, that would be both negligence and battery. Notice that assault and battery are both criminal wrongs and civil wrongs. They are defined ever-so-slightly differently in the two bodies of law, but the key differences will be who

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brings the lawsuit and what are the available remedies. It is quite common for someone to be brought up on CRIMINAL charges for assault and battery and to be also SUED by the person they committed the assault and battery AGAINST. In these cases, the defendant must stand trial twice: once in criminal court and again in civil court.
Jurisprudence is the study of the theory and philosophy of law. Scholars of jurisprudence are sometimes called “legal philosophers.”

Your book contains a brief introduction to these three schools of jurisprudence on pages 13 to 15.
Schools of jurisprudence answer questions like these:

1. What is law?
2. Where does it come from?
3. How can we tell if a law is valid?
4. When should a law be obeyed and when should it not be obeyed?

Not all schools of jurisprudence attempt to provide an ANSWER to ALL of these questions, however, as we shall see. Some choose to answer some questions and remain silent on the others.
Legal Positivism

✓ How does Legal Positivism answer the question “What is law?”
Legal Positivism

✓ How does Legal Positivism answer the question “What is law?”

Answer:

“Law is what the sovereign says it is.”
Legal Positivism
✓ How does Legal Positivism answer the question “Where does law come from?”
Legal Positivism

✓ How does Legal Positivism answer the question “Where does law come from?”

Answer:

“Law comes from the sovereign.”
Legal Positivism

✓ How does Legal Positivism answer the question “How can we tell if a law is valid?”
Legal Positivism

✓ How does Legal Positivism answer the question “How can we tell if a law is valid?”

Answer:

“A law is valid if it comes from the sovereign, and invalid if it does not.”
The Natural Law School
St. Thomas Aquinas (1225-1274) argued in his *Summa Theologica* that
✓ An unjust law is no law at all, and need not be obeyed.
✓ It is not enough that a sovereign makes a command. The law must have a moral basis.
The Natural Law School
✓ How does the theory of Natural Law answer the question “What is law?”
They go on to say that there is a large degree of overlap between the two types of law. Most of the things that are illegal under man’s imperfect law are also illegal under moral law. This is called “The Overlap Theory.”
This is a picture of the overlap theory, although it is not drawn to scale. Natural law theorists argue that most of the two sets are overlapping. I have drawn the portion of the sets that do NOT overlap LARGER, ONLY so that I could fit more words into those portions. This diagram is NOT DRAWN TO SCALE.

I think most people in American society today would agree that slave ownership is morally wrong, and that it was morally wrong in the United States in the 1820s, even though it was LEGAL at that time. If you were a PURE ADHERENT of natural law theory, then you would have viewed it as your moral duty to vigorously oppose slavery in 1820s America. Not only would you not have OBEYED that law, you would have actively OPPOSED it.

Similarly, Rosa Parks’ refusal to sit in the back of a public bus in Alabama in 1955, for which she was arrested and jailed was, many would say, perfectly MORAL behavior, even though it was ILLEGAL at the time, according to the man-made laws published by the sovereign state of Alabama.

The same could be said of Mathatma Gandhi’s deliberate public violation of the salt tax act in India in 1930. Many would say his actions were MORAL, even though they were ILLEGAL as defined by the British sovereign.

The rule “thou shalt not kill” is just ONE example of a rule that is found in both MORAL law and man-made law.
The Natural Law School

✓ How does the theory of Natural Law answer the question “Where does law come from?”
The Natural Law School

✓ How does the theory of Natural Law answer the question “Where does law come from?”

Answer:

“It comes from outside man. From nature.”
The Natural Law School

✓ How does the theory of Natural Law answer the question “Which laws are valid?”
2. And if they are consistent with moral law, they are just.
3. If they are inconsistent with moral law, they are unjust and need not be obeyed.
Advocates of the philosophy of legal realism argue that the only real way to discover what the LAW is in a given society at a given time is to study how people from different social and economic backgrounds are actually TREATED by the legal system. Thus, they would argue that the LAW is something MORE than just the written laws that have been PUBLISHED. That the law is some kind of net result or net effect of written laws, human biases, inadequate funding for the legal system or the penal system, corruption, human frailty and prejudice, and much, much more. They would say that you cannot find out what the law is just by reading the laws passed by Congress or the state legislatures. You would need to study legal outcomes, and measure how those outcomes differ for people of different incomes, ethnic backgrounds, educational backgrounds, et cetera.
Legal Realism: What is Law?

Law is a combination of written rules, institutions, procedures, and the biases of human beings. It is the sum total of everything that contributes to legal outcomes.

Here’s how I think they would answer the first question.
Here’s how I think they would answer the second question.
As far as I know, the school of legal realism makes no attempt to answer either of these two questions. It has “no comment.” The purpose of the legal realism school is to bring attention to the importance of human frailty, biases, and prejudices in determining legal outcomes. They are not interested in providing an answer to either of these two questions. They leave these questions to other philosophers.

In chapter 1, we learn 5 MAIN sources of law and two MINOR ones.

What are the 5 main sources of law?
Let’s take a look at our next case. It is called Kuehn versus Pub Zone. It is a negligence case. You will find the case summary on pages 16-17 of your textbook.

READ SLIDE
Kuehn v. Pub Zone

✅ The appeals court in the state of New Jersey overruled the trial court’s decision, and reinstated the jury’s $300,000 verdict.

✅ They said the injury was foreseeable because Kerkoulas had reason to believe the Pagans were dangerous.

READ SLIDE, then add
... from the police pamphlet and from her conversations with the owner of the nearby bar.
Kuehn v. Pub Zone

✓ The Pub Zone had a duty to Kuehn and all its other patrons to call the police when the Pagans pushed past its bouncer wearing colors.
✓ Had they done this, it is likely that Kuehn would not have been beaten up at the Pub Zone.

READ SLIDE.
Just an interesting side note: Shortly after Kuehn was beaten up, the Pub Zone went out of business. People stopped coming, apparently because they felt the bar wasn’t a safe place to go anymore, because they had heard about the attack on Mr. Kuehn. So at the time of the trial, the Pub Zone was already out of business, but the insurance policy they had purchased was still valid for any breaches of duty that might have occurred while the bar was still in business, so it was actually the insurance company that had to pay.
James v. Meow Media

✓ How many think the appellate court found for the parents of the victims? Why?
✓ How many think the appellate court found for the producers of the video games? Why?