Chapter 1
Introduction to Law

Class Discussion:
What is Law?

English Legal History

<table>
<thead>
<tr>
<th>Period</th>
<th>Timeframe</th>
<th>Highlighted legal feature</th>
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<tbody>
<tr>
<td>Anglo-Saxon</td>
<td>410 – 1066 A.D.</td>
<td>Bring oath-helpers to swear your facts are correct</td>
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Stare Decisis:
Also known as the doctrine of precedent, its literal meaning in Latin is “Let the decision stand.”

The Doctrine of Precedent
✓ It is a policy that similar types of cases should have similar legal outcomes.
✓ 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, then the current trial court must reach the same conclusions of law.

Precedent:
1. A legal doctrine (policy) requiring judges to decide current cases based on previous rulings.
2. A ruling in a previous case with facts similar to or identical to the current case.
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.

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.)

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.
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.
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.

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.

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 (1329)

What were the facts that led to this case? Answer:
An Englishman went to see a doctor, seeking treatment of his eye. The doctor used “herbs and other medicines” to treat the eye, and the patient subsequently became blind in that eye.

Issues of Fact

Questions about the facts. Examples:
✓ Is that, or is that not the defendant’s signature?
✓ Did the herbs and/or other medicines cause the patient’s blindness, or was the blindness caused by the original illness?

Issues of Law

Questions about what the law requires in a given situation. Example:
✓ 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?**

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?**
The Oculist’s Case (1329)

Case Summary:

Attorney Lusade [the defendant]: Sir, you plainly saw how [the plaintiff] claimed that he had submitted himself to [the defendant’s] medicines and his care; and after that he was seized no trespass in his person, time nor to he submitted himself to his care: but this action, if he has any, sounds naturally in breach of covenant. We demand that the case be dismissed.

Example from Judge Dennis’s Decision: I saw a Newcastle man arraigned before my fellow justice and one for the death of a man. I asked the reason for the indictment, and it was said that he had slain one under his care, who died within four days afterwards. And because I saw that he was a doctor and that he had not done the thing intentionally but accidentally I ordered him to be discharged. And suppose a blacksmith, who is a man of skill, injures your horse with a nail, whereby you lose your horse; you shall never have recovery against him. No more shall you have. Afterwards the plaintiff did not wish to pursue his case any more.

Sources of Contemporary Law

✓ Federal and state constitutions
✓ Federal and state statutes
✓ Common law
✓ Administrative law

The Federal Constitution does 3 basic things

✓ Establishes the federal government
✓ Declares that any powers not expressly given to the federal government by the Constitution fall to the states or the people.
✓ Guarantees the people certain rights.
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?

Statutes

✓ Laws passed by a legislative body
✓ Legislative bodies:
  • U.S. Congress
  • California State Legislature

Common Law

Judge-made law, embodied in the decisions made by appellate courts over the years.
✓ What gives the past decisions of appellate courts legal power?
  Answer: The doctrine of *stare decisis*. 
Administrative Law
Regulations “promulgated” by federal and state administrative agencies.
✓ Have the full force and effect of law, provided the agency is operating within the scope of the powers granted to them by the legislature.

Other Sources of Law
1. Treaties: Contracts between sovereign nations.
2. Executive Orders: Orders issued by the President or a governor in pursuit of the fulfillment of their duties.
3. Principles of Equity

Principles of Equity
✓ In medieval England, common law rules were technical and rigid.
✓ Remedies were limited.
✓ Separate “equity” courts developed.
✓ Equity means “fairness” or “justice”.
✓ An injunction is an equitable remedy.
### Criminal law v. Civil law

- **What’s wrong with this sentence?:**
  “The court found Sheila guilty of breaching the contract.”

- **Which is this course mostly about?**

- **Can the same person stand trial twice for the same act?**

#### Table: Criminal vs. Civil Law

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<th>Criminal</th>
<th>Civil</th>
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<tr>
<td><strong>Who is harmed?</strong></td>
<td>All are harmed.</td>
<td>Only one or a few are harmed.</td>
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<tr>
<td><strong>Who is the plaintiff?</strong></td>
<td>Government prosecutes</td>
<td>Plaintiff sues</td>
</tr>
<tr>
<td><strong>What legal remedies are available?</strong></td>
<td>Jail, prison, fines</td>
<td>Money damages, equitable remedies</td>
</tr>
<tr>
<td><strong>What verdicts are possible?</strong></td>
<td>Guilty/not guilty</td>
<td>Liable/not liable</td>
</tr>
<tr>
<td><strong>What is the burden of proof?</strong></td>
<td>Beyond a reasonable doubt</td>
<td>By a preponderance of the evidence</td>
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#### Criminal Examples
- Burglary, larceny, embezzlement, rape, assault and battery

#### Civil Examples
- Negligence, breach of contract, assault and battery
Schools of Jurisprudence

- Legal Positivism
- Natural Law
- Legal Realism

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?

Legal Positivism

- How does Legal Positivism answer the question “What is law?”
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<td>✓ How does Legal Positivism answer the question “What is law?”</td>
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<tr>
<td>Answer: “Law is what the sovereign says it is.”</td>
<td>Answer: “Law comes from the sovereign.”</td>
<td>Answer: “Law comes from the sovereign.”</td>
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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?”

What is Law?
The Natural Law Theorists’ Answer
Law is not one thing, but two
1. There is the perfect law of nature that predates man, which the natural law theorists call “moral law,” and then there is
2. Man’s imperfect law, which the natural law theorists call “civil law.”

Law and Morality
LEGAL only
• Slave ownership in 1820s America
MORAL only
• Rosa Parks’ defiance of the ban against blacks sitting in the middle of the bus in Montgomery, AL in 1955
BOTH
• Thou shall not kill.
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?”
The Natural Law School

✓ How does the theory of Natural Law answer the questions “Which laws are valid?” and “When should a law be obeyed?”

Answer:
1. All moral law is valid and should always be obeyed.
2. Civil laws that are just are valid and should always be obeyed.
3. Civil laws that are unjust are invalid and need not be obeyed.

Legal Realism

Law can only be discovered by studying how real people are treated by the legal system.

✓ The written laws may be predictive of those outcomes, or they may not.

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.
Legal Realism: Where Does Law Come From?
Law comes from human beings, and not just the sovereign, but all human beings in a position to carry out a portion of the legal function within a society, including judges, members of the jury, attorneys, and police officers.

Legal Realism
...doesn’t attempt to answer these two questions!
3. How can we tell if a law is valid?
4. When should a law be obeyed and when should it not be obeyed?

Kuehn v. Pub Zone
✓ The jury awarded Karl Kuehn $300,000 in damages.
✓ But the trial court judge granted a “judgment notwithstanding the verdict” motion, handing victory to the Pub Zone.
✓ Mr. Kuehn appealed.
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.

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.

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?