
CHAPTER 1

INTRODUCTION TO LAW AND LEGAL REASONING

ANSWER TO CRITICAL ANALYSIS QUESTION IN THE FEATURE

INSIGHT INTO E-COMMERCE—CRITICAL THINKING—INSIGHT INTO THE SOCIAL ENVIRONMENT (PAGE 17)

Now that the Supreme Court is allowing unpublished decisions to be used as persuasive precedent in federal courts, should state courts follow? Why or why not? Yes, because categorizing some decisions, unpublished or otherwise, as not establishing precedent is arguably unconstitutional. No, because such decisions are often less significant or may set “bad” precedents and have not traditionally been regarded as establishing precedent.

ANSWERS TO QUESTIONS IN THE REVIEWING FEATURE AT THE END OF THE CHAPTER

1A. Parties

The automobile manufacturers are the plaintiffs, and the state of California is the defendant.

2A. Remedy

The plaintiffs are seeking an injunction, an equitable remedy, to prevent the state of California from enforcing its statute restricting carbon dioxide emissions.

3A. Source of law

This case involves a law passed by the California legislature and a federal statute; thus the primary source of law is statutory law.

4A. Finding the law

Federal statutes are found in the *United States Code*, and California statutes are published in the *California Code*. You would look in these sources to find the relevant state and federal statutes.

ANSWERS TO QUESTIONS AND CASE PROBLEMS AT THE END OF THE CHAPTER

1-1A. (Chapter 1—Pages 6–7, 8–9 & 13–14)

Common law developed in the judicial system of England and its colonies before 1776. Statutory law refers to the body of law that is enacted by state and federal legislatures. Common law is not in any particular form; it consists of quotable statements taken from relevant opinions by prior judges, as well as ancient statutes, and is often summarized in legal treatises. Statutory law is found in the current published laws of each jurisdiction and is relatively concise. Although most states have adopted common law by legislative decree, state legislatures do not feel obligated to pass statutes consistent with common law, and inconsistent statutes supersede common law. Only in areas in which the legislature has not acted does common law serve as the primary authority. For example, the adoption of the Uniform Commercial Code in each state changed some rules of common law previously in effect.

1-2A. QUESTION WITH SAMPLE ANSWER

At the time of the Nuremberg trials, “crimes against humanity” were new international crimes. The laws criminalized such acts as murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population. These international laws derived their legitimacy from “natural law.” Natural law, which is the oldest and one of the most significant schools of jurisprudence, holds that governments and legal systems should reflect the moral and ethical ideals that are inherent in human nature. Because natural law is universal and discoverable by reason, its adherents believe that all other law is derived from natural law. Natural law therefore supersedes laws created by humans (national, or “positive,” law), and in a conflict between the two, national or positive law loses its legitimacy. The Nuremberg defendants asserted that they had been acting in accordance with German law. The judges dismissed these claims, reasoning that the defendants’ acts were commonly regarded as crimes and that the accused must have known that the acts would be considered criminal. The judges clearly believed the tenets of natural law and expected that the defendants, too, should have been able to realize that their acts ran afoul of it. The fact that the “positivist law” of Germany at the time required them to commit these acts is irrelevant. Under natural law theory, the international court was justified in finding the defendants guilty of crimes against humanity.

1-3A. (Chapter 1—Pages 16 & 18–19)

The court’s opinion in this case—*Menashe v. V Secret Catalogue, Inc.*, 409 F.Supp.2d 412 (S.D.N.Y. 2006)—can be found in volume 409 of West’s *Federal Supplement*, Second Series, on page 412. The United States District Court for the Southern District of New York issued this opinion in 2006.

1-4A. (Chapter 1—Pages 6–7)

(a) The U.S. Constitution—The U.S. Constitution is the supreme law of the land. A law in violation of the Constitution, no matter what its source, will be declared unconstitutional and will not be enforced.

(b) The federal statute—Under the U.S. Constitution, when there is a conflict between a federal law and a state law, the state law is rendered invalid.

(c) The state statute—State statutes are enacted by state legislatures. Areas not covered by state statutory law are governed by state case law.

(d) The U.S. Constitution—State constitutions are supreme within their respective borders unless they conflict with the U.S. Constitution, which is the supreme law of the land.

1-5A. (Chapter 1—Pages 9–11)

Stare decisis is a Latin phrase meaning “to stand on decided cases.” In the King’s Courts of medieval England, it became customary for judges to refer to past decisions (precedents) in deciding cases involving similar issues. Over time, because of application of the doctrine of *stare decisis* to issues that came before the courts, a body of jurisprudence was formed that came to be known as the “common law”—because it was common to the English realm. Common law was applied in the American colonies prior to the War of Independence and was adopted by the American states following the Revolution. Common law continues to be applied today in all cases except those falling under specific state or federal statutory law. The doctrine of *stare decisis* is fundamental to the development of our legal tradition because without the acceptance and application of this doctrine, the evolution of any objective legal concepts—and thus a legal “tradition”—would have been impossible.

1-6A. (Chapter 1—Pages 21–22)

A majority opinion is a written opinion outlining the views of the majority of the judges or justices deciding a particular case. A concurring opinion is a written opinion by a judge or justice who agrees with the conclusion reached by the majority of the court but not necessarily with the legal reasoning that led the conclusion. A concurring opinion will voice alternative or additional reasons as to why the conclusion is warranted or clarify certain legal points concerning the issue. A dissenting opinion is a written opinion in which a judge or justice, who does not agree with the conclusion reached by the majority of the court, expounds his or her views on the case. Obviously, a concurring or dissenting opinion will not affect the case involved—because it has already been decided by majority vote—but such opinions may be used by another court later to support its position on a similar issue.

1-7A. (Chapter 1—Pages 9–14)

Because the common law has been adopted in most jurisdictions by state statutes, and because legislatures have given common law the same force and effect as statutes, judges should, technically, have no more authority to overrule common law than they have to overrule statutory law. Most courts and legislatures, however, do not take such a view. Courts do not always treat common law with the same deference as statutory law because common law is judge-made law, and therefore the courts feel that it can be changed by judges.

1-8A. (Chapter 1—Pages 10–11)

In the American legal system, a court can depart from a precedent if it decides that the precedent should no longer be followed. A court can overturn a statute that it believes is in violation of the Constitution. If there is no precedent on which to base a decision, a court must establish the law on the question at issue. In all of these instances, the court’s role is to “make the law.” In support of the court’s role, it may be pointed out that

technological or social changes can outdate a precedent or a statute. In some cases, particularly when the foundation for a precedent was the Constitution, correction of an earlier decision through legislation is practically impossible. Courts do not lightly make use of their prerogative. Against the court's role, it may be noted that although judges attempt to be free of bias, each has a unique set of values, intellectual abilities, and philosophies that color his or her opinions. The doctrine of precedent introduces certainty into legal affairs that can lend itself to effective planning of private and business activities, provides attorneys with a settled basis from which to advise their clients, curbs the arbitrariness of judges, speeds judicial business, and reinforces our notions of justice.

1-9A. *(Chapter 1—Pages 8–9 & 21)*

(a) In a suit by Arthur Rabe against Xavier Sanchez, Rabe is the plaintiff and Sanchez is the defendant.

(b) Specific performance is the remedy that includes an order to a party to perform a contract as promised.

(c) Rescission is a remedy that includes an order to cancel a contract.

(d) In both cases, these remedies are remedies in equity.

(e) If Sanchez appeals your decision, Sanchez would be the appellant (or petitioner) and Rabe would be the appellee (or respondent).

1-10A. A QUESTION OF ETHICS

(a) Your answer to these questions and the reasons for those answers will likely follow one of the three schools of jurisprudential thought discussed in Chapter 1. In other words, your reasoning would indicate how you personally view the nature of ethics and the law. If your sentiments are similar to those of the positivist school, you would have little difficulty. Your answers would include that regardless of the necessity, or even the ethicality, of the men's actions, the criminal law of their nation should be applied. In contrast, if you hold that there is a higher, "natural" law with legal and ethical principles to which all human beings are subject, you might have concluded that, given their circumstances, the men should be subject to that higher law, not any nation's particular laws. If you reached this conclusion, then you would have to further decide whether those principles would sanction the killing of another human being for the sake of necessity—survival in these circumstances—or absolutely prohibit the taking of another's life under any circumstances. This is both a legal and an ethical question that you would ultimately answer on the basis of your personal ethical, religious, or philosophical leanings. Approaching the question from a legal realist's perspective, you would probably attempt to balance your personal, subjective view of the men's actions against the views held by the others—how do most people feel about the issue? How would they respond to whatever your decision might be? As a judge, do you have an obligation to be responsive to society's ethical standards? If so, to what extent should this obligation be a determining factor in your decision, and how do you balance this obligation against your duty to uphold the law?

(b) The legal realists believed that, just as each judge is influenced by the beliefs and attitudes unique to his or her personality, so, too, is each case attended by a unique set of circumstances. According to the legal realist school of thought, judges should tailor their decisions to take account of the specific circumstances of each case, rather than rely on an abstract rule that may not relate to those circumstances. Legal realists also believe that judges should consider extra-legal sources, such as economic

and sociological data, in making decisions, to the extent that those sources illuminate the circumstances and issues involved in specific cases. A counterargument can be derived from the positivist school: the law is the law, and there is no need to look beyond it to apply it. In fact, a legal positivist might argue that looking at extra-legal sources would be acting contrary to the law.