**Alternate Case Problems**

*Chapter 1*

**The Legal Environment**

**1–1. Sources of Law.** Under a Massachusetts state statute, large wineries could sell their products through wholesalers or to consumers directly, but not both. Small wineries could use both methods. Family Winemakers of California filed a suit against the state, arguing that this restriction gave small wineries a competitive advantage in violation of the U.S. Constitution. The court agreed that the statute was in conflict with the Constitution. Which source of law takes priority, and why? [Family Winemakers of California v. Jenkins, 592 F.3d 1 (1st Cir. 2010)]

**1–2. Rulemaking.** The Occupational Safety and Health Administration (OSHA) is part of the U.S. Department of Labor. OSHA issued a “Directive” under which each employer in selected industries was to be inspected unless it adopted a “Comprehensive Compliance Program (CCP)”—a safety and health program designed to meet standards that in some respects exceeded those otherwise required by law. TheChamber of Commerce of the United States objected to the Directive and filed a petition for review with the U.S. Court of Appeals for the District of Columbia Circuit. The Chamber claimed, in part, that OSHA did not use proper rulemaking procedures in issuing the Directive. OSHA argued that it was not required to follow those procedures because the Directive itself was a “rule of procedure.” OSHA claimed that the rule did not “alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.” What are the steps of the most commonly used rulemaking procedure? Which steps are missing in this case? In whose favor should the court rule and why? [*Chamber of Commerce of the United States v. U.S. Department of Labor,* 174 F.3d 206 (D.C.Cir. 1999)]

**1-3. Rulemaking Procedures.** The Atomic Energy Commission (AEC) was engaged in rulemaking proceedings for nuclear reactor safety. An environmental group sued the commission, arguing that its proceedings were inadequate. The commission had carefully complied with all requirements of the Administrative Procedure Act. The environmentalists argued, however, that the very hazardous and technical nature of the reactor safety issue required elaborate procedures above and beyond those set forth in the act. A federal court of appeals agreed and overturned the AEC rules. The commission appealed the case to the United States Supreme Court. How should the Court rule? Discuss. [*Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.,* 435 U.S. 519, 98 S.Ct. 1197, 55 L.Ed.2d 460 (1978)]

**1-4. A Question of Ethics**

TheMarine Mammal Protection Act was enacted in 1972 to reduce incidental killing and injury of marine mammals during commercial fishing operations. Under the act, com­mercial fishing vessels are required to allow an employee of the National Oceanic and Atmospheric Administration (NOAA) to accompany the vessels to conduct research and observe operations. In December 1986, after NOAA had adopted a new policy of recruiting female as well as male observers, NOAA notified Caribbean Marine Services Co. that fe­male observers would be assigned to accompany two of the company’s fishing vessels on their next voyages. The owners and crew members of the ships (the plaintiffs) moved for an injunction against the implementation of the NOAA directive. The plaintiffs con­tended that the presence of a female on board a fishing vessel would be very awkward, be­cause the female would have to share the crew’s quarters, and crew members enjoyed lit­tle or no privacy with respect to bodily functions. Further, they alleged that the presence of a female would be disruptive to fishing operations, because some of the crew members were “crude” men with little formal education who might harass or sexually assault a female observer, and the officers would therefore have to devote time to protecting the fe­male from the crew. Finally, the plaintiffs argued that the presence of a female observer could destroy morale and distract the crew, thus affecting the crew’s efficiency and de­creasing the vessel’s profits. [*Caribbean Marine Services Co. v. Baldrige,* 844 F.2d 668 (9th Cir. 1988)]

**1.** In general, do you think that the public policy of promoting equal employment opportunity should override the concerns of the vessel owners and crew? If you were the judge, would you grant the injunction? Why or why not?

**2.** The plaintiffs pointed out that fishing voyages could last three months or longer. Would the length of a particular voyage affect your answer to the preceding ques­tion?

**3.** The plaintiffs contended that even if the indignity of sharing bunk rooms and toi­let facilities with a female observer could be overcome, the observer’s very presence in the common areas of the vessel, such as the dining area, would unconstitution­ally infringe on the crew members’ right to privacy in these areas. Evaluate this claim.