



What is Law?

Law Studies  
2010-2011  
J. Hallenus

# Getting Started

- What is Law?
  - **Law** is defined as rules and regulations made that are enforced by government to regulate people's conduct.
  - **Jurisprudence** is the study of law and legal philosophy.
- Where do we first learn about laws and values?
  - Rules at home or at school, perhaps.
  - **Problem 1.1** List 10 of your daily activities. Next to each activity, list any laws that affect that activity. What do you think is the purpose of each law you identified? Would you change any of these laws?

# Laws and Values

- Laws generally reflect and promote a society's values.
- Generally, the legal system is influenced by society's ideas of right and wrong.
  - Is it wrong to kill another person?
  - Not everything that is immoral is illegal.
    - Lying to your friend is not illegal, although it may be immoral.
- Laws must balance rights and responsibilities, the will of the majority with the rights of the minorities, and the need for order with the need for basic human rights.
- Laws are intended to protect people and resolve conflicts of everyday life.

# Goals of the Legal System

- **We expect our legal system to achieve the following goals:**
  - 1) Promote/protect basic human rights.
  - 2) Promote fairness
  - 3) Help to resolve conflicts
  - 4) Promoting order and stability
  - 5) Promoting desirable social and economic behavior.
  - 6) Represent the will of the majority.
  - 7) Protect the rights of minorities.

# Laws & Values

- Laws can be based on many different things: moral, economic, political, or social values.
- As people's values change, so can the laws. For example, one of societies most absolute value is the protection of life. However, the protection of human life is not absolute. killing in self-defense or war, is allowed by law.
- Laws promote economic values by encouraging certain economic decisions and discouraging others.

# Laws & Values

- Laws based on economic values deal with the accumulation, preservation, use, and distribution of wealth.
- As an example, the law encourages home ownership by giving tax incentives for people to borrow money to buy their home.

# Laws & Values

- Political values reflect the relationships between government and individuals. For example, laws that make it easier for citizens to vote promotes citizen participation in our political process, which is considered a basic American political value.
- Social values concern issues that are important to society. Some examples would include laws about education –all students are provided with a free public education, at least through high school. Also, the law requires schools to provide females with sports opportunities similar to those offered for boys.

# Laws & Values

- Sometimes Americans think that laws can be passed to solve all of their problems. Prohibition, passed in 1919, prohibited the manufacture, sale, transport, or consumption of alcoholic beverages in the USA. We passed the 18<sup>th</sup> Amendment to the constitution to address the problem we had with alcohol.
- This law proved difficult to enforce and the amendment was eventually repealed -14 years later.



# Laws and Values: Activity

- On page 6, in groups of two read the Case of the Shipwrecked Sailors and discuss questions a-f. Write your answers on a sheet of paper. In instances when group members disagree, each person will write their answer on the one sheet of paper before moving on to the next question. If you disagree, its okay...
- This activity should take about 15 minutes.

# Laws and Values: Activity

- Problem 1.3
- Each student will complete Problem 1.3 on looseleaf.
- Write either moral, economic, political, or social values for each of the statements. Explain why you answered the way you did.

# Human Rights

- Human rights are the rights that ALL PEOPLE have just because they are human beings. When someone advocates human rights, they are demanding that the dignity of all people be respected.
- Human rights are so important that the **Universal Declaration of Human Rights** was passed in 1948 under the leadership of Eleanor Roosevelt. It is a statement of basic human rights and standards for government that has been agreed to by almost every country in the world. It proclaims that all people have the right to liberty, education, political and religious freedom, and economic well-being.

# Human Rights

- The Declaration also bans torture and it says that **ALL PEOPLE** have the right to participate in their government process. Today these rights are promoted, recognized, and observed by every country that belongs to the UN (United Nations).
- Other human rights treaties cover more specific areas such as genocide, discrimination against women, and the rights of children.

# Human Rights

- When the United States signs these human rights treaties, it often restricts the enforcement of them within this country. This is done by announcing that the U.S. is taking **reservations** –which is a legal means for making a provision less enforceable than it might otherwise be.
- Many human rights doctrines mentions ‘cultural rights.’ Sometimes cultural rights come in direct conflict with human rights, most notably the practice of female infanticide. In some countries, this practice is widely accepted, but the world community condemns it as a violation of human rights.

# Kinds of Laws

- There are two categories of laws: criminal and civil.
- **Criminal laws** regulate public conduct and set out duties owed to society.
  - A criminal case is a legal action that can only be brought by the government against a person or people accused of a crime.
  - Criminal offenses are divided into two categories: **felonies and misdemeanors.**
  - The penalty for a felony is a term of more than one year in prison. Felonies, such as murder, rape, robbery, are more serious crimes and have a steeper penalty. Less serious crimes are misdemeanors, such as simple assault, minor theft, or criminal mischief.

# Kinds of Laws

- Civil Laws regulate relations between individuals or groups of individuals. A civil action is a lawsuit that can be brought by a person who feels wronged or injured by another person.
- A civil action may take place if you drive your car into another person's home. Under this circumstance, a law suit would be brought. Perhaps you may be ordered to pay for the damages to the home, or any injuries caused by your action.
- Civil Laws regulate many everyday situations, such as marriage, divorce, entering into contracts, real estate, insurance, consumer protection, and negligence.

# Kinds of Laws

- Sometimes behavior can violate both civil and criminal laws, resulting in two court cases. The criminal case would be brought by the government against a **defendant** –the person who is accused of committing a crime. In a civil case, the case is brought by a **plaintiff** –the person or company harmed – against the defendant.
- In a criminal case, the prosecutor is the state or federal government’s attorney. A defendant must be proven guilty ***beyond a reasonable doubt*** –which means that if a jury or judge (in non-jury trials) has any reasonable doubts about a defendant’s guilt, then they must vote to not convict.



# Kinds of Laws

- In a civil case, the plaintiff wins by convincing a jury or a judge in non jury cases by a ***preponderance of the evidence***. With this burden of proof the judge or jury only needs to decide if it is more likely than not that the plaintiff's complaint is true.
- A preponderance of the evidence is a lower requirement for burden of proof than beyond a reasonable doubt standard used in criminal trials. The reasoning behind this is due to the fact that in civil cases the defendant stands to lose money, however in criminal cases the defendant would suffer imprisonment or the death penalty.

# Kinds of Laws

- Preponderance of the Evidence vs. Beyond a Reasonable Doubt
- In the O.J. Simpson criminal trial he was found not guilty by a reasonable doubt. However, in the Civil Trial, based on the preponderance of the evidence, he was held responsible for the deaths of Nicole Brown Simpson and Ronald Goldman and ordered to pay millions of dollars to the families. The Civil Trial required a different burden of proof because it was not going to deprive him of his life or freedom, only a possible monetary settlement.

# Our Constitutional Framework

- The U.S. Constitution is the highest law of the land. It provides the framework of our government.
- The concept of **limited government** is key to our Constitution.
- It states:
  - Government is NOT all powerful.
  - Government is limited in what it can do and each individual has rights that cannot be taken away.
  - The concept of limited government was deeply rooted in English belief and practice by the time the first English ships reached the Americas. It had been planned there with the signing of the Magna Carta

# Our Constitutional Framework

- The framers of the Constitution established three branches of government: executive, legislative, and judicial. This is known as a **separation of powers** –the division of power among the branches of government.
  - Executive Branch is in charge of enforcing the law.
  - Legislative Branch or Congress is in charge of making the law (or **statutes** –written laws enacted by the legislature)
  - Judicial Branch or judiciary is in charge of interpreting the law.
- Each of the three branches is independent , but each branch has the power to restrain the other branches in a system of **checks and balances** –the power of each of the three branches of government to limit the other branches power so as to limit abuse.
- The **veto** –refusal to approve laws passed by Congress- is one of the checks that the Executive Branch has on the Legislative Branch.

# Our Constitutional Framework

- One of the most important checks of one branch on another is the power of **judicial review** –enables a court to declare unenforceable any law passed by Congress or state legislature that conflicts with the nation’s highest law, the Constitution.
- Generally speaking, the courts can declare a law **unconstitutional** for two reasons: (1) the government has passed a law which the Constitution does not give it the power to pass or (2) the government has passed a law that violates somebody’s rights. Also, judicial review can declare an action of the executive or legislative branch to be unconstitutional.

# Our Constitutional Framework

- Governmental power is divided between the national government and the state government. This is known as **federalism**. The powers of the national government are listed in the Constitution. The remaining powers are reserved for the states.
- The concept of limited government is reflected in the **Bill of Rights** –which are the first ten amendments to the Constitution. The Bill of Rights defines the fundamental rights and liberties of all Americans, including the freedom of religion, speech, and press; freedom from unreasonable searches and seizures; and other individual rights.

# Our Constitutional Framework

- We have our national Constitution as well as 50 state constitutions. These constitutions are difficult to change, but they can be changed if the changes have overwhelming support. These changes are called **amendments**.
- The U.S. Constitution has been amended 27 times. Amendments can be approved by 2/3 vote of both houses of Congress OR at a convention called for by 2/3 of the states. It then must be ratified or approved by  $\frac{3}{4}$  of all states.
- The U.S. Constitution has the **supremacy clause** in Article VI stating that U.S. laws and treaties must be followed even if the state and local laws disagree with the Constitution and these treaties.

# Our Constitutional Framework

- In 1992, the 27<sup>th</sup> Amendment became part of the Constitution. This amendment, first proposed by James Madison in 1789, bans midterm congressional pay raises.