
CHAPTER 1

LAW AND LEGAL REASONING

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.

ANSWER TO DEBATE THIS QUESTION IN THE REVIEWING FEATURE AT THE END OF THE CHAPTER

Under the doctrine of stare decisis, courts are obligated to follow the precedents established in their jurisdictions unless there is a compelling reason not to. Should U.S. courts continue to adhere to this common law principle, given that our government now regulates so many areas by statute? Both England and the U.S. legal systems were constructed on the common law system. The doctrine of stare decisis has always been a major part of this system—courts should follow precedents when they are clearly established,

excepted under compelling reasons. Even though more common law is being turned into statutory law, the doctrine of *stare decisis* is still valid. After all, even statutes have to be interpreted by courts. What better basis for judges to render their decisions than by basing them on precedents related to the subject at hand?

In contrast, some students may argue that the doctrine of *stare decisis* is passé. There is certainly less common law governing, say, environmental law than there was 100 years ago. Given that federal and state governments increasingly are regulating more aspects of commercial transactions between merchants and consumers, perhaps the courts should simply stick to statutory language when disputes arise.

ANSWERS TO ISSUE SPOTTERS IN THE EXAMPREP FEATURE AT THE END OF THE CHAPTER

1A. Under what circumstances might a judge rely on case law to determine the intent and purpose of a statute? Case law includes courts' interpretations of statutes, as well as constitutional provisions and administrative rules. Statutes often codify common law rules. For these reasons, a judge might rely on the common law as a guide to the intent and purpose of a statute.

2A. After World War II, several Nazis were convicted of "crimes against humanity" by an international court. Assuming that these convicted war criminals had not disobeyed any law of their country and had merely been following their government's orders, what law had they violated? Explain. 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.

ANSWERS TO BUSINESS SCENARIOS AND BUSINESS CASE PROBLEMS

AT THE END OF THE CHAPTER

1-1A. ***Binding v. persuasive authority*** (Chapter 1—Page 8)

A decision of a court is binding on all inferior courts. Because no state's court is inferior to any other state's court, no state's court is obligated to follow the decision of another state's court on an issue. The decision may be persuasive, however, depending on the nature of the case and the particular judge hearing it. A decision of the United States Supreme Court on an issue is binding, like the decision of any court, on all inferior courts. The United States Supreme Court is the nation's highest court, however, and thus, its decisions are binding on all courts, including state courts.

1-2A. ***Sources of law*** (Chapter 1—Page 3)

(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.

1-3A. ***Stare decisis*** (Chapter 1—Page 8)

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.

1-4A. Remedies*(Chapter 1—Page 6)*

(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).

1-5A. SPOTLIGHT ON AOL—Common law

The doctrine of *stare decisis* is the process of deciding case with reference to former decisions, or precedents. Under this doctrine, judges are obligated to follow the precedents established within their jurisdiction.

In this problem, the enforceability of a forum selection clause is at issue. There are two precedents mentioned in the facts that the court can apply. The United States Supreme Court has held that a forum selection clause is unenforceable “if enforcement would contravene a strong public policy of the forum in which suit is brought.” And California has declared in other cases that the AOL clause contravenes a strong public policy. If the court applies the doctrine of *stare decisis*, it will dismiss the suit.

In the actual case on which this problem is based, the court determined that the clause is not enforceable under those precedents.

1-6A. BUSINESS CASE PROBLEM WITH SAMPLE ANSWER—Reading citations

The court’s opinion in this case—*United States v. Yi*, 70 F.3d 800 (9th Cir. 2013)—can be found in volume 70 of *Federal Reporter, Third Series* on page 800. The United States Court of Appeals for the Ninth Circuit issued this opinion in 2013.

1-7A. A QUESTION OF ETHICS—The common law tradition

(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.

1–8A. LEGAL REASONING GROUP ACTIVITY—*Court opinions*

(a) 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.

(b) 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.

(c) 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.