

## Chapter 1: INTRODUCTION

Definitions of law: informal and formal methods of establishing and maintaining social control and approaches to defining law.

Norms, Value, and Folkways

Values are core beliefs about what is moral and immoral, good and bad, and acceptable and unacceptable. Norms are the "action aspect" of values and tell us how to act in a situation. Provide foundation for many of our laws.

Folkways are the customs that guide our daily interactions and behavior.

Mores are deeply and intensely held norms about what is right and wrong.

Families of Law

Common Law

Law common to all of England. Judge-made law. Adversarial nature of trials. Embodies a strong concern with individual rights and liberties, competition between lawyers and judges.

Civil Law

embodies a legal tradition in which statutes passed by the legislature are the only recognized source of law, oldest and most widely used — origins traced to Rome, embodied in a clear written code that addresses every problem and is the product of scholars and legislatures, limited judge, lawyers and judge work together.

Socialist legal

identifies with the political ideology of communism (Marx and Engels) workers are there to basically serve those of the upper class who own everything while workers own nothing. Socialist law: not neutral and objective; the law advances the political goals of the gov. and imparts socialist values, principles of socialist law: Property, Security, Education,

Islamic legal (Shari'a Law)

defined in the Koran, harsh punishment, contrasts with many other legal traditions because of what is considered a crime and its punishment. Koranic crimes: Hudud (crimes against God), Qesas (crimes of physical assault and murder) non-Koranic crimes: Ta'zir, the judge is the magi and convenes in the mosque, absence of an appeal.

International Law

the law that regulates relationships between nation-states and encompasses areas such as law of war. The Functions of law

Social control - the law is the primary institution that is relied on to ensure social control in large societies, dispute resolution, Social change

The dysfunctions of law

Harassment, bias, repression, rigidity, precedent, conservatism, unequal access to justice

the study of legal doctrine

Black Letter Law - the rules that are followed in writing a will, drafting a contract, etc. the study of legal doctrine is an applied and practical discipline intended to train practicing attorneys.

Public Law - common in criminal law, and constitutional law

Private Law

Jurisprudence - the study, knowledge, or science of law, typical involves philosophy

Approaches to defining law

Law and Official Authority: "the law is the law", law is governmental social control, the government regulates the actions of individuals and organizations through official public institutions. The law establishes and reinforces the central values and beliefs in society.

Law in action: the prophecies of what the courts will do in fact and nothing more pretentious are what I mean by law (Holmes). The meaning of law as written often is clear only after a court decision interpreting the law.

Law and physical force: the application of coercion, particularly physical force. Hoebel's definition distinguishes social norms from law based on the fact that a violation of the law regularly is not met by physical force. A law that is rarely enforced is not considered law.

Law, Coercion, and Specialization (Max Weber): physical or psychological coercion is a fundamental aspect of the law. Law may be enforced either by physical or psychological coercion.

Law and Justice: A definition of law must incorporate a justice or moral component.

Law and social integration: Law is a body of binding obligations... kept in force by specific mechanisms of reciprocity, and publicly inherent in the structure of society. Malinowski viewed the customary law of gift giving as performing the function of integrating society by creating social relationships and is credited with helping to establish the structural functionalist approach to law.

Law and Custom: Law is custom recreated by agents of society in institutions specifically meant to deal with legal questions.

Chapter 2: THEORIES OF LAW AND JUSTICE

Legal systems (do not evolve by accident, evolving) components:

laws - define formal rules regulating society

legislation - an agency for changing and making laws

enforcement

dispute resolution - an agency for settling disputes between individuals

natural law (St. Thomas Aquinas): views law as a set of universal principles applicable to all societies in all historical epochs, these principles are discoverable through reason.

legal positivism (John Austin): law is the command of sovereign. A common is an order accompanied by a threat to impose a disability or punishment for disobedience, law is "governmental social control"

utilitarianism (Jeremy Bentham): law should be maximizing the "greatest good for the greatest number".

utilitarianism is based on the belief that individuals in their personal lives act to maximize their pleasure and minimize their pain.

the categorical imperative (Immanuel Kant)

Kant believed human beings are capable of ordering their life based on reason and are not controlled by emotion and impulse. The categorical imperative: "Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means but always as an end."

Historical school: as society develops industrial factories, banking, etc the historical school argued that the legal system responds by developing laws and regulations that are not required in a simpler agricultural society.

Classical Sociological theories

Karl Marx

the law on the surface appearing to be fair serves the interest of capitalism, legal rules are interpreted and used by economic elites to maintain their control or property and to induce a false consciousness among the proletariat by convincing them that society is fair and just. "dialectical materialism"

Max Weber

Political domination: the probability that specific commands will be obeyed by a group of persons.

Charismatic authority (commands obeyed because extraordinary qualities of person), traditional authority, and rational-legal authority

Law is backed by the power of coercion, economic development is encouraged by an insistence on clear, certain, definite, and predictable legal rules that regulate relationships between people

Emile Durkheim

a society is united by a sense of solidarity and societies have different types of solidarity as they evolve.

Mechanical solidarity exists in small homogeneous societies which share attitudes, beliefs and values.

organic solidarity is found in large scale societies with economic division of labor

Legal realism (Holmes): a movement that argued that the focus should be actual functioning of the law

sociological jurisprudence: law should be evaluated based on the "results it achieves" rather than the logical consistency of legal rules, the true purpose of the law is to make people lives easier and happier

functionalism: views law as performing an important function that assists in keeping the social system in equilibrium and performing in an effective fashion

legal behaviorism: the sociology of law should be objective and value-free and rely on quantitative measures of law.

Libertarianism: the care is to maximization of individual freedom, individuals can do whatever they want so long as they do not interfere with the freedom of other individuals

Chapter 3: THE STRUCTURE AND FUNCTION

The primary function of the courts is conflict resolution

Types of disputes

Private disputes/ public initiated disputes/ defendant initiated public disputes

Adjudication: The final decision issued by a court in a dispute

Judges do not control the issues they are asked to decide

The Development of federal courts

## Chapter 4: THE LEGAL PROFESSION

The earliest lawyers were likely orders/Gorgoous with all the local customs in deciding cases. The decisions were gradually were compiled into the system of law comment English people informed the bases of the common law, or law that is shared by the English people. The judges decisions formed the president (stare decisis) that would be followed by other judges.

The early years

Early call allyssa confidence in the average person and view the lawyers as members of the social elite made money by taking advantage of the problems of small farmers and workers. The number of individuals entering the legal profession increased in response to the growing demand for lawyers to assist in the selling purchase of land and agricultural crops and to collect debts, drop your wheels in contract, and petty crimes, and address the range of issues involved in maritime commerce.

In the 1840s law firms (these groups of lawyers who practiced law together) he into establishing most major cities.

The middle years

in the 20th century a number public universities established law schools. Introduction of the law school further democratized the legal profession by breaking a hold of the practicing bar own who could obtain an apprenticeship and obtain the necessary experience to practice law

Langdell: remembered for his contribution of the casebook as a replacement for the textbook. The casebook contained a collection of carefully selected cases that reflected what he viewed as the correct legal rule, he viewed law as a science, he also replaced part time instructors with full-time faculty members who were academic researchers rather than practitioners

socratic method became the standard approach to teaching long and Harvard graduates were hired by law schools across the country.

The other important development was the proliferation of night schools.

States began to require applicants to pass a bar exam as a condition for being admitted to practice law. The 20th century witnessed the beginning of a "stratified and legal profession in which the lawyers in elite corporate law firms had a different background and inhabited a different world than the small-town solo practitioner.

The American Bar Association

before its development the licensing of lawyers was controlled by state legislators

The ABA in the early years was an exclusionary organization intends on limiting access to the profession by immigrants and religious and racial minorities. There was an exclusion of aliens in the organization

interRoute most lawyers had suspicions of the ABA.

membership in state bar association is expanded because of bar integration. Lauren to Gratian requires that all lawyers in the state join the local Bar Association. The local Bar Association is an integrated bar that could collect dues from all lawyers within the state and speak with a unified and powerful voice on behalf of the legal profession

The ABA today is concerned with helping improve the practice of law rather than restricting access to the legal profession. The organization is for primary purposes: existing members in law office management, improving professionalism, increasing diversity within the profession, and advancing the rule of law

solo practitioners and small firm lawyers

hierarchy: The American legal profession is a peer amid in which there is a large gap in income in lifestyle between the corporate attorneys in law firms in the solo practitioners and small firm lawyers at the bottom

integration: there is little contact or connection between corporate lawyers and the lawyers at the bottom

Quality of legal representation: there is some indication that clients represented by solo practitioners may receive less skilled representation in the corporate interests represented by large firms

ethics: research indicates that solo practitioners maybe more likely than corporate lawyers to disregard ethical codes of professional conduct

large corporate law firms

The lawyers who practice law in large law firm's are the royalty of the profession, corporate firms are becoming increasingly cost-conscious and have modify their business practices in response to the changing economic climate. Large firms are introducing to track partners. Firm is no longer reserve partnerships for lawyers who have worked their way up through the associate track and instead are hiring partners from other firms in an effort to strengthen your legal expertise. The firms cannot afford for associates to ease into their positions and thus increasing we assign associates to specialty areas early in their careers. Instead of hiring additional associates, firms are saving money by hiring lawyers on a temporary basis to work on specific projects or are relying on paralegals. Paralegals are nonlawyers who have basic legal training and who work at secretaries are performing on complicated legal work that previously may have been undertaken by lawyers

government lawyers

Government lawyers are those employed by the federal, state, country, or municipal governments. This does not include the judicial branch. The attorney general establish his priorities for the enforcement of federal law and is appointed by the president with the approval of the senate

The president of the United States appoints a personal lawyer, the counsel to the president, who is headquartered in the White House office of General Counsel. The counselor to the president and his staff provide legal advice on issues regarding the administration of the executive branch.

Washington lawyers are lawyers and firms specializing in representing business interest before federal agencies and in influencing congressional legislation affecting their clients

governmental lawyers confront the dilemma whether their loyalty rest with the politicians who have been elected to office or whether it is with the evenhanded enforcement of the law

in house corporate counsel: these lawyers spend your time I worked at formerly was performed by corporate law firms. These tasks my include a go shooting and drafting contracts to supply goods to a national department store chain, entering into franchise agreements, and purchasing land, etc

female lawyers: Women now comprise 34% of all practicing through. Females used to be viewed as inferior in mind and body and were thought to be naturally destined to be wives and mothers and domestic homemakers. Unscrupulous women would employ their feminine charms to sway judges and juries. The first female lawyer is thought to have been Arabella Mansfield — Iowa

african american lawyers: there is a history of excluding my Nordic lawyers from the legal profession.

The small number of African-American lawyers was due to a combination of discrimination and lack of educational opportunity. African-American lawyers reported they do not receive mentoring or important assignments and are not given the opportunity to attend meetings with clients. African-American lawyers have found government and in-house corporate counsel to be more receptive environments

professional satisfaction

Schiltz concludes that the legal profession is one of the most unhappy and unhealthy professions on the face of the earth and that lawyer seem to be among the most depressed people in the world

The Chicago study indicates that 84% of the respondents stated that they were either satisfied or very satisfied with their legal career, 10% or neutral, 5% were dissatisfied, and 1.6 remarked to satisfied.

Chapter 5

Surveys of state and federal judges indicated they are quite certain that individuals who are without legal representation fare far worse than individuals who are represented by a lawyer

three efforts to increase access to legal services

advertising: The court later clarify that while lawyers are permitted to advertise their services, a Bar Association may prohibit lawyers from engaging in person solicitation of potential clients. There is no limitation on lawyers informing individuals of their legal rights and prospects for obtaining a recovery so long as the lawyer does not seek to represent the individual.

contingent fees: most lawyers charge by the hour, and their hourly rate is based on their expertise, their experience, and the difficulty of the task. Solo practitioners and small firms in the local area charge roughly the same fee for routine tasks such as the purchase of a home.

an alternative method of charging for legal services is a contingent fee arrangement. In a contingent fee arrangement, the client does not pay the lawyer. The lawyer is paid and agreed on percentage of any legal settlement or any court judgment that a plaintiff me receive. The primary argument for contingent fees is that absent a contingent fee, lawyers maybe unwilling to represent a client in a complicated case.

defenders of contingent fees argue that the hourly income of a lawyer working on a contingent fee case works out to be roughly similar to that of a lawyer working on an hourly basis. The lawyer also cannot predict how many hours a case will take I cannot predict whether he or she will be successful.

A class action is a legal action in which a lawsuit is brought on the half of a small number of plaintiffs who are certified by the court as representatives of all "similarly situated individuals"

legal services plans: access plans provide individuals with access to lawyers as a benefit of their union membership or employment or membership in the organization. In contrast, individuals in rolled in a prepaid legal services plan pay a fee and in return or providing legal assistance for certain types of legal needs, individuals were covered by the plan are given a list of lawyers near their home with whom they may consult without having to pay a fee. The lawyer will make a phone call, write a letter, or review a contract or other documents. An individual who wants the lawyer to pursue more complicated matters will be charged a reduced fee.

Article 3 created a single supreme court and left it to congress to fill in the details of a national judicial system. Circuit courts had original jurisdiction over serious crimes, civil cases of \$500 + and cases where the USA is the plaintiff. circuit courts were also given appellate jurisdiction over district court cases

The structure of the judicial system

The US has a dual court system comprising a federal court system and a state court system. The federal courts is based on the US Constitution and on statutes passed by Congress; the state systems are created by state constituents and state statutes.

Each state has its own laws court procedures, legal precedents, and system of appeals

One interesting twist is that the 5th Amendment protects individuals from double jeopardy, or being prosecuted twice for the same offense. The dual sovereignty doctrine permits an individual to be prosecuted for the same act in both federal and state court.

Judicial Gatekeeping

The first requirement for a court to hear a case is that the tribunal has just diction over the dispute.

Jurisdiction is the authority of a court to hear a case and is established by a legislative statute or by the Constitution. Second, individuals must have a personal stake in the outcome of the litigation.

Justifiability is a term that describes the # if preconditions that must be met before a court will consider a case.

Mootness - courts will not hear a case in which the plaintiff is not affected by the outcome

Standing - an individual must be affected by the law they are challenging

ripeness - courts limit their jurisdiction to "cases and controversies"

collusion - can't stage a conflict

exhaustion - have to have exercised all other options

political question and state secrets

The Jurisdiction of federal courts

Federal courts under Article 3 have so called federal question doctrine: cases involving a law passed by the US Congress cases raising constitutional issues, and cases requiring interpretation

federal court of appeal

appeals from district courts can be taken to federal courts of appeal (circuit courts)

3 court of appeal judges hear appeals from district courts. the judges read a written argument submitted by the lawyers called a brief and listen to oral arguments

The supreme court

Article 3 gives supreme court appellate jurisdiction over cases in the federal system, cases in state courts

that raise a federal issue, and cases involving interpretation of an international treaty

has original jurisdiction

The court is discretionary, meaning the justices choose specific cases they will decide and those they will not.

An individual who wants to be heard by the SC file a writ of certiorari and the rule of 4 requires that 4 of the 9 judges must vote to hear a case

Cases he SC will hear:

when several courts of appeal disagree on an issue

cases presenting significant constitutional issues that must be addressed in the interests of the country

5 supreme court judges are required for majority rule

Concurring opinion - judge agrees with majority but for different reasons

The background of supreme court judges

federal court justices are nominated by the president of the US and confirmed by the Senate. Judges are drawn from a relatively small slide of the legal profession

Judicial Review (maurbury v madison)

Judicial review: the court claimed the right to determine the meaning of the Constitution and the evaluate whether acts of Congress and the president were authorized by it

Judicial activism: Judges that favor the courts employing the power of judicial review to overturn state and federal laws; believe law should adapt to changing conditions

Judicial restraint: Judges who favor issuing a ruling that avoids directly overturning a law adopted by elected representatives

the constitution insulates federal judges salaries may not be reduced

Very little is known about the inner working of the Supreme Court, and the courts decisions are not televised

the organization of state courts

state constitutions give the legislature the power to create state courts, state court systems are independent of one another, various efforts have been made to provide for uniform state laws, there is significant variation in state court structures

State courts of limited jurisdiction - hear minor criminal offenses and civil cases

state courts of general jurisdiction - primary trial courts for criminal and civil cases that do not originate in courts of limited jurisdiction

state appellate courts - individuals have right to appeal a case from general jurisdiction

state supreme courts - at the top of the hierarchy. a party that loses a case in the state supreme court that raises a federal question may appeal to a federal district court

How judges decide disputes

legalism: the judicial branch has only one duty, to lay the article of the Constitution which is invoked beside the statute which is challenged and decide whether the latter squares with the former

originalism: what the creators of the law intended at the time it was drafted

textualism, balancing of interests, and attitude approach

Legislatures

a legislature is a group of individuals elected or selected as members of a governmental assembly of individuals established by a state or national constitution. Concerned primarily with lawmaking.

The constitutional role of the legislature: Separation of power, checks and balances, limited power, federalism

Conflict management, adjudication, government responsiveness, appointments, legitimation

Interest groups: a coalition of individuals or organizations that attempt to influence governmental decisions

Administrative law: the law regulating government administrative agencies. the law specifies the process that agencies must follow in developing and enforcing rules and regulations

Law enforcement: the police are part of the executive branch

meeting the legal needs of the poor

legal assistance to the poor gradually came to be viewed as a mechanism to be sure the poor and working-class that the legal system serve the interests of all citizens and did not merely cater to the wealthy and privileged

legal services Corporation or LSC the corporation was to be run by 11 person board of directors appointed by the US president with the approval of Congress

Pro bono: Pro bono Publico (done without compensation for the public good) is viewed as part of the lawyers obligation to ensure equal justice and reminds lawyers that their primary responsibility is to uphold the rule of law. Although the ABA has rejected mandatory pro bono, it's suggest lawyer should aspire to provide 50 hours per year without charge primarily to persons of limited means or to organizations assisting them

cause lawyering

some lawyers the vote their energies to representing causes rather than individuals or large corporate and Steve's in organizations. Lawyers engage in Klaus lawyering when they use the law to advance a social movement or social policy they believe is in the public interest.

self representation: courts are gradually recognizing the right to pro se representation or self representation.

legal ethics: lawyers stork we have been viewed as having little regard for ethics. The primary complaint is greed. The second complaint is that lawyers are impolite, arrogant, and insensitive and neglect their clients. The ethical system is based on the premise that if lawyers are taught there at the go responsibilities, they will adhere to the standards regardless of pressures from clients and colleagues, and temptations of financial fraud, or other financial misconduct. Individuals will ply for admission to a state bar must submit a character of you in which they submit references and disclose all information that may call their a good character into question.

The molds rules of professional conduct address a number of areas the most important of which: lawyer client relationships, the lawyer as counselor, the lawyer as advocate, relations with persons other than the client, law firms and associations, public services, information regarding legal services, and the integrity of the profession. The worst penalty is dismemberment or a permanent prohibition of the ability of a lawyer to practice law, which is imposed for the most serious violations