Part One:

Introduction to Law and Ethics

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ETHICS QUESTIONS RAISED IN THIS PART

1. Are all laws moral? Should all laws be moral? How should morality be determined?

2. Are laws always just?

3. Which is more important, morality or justice?

4. Why is there a difference between the treatment of cases brought under civil law and those brought under criminal law? Should there be a difference?

ACTIVITIES AND RESEARCH PROBLEMS

1. Have students draw a diagram of two overlapping circles, with one circle labeled “Moral” and the other labeled “Legal.” The area of overlap would be both moral and legal. Then list several controversial topics of current interest (e.g., abortion, capital punishment, marijuana smoking, etc.) for students to place within an area of the diagram (or outside the circles if it is neither moral or legal). Can any of these issues be absolutely determined to be moral or immoral?

2. Have any laws in our country’s history been repealed on the basis of their immorality? Are there any laws still in existence that should be repealed? Have students discuss their opinions.

3. How does American common law differ from English common law?

4. Have students write a fictitious case involving questionable ethics in a business decision.

**Chapter 1**

Introduction To Law

 A. Nature of Law C. Sources of Law

 1. Definition of Law 1. Constitutional Law

 2. Functions of Law 2. Judicial Law

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TEACHING NOTES

Law concerns the relations between and among individuals as those relations affect social and economic order. It affects the rights and duties of every citizen and many non-citizens.

Law is both **prohibitory**, meaning certain acts must not be committed, and **mandatory**, meaning certain acts must be done, sometimes in a set way. Additionally, law is **permissive**: certain acts are allowed, but not required by the law.

A. Nature of Law

The law is a continuously changing process of developing a workable set of rules that balance the individual and group rights of an always-changing society.

Definition of Law

Legal scholars have defined law in various ways, including:

• “predictions of the way that a court will decide specific legal questions”

• “a rule of civil conduct prescribed by the supreme power in a state, commanding what is right, and prohibiting what is wrong”

NOTE: See textbook for a description of the law’s essential characteristics, as defined by Roscoe Pound, a distinguished American jurist and former dean of the Harvard Law School.

\*\*\* Chapter Objective \*\*\*

Identify and describe the basic functions of law.

Functions of Law

The functions of law are to maintain stability in the social, political, and economic system through (1) dispute resolution, (2) protection of property, and (3) the preservation of the state while at the same time permitting ordered change.

1. Disputes are inevitable in a complex society and may involve criminal or noncriminal matters. Law provides rules to resolve disputes and avoid personal revenge.

2. Law protects ownership of property and allows for agreements (contracts) to exchange property. (This text deals with many aspects of this including contracts, sales, commercial paper, and business associations.)

3. Law preserves the state. It ensures that changes are result of elections, legislation, and referenda rather than revolution, sedition, and rebellion.

\*\*\* Chapter Objective \*\*\*

Distinguish between law and justice. Distinguish between law and morals.

Law and Morals

Though law is affected by morals, law and morality are not the same. Some actions have no moral implications but have legal sanctions, whereas other actions have no legal sanctions but do have moral implications. Some actions have both moral impact and legal sanction.

NOTE: See Figure 1-1: Law and Morals.

Law and Justice

Law and justice are distinct but interrelated concepts.

• Justice may be defined as “the fair, equitable, and impartial treatment of the competing interests and desires of individuals and groups, with due regard for the common good.”

• Justice depends on the law, but the law does not guarantee justice, since laws can be unjust. (Think back to “legal” slavery and the “legal” actions of Nazi Germany.)

B. Classification of Law

Because the law is vast, it is helpful to organize it into categories such as: (1) substantive and procedural, (2) public and private, and (3) civil and criminal.

Basic to understanding these classifications are the terms right and duty. A **right** is the ability of a person, with the aid of the law, to require another person to perform or to refrain from performing a certain act. A **duty** is the obligation the law imposes upon a person to perform or to refrain from performing a certain act. Duty and right exist together: a person cannot have a right without some other person (or all persons) having the corresponding duty.

NOTE: See textbook Figure 1-2, which outlines the classifications of law.

\*\*\* Chapter Objective \*\*\*

Distinguish between (a) substantive and procedural law, (b) public law and private law,
and (c) civil law and criminal law.

Substantive and Procedural Law

Substantive law creates, defines, and regulates legal rights and duties. Procedural law sets forth rules for enforcing those rights that are created by the substantive law.

Public and Private Law

Public law is the branch of substantive law that deals with the government's rights and powers and its relationship to individuals or groups.

Private law is that part of substantive law governing individuals and legal entities (such as corporations) in their relationships with one another.

Civil and Criminal Law

Civil law defines duties and deals with the rights and duties of individuals among themselves. (It is part of private law.)

NOTE: Civil law is not the same as a civil law system, discussed later in this chapter.

Criminal law establishes duties and involves offenses against a whole community. (It is part of public law.)

The purpose of the civil law is to compensate the injured party (plaintiff), while the purpose of criminal law is to punish the wrongdoer. Typically, the civil law awards money for damages or an order for the defendant to behave in a certain way, while criminal law imposes a fine or imprisonment on the guilty party.

\*\*\* Chapter Objectives \*\*\*

Identify and describe the sources of law. Explain the principle of stare decisis.

C. SOURCES OF LAW

• Federal and state constitutions

• Federal treaties (agreements between or among independent nations)

• Interstate compacts

• Federal and state statutes (laws passed by a legislative body such as the U.S. Congress or the legislature of a state)

• Executive orders (legislation issued by a President or governor)

• Ordinances of local municipal governments

• Rules and regulations of federal and state administrative agencies

• Federal and state court decisions

NOTE: See Figure 1-3, Hierarchy of Law

Constitutional Law

A constitution sets forth the basic principles by which a government is guided, as well as the limitations on governmental authority. The U.S. Constitution is the supreme law of the nation; a state constitution is the highest law within that state. Federal law is supreme in cases of conflict with state law.

Fundamental principles of the U.S. Constitution include: **Separation of Powers** (division of power among branches of government) and **Judicial Review** (power of the Supreme Court to determine constitutionality of all laws).

Judicial Law

**Common Law —** Case decisions establish precedent in our common law system and must also be consulted when researching a legal question. The principle of *stare decisis* requires that inferior courts stay consistent with prior decisions of higher courts on cases with similar facts.

**Equity —** A supplementary system of judicial relief separate from the common law, based upon settled rules of fairness, justice and honesty. Remedies include: **specific performance, injunction, reformation, rescission**, and **decree**.

In most jurisdictions, a single court administers both common law and equity.

**Restatements of Law —** This is an orderly re-writing (or re-stating) of the general common law of the United States; it is regarded as the authoritative statement of the common law of the United States. Covers many areas, including torts, contracts, agency, property, and trusts.

Legislative (Statutory) Law

Legislative law consists of statutes passed by legislatures. Statutes may repeal judge-made law as long as the statute is not unconstitutional. Legislatures have the freedom to choose the issues they want to address, and can make or change laws relatively quickly. Courts may only address issues that are presented in actual cases, leading to a more haphazard approach to establishing or revising laws.

The need for uniformity among state statutes led to the codification of large parts of business law. The most successful example of this effort is the **Uniform Commercial Code (UCC)**, prepared under the joint sponsorship and direction of the National Conference of Commissioners on Uniform State Laws and the American Law Institute. All fifty states, the District of Columbia, and the Virgin Islands have adopted the UCC. (Louisiana has adopted only part of the UCC.)

**Treaties —** Agreements between or among independent nations; if signed by the President and approved by the Senate, it has the legal force of a federal statute.

**Executive Orders —** The President has power to issue executive orders, which carry the authority of a law.

Administrative Law

The branch of public law that governs the powers and procedures of governmental entities (other than courts and legislatures); often involves public health, safety and welfare. Administrative law is created by administrative agencies in the form of rules, regulations, orders, and decisions to carry out the regulatory powers and duties of those agencies.

D. Legal Analysis

Decisions in state trial courts generally are not published but are filed in the office of the clerk of the court. Decisions of state courts of appeals are published in volumes called “reports,” numbered consecutively. Some states rely on a commercial reporter and no longer publish official reports. The decisions of courts in the federal system are found in a number of reports.

For instance, *Lefkowitz v. Great Minneapolis Surplus Store, Inc*., 251 Minn. 188, 86 N.W.2d 689 (1957), indicates that the opinion in this case may be found in Volume 251 of the official Minnesota Reports at page 188; and in Volume 86 of the North Western Reporter, Second Series, at page 689; and that the opinion was delivered in 1957.

Normally, the reported opinion in a case includes:

1. the essential facts, the nature of the action, the parties, what happened to bring about the controversy, what happened in the lower court, and what pleadings are material ;

2. the issues of law or fact;

3. the legal principles involved;

4. the application of these principles; and

5. the decision.

A serviceable method of analyzing and briefing cases after a careful reading and comprehension of the opinion is for students to write in their own language a brief containing the following:

1. the facts of the case,

2. the issue or question involved,

3. the decision of the court, and

4. the reasons for the decision.

All cases are decided with these four presuppositions in mind: the court must decide the issue before it and may not decide anything other than the issue before it; the court decides this particular case based on general rules; and everything a judge says in an opinion must be interpreted in relation to this particular case.

The following excerpt from Professor Karl Llewellyn’s *The Bramble Bush* contains a number of useful suggestions for reading cases:

The first thing to do with an opinion, then, is read it. The next thing is to get clear the actual decision, the judgment rendered. Who won, the plaintiff or defendant? And watch your step here. You are after in the first instance the plaintiff and defendant below, in the trial court. In order to follow through what happened you must therefore first know the outcome below; else you do not see what was appealed from, nor by whom. You now follow through in order to see exactly what further judgment has been rendered on appeal. The stage is then clear of form—although of course you do not yet know all that these forms mean, that they imply. You can turn now to what you want peculiarly to know. Given the actual judgments below and above as your indispensable framework—what has the case decided, and what can you derive from it as to what will be decided later?

You will be looking, in the opinion, or in the preliminary matter plus the opinion, for the following: a statement of the facts the court assumes; a statement of the precise way the question has come before the court—which includes what the plaintiff wanted below, and what the defendant did about it, the judgement below, and what the trial court did that is complained of; then the outcome on appeal, the judgment; and, finally the reasons this court gives for doing what it did. This does not look so bad. But it is much worse than it looks.

For all our cases are decided, all our opinions are written, all our predictions, all our arguments are made, on certain four assumptions. They are the first presuppositions of our study. They must be rutted into you till you can juggle with them standing on your head and in your sleep.

1. *The court must decide the dispute that is before it*. It cannot refuse because the job is hard, or dubious, or dangerous.

2. *The court can decide only the particular dispute which is before it*. When it speaks to that question it speaks *ex cathedra*, with authority, with finality, with an almost magic power. When it speaks to the question before it, it announces law, and if what it announces is new, it legislates, it makes the law. But when it speaks to any other question at all, it says mere words, which no man needs to follow. Are such words worthless? They are not. We know them as *judicial dicta*; when they are wholly off the point at issue we call them *obiter dicta*—words dropped along the road, wayside remarks. Yet even wayside remarks shed light on the remarker. They may be very useful in the future to him, or to us. But he will not feel bound to them, as to his *ex cathedra* utterance. They came not hallowed by a Delphic frenzy. He may be slow to change them; but not so slow as in the other case.

3. *The court can decide the particular dispute only according to a general rule which covers a whole class of like disputes.* Our legal theory does not admit of single decisions standing on their own. If judges are free, are indeed forced, to decide new cases for which there is no rule, they must at least make a new rule as they decide. So far, good. But how wide, or how narrow, is the general rule in this particular case? That is a troublesome matter. The practice of our case-law, however, is I think fairly stated thus: it pays to be suspicious of general rules which look too wide; it pays to go slow in feeling certain that a wide rule has been laid down at all, or that, if seemingly laid down, it will be followed. For there is a fourth accepted canon:

4. *Everything, everything, everything, big or small, a judge may say in an opinion, is to be read with primary reference to the particular dispute, the particular question before him*. You are not to think that the words mean what they might if they stood alone. You are to have your eye on the case in hand, and to learn how to interpret all that has been said merely as a reason for deciding that case that way.

CASE

*Caldwell v. Bechtel, Inc.*

 UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA CIRCUIT, 1980

631 F.2D 989

http://scholar.google.com/scholar\_case?case=3842479506088806570&q=631+F.2D+989&hl=en&as\_sdt=2,34

OPINION:

MacKinnon, J. We are here concerned with a claim for damages by a worker who allegedly contracted silicosis while he was mucking in a tunnel under construction as part of the metropolitan subway system (Washington Metropolitan Area Transit Authority [WMATA]). The basic issue is whether a consultant engineering firm owed the worker a duty to protect him against unreasonable risk of harm.

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In attempting to convince the court that it owes no duty of reasonable care to protect appellant’s safety, Bechtel argues that by its contract with WMATA it assumed duties only to WMATA. Appellant has not brought action, however, for breach of contract but rather seeks damages for an asserted breach of the duty of reasonable care. Unlike contractual duties, which are imposed by agreement of the parties to a contract, a duty of due care under tort law is based primarily upon social policy. The law imposes upon individuals certain expectations of conduct, such as the expectancy that their actions will not cause foreseeable injury to another. These societal expectations, as formed through the common law, comprise the concept of duty.

Society’s expectations, and the concomitant duties imposed, vary in response to the activity engaged in by the defendant. If defendant is driving a car, he will be held to exercise the degree of care normally exercised by a reasonable person in like circumstances. Or if defendant is engaged in the practice of his profession, he will be held to exercise a degree of care consistent with his superior knowledge and skill. Hence, when defendant Bechtel engaged in consulting engineering services, the company was required to observe a standard of care ordinarily adhered to by one providing such services, possessing such skill and expertise.

A secondary but equally important principle involved in a determination of duty is to whom the duty is owed. The answer to this question is usually framed in terms of the foreseeable plaintiff, in other words, one who might foreseeably be injured by defendant’s conduct. This secondary principle also serves to distinguish tort law from contract law. While in contract law, only one to whom the contract specifies that a duty be rendered will have a cause of action for its breach, in tort law, society, not the contract, specifies to whom the duty is owed, and this has traditionally been the foreseeable plaintiff.

It is important to keep these differences between contract and tort duties in mind when examining whether Bechtel’s undertaking of contractual duties to WMATA created a duty of reasonable care toward Caldwell. Dean Prosser expressed the relationship in this terse fashion.

[B]y entering into a contract with A, the defendant may place himself in such a relation toward B that the law will impose upon him an obligation, sounding in tort and not in contract, to act in such a way that B will not be injured. The incidental fact of the existence of the contract with A does not negative the responsibility of the actor when he enters upon a course of affirmative conduct which may be expected to affect the interests of another person.

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Analyzing the common law, Prosser noted that courts have found a duty to act for the protection of another when certain relationships exist, such as carrier-passenger, innkeeper-guest, shipper-seaman, employer-employee, shopkeeper-visitor, host-social guest, jailer-prisoner, and school-pupil. These holdings suggest that courts have been eroding the general rule that there is no duty to act to help another in distress, by creating exceptions based upon a relationship between the actors.

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We find that case law provides many such analogous situations from which the principles deserving of application to this case may be culled. The foregoing concepts of duty converge in this case, as the facts include both the WMATA-Bechtel contractual relationship from which it was foreseeable that a negligent undertaking by Bechtel might injure the appellant, and a special relationship established between Bechtel and the appellant because of Bechtel’s superior skills, knowledge of the dangerous condition, and ability to protect appellant.

We reverse the summary judgment of the district court, and hold that as a matter of law, on the record as we are required to view it at this time, Bechtel owed Caldwell a duty of due care to take reasonable steps to protect him from the foreseeable risk of harm to his health posed by the excessive concentration of silica dust in the Metro tunnels. We remand so that Caldwell will have an opportunity to prove, if he can, the other elements of his negligence action.

*Brief of Caldwell v. Bechtel, Inc.*

FACTS:

Caldwell was a laborer who now suffers from silicosis. He claims that he contracted the disease while working in a tunnel under construction as part of the Washington Metropolitan Area Transportation Authority (WMATA). He brought his action for damages against Bechtel, Inc., a consultant engineering firm under contract with WMATA for the project.

ISSUE:

Did Bechtel breach a duty of due care owed to Caldwell to take reasonable steps to protect him from the foreseeable risk of harm to his health posed by the excessive concentration of silica dust in the subway tunnels?

DECISION:

In favor of Caldwell. Summary judgment reversed and case remanded to the district court.

REASONS:

Caldwell has not brought an action for breach of contract as Bechtel seems to believe. Rather, he seeks damages for an alleged breach of the duty of reasonable care. Unlike contractual duties, which are imposed by agreement of the parties to a contract, a duty of due care under tort law is based primarily on social policy. That is, the law imposes upon individuals the expectation that their actions will not cause foreseeable injury to another. These societal expectations comprise the concept of duty—a concept that varies in response to the activity engaged in by the individual. Moreover, the duty is owed to anyone who might foreseeably be injured by the conduct of the actor in question. In contrast, under contract law, a duty is owed only to those parties specified in the contract. Here, by entering into a contract with WMATA, Bechtel placed itself in such a relation toward Caldwell that the law will impose upon it an obligation in tort, and not in contract, to act in such a way that Caldwell would not be injured.