

Civil Procedure

Professor Steve Subrin

FIRST ASSIGNMENT

1. Please do not read any outside legal material, including your text and supplement, in preparing for this assignment.
2. Assume the following facts, and be prepared to discuss the problem in depth during class. Spend time you would otherwise use reading an assignment to think.
3. Please do not answer in terms of what you think your instructor wants to hear or in terms of the judicial structure of the United States or any other country, except to the extent that what you know about any given court system convinces you of its applicability or inapplicability to this problem.

A Potential Gift of Two Islands

You are among a group of 1000 people of many ages, types, and backgrounds who are disenchanted with the complexity of modern life and have decided to form your own community. Although you don't all agree on a fully developed social-economic-political philosophy, most of you do agree on fundamentals. You do not want to live in a dictatorship or a community that is capricious or arbitrary in its use of power. You want to live in a community that permits and encourages participation, free expression, choice, and creativity. You hope that your community will grow to about fifteen or twenty thousand people.

Patricia Rolly, a wealthy philanthropist, has heard of your group and has said that she is considering donating two islands off the coast of Maine, as well as a substantial sum of money, to help initiate your community. One of the islands is quite large; the smaller island is about 15 miles distant from the larger one. But Patricia makes clear that her donations are contingent on one major condition.

Patricia has always distrusted Utopian schemes, and points out that they have invariably floundered due to lack of resources, will power, planning, foresight, practicality, and clear, tough thinking. Before parting with her islands and hard-earned cash, she wants a detailed manual of the economic, political, social, and legal structure and procedures that your community will follow. She says that she will not accept a broad, philosophical outline or treatise, but instead wants to know how real problems will be met on a day-to-day basis; precisely what will physically and actually be done, in concrete detail, to solve basic problems. Some of the topics she suggests are shelter, food, fire, family relations, business and commerce, passage of rules, enforcement of rules and decisions, and resolution of civil and criminal disputes.

You and representatives of the other pioneers meet to choose committees in order to speedily compile the manual. As a law student, you are selected to be the chairperson of the committee dealing with "how to resolve civil (non-criminal) disputes." There are other committees to delve into "law

enforcement,” “selecting leaders”, “passing laws”, “the police and the military (if any)”, and “criminal matters,” so that your topic is limited.

Patricia has set up a meeting with each of the committees. In anticipation of the meeting, she has sent each chairperson a letter reminding that although history and philosophy may guide each group in its approach, she wants to end up with a specific and detailed manual and reasons for each of the decisions that are made. In her letter to you, she has ended as follows:

“Do not give me generalities. Try not to get hung on the need for a full-blown economic, social, or political philosophy of life, although I assume fairness is important to you, as it is for me. I’m only interested for the moment in how you are going to handle non-criminal (civil) disputes that have gone beyond the stage where they can amicably be settled. I want to know exactly what one would do if one felt aggrieved by another’s actions and what the other person will do to defend himself or herself against the accusations. Consider carefully what subtopics will have to be covered. For examples, where would the aggrieved person go? What would he or she say or write? Who will decide the outcome of the dispute? Based on what? How will we keep track of everything? What if the aggrieved or the accused needs information from others to support their positions? What if two of the folks on the islands have accusations against the same person? Can they join together? What if an outsider is visiting the island and gets into a dispute? If an aggrieved person loses the first time, can he or she try again? Will all types and sizes of civil disputes be dealt with the same way? These are just some of the things I think we need to decide for the island, but I’m sure you’ll be thinking of these and other issues for our meeting. Or perhaps you can persuade me that I have not suggested relevant or correct subtopics and that you have an entirely different approach and different subtopics that must be addressed.”

Please prepare yourself for your meeting with Patricia Rolly. Feel free to discuss any of this with anybody in advance of your meeting.