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## **MODEL SYLLABUS AND COURSE OUTLINE**

### Introduction to Law

#### Instructor:

Telephone/E-mail:

Web Page:

Office:

Office Hours:

### Course Description (Use description found in school catalog)

This course covers the structure and function of the American legal system. Major areas of substantive law are introduced to students. An overview of both civil and criminal procedure is also provided. Legal vocabulary and the process of legal analysis are emphasized.

### Course Objectives

When students complete this class they should:

- Understand the structure and function of the American legal system
- Understand and be able to use legal terminology
- Be able to analyze a basic factual problem in light of statutory or case law
- Be able to explain basic court procedures used in civil and criminal cases
- Develop a basic understanding of major areas of substantive law
- Know how to read and brief a case
- Know how to read and analyze a statute

### Text

*Introduction to Law 2ed.*, by Hames and Ekern, Prentice Hall

### Instructional Methods

A variety of instructional methods are used including lecture, case study from text, small group discussion and writing exercises, individual writing exercises, Internet assignments, speakers, and videos.

### Student Evaluation

Students are evaluated on the following: midterm and final examinations, written homework assignments, classroom written assignments, and classroom participation.

Grading Scale      (Insert your grading scale.)

In a major school desegregation case preceding this action, respondents prevailed and were awarded attorney's fees under 42 U.S.C. / 1988. In this case, the Supreme Court was asked to decide whether and to what extent paralegal time could be included in the award of attorney's fees. Respondents claimed they should be allowed to recover the amount they normally billed for paralegal work. Petitioner (Missouri) claimed that respondents should recover only what they actually pay paralegals. In finding for respondents, the Court discussed the role paralegals now play in the legal community, comparing much of their work to the work of the attorney.

1. The parties to a case are the people or organizations who have brought their dispute to court. Who are the parties in this case? Which party petitioned the Supreme Court for review? Can you tell which party won the case at the trial level?

**Suggested Answer:**

The parties are the State of Missouri and Jenkins. Missouri petitioned the Court. Jenkins won at the trial level.

1. Describe the nature of the dispute between the parties in this case. How did the Court resolve the dispute?

**Suggested Answer:**

The parties argued over whether paralegal time could be included when assessing an award of reasonable attorney fees to the same extent that the time would be billed to a client. The Court found that paralegal time, billed at the going rate, was properly included in an award of attorney's fees.

1. What does the Court say about the nature of work done by paralegals? Do you think this has any impact on the way judges and lawyers view the paralegal profession?

**Suggested Answer:**

In one of the footnotes, the Court states:

It has frequently been recognized in the lower courts that paralegals are capable of carrying out many tasks, under the supervision of an attorney, that might otherwise be performed by a lawyer and billed at a higher rate. Such work might include, for example, factual investigation, including locating and interviewing witnesses; assistance with depositions, interrogatories, and document production; compilation of statistical and financial data; checking legal citations; and drafting correspondence. Much such work lies in a gray area of tasks that might appropriately be performed either by an attorney or a paralegal....

The Court also says that the use of paralegals allows for more affordable legal services to be rendered

(The second part of this question calls for student opinion.)

1. Is the Court treating paralegals more like secretaries or more like attorneys? Explain.

**Suggested Answer:**

By allowing the recovery of paralegal time the Court is obviously treating paralegals more like attorneys than secretaries.

**29 CFR 541.1 (d) & 29 CFR 541.107 (Pg. 12)**

This section provides that overtime pay need not be paid to workers who customarily and regularly exercise discretionary powers and that this requirement is met by the employee who normally and recurrently is called upon to exercise and does exercise discretionary powers in the day-to-day performance of his duties. 29 CFR 541.107

1. Do you think paralegals are entitled to overtime pay according to this law?

**Suggested Answer:**

Although this question calls for an opinion by the student, in answering, students should analyze the type of work done by paralegals and the skills required and discuss how much discretion is involved in the work.

1. What factors are important in making this determination?

**Suggested Answer:**

Students might discuss the fact that not all paralegals do the same type of work. Some have much more discretion than others. Students should also discuss the fact that paralegals should be working under the supervision of a lawyer.

1. What about other law office support staff?

**Suggested Answer:**

Most support staff would probably not fall into this category since their work is largely ministerial. However, legal secretaries might at times be close to paralegals.

1. What about attorneys?

**Suggested Answer:**

Even attorneys who work for other attorneys or organizations are required to use their discretion and judgment. Students should try to give some examples of the types of work done by attorneys that would demonstrate this.

***Phoenix Founders, Inc. v. McClellan*, 887 S.W.2d 831, 38 Tex. Sup. J. 12 (1994) (Pg. 20)**

This case concerns the ethical question of conflict of interest. The court was asked to consider whether a law firm must be disqualified from ongoing litigation because it rehired a legal assistant who had worked for opposing counsel for three weeks. Phoenix was represented by the law firm of Thompson and Knight. A paralegal working for this firm left and was hired by the firm of David and Goodman, who represented the Benekes. The Benekes were being sued by Phoenix. The paralegal who originally worked for Thompson and Knight, left and went to work for David and Goodman for three weeks and then returned to Thompson and Knight. While at David and Goodman, the paralegal had some minor involvement in the case against the Benekes. When she returned to Thompson and Knight, the Benekes made a motion to disqualify the firm on the basis that they were now privy to confidential information. In the meantime, the paralegal had resigned from the firm (the alternative being termination). The trial court disqualified the firm. They appealed. The court stated that the paralegal did obtain confidential information. However, the court could not say that any confidential information obtained by a paralegal was absolutely imputed to the law firm. The firm would not have to be disqualified if proper steps were taken to insulate the paralegal. The case was remanded to determine if Thompson and Knight had in fact taken such steps.

1. Who brought this action in court and why?

**Suggested Answer:**

This action was brought by the law firm of Thompson and Knight, attorneys for Phoenix Founders, Inc. Obviously the firm did not want to be disqualified from representing plaintiffs in this and other litigation.

1. Why did the firm of Thompson and Knight ask the paralegal, Denise Hargrove, to leave or be fired?

**Suggested Answer:**

The answer to this question is not apparent in the case. One of two reasons seems probable. Either the firm was trying to minimize the conflict (and the paralegal was more expendable than the client), or it felt that she might not have been honest with them. This question gives students the opportunity to discuss the importance and consequences of ethical choices.



1. The Court talks a great deal about formal screening (which is sometimes referred to as the Chinese Wall). What types of things could be done in a law firm to achieve this?

**Suggested Answer:**

Students should discuss ways of keeping files from a person who has a conflict. They should also discuss ways of making sure that the case is not inadvertently discussed in the presence of such an individual.

## **ETHICAL CHOICES**

You have just completed your first year of your paralegal education. Your neighbor, and good friend, was recently in an automobile accident. She tells you how the accident happened and asks if she has a good case. What should you tell her? (Pg. 8)

**Points to Discuss:**

This situation raises the issue of giving legal advice and the unauthorized practice of law. Students should discuss what they can tell their neighbor as well as what they cannot.

## **QUESTIONS FOR ANALYSIS**

1. Review the classified section of your local newspaper for job advertisements for attorneys, paralegals and legal secretaries. Compare and contrast the job requirements and skills.

No suggestion here.

2. Review the Ethical Choices in this chapter. Which NALA and/or NFPA ethical rules or guidelines apply to the situations? Review your state's ethical rules (hint: go to [www.nala.org](http://www.nala.org) and find a link). Which of those rules apply?

The NALA and NFPA rules are found in Appendix II of the text. State's rules will vary.

## CHAPTER 2: THE AMERICAN LEGAL SYSTEM

### TRANSPARENCY MASTERS

Powers of the Federal Government  
Powers of the Federal Government  
Powers of the State Government  
The Supremacy Clause  
*Texas v. Johnson*  
The U.S. Supreme Court

### PURPOSE AND SUBSTANTIVE CONTENT

The purpose of this chapter is to give the introductory student an overview of the American legal system. Included is a discussion of the concept of federalism. All branches of the federal and state governments are discussed, with an emphasis on the structure and role of the various federal and state courts.

### CHAPTER OUTLINE

Technology Corner  
Case File

- 2-1 Introduction
- 2-2 Federalism — The Relationship Between Federal and State Government
  - Powers of the Federal Government
  - Powers of the State Government
  - Exclusive and Concurrent Powers of Federal and State Governments
  - Conflicts Between Federal and State Laws — The Supremacy Clause
- 2-3 The Federal Government and the Legal System
  - Executive Branch
  - Legislative Branch
  - Judicial Branch
- 2-4 State Governments and the Legal System
- 2-5 The Courts and Their Roles
  - The Federal Court System
  - Federal District Courts
  - Federal Appellate Courts
  - The U.S. Supreme Court
  - The Courts and Technology
  - Federal Judges
  - State Court Systems
  - State Court Judges

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## CASE SUMMARIES, CASE QUESTIONS, AND SUGGESTED ANSWERS

### *Katzbach , Acting Attorney General v. McClung*, 379 U.S. 294 (1964) (Pg. 27)

This case involved the application of the Civil Rights Act of 1964 to a small family-run restaurant, Ollie s Barbecue. Ollie s refused to serve blacks on the premises. As a result this action was brought. Since the Civil Rights Act applied only if a business was involved in interstate commerce, the Court had to decide if a small family-owned business was so involved. The record showed that part of the supplies bought by the restaurant were transported in interstate commerce, even though the restaurant operated solely within a state. The court held that there was a sufficient connection with interstate commerce to apply the Civil Rights Act.

1. This case deals with the validity of the Title II of the Civil Rights Act of 1964. Why is the Court discussing the interstate commerce clause of the U.S. Constitution?

#### **Suggested Answer:**

Since the power of Congress to make laws is restricted to those matters authorized in the Constitution, the Civil Rights Act must have some connection with a power given to Congress under the U.S. Constitution. The Interstate Commerce Clause gives Congress the power to regulate interstate commerce. In answering this question, students should demonstrate that they know Congress cannot make any law it wants to.

1. Does a small, family-owned business really have a substantial impact on interstate commerce? Why or why not?

#### **Suggested Answer:**

This question really calls for the students opinion and analysis. Although the Court felt that Ollie s Barbecue did have a sufficient impact, students might not agree.

1. Do you think that, under the Interstate Commerce Clause, Congress would have the power to make a law that makes it a crime for a person to possess a gun in areas around schools? See *U.S. v. Lopez*, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995)

**Suggested Answer:**

This question calls for analysis by the students. They should compare this situation to the case. The issue is what effect the restriction of possession of guns has on interstate commerce. (The *Lopez* case held that Congress did not have the power to make such a law.)

1. Could the U.S. Congress make it a federal crime for any business to discriminate because of race, sex or national origin or age? Why or why not?

**Suggested Answer:**

Again, this question calls more for student analysis and opinion. No answer is found directly in the case. Students should discuss whether Congress has general rights to enact crimes (which of course it does not). They should also discuss whether other provisions under the Constitution might control. Students will probably be inclined to mention the equal protection clause of the 14th Amendment. At this point a discussion about the fact that this Amendment only applies to state action and not individual action is appropriate.

***Texas v. Johnson*, 491 U.S. 397 (1989) (Pg. 30)**

In this case the defendant, Johnson, was found guilty in a Texas trial court for violating a state law making it a crime to burn the American flag. He did this at the Republican national convention held in Texas. Johnson appealed and eventually the U.S. Supreme Court granted certiorari. The question was whether burning the flag was protected under the First Amendment Right to Free Speech. The Supreme Court held that it was.

1. What gave the United States Supreme Court, a federal court, the right to review a Texas State law?

**Suggested Answer:**

The fact that a U.S. Constitutional right was asserted gave the Supreme Court federal jurisdiction.

1. Suppose that Johnson had burned a Texas state flag instead of the U.S. flag.
  - a. Would the U.S. Supreme Court have jurisdiction to hear the case?
  - b. If the Supreme Court did hear the case, do you think the decision would have been any different?

**Suggested Answer:**

The Supreme Court could hear the case and the result would probably be the same because the real issue was the Right to Free Speech under the U.S. Constitution, not whether the criminal law was state or federal.

1. In which court was Johnson first tried? List all of the courts that heard this case in the order in which they heard it.

**Suggested Answer:**

The case was first tried in a Texas trial court; The Court of Appeals for the Fifth District of Texas at Dallas affirmed Johnson's conviction, 706 S.W. 2d 120 (1986), Texas Court of Criminal Appeals reversed, 755 S.W. 2d 92 (1988), and U.S. Supreme Court granted a hearing.

***Blanton v. North Las Vegas*, 489 U.S. 538 (1989) (Pg. 32)**

Petitioners were charged with drunk driving, an offense that carried a two-day jail term. They were denied the right to a jury trial in the trial court and appealed to the U.S. Supreme Court. The Court held there was no right to a jury trial in petty offenses which it described as offenses carrying less than six months in jail.

Calif. Health & Safety Code /11357 (b) makes possession of less than one ounce of marijuana a misdemeanor punishable by a fine of \$100.

California Penal Code / 689 provides for the right to trial for any misdemeanor in California.

1. Is there a conflict between California Penal Code/689 and the rule stated by the Supreme Court that jury trials are not required where the penalty is less than six months incarceration?

**Suggested Answer:**

There is no conflict here. The Supreme Court has held that jury trials are not required but has not precluded any state from offering such trials.

1. Suppose that Jensen is charged with violating California Health and Safety Code /11357 for possessing less than one ounce of marijuana. Assuming this is a public offense and assuming the maximum sentence is a fine of \$100, is Jensen entitled to a jury trial to determine guilt? Why or why not?

**Suggested Answer:**

Jensen is entitled to a jury trial because California law provides for it.

***Heath v. Alabama*, 474 U.S. 82 (1985) (Pg. 34)**

Petitioner in this action hired two individuals to kidnap and murder his wife. She was kidnapped in Alabama, taken across state lines and murdered in Georgia. Petitioner pled guilty to a non-capital murder charge in Georgia. He was later charged with a capital murder charge in Alabama. Petitioner claimed that the double jeopardy clause of the Fifth Amendment prohibited the action in Alabama. The U.S. Supreme Court held that since the two states were separate sovereigns and each has its own laws and their own interests, each could prosecute the criminal case without any violation of double jeopardy.

1. What is meant by dual sovereignty?

**Suggested Answer:**

Dual sovereignty means that different governments (either separate states or state and federal) have the right to regulate within their governmental boundaries. When individuals have dealings with more than one government they are subject to laws of each of these governments.

1. Where do states get their power to prosecute individuals for crimes?

**Suggested Answer:**

States get their power to prosecute individuals for crimes from their own constitutions.

1. Is there dual sovereignty between a city and the state in which it is located? Explain.

**Suggested Answer:**

There is no dual sovereignty between a city and state because ultimately the city gets its authority from the state constitutions.

**ETHICAL CHOICES**

Assume that you work as a paralegal in a law office that has seven attorneys. While you are having dinner with your spouse in a restaurant, you see a female attorney from your law firm having an intimate dinner with a local male judge. The judge has been assigned to hear a case that your supervising attorney is handling. The female in question has nothing to do with this case. What do you do? (Pg. 39)

**Points to Discuss:**

Is there a potential conflict? Can attorneys and judges socialize? Does this create an appearance of impropriety? Is it the paralegal's obligation or responsibility to say anything? If the paralegal does tattle, how will he or she be regarded?

Assume that you work as a paralegal or legal secretary for an attorney who represents your small city. Work for the city constitutes about 50% of the practice of your attorney. One of the responsibilities of your office is to draft proposed local ordinances at the request of the city council. You receive a telephone call from the mayor of the city who tells you that the council is meeting that evening and he wants a draft of a proposed law that would ban all picketing within 200 feet of city hall. You explain to the mayor that the attorney is out of town for three days. The mayor tells you that he knows that you do all the real work in the law firm and orders you to draft the proposal, adding that if this firm cannot get the job done, the city will have to look for another firm to represent them. You know that the proposal would be unconstitutional. What do you do? (Pg. 41)

**Points to Discuss:**

Is drafting proposed legislation unauthorized practice of law? Does it require supervision? Is there a client? Can you draft a law knowing it is unconstitutional? Does that violate professional conduct and personal integrity? Does it matter that it is only a draft of a law? Can a paralegal work on any project if he or she believes they are supporting an untenable legal position?

**QUESTIONS FOR ANALYSIS**

1. Review the box titled Powers Granted to the U.S. Congress and consider the following :
  - a. Would you expect the lawsuit by Eberhardt's employer to be in state court or federal court?
  - b. Would you expect the Eberhardt divorce case to be in state court or federal court?
  - c. Would a federal or county prosecutor be handling the Eberhardt theft charges?
  - d. Would a federal or county prosecutor be handling a treason case against Eberhardt.

**Suggested Answer:**

- a. The trade secret lawsuit would probably be in state court since there is no federal question.
  - b. The divorce case would be in state court
  - c. A county prosecutor would handle the theft charge, a state crime.
  - d. A federal prosecutor would handle a treason charge
2. Read the hypothetical case in the Mock Trial in Appendix III. If this happened in your city, which court would have jurisdiction?

**Suggested Answer:**

The exact court will vary from state to state but it will be a trial court with jurisdiction over felonies.

3. Review the Ethical Choices in this chapter. Which NALA and/or NFPA ethical rules or guidelines apply to the situations? Review your state's ethical rules (hint: go to [www.nala.org](http://www.nala.org) and find a link). Which of those rules apply?

**Suggested Answer:**

The NALA and NFPA rules are found in Appendix II of the text. State's rules will vary.



## **CHAPTER 3: LAWS: THEIR SOURCES**

### **TRANSPARENCY MASTERS**

Constitutional Law  
Federal Constitution  
Case Law (vocabulary)  
*Tennessee v. Garner*  
Statutory Law  
Statutory Law (vocabulary)

### **PURPOSE AND SUBSTANTIVE CONTENT**

The purpose of this chapter is to introduce students to the different sources of laws: constitutions, cases, and codes. Each source is explained and examples are provided.

### **CHAPTER OUTLINE**

Technology Corner  
Case File

- 3-1 Introduction
- 3-2 Constitutional Law
  - The Federal Constitution
  - State Constitutions
- 3-3 Case Law
  - Common Law
  - Case Law—Interpretation of Constitutional and Statutory Law
  - Case Law—The Power to Invalidate Statutory Law
  - Case Law—The Factual Controversy
  - Stare Decisis
- 3-4 Statutory Law
  - The Legislative Process—The Federal Government
  - The Legislative Process—States
- 3-4 Administrative Regulations

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Questions for Analysis  
Assignments and Projects

### **SKILL BUILDING**

The case questions, assignments, and projects give students the opportunity to build the following skills:

Critical Analysis  
Investigation  
Interviewing  
Writing



## CASE SUMMARIES, CASE QUESTIONS, AND SUGGESTED ANSWERS

### *Koon v. United States*, 518 U.S. 81 (1996) (Pg. 49)

This case concerns the criminal action brought against the police officers in the Rodney King beating. The officers were convicted of criminal charges under the federal civil rights statute. The trial judge then imposed sentence. Under federal law, sentencing must follow certain guidelines, established by a special commission established by Congress. These guidelines provide sentencing standards. The trial judge is allowed to depart from these standards or times only under certain circumstances. In the *Koon* case, the trial judge considered various factors and reduced the sentence, departing from the standard sentence. In particular the trial court considered the effect of the conviction on their employment, the fact that this was a first offense, and the hardship to the officers because of the dual prosecution by both state and federal authorities. The government appealed. The Supreme Court held that the first two factors could not be considered by the trial court in sentencing, because they were already reflected in the sentencing guidelines. The hardship caused by double prosecution could be considered, however. The Supreme Court remanded the case for reevaluation.

1. What law is the court interpreting here? Be specific.

#### **Suggested Answer:**

The Court is interpreting The Sentencing Reform Act of 1984 as amended in 18 U.S.C. §3551 et seq. and 28 U.S.C. §991-998.

1. What was the factual controversy in this case?

#### **Suggested Answer:**

The factual controversy was whether or not the trial judge abused his discretion in sentencing by reducing the sentence based on three factors: (1) the effect of the conviction on their employment, (2) the fact that it was a first offense, and (3) the extraordinary hardship caused by two separate prosecutions.

1. Would this case have any applicability in determining if Hardtack used excessive force? Explain.

**Suggested Answer:**

This case has nothing to do with what constitutes excessive force. It is limited to issues relating to sentencing.

***Tennessee v. Garner, 471 U.S. 1 (1985) (Pg. 53)***

In this case a young burglary suspect was shot and killed by a police officer while attempting to flee the scene of the crime. He was not armed. The father of the victim filed a civil lawsuit against the police officer and the state. The officer was acting in accordance with a state law that authorized the use of deadly force under this circumstance. At trial, the court found in favor of all defendants. The Court of Appeals reversed, stating that the use of force in this case violated the U.S. Constitution because it was unreasonable. The Supreme Court agreed with the Court of Appeals. The use of force in making an arrest must be reasonable. The use of deadly force is generally limited to situations where the perpetrator posed an immediate and serious threat to those around him. In reaching its decision the Court explores the history of this area of law, commenting on the common law rule that one could shoot a fleeing felon and explaining why the rule is no longer appropriate.

1. Which Constitutional provisions apply to this case and how do they apply?

**Suggested Answer:**

Fourth Amendment The shooting was part of the arrest, and the Fourth Amendment states that arrests must be reasonable. Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution also apply here.

1. What statutory law is the Court interpreting here?

**Suggested Answer:**

Tenn. Code Ann. /40-7-108 (1982).

1. Did the Court strike down the Tennessee statute? Quote the language that applies.

**Suggested Answer:**

The Court did not strike down the Tennessee statute in its entirety, only as applied in this type of situation. It is not, however, unconstitutional on its face. Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force

may be used if necessary to prevent escape and if, where feasible, some warning has been given. As applied in such circumstances, the Tennessee statute would pass constitutional muster.

1. What common law rule was mentioned by the Court?

**Suggested Answer:**

The Court discusses the common-law rule that one could use deadly force against a fleeing felon.

1. Why did the Court not follow the common law rule?

**Suggested Answer:**

The common law was no longer needed. The common law rule occurred at a time when the killing of a resisting or fleeing felon resulted in no greater consequences than those authorized for punishment of the felony of which the individual was charged or suspected. Courts have also justified the common-law rule by emphasizing the relative dangerousness of felons.

Neither of these justifications makes sense today. Almost all crimes formerly punishable by death no longer are or can be. And while in earlier times the gulf between the felonies and the minor offences was broad and deep, today the distinction is minor and often arbitrary. Many crimes classified as misdemeanors, or nonexistent, at common law are now felonies. These changes have undermined the concept, which was questionable to begin with, that use of deadly force against a fleeing felon is merely a speedier execution of someone who has already forfeited his life. They have also made untenable the assumption that a felon is more dangerous than a misdemeanor.

There is an additional reason why the common law rule cannot be directly translated to the present day. The common-law rule developed at a time when weapons were rudimentary. Deadly force could be inflicted almost solely in a hand-to-hand struggle during which, necessarily, the safety of the arresting officer was at risk. Handguns were not carried by police officers until the latter half of the last century. Only then did it become possible to use deadly force from a distance as a means of apprehension. As a practical matter, the use of deadly force under the standard articulation of the common-law rule has an altogether different meaning -- —and harsher consequences — now than in past centuries.

1. In this case, the Court found that the use of deadly force in arresting an individual is a violation of the Fourth Amendment. Hardtack is accused of using excessive force (not deadly). Does this case apply to Hardtack? Why or why not? Quote language in the case that supports your position.

**Suggested Answer:**

Yes, this case would apply to Hardtack. A police officer may arrest a person if he has probable cause to believe that person committed a crime. *United States v. Watson*, 423 U.S. 411 (1976). Petitioners and appellant argue that if this requirement is satisfied the Fourth Amendment has nothing to say about how that seizure is made. This submission ignores the many cases in which this Court, by balancing the extent of the intrusion against the need for it, has examined the reasonableness of the manner in which a search or seizure is conducted. It is plain that reasonableness depends on not only when a seizure is made, but also how it is carried out. Hardtack is accused of using excessive force in making an arrest. How he made the arrest is an issue. This case would apply.

***Powell v. Alabama*, 287 U.S. 45 (1932) (Pg. 57)**

In this case several young Negro men were tried and convicted of a capital offense in the state court of Alabama. The young men were poor and illiterate. They were not given the opportunity to secure counsel for their defense. They were convicted and appealed to the U.S. Supreme Court.

1. What law is this Court interpreting? Be specific.

**Suggested Answer:**

The Court is interpreting the Fourteenth Amendment to the U.S. Constitution, in particular the due process clause.

1. Review the definition of the term remand from the previous chapter. Were the defendants in this case set free by the Court?

**Suggested Answer:**

No, the defendants were not set free. They were ordered to stand trial again, this time with adequate counsel.

1. Does the decision in this case apply to all felony cases? Quote the language in the case that supports your answer.

**Suggested Answer:**

The decision does not apply to all felony cases. The Court said we are of the opinion that, under the circumstances just stated, the necessity of counsel was so vital and imperative that the failure of the trial court to make an effective appointment of

counsel was likewise a denial of due process within the meaning of the Fourteenth Amendment. Whether this would be so in other criminal prosecutions, or under other circumstances, we need not determine. All that it is necessary now to decide, as we do decide, is that in a capital case, where the defendant is unable to employ counsel, and is incapable adequately of making his own defense because of ignorance, feeble mindedness, illiteracy, or the like, it is the duty of the court, whether requested or not, to assign.

1. This case started in the Alabama courts. Is it binding in your state? Explain.

**Suggested Answer:**

Yes. This was a decision on the meaning of the Fourteenth Amendment to the U.S. Constitution by the U.S. Supreme Court. As such, it is binding on all states.

1. What are the various sources of law relied upon by this Court in its decisions. Give examples from the case?

**Suggested Answer:**

The Court relies on Constitutional law (citing both the U.S. and Alabama state Constitutions), case law (citing the *Holden* decision), and statutory law (citing the Alabama statute dealing with rape).

1. What did the Supreme Court say about possible violations of the Alabama state constitution? Explain.

**Suggested Answer:**

The Court said it was not up to it to decide those issues. It was concerned with the U.S. Constitution. The Constitution of Alabama provides that in all criminal prosecutions the accused shall enjoy the right to have the assistance of counsel; and a state statute requires the court in a capital case, where the defendant is unable to employ counsel, to appoint counsel for him. The state supreme court held that these provisions had not been infringed, and the Supreme Court said it was powerless to interfere with that decision.

## **STATUTORY LAW, QUESTIONS, AND SUGGESTED ANSWERS**

Federal Statutory Law (United States Code): 18 U.S.C. / 242 makes it a crime for anyone acting under color of authority to deprive another person of any Constitutional right because of color or race.

### **State Statutory Law**

### Battery Defined

A battery is any willful and unlawful use of force or violence upon the person of another.

### Punishment for battery.

A battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail not exceeding six months, or by both the fine and imprisonment.

California Penal Code //242, 243

1. Review the facts in the memo at the beginning of the chapter. Has Hardtack violated the federal statute? Explain

#### **Suggested Answer:**

Hardtack was a police officer on duty, so he was acting under color of authority. If he used excessive force and if he did so because of the race of the arrested individual, there is a violation. At this point, students should be encouraged not to assume that excessive force and a racial motive exist.

1. Has Hardtack violated the state statute?

#### **Suggested Answer:**

The state statutes are less restrictive than the federal statute. However, it must be shown that unlawful force was used.

1. If Hardtack is charged with violating the federal statute, which court would hear the trial?

#### **Suggested Answer:**

Federal District Court.

### **ETHICAL CHOICES**

Assume that you work for the prosecutor's office. You are organizing a file in preparation for trial and come across the name and telephone number of a witness who identified the perpetrator of the crime as someone other than the defendant named in the case. It does not appear from the file that the defense attorney has been advised of this fact. You bring this to the attention of the attorney handling the case who tells you to forget about it. After all it isn't the prosecutor's job to defend anyone accused of a crime. What do you do? (Pg. 62)

**Points to Discuss:**

How does confidentiality affect this? Does the law require that this be disclosed? (It probably does under the *Brady* decision.) Whether or not the law requires it, do basic ethics require it? What do you do when you think an attorney you work for is doing something unethical?

Assume that you work for the public defender's office. You are organizing a file in preparation for trial and come across the name and telephone number of a witness who positively identified the perpetrator of the crime as the defendant named in the case. You are fairly certain that the prosecutor does not know of this witness. You bring this to the attention of the attorney handling the case who tells you to forget about it. After all it isn't the defense attorney's job to worry about this. The defendant, your client, has been accused of child molestation. What do you do? (Pg. 62)

**Points to Discuss:**

How does this differ from the situation above? Do you owe any obligation to society or potential victims of crime? Distinguish between identifiable victims and possible unknown victims.

**QUESTIONS FOR ANALYSIS**

1. Review the Bill of Rights, found in Appendix I, and refer to the Case File at the beginning of the chapter. If Hardtack is accused of any crimes, what rights does he have? Does it matter if he is charged with a federal crime or a state crime? Review the *Heath* case in Chapter 2 and the *Koon* case in this chapter. Based on these cases, could Hardtack be prosecuted for both state and federal crimes for his actions?

**Suggested Answer:**

Hardtack has the rights mentioned in the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 8<sup>th</sup> Amendments. If charged with a state crime, the rights will be basically the same because of the 14<sup>th</sup> Amendment. Based on the *Heath* and *Koon* cases, he could be tried for both state and federal crimes.

2. A group of concerned parents in the city of Elmwood wants to see a curfew imposed on anyone under the age of eighteen. How can they get such a law imposed (*i.e.*, legislative action, court case)?

**Suggested Answer:**



They would have to try to get local authorities to pass a law. Since there is no existing controversy, there can be no court case.

3. Peter, Paul, and Mary are sixteen-year-olds who live in Elmwood, a city with a 10 p.m. curfew for anyone under the age of eighteen. They think the law is unfair and violates their constitutional rights, and they want it changed. How can they go about doing this?

**Suggested Answer:**

They could try to get the city legislative body to repeal the law. Alternatively, they could file a lawsuit, but they would probably have to violate the curfew and be cited for it.

4. Review the Ethical Choices in this chapter. Which NALA and/or NFPA ethical rules or guidelines apply to the situations? Review your state's ethical rules (hint: go to [www.nala.org](http://www.nala.org) and find a link). Which of those rules apply?

**Suggested Answer:**

The NALA and NFPA rules are found in Appendix II of the text. State's rules will vary.

# **CHAPTER 4: FINDING THE LAW: LEGAL RESEARCH**

## **TRANSPARENCY MASTERS**

- Primary Sources
- Secondary Sources
- Facts and Issues
- Factual Categories
- How to Sort the Facts
- What Is Case Law?
- Federal Case Law
- How to Read a Case Citation
- State Case Law
- What Is Statutory Law?

## **PURPOSE AND SUBSTANTIVE CONTENT**

This chapter introduces students to basic legal research. Students should carefully review Appendix IV, the Basic Citation Reference Guide. Basic legal research sources are summarized and categorized. Examples of several types of legal resources are included in the text of Chapter 4. Attention is given to sorting out relevant facts and identifying the legal issues raised by the relevant facts. An introduction on how to begin a legal research project is provided. This chapter introduces the student to case law and statutory law. Special attention is given to reading and analyzing cases and statutes. Critical thinking skills are an essential component of Chapter 4.

## **CHAPTER OUTLINE**

Technology Corner  
Case File

- 4-1 Introduction to Legal Research and Writing
- 4-2 Before You Begin
  - Know the Facts
  - Analyze the Facts
  - Identify the Issues
  - Use the Relevant Facts to Define the Issues
  - Sort the Facts
- 4-3 Where to Begin the Research
  - Dictionaries
  - Encyclopedias
  - Form Books
  - Legal Periodicals

- Treatises
- Digests
- 4-4 Case Law
  - What Is a Case?
  - Where to Find Case Law
  - Federal Case Law
  - State Case Law
  - How to Read and Use Case Law
- 4-5 Statutory Law
  - Using Statutory Law

Featured Website  
Chapter Summary  
Terms to Remember  
Questions for Review  
Questions for Analysis  
Assignments and Projects

## SKILL BUILDING

The examples, assignments, case questions, and projects provide the opportunity for students to build the following skills:

- Critical Thinking
- Critical Analysis
- Legal Reasoning
- Basic Legal Research
- Basic Legal Writing
- Computer



## CASE SUMMARIES, CASE QUESTIONS, AND SUGGESTED ANSWERS

*In re Marriage of Modnick*, 33 Cal. 3d 897, 191 Cal. Rptr. 629, 663 P.2d 187 (1983) (Pg. 79)

*Modnick* is a family law/domestic relations decision. The legal issue addressed is does the failure of one spouse to disclose the existence of a community property asset constitute extrinsic fraud? When the Modnicks dissolved their marriage Mr. Modnick disclosed only one bank account in his name, that account had a \$7.00 balance. After an IRS investigation Mrs. Modnick discovered that her former husband had willfully not disclosed other substantial bank accounts. She moved to set aside the final judgment. The trial court denied her motion. The appellate court reversed and vacated the interlocutory and final