

M A S A R Y K U N I V E R S I T Y

INTRODUCTION TO U.S. LAW
AND
LEGAL ETHICS

Course Outline and Syllabus

Visiting Professor Joseph F. Vosicky, Jr.

Spring, 2010

Suggested Text:

Fine, American Legal Systems: A Resource and Reference Guide, Anderson Publishing Co.

Burnham, Introduction to the Law and Legal System of the United States, West [Publishing] Group

Foonberg, How to Start + Build a Law Practice, American Bar Association

Fox Legal Tender, (A Lawyer's Guide to Handling Professional Dilemmas), American Bar Association

Morgan + Rotunda, Professional Responsibility Problems and Materials, Foundation Press

CLASS #1

Monday, 19/4 11:10 – 12:40 Room No. 025

Common Law Tradition: „Stare Decisis“
Legal Authority: Constitution, Statutes, Case Law
Adversary System of Dispute Resolution
Case Titles, Terminology + Briefing

Structure of American Courts (Federal + State)
Civil v. Criminal
Division of Local Courts + Alternative Dispute Resolution
Jurisdiction in Federal Court
Civil Law: Tort + Contract
(*See*, Addendum below)

CLASS #2

Tuesday, 20/4 15:05 – 16:35 Room No. 133

How Federal Court Applies State Law + Interprets Statutes:
AAR Aircraft v. Edwards
Choice of Law and Finding the „Rule“ or „Holding“ of Court
Due Process (5th + 14th Amendments to U.S. Const.)
Jury Trials + Jury Demand

Judges in American System (State v. Federal)
Role of Judge in Court
Relationship between Judges + Attorneys (Civility in Ct. Rooms)
Judicial Mentoring + Continuing Legal Education

CLASS #3 *Wednesday, 21/4 16:40 – 18:10 Room No. 133*

Attorney-Client Relationship
Keeping Confidences, Maintaining Contact, Safeguarding Funds
Billing Clients, Fee Disputes; In Re Pyzik
(When a Big Law Firm Sends You a Case, Send It Back.)
„Officer of the Court“ – Fox’s Legal Tender

Admission to Bar (American + Czech)
In Re Edward Loss
Attorney Liability Insurance
Liability of Law Firm for Its Lawyers
„Himmel“ Duty to Report Unethical Conduct
In re Himmel, 125 Ill.2d 531 (1988)
RPC Rule 8.3(a) with 8.4(a)(3) or (a)(4)
Illinois Rules of Professional Conduct
Skolnick v. Alteimer & Gray, 191 Ill.2d 214 (2000)
Disciplinary Proceedings

CLASS #4 *Wednesday, 21/4 18:15 – 19:45 Room No. 133*

The Practice of Law in U.S.: Big v. Little; Boutiques
The Business of the Law Business: „Slip Sliding Away“ – Fox
Billable Hours, Profitability + Impact on Clients
Conflicts of Interest (Withdraw or Alert Client in Writing)
Morning Meetings + Mining the Gold
„If You Think There Is a Problem, There Probably Is“

Volunteerism in America; Rules for Radicals – Alinsky
The Dance of Legislation – Redman
Bar Association (Mandatory v. Voluntary) Ethnic Var
Amicus Briefs; Constitutional Law Com. of Chicago Bar

CLASS #5 *Thursday, 22/4 8:00 – 9:30 Room No. 133*

Consumer Protection Laws and Foreclosure:
Westbank v. Maurer, 276 Ill.App.3d 533 (2d Dist., 1995) (Lending Practices, Conflicts, Fees)
GMAC v. Wilson v. Woodfield (Counterclaims + 3rd Parties)
In re Foreclosure Cases
Public Policy; „Bulldogs Never Give Up“

„It’s a Matter of Style“ – Importance of Reputation
Lawyers Shouldn’t Make Themselves the Issue
Consider the Big Picture, Don’t Sweat the Little Stuff
Mrs. Sala’s Rule; „You Can’t Be Hung for What You Don’t Say“

CLASS #6

Thursday, 22/4 9:35 – 11:05 Room No. 133

Lawyer as a Candidate for Public Office
Citizens United v. Federal Election Commission
Pullen v. Mulligan, 1990 Illinois Supreme Court
Bush v. Gore, 2000

ADDENDUM

BASIC CONCEPTS OF AMERICAN JURISPRUDENCE

A. Summary of Basic American Legal Principles

1. Impact of Precedent – Principle of “Stare Decisis“
2. Court Hierarchy
3. Jurisdiction
4. Mandatory/Binding versus Persuasive Authority
5. Primary versus Secondary Authority
6. Dual Court System
7. Interrelationship Among Various Sources of Law

B. What is Common Law?

1. Common Law as Differentiated from Civil Law
2. Case Law
 - a. Case Law May Be of Several General Types:
 - (1) Pure Decisional Case Law (No Statutes or Const. Pt.)
 - (2) Case Law Based on Constitutional Provisions
 - (3) Case Law Based on Statutory Provisions
 - b. Subsequent Case History
 - c. Subsequent Case Treatment

C. American Judicial System: System Based on Advocacy + Actual Controversy

1. Threshold Issues Designed to Preclude Advisory Opinions
Standing – Parties Must Have Actual, Cognizable, Usually Pecuniary or Proprietary Interest in Litigation

Finality – On Appeal or Agency Review, Action by Trial Court or Administrative Body Must Be Final + Have Real Impact in Parties

Exhaustion – Parties Must Have Exhausted All Trial Ct./Administrative Remedies

Ripeness – Dispute Is a Current Controversy Which Has Immediate Effect Not Hypothetical

Mootness – Dispute Still Alive + Unresolved; Circumstances Have Not Changed

No Political Question – Courts Stay Out of Non-justiciable Disputes Between Other Two Branches of Government

2. Courts Generally Confine Themselves to Dispute Presented for Resolution
3. Tendency to Avoid Constitutional Issues When Possible

D. Institutional Roles in American Legal System

1. Attorney (Officer of Court, Zealous Advocate, Avoid Conflicts of Interest, Required to Deal Fairly + Honestly with Court + Opposing Attorneys)
2. Judge (Final Arbiter of the Law + Sometimes of the Facts)
3. Jury (Decides (Finds) the Facts)

E. Sources of Law

Constitution (Federal + State)

Statutes (Federal + State)

Rules, Regulations, Orders (Federal + State)

Executive Orders + Proclamations

Case Law/Common Law

Secondary Sources:	Treaties	American Law Reports
	Restatements	Hornbooks
	Law Reviews	Legal Encyclopedias

F. Use of Precedent – Principle of “Stare Decisis”

1. Stare Decisis – Means “Let [the Prior Decision] Stand”
2. Rationale: Judicial Economy
Fairness to Parties (Fundamental Fairness)
Predictability
Check on Arbitrary Behavior
3. Applies Only if Precedent is “Binding” or “Mandatory”

4. Two Main Factors
 - a. Jurisdiction (State Court or Federal Court)
 - b. Court Hierarchy (Trial, Appellate, Highest Court)
5. Additional Factors to Consider in Applying Stare Decisis
 - a. Similarity of Legal Issues
 - b. Similarity of Facts
 - c. More Recent Precedent Has Greater Value
 - d. Whether Precedent Came from Leading Court
 - e. Whether Precedent (Opinion) Was Well-reasoned
6. Analogizing and Distinguishing Principles of “Star Decisis”
7. Deviations from “Stare Decisis” (Binding/Persuasive Authority)

G. Federal and State Systems

1. Federal Courts Have Jurisdiction to Hear Cases Involving:
2. State Courts Can Hear Any Cases, Even Where Federal Court Has Jurisdiction, Except Where Federal Statute Expressly Requires Federal Court: Admiralty, Patent, Copyright, or by Implication – Antitrust

	Level	Federal Courts	State Courts
(Highest)	I.	U.S. Supreme Court	State Supreme Court
	II.	U.S. Court of Appeals 13 Circuit Courts -11 Geographical Circuits -District of Colombia Circuit -Federal Circuit for Specialized Matters	Intermediate Courts (Frequently Called Appellate Court)
(Lowest)	III.	U.S. District [Trial] Courts (94 Separate Dist. Courts)	Trial Courts – Sometimes Called Circuit Courts

H. Relative Priority of Sources of Law: Hierarchy of Authority

1. Federal Law
 - a. U.S. Constitution
 - b. Federal Statutes
 - c. Federal Rules + Regulations
 - d. Federal Cases (Decisional Law)
2. State Laws

There are several principles of law that must be considered when dealing with an issue of state law. Although a comprehensive examination of these complex rules is beyond the scope of this presentation, the basic rules are as follows:

- (a) Federal Supremacy –
Federal law prevails over conflicting state law. State law may not be inconsistent with federal law. Nor may there be state laws covering areas that have been preempted, or fully covered by a federal statutory scheme.

- (b) “Erie Doctrine” (Rule of Law from *Erie Railroad Co. v. Tompkins*, 304 U.S.64 (1938))
Federal courts will apply state “SUBSTANTIVE” law (for example, TORT CASES + CONTRACT DISPUTES) and federal “PROCEDURAL” law when state law creates the cause of action.

- (c) Choice of Law Issues –
A federal court deciding which state’s law to apply to a state claim will use the choice of laws rules of the state in which the federal court sits.

Apart from the above considerations, the following hierarchy of authority would apply to state sources of law:

- (1) State Constitution
- (2) State Statutes
- (3) State Rules + Regulations
- (4) State Cases (Decisional Law)

Adapted from, Fine, American Legal Systems: A resource and Reference Guide, Anderson Publishing Co., 1997 (Chapter I).