



Chapter 1

Introduction to the Study of Law

The study of the law qualifies a [wo]man to be useful to self, to neighbors, and to the public.
Unknown

INTRODUCTION

Law plays an essential role in everyone's life. It provides guidelines on how people should interact with each other. The criminal codes prohibit theft, assault, battery, rape, murder, and many other offenses. The tax codes require that individuals and businesses give part of their income to the government. The environmental laws prohibit the dumping of raw sewage into lakes and rivers. The civil rights laws protect against discrimination and harassment.

In addition to defining what constitutes appropriate behavior, the law provides a mechanism for resolving the conflicts and disagreements that arise among us without resorting to personal violence. When individuals violate a section of the criminal law, the government takes responsibility for bringing them to trial and for administering an appropriate punishment. If one person's negligence injures others, that person can be required to compensate the injured parties for the damages caused by this negligent act. When persons fail to carry out the terms of a contract, the state can either force them to do so or force them to pay damages that resulted from their failure to live up to their agreement.

Legislators, government administrators, and lobbyists focus on developing the statutes and regulations that govern everything from the way we drive our cars to the procedures we have to follow to get a divorce. Most lawyers spend

their time advising people as to what they should do to live within the requirements of the law. For example, a group of entrepreneurs may seek legal advice regarding the best way to organize their new business, or a young married couple may come to an attorney for help with the purchase of their first home. Alternatively, individuals may enlist the aid of an attorney when they have been injured in an automobile accident or have been charged with a crime.

Paralegals help attorneys solve people’s legal problems by assisting in the gathering of factual information about the client’s situation; by doing legal research to find appropriate statutes, regulations, and case law; by helping to draft various types of legal documents; and by helping to prepare and organize the information attorneys present in trials.

The purpose of this text is to help you understand the American legal system and how attorneys and paralegals work within it. In the chapters that follow, you will learn about the organization and structure of the legal system, the various forms that law takes, the procedures used in litigating civil and criminal cases, and the basic legal principles that form the basis of our law in areas such as torts, contracts, and property.

A. LEGAL ANALYSIS

In addition to helping you acquire this type of basic legal knowledge, this text is designed to develop the critical thinking skills you need to understand statutes, court opinions, and administrative regulations. These critical thinking skills include analyzing the facts, identifying the appropriate legal rules, applying the legal rules to the facts, and reporting the results in a clear and understandable manner.

Throughout the text we will be presenting you with short factual scenarios to illustrate how people and businesses turn to the law for help. Two such scenarios follow. Take a moment to read the facts of the case of “The Distressed Grandfather” and the case of “The Harassed Student.” In addition to studying these cases now, we will refer to them again in later chapters.

Case 1: The Distressed Grandfather

Approximately one year ago, Donald Drake and his six-year-old grandson, Philip, were walking down a residential road on their way home from visiting one of Philip’s friends. Philip was walking on the sidewalk approximately thirty feet in front of Mr. Drake. Suddenly, a car sped past Mr. Drake, seemingly went out of control, jumped the curb, and hit Philip. Mr. Drake ran to Philip’s side, but it was too late. Philip had been killed instantly. The driver of the car, Mrs. Wilma Small, was unhurt. Based on skid marks and testimony from both Mrs. Small and Mr. Drake, the police investigation following the accident determined that excessive speed was the cause of the accident.

Mr. Drake said that at the time of the accident his only concern was for the welfare of his grandson because he himself was clear of the danger. Naturally, Mr. Drake suffered a great deal of mental pain and shock because of seeing his grandson killed. While being driven home from the accident, he suffered a heart attack that necessitated a lengthy hospital stay.

One year later, he still does not feel completely recovered and often suffers from nightmares reliving the accident and his grandson’s death. Following the advice of trusted friends, he decides to make an appointment at the law office of Darrow and Bryan to see if he can sue Mrs. Small to recover for his hospital bills and for his pain and suffering.

Case 2: The Harassed Student

Wanda Smith, a twenty-two-year-old college student, was walking past a construction site on campus when several of the construction workers began to whistle and make cat calls. Wanda did not appreciate being treated as a sex object and greatly resented the way in which these construction workers were behaving.

After talking it over with a few of her friends, Wanda decides to talk to one of the attorneys at Darrow and Bryan to see if she can take legal action. She does not want other women to have to undergo similar treatment and wonders if she can collect damages for mental suffering.

Keep these clients' situations in mind as we give you a quick overview of the four basic steps in analyzing a legal situation:

- gather and analyze the facts;
- conduct legal research to identify the appropriate legal rules;
- apply the legal rules to the facts; and
- report the results (usually in writing).

Once an attorney completes these steps, the attorney can advise the client as to the appropriate actions to take.

1. Gathering and Analyzing the Facts

The first step in legal analysis is to identify and review the relevant facts. The answer to any legal question depends on the specific facts of the individual case. Even a minor change in the facts may alter the outcome of the case.

Just as a medical doctor cannot give a competent medical diagnosis without a thorough examination of the patient, a lawyer cannot render legal advice without a complete understanding of all of the relevant facts. Some areas of the law, such as those dealing with negligence or landlords and tenants, are particularly **fact bound**. For example, assume a stranger approaches an attorney at a party with a question such as: "My landlord is trying to evict me. Can he do that?" or "My husband is trying to get custody of my kids. Will he succeed?" It would be impossible for the attorney to answer without gathering a lot more information and personally reviewing key documents.

Paralegals often assist in the fact-gathering process by conducting interviews, summarizing those interviews, and reading and summarizing relevant documents. For example, when Donald Drake and Wanda Smith came to the law office of Darrow and Bryan to seek advice, they were each interviewed by Pat Harper, a senior attorney with the firm. Chris Kendall, one of the firm's paralegals sat in on the interviews to help take notes and to become familiar with the facts of their cases.

2. Conducting Legal Research to Identify the Appropriate Legal Rules

After meeting with the clients, the first thing that attorney Harper needed to determine was whether either client had a valid cause of action. A **cause of action** can be defined as a claim that based upon the law and the facts is sufficient to support a lawsuit. For example, in Wanda Smith's case, she was

Fact bound

When even a minor change in the facts can change the outcome.

Cause of action

A claim that based on the law and the facts is sufficient to support a lawsuit.

PRACTICE TIP

Everything you read in this book is wrong! Or at least it might be. Remember that law keeps changing and that it varies from state to state.

clearly upset and disturbed by what had happened to her. However, that does not mean she has a legal remedy. Her lawyers will have to prove not only that the construction workers harassed and upset her but also that these actions violated some law. It is important to understand that not every problem is a problem for which the courts will supply a remedy.

Thus, the second stage of legal analysis involves the identification of the specific provisions of the law that are applicable to the client’s situation. Because there are so many laws at the federal, state, and local levels, and because the law covers such a wide variety of topics, it is impossible for any lawyer to know everything there is to know about the law. The law is far too complex for any individual to be able to commit it all to memory. Furthermore, because the law is constantly changing, one’s legal knowledge must be continually updated. Therefore, even lawyers who specialize and strive to keep current by reading legal newspapers, journals, and bar publications on a daily basis may still need to do legal research. Law books and on-line computer databases are the tools of the trade for the legal professional.

Because **legal research** is a very time-consuming process, attorneys often rely on paralegals to assist them in locating and summarizing the relevant statutes and cases they need to properly interpret the current status of the law. Because attorney Harper has not recently handled a similar case, Chris Kendall was assigned to research the law on sexual harassment. You can find a detailed discussion of legal research in Chapter 9.

Legal research

The process of finding the law.

3. Applying the Legal Rules to the Facts

Even after an attorney or a paralegal has found the applicable legal rule through legal research, the job is far from completed. Because each client’s problem is unique, simply knowing a general rule will not solve the client’s problem. These general rules must be applied to the client’s specific facts. We call this **legal reasoning**.

There are two basic types of legal reasoning. The first involves the analysis of court opinions and the second the analysis of constitutions, statutes, and administrative regulations. We will discuss these processes in great depth in Chapters 7, 8, and 10. For now, it is important that you understand that the result in a client’s case will depend on how the courts have handled similar situations in the past. This is because our legal system is based on a doctrine known as **stare decisis**, literally, the decision stands. Following **stare decisis** means that if a court has decided one way on a particular issue in the past, in all likelihood it and other courts in the same jurisdiction will decide the same way on that issue in future cases given a similar set of facts.

Legal reasoning

The application of legal rules to a client’s specific factual situation; also known as *legal analysis*.

Stare decisis

The doctrine stating that normally once a court has decided one way on a particular issue in the past, it and other courts in the same jurisdiction will decide the same way on that issue in future cases given a similar set of facts unless they can be convinced of the need for change.

NETNOTE



One way to stay current with the changes in the law is through the Internet. You can find the latest legal news by going to the home page of Find law at www.findlaw.com. Then click on the “For Legal Professionals” tab at the top of the opening screen.

In order to find out how similar situations have been handled in the past, an attorney or a paralegal will examine prior court decisions, known as **precedent**, and then apply them to the client's situation. If the facts of the client's situation and a prior court decision are similar, the two situations are **analogous**. If they are analogous, it is likely that the result in the client's case will be similar to the result reached in the prior case. If the facts are significantly different, the two situations are **distinguishable**. Because they are distinguishable, it is likely that the result in the client's case will not be the same as the result reached in the prior case. As you progress through this text, you will learn a lot more about the importance of stare decisis to our legal system. But for now, it is enough to understand that the doctrine of stare decisis is what gives our system its stability and predictability. As we will see, however, stare decisis also gives the courts enough flexibility to allow for change as the needs of our society change.

Unfortunately for Ms. Smith, Chris's research indicated that she did not appear to have a cause of action against the construction workers. If Ms. Smith had been employed as one of the construction workers and her boss had been harassing her in this way, she would have had the basis for a suit against the company. However, as a mere passerby she lacked such protection. Her facts combined with the law do not give her a cause of action.

Twenty-five years ago, Ms. Smith would not even have had a cause of action if she had been harassed by her employer. But as societal values change, the law usually changes as well. In recent years our society has become more sensitive to issues of gender equality, and new laws have been developed to provide new protections. Twenty years from now, someone in Ms. Smith's position may have a cause of action that does not exist today. Societal values will change, and the law will continue to evolve in order to respond to those changes.

DISCUSSION QUESTIONS

1. Why do you suppose there are certain types of harm, such as the humiliation Ms. Smith felt when the construction workers whistled at her, that courts will not help individuals resolve?
2. Do you think it is right that employees can go to court and sue their bosses for sexual harassment? Why? If the harasser were a co-worker instead of a boss, how would you view the situation?

With regard to Mr. Drake's case, Chris's research proved more promising. In one case a mother who saw her young child killed by a negligent driver was allowed to recover for the emotional distress the accident caused her. However, five years later, in another decision involving a similar situation, a female bystander who happened to witness the death of a young boy was not allowed to recover for her emotional distress.

In assessing the strength of Drake's case, attorney Harper must decide whether the courts would treat a grandfather as they did the mother or as they did the bystander. Take a few minutes to list as many arguments as you can muster for each side of the debate. The most important part of legal reasoning is seeking factual similarities and differences between prior decisions and your client's case and then explaining why you think those similarities or differences

Precedent

One or more prior court decisions.

Analogous

Similar.

Distinguishable

Different.

matter. In that process you will find that you and your classmates often differ as to the “right” answer.

In actuality there is no “right” answer, only better or worse arguments for your client. A judge may be the final arbiter as to what the answer is in a particular case, but even then it is not the “right” answer in any cosmic sense. Any decision about what the law should be is a choice between competing values. This is why some cases go to trial instead of settling—that is, because the two litigants have differing viewpoints as to which of two competing values is the more important. The important point to remember is that your goal is to learn how to develop arguments that will help persuade the other side that your answer is more correct than theirs.

Legal Reasoning Exercise

1. Imagine that you are interning in attorney Harper’s law firm. She has asked you to give her your thoughts on Mr. Drake’s case. Specifically, attorney Harper wants you to list all of the ways in which you think Mr. Drake’s case is similar to that of the mother who saw her child injured. Then list all of the ways in which you think Mr. Drake’s case could be likened to that of the bystander. Finally, give attorney Harper your evaluation as to why you think that a court would see Mr. Drake’s case as more similar to that of the mother or to that of the bystander. Also, let her know if you think there are additional facts that you would want to gather before making a final recommendation.

4. Reporting the Results

At various points throughout the legal process attorneys and paralegals are required to commit their thoughts to writing. At some points, they will take informal working notes for their own use. At other times they will make more formal reports that are designed to be read by colleagues, clients, opposing attorneys, or judges. Examples of some of the more specialized forms of **legal writing** include case briefs, legal memoranda, and appellate briefs.

Case briefs summarize specific court decisions. Attorneys and paralegals use case briefs to help them analyze court decisions and prepare legal memoranda and appellate briefs. A **law office memorandum** is an unbiased analysis of a client’s case for use within the law firm. It serves as a means of fairly evaluating the likelihood of the client’s winning should the case go to court. This type of memorandum is often followed by a letter written to the client advising the client as to what action should be taken. An **appellate brief** is written to persuade an appeals court of the merits of the client’s case. These documents will be discussed more thoroughly at various points throughout this text.

Legal writing

Examples of legal writing include case briefs, law office memoranda, and documents filed with the court.