



# INTRODUCTION TO LAW

Seventh Edition

Beth Walston-Dunham  
John D. DeLeo, Jr.

INTRODUCTION TO **LAW**  
SEVENTH EDITION

Beth **Walston-Dunham**

John D. **DeLeo, Jr.**



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***Introduction to Law,  
Seventh Edition***

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Library of Congress Control Number: 2018951864

Book Only ISBN: 978-1-305-94864-8

Loose-leaf ISBN: 978-1-337-41416-6

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*To Bobby, Sam, and Ben,  
For continually introducing me to the singular importance of each and every day.*

**Beth**



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The purpose of this book is not to answer all of the student's questions about the law but to generate questions. As an introductory text, the goal of this book is to create an awareness of and appreciation for the effect that law has on virtually every facet of life and society. The chapters guide the student from a basic introduction of the rationale behind the structure of the U.S. system of government to a discussion of each major area of law in the legal system. Regardless of the initial reason for picking up this book, the intended outcome of reading for the student remains the same: to gain a better understanding of not only how but also why law is such an integral part of our professional and personal lives, and to gain some sense of the order and stability that law provides even as it remains adaptive to the ever-changing face of American society.

This text is aimed at the student who is studying law for the first time. Each chapter is designed to introduce the student to fundamental legal concepts and principles. Chapters 1 to 8 provide an introduction to the U.S. legal system, the manner in which law is created and administered, and certain considerations that affect legal disputes. The balance, Chapters 9 to 16, concentrate on different areas of law by exploring basic principles and terminology. The areas covered include tort, family, estates, property, contract, business, and criminal law and procedure. Chapter 7 addresses the roles of legal professionals and their support staff. Throughout the text, and specifically in Chapter 8, discussion is given to the ethical considerations that affect legal professionals and subjects of law.

## CHANGES TO THE SEVENTH EDITION

The seventh edition updates the law and includes updated court cases. It also contains a series of writing assignments. To best utilize the legal skills discussed in Chapter 2, the writing assignments first direct the student to review the section "The Process of Legal Analysis" in that chapter. The writing assignments are designed to allow students to develop skills in legal writing and reasoning.

## Chapter Format

Recent case law has been incorporated to provide a better view of the current position of courts across the nation. Chapter features include the following:

- A "news" article highlights the real-world application of the chapter topic.
- A **Chapter Outline** provides an introduction to the major topics that will be addressed.
- **Chapter Objectives** at the beginning of each chapter focus students' attention on the main elements they will learn.
- Hypothetical **Practical Applications** are interspersed through each chapter to illustrate chapter concepts. **Points for Discussion** follow the applications and provide a springboard for class discussion.
- Longer edited **Cases**, most of them new to this edition, are followed by questions that encourage students to consider the major issues in each case.
- **Assignments** throughout each chapter test students' knowledge by asking them to apply the chapter material.
- **Ethical Considerations** and **Ethical Circumstances** in each chapter provide insight relevant to the legal issues presented.

- A **Chapter Summary** ends each chapter with a brief review of the main points covered.
- **Key Terms** are set in boldface type and defined in the margin where they first appear within the chapter. For easy review, each chapter also ends with a list of the key terms that appear in the chapter.
- **Review Questions** follow the chapter material, giving students yet another opportunity to review the chapter content.
- **Writing Assignments** allow students to develop skills in legal writing and reasoning.
- **Internet Assignments** introduce students to the concept of Internet legal research.

## SUPPORT MATERIALS

This seventh edition is accompanied by a support package that will assist students in learning and aid instructors in teaching:

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# ACKNOWLEDGMENTS

Thanks and appreciation are extended to the manuscript reviewers, instructors, and others who provided invaluable suggestions and support in the preparation of the seventh edition:

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# CHAPTER 1

## The Historical Basis and Current Structure of the American Legal System

### CHAPTER OBJECTIVES

After reading this chapter, you should be able to:

- Distinguish the positivist, naturalist, and sociological theories.
- Explain the role of political theories in the current system of American government.
- Discuss the weaknesses of the Articles of Confederation.
- Describe the function of each branch of government under the Constitution.
- Explain the differences between legislative, judicial, and administrative law.
- Distinguish the traditional and modern balance of application of laws.
- List the hierarchy of law.
- Explain the exception to the rule of hierarchy.

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### CHAPTER OUTLINE

#### THE HISTORICAL BASIS OF AMERICAN LAW

Before the Government  
The Results of the Revolution  
The Influence of Political Theories  
Balance as the Key to Success

#### THE MODERN LEGAL SYSTEM

The Sources of Law  
The Hierarchy of Law  
The Exception to the Rule of Hierarchy

**T**he new government has finally been established. With the help of a committed military and citizenship, the Constitution was adopted and the first open elections were held. There is still unrest in many areas, and some conflicts continue. There are those who still maintain that a return to the former system of government is imminent and the best alternative for the public at large. However, the majority has spoken and established the new course for what promises to be a nation unlike any other that the people of this country have ever known. Many look forward to the freedoms they have only dreamt of in the past. The new Congress has convened and is in the process of passing legislation to give structure to the government and protect the rights of individuals. A judiciary has been appointed, and now hears the cases coming before them from the citizens. High ranking officials hope that after so many years of struggle it is only a matter of time until foreign military forces leave the soil of the burgeoning nation, and peace will finally reign over this battle scarred country.

“The Boston Revolutionary Herald, 1776”

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## THE HISTORICAL BASIS OF AMERICAN LAW

The historical path of democracy has been travelled many times since the creation of the American legal system. The newspaper article quoted at the beginning of this chapter could have been written about many new governments, including the ongoing struggle to maintain a democratic system in Iraq. The concept is relatively straightforward: Citizens want a just and proper governmental authority that addresses inequality, reveres individual rights, and protects the population as a whole. In this chapter, the focus is on how these goals have been approached through the methodical development of the American legal system despite sociological and economic changes. Subsequent chapters examine both the mechanical aspects of the American legal system and fundamental concepts in the most common areas of legal practice within the system.

Although the purpose of this text and this chapter is not to provide a course on American history, there are important facts to note. The longevity of the American legal system is derived from a complex equation that allows the laws to provide stability while also being responsive to the need for change. Understanding this basis, it is easier to see how and why the American government was established to withstand the tests of time.

### Before the Government

The American legal system was not developed hastily. The first settlers in the New World had no intention of creating an entirely new legal system. Many came to escape religious persecution they had suffered in European countries where citizenship required adherence to the same religious principles held by those in power. Others came for economic opportunity and to break free of the strong class system in Europe. For most, a new governmental structure and independent nation was far down on the list of priorities, if it was on the list at all. For early settlers, most of whom had been urban dwellers, the priority immediately after arrival was, first and foremost, purely to survive in an environment that was hostile and strange.

As more and more colonists established their homes in America, issues of law began to arise. For more than a century, the immigrants and their descendants clung to the same principles and methods of law and order

that they or their ancestors had known in Europe, predominantly in England. These colonists adhered to many of the traditions of the laws of England, which were based upon the prevailing attitudes toward common English religious beliefs. Under these principles, known as the English Common Law, there were few widely published legal standards. People were charged and punished by the government for committing acts that were presumed to be known by all to be sinful and consequently illegal. As the American population grew, British and other European governments stepped up their efforts to establish a formal and permanent influence in America. These attempts included establishing the presence of foreign governments in the colonies by placing government officials there and attempting to enforce the laws of these foreign governments. Although the colonists were willing to adopt many legal principles, particularly from England, they were not interested in adopting a governmental structure that they felt was unresponsive to the will of the people. This was especially true because those foreign governments were the very structures the colonists had sought to avoid by coming to America.

During the revolutionary era that began in the mid-18th century, the colonists realized that they had to establish some form of permanent governmental structure if they were to avoid rule by another country. Our modern structure derives from a combination of factors that influenced those who were responsible for establishing the American government. The founders' foresight is evidenced by many of the laws and procedures they created that remain in place more than two centuries later.

Initially, the colonists' primary legal concern was to deter and punish criminal acts as a means of maintaining order. As mentioned earlier, the founders sought to prosecute and punish those who committed what were seen as crimes against morality—religiously based morals presumed to be held by most of the population. Many of those in positions of authority in the new government were also members of the new American aristocracy. The focus of law in early American society was thus an attempt by this aristocracy to impress its perception of right and wrong on the working classes and to punish those whom the wealthy and powerful perceived to be improper or sinful. Therefore, the original system of justice in America was based on a somewhat simplistic theory of right and wrong. This theory, also known as the **naturalist theory**, was based on the belief that all persons are born with not only the ability to distinguish the difference between right and wrong but also the knowledge that they are responsible for acting in the proper manner. However, the population increased, industry advanced and expanded, cultures mixed, and vast numbers of individuals with different opinions of right and wrong came together in communities. These developments rendered obsolete a justice system predicated on simple aristocratic beliefs of right and wrong. The American people required a more detailed legal system that included written legal principles that could be applied, fairly and equitably, to a myriad of circumstances and the entire population.

### naturalist theory

Philosophy that all persons inherently know the difference between right and wrong.

## PRACTICAL APPLICATION

### 1.1

In 2002, an American missionary set out for a remote area of an impoverished country. Because her assignment was for a continuous period of seven years, she took along a great many items, such as nonperishable foods, clothing, medical supplies, and so on, that she anticipated she would need for personal use over such a long time. The organization that sponsored her also planned to send regular shipments of supplies

**PRACTICAL APPLICATION CONT.****1.1**

to help the local population. Shortly after the missionary arrived, she returned to her new home one day and found that most of her supplies and personal things were gone. Because the local minister was the only one with ready access to her home and storage area, she went to him first. He acted surprised and insulted that she would accuse him of stealing, although he freely admitted taking her property. His explanation was that, as members of the same religious community and as Christians, he just assumed that she wanted to share her wealth, both with him and with all those less fortunate in the area. He did not see his action of coming in and taking the property as wrong in any way.

**Point for Discussion:** Even today, cultural differences in the definitions of acceptable conduct can be profound, even among members of the same religion. Can you identify any such differences that exist today, or that may have existed at the time of American colonization, that could have legal ramifications?

As mentioned, with an increase in population and industry came nearly simultaneous attempts by other nations to control the colonies. Initially, the colonies fought this control as individual governments, without ties to the other colonies, but the colonists quickly realized that if any of them were to succeed against the attempts of others to take control, especially the British, the colonies must become unified.

## The Results of the Revolution

At the time of the Revolution (the War of Independence), the colonies came together and issued their Declaration of Independence. Enforcement of such a document was not an easy task for a largely unsophisticated, poorly armed, and disorganized band of citizens, who were matched against the armies and navies of Great Britain and any other country that might want to attempt to increase its power and position on the world stage. Nevertheless, the people formed a central government made up of individual states. Today most Americans consider the Declaration of Independence the bedrock of our nation, the document that established the moment at which America became an independent nation. In reality, the document was not initially taken that seriously by other governments. At best, it was considered more a declaration of war by a small group of people against the most powerful government, army, and navy of the world.

Nevertheless, the new Americans set out to establish a long-standing and powerful nation of their own. What many do not realize is that this new government was guided for 11 years by a document known as the Articles of Confederation. The United States Constitution as we know it today was not passed until September 1787, near the end of the revolutionary era. The Articles of Confederation bore little resemblance to the current Constitution. Under the Articles, each state sent delegates to act as members of a Congress; the delegates then nominated and elected a president from amongst themselves. The delegates passed laws, acted as judges in disputes among the states, negotiated treaties, and served as the government for the new nation. The president was assigned the duties of presiding over sessions of Congress, as well as acting as an ambassador to, and receiving representatives of, other governments. All legal disputes with respect to individuals continued to be dealt with by each state's own system of justice.

The founders quickly realized that the Articles of Confederation and the Congress formed under them were largely ineffective. The national government had no "enforcement power": It had no independent judges, no jails, and no way to force collection of

the monies each state was supposed to contribute. Moreover, there was no money or organization to support a national army. Nor was there a staff of government employees to operate the government when Congress was not in session. The president was only the head of a small group of delegates, not the leader of the nation. Clearly, if such a nation was to succeed, then a much more organized system would have to be created.

Interestingly, one of the very first real issues that arose in creating a permanent government was whether to allow the states to continue in existence in any sort of individual fashion. Several delegates, including some from the South, believed that the individual states should be abolished and that all people and all legal issues should be governed by a central authority. In history, small states within a country had often ended up in conflict with one another, undergoing power struggles and other clashes that produced civil war and, in turn, vulnerability to attack by other nations. However, in America the idea failed to gain popular support because the settlers were fiercely independent and sought to preserve as much personal freedom from government as possible. In the end, a system consisting of separate state governments and a national government with specific functions was created. The states were left intact because they could respond effectively and quickly to the needs of their citizens and each individual state's economy.

Keep in mind that mass transit and communication were virtually nonexistent at that time, and that a distant national government was seen as being uninformed about and properly uninvolved in matters of local concern. The national government was formed to protect the fundamental rights of all citizens and ensure that the state governments would not interfere with individual rights. The national government would also handle broader issues such as interstate commerce, Indian affairs, immigration, and international issues such as treaties for trade and nonaggression. What emerged was a system of federalism wherein the federal government was given certain powers and the states retained theirs, except those powers that were made exclusive to the federal government. This division of power between two separate governments serves as a check on power much mirroring the establishment of three separate branches of the federal government.

**ESTABLISHMENT OF BRANCHES OF GOVERNMENT.** Once it was decided that the government would take the form of a single nation with individual statehood, a Constitutional Convention set out to create a structure for the new federal government. The Constitutional Congress drafted the Constitution, which clearly defined the powers and limitations of the national and state governments with respect to each other and to individual citizens. The members of the Constitutional Congress agreed that there would be three distinct branches of government, each with separate duties and all with the obligation to cooperate with and monitor the other branches to ensure that no one branch obtained too much power. This separation of powers was a direct attempt to prevent the development of the monarchy-type government that so many colonists had rejected by coming to America.

The first branch of government created by the Constitutional Convention was the legislative branch. This Congress would be elected by the people (directly for the House of Representatives but indirectly for the Senate, whose members were elected by the state legislatures until the Seventeenth Amendment was ratified in 1913). Congress would retain the sole authority to make statutory law. In this way, the people as a whole would always have significant influence in establishing the laws that all persons were required to follow. As set out by the Constitution, only Congress, and no other branch, has the power to create statutory law. In the past, when any other governmental source attempted to create statutory law, the law has been struck down as being in violation of what is known as the *delegation doctrine*. The delegation doctrine is based on the fundamental constitutional principle that Congress cannot delegate or give away its authority to make statutory law; thus, law-making power remained

closely connected to the will of the people. Chapter 4 specifically and more fully discusses the development and application of the delegation doctrine.

The executive was the second branch of government specified by the Constitution. The president was given authority to head the executive branch at the national level. This is paralleled in the states, with each state executive branch headed by a governor. Under the Constitution, the president is elected indirectly by the people through the Electoral College. Each state is entitled to appoint a number of electors equal to the state's total number of senators and representatives in Congress. A person cannot serve as both a member of Congress and an elector. Each state legislature determines the manner in which its electors are selected. The electors vote and elect the president by a majority. Generally, the electoral vote reflects the popular vote. If no one person gains a majority of the electoral vote, the House of Representatives is responsible for electing the president. The details of the electoral process can be found in Article II of the Constitution (Appendix). Chapter 4 also discusses the executive branch.

The president has the power to approve or reject laws passed by Congress. The power is not absolute, however, and the president cannot deny Congress's authority to enact law if it is, in fact, the will of the majority that such law be enacted. Rejection by the president of a law enacted by Congress is known as an *exercise of the veto power*; a veto can, however, be overridden by a significant majority of Congress. The president also has several important functions with respect to foreign affairs and the ultimate duty to enforce the laws of the United States—the latter has grown to be one of the most important presidential responsibilities. Consequently, federal law-enforcement agencies are considered part of the executive branch. A similar structure is in place at the state level between the governor and state law-enforcement personnel. The various powers and functions of the executive branch are discussed further in Chapter 4.

Finally, the Constitutional Convention determined that a third and separate branch of government was needed to protect the Constitution, serve as a mediator of disputes among the states, and adjudicate cases against the government by its citizens; hence, the delegates wrote the Constitution so as to establish the judicial branch. This arm of government has the task of judicial review, as well as the authority and responsibility to interpret laws and protect the Constitution from violation by Congress, the president, or the states. Although the Constitution vests the ultimate authority to enforce laws in the president, in practice the judiciary also assists in enforcement when the courts apply law to specific cases.

**THE BILL OF RIGHTS.** The three separate but related branches of government were designed to protect against a small number of individuals gaining power over the entire population. By having the branches operate independently from, but with the power to influence, one another, the people are better protected from one branch obtaining too much power or using its power unwisely. Through this system of *checks and balances*, each branch can use its specially designated powers to make sure the other branches act within their constitutionally prescribed limits.

In addition to the Constitution, which provided the governmental framework, the Congress, with the approval of the people, subsequently passed the Bill of Rights, which protects what are considered to be fundamental human rights and freedoms. The Bill of Rights, now enshrined in the first ten amendments to the Constitution, protects all citizens from government infringement on those matters that are presumed to be inherently personal and a matter of choice for all human beings. The following rights are specifically protected:

- Freedom of speech, religion, and press; peaceable assembly; petitions for governmental change (First Amendment)
- Right to bear arms (Second Amendment)

- Freedom from unreasonable invasion of one's home by the government for purposes of search and seizure of persons or property or for occupation by the military other than as prescribed (Third and Fourth Amendments)
- Right to have an independent judicial magistrate determine if probable cause exists before a search or arrest warrant can be issued (Fourth Amendment)
- Right not to be tried twice for the same crime (Fifth Amendment)
- Right not to have persons or property seized without due process (Fifth Amendment)
- Right to a speedy and public trial (Sixth Amendment)
- Right to an impartial jury in the jurisdiction where the alleged crime occurred or where the dispute is governed by common law (Sixth and Seventh Amendments)
- Freedom from forced self-incrimination (Fifth Amendment)
- Right to counsel in criminal prosecutions (Sixth Amendment)
- Right of the accused to know of the crime alleged (Sixth Amendment)
- Right of the accused to confront the witnesses for the prosecution (Sixth Amendment)
- Right not to be subjected to excessive bail (Eighth Amendment)
- Freedom from cruel or unusual punishment (Eighth Amendment)
- Freedom from use of the Constitution to limit individual rights not mentioned therein (Ninth Amendment)
- Right of the states to govern matters not addressed in the Constitution or its amendments (Tenth Amendment)

The Bill of Rights establishes the standards of fundamental fairness under which the government must deal with its citizens. These standards have always been and will always be protected by the U.S. Supreme Court as long as the U.S. Constitution stands. But what has changed over time is the way in which these rights are defined and interpreted, based on changes in American society, government, culture, and law.

**ADDITIONAL INDIVIDUAL RIGHTS.** In recent years, the Supreme Court has been increasingly asked to resolve issues that determine the rights of persons to be free from governmental intrusion into their private lives. Issues have ranged from abortion, to the rights of law-enforcement officials to search and seize persons and evidence of criminal activity, and even to the death penalty. Frequently, news reports discuss Supreme Court opinions that define the boundaries between government obligations and individual freedoms with respect to the Bill of Rights. From time to time, additional language regarding these freedoms has been added through more amendments to the Constitution as Congress and the people have deemed appropriate.

The Constitution and its Bill of Rights were created more than 200 years ago, not only to establish a new government but also to serve as the foundations of modern-day law. Every time Congress passes a statute, the executive branch enforces a law, or the judiciary interprets a law applicable to a situation or an individual, such action must be taken in accordance with the requirements of the Constitution and its amendments. All law created in this country must be consistent with, and embody the spirit of, the rights guaranteed in the Constitution and its amendments. The Constitution and its amendments continue to be responsible for giving definition to the rights of citizens and governments alike. More recently, the courts have, in high-profile opinions, used the Constitution and its amendments to prevent police from invading the privacy of individuals without a warrant; allow people the right to publicly express their religious and political beliefs; encourage the public to take an active role in

government through elections, petitions, and peaceful protests; and protect those who might otherwise be treated in a disadvantaged or unfair way because of traits associated with race, religion, background, and physical/mental condition. In a case that was both high profile and hotly debated, the Supreme Court in *Obgerefell v. Hodges* ruled that the Fourteenth Amendment of the Constitution requires states to recognize same-sex marriage on the same footing as opposite-sex marriage. *Obgerefell* will be discussed further in Chapter 10.

## PRACTICAL APPLICATION

### 1.2

Sometimes Courts must decide between competing interests and values. A New Mexico company refused to photograph a same-sex marriage on religious grounds. New Mexico has a law that stated it was illegal to discriminate on the basis of sexual orientation. The New Mexico Supreme Court ruled that enforcing the law does not violate the freedom of religion of the Jonathan and Elaine Huguenin (the owners of the company).

One Justice wrote separately on this sensitive issue.

In 1943 during the darkest days of World War II, the State of West Virginia required students to salute the American flag and decreed that refusal to salute would “be regarded an Act of insubordination,” which could lead to expulsion for the student and criminal action against the parent. *W. Va. State Bd. of Educ. v. Barnette* (1943). Some students refused to salute, believing as Jehovah’s Witnesses “that the obligation imposed by law of God is superior to that of laws enacted by temporal government.” The Jehovah’s Witnesses, without any desire to show disrespect for either the flag or the country, interpret the Bible as commanding, at the risk of God’s displeasure, that they not go through the form of a pledge of allegiance to any flag. Jonathan and Elaine Huguenin see themselves in much the same position as the students in *Barnette*. As devout, practicing Christians, they believe, as a matter of faith, that certain commands of the Bible are not left open to secular interpretation; they are meant to be obeyed. Among those commands, according to the Huguenins, is an injunction against same-sex marriage. Their refusal to do business with the same-sex couple in this case, no matter how religiously inspired, was an affront to the legal rights of that couple, the right granted them under New Mexico law to engage in the commercial marketplace free from discrimination. The Huguenins are free to think, to say, to believe, as they wish; they may pray to the God of their choice and follow those commandments in their personal lives wherever they lead. The Constitution protects the Huguenins in that respect and much more. But there is a price, one that we all have to pay somewhere in our civic life. In the smaller, more focused world of the marketplace, of commerce, of public accommodation, the Huguenins have to channel their conduct, not their beliefs, so as to leave space for other Americans who believe something different. That compromise is part of the glue that holds us together as a nation, the tolerance that lubricates the varied moving parts of us as a people. That sense of respect we owe others, whether or not we believe as they do, illuminates this country, setting it apart from the discord that afflicts much of the rest of the world. In short, I would say to the Huguenins, with the utmost respect: It is the price of citizenship.

**Point for Discussion:** What do you think of the reasoning of the Justice in explaining the balance that must be struck when competing values are in conflict?

**ASSIGNMENT****1.1**

Consider the following situations and identify which of the Bill of Rights amendments to the Constitution would allegedly protect the behavior.

- 1 The right to have a parade to celebrate gay pride.
- 2 The right to not be forced to pray, or participate in prayer, in a public school.
- 3 The right to refuse entry to one's home by a government official who does not have a warrant.
- 4 The right to refuse to answer questions by the police.
- 5 The right to be released from jail before trial if the defendant deposits a sum with the court that is reasonably expected to deter the defendant from fleeing the jurisdiction or committing additional crimes.
- 6 The right to set fire to an American flag in a public place as a political statement.
- 7 The right of media to be present during the trial in a criminal prosecution.
- 8 The right to carry or own multiple registered weapons.
- 9 The right of a defendant to refuse to testify against himself or herself in a criminal trial.
- 10 The right of a defendant charged with sexual assault to force the alleged victim to testify at trial and answer questions about the allegations.

**ASSIGNMENT****1.2**

Identify five modern-day situations in which the rights of an individual are at odds with the rights of the public as a whole.

**Example:**

The right of a motorcyclist to choose not to wear a helmet versus the right of the public to protect itself from the governmental costs

incurred in providing long-term care for individuals with severe brain and other serious injuries caused by motorcycling while not wearing a helmet.

**positivist theory**

Political belief that there should be a superior governmental entity that is not subject to question or challenge.

**The Influence of Political Theories**

The functioning of the branches of government and the manner in which issues between government and citizens are decided are the product of distinct philosophies that have influenced the U.S. legal system since its inception. As Congress structured the new government, the naturalist theory discussed earlier became inadequate to deal with the complexity of the legal issues that arose. As a result, other theories regarding the establishment of an orderly society were incorporated into the U.S. system of government and law. One influential theory was the **positivist theory**, which proposes that a government should have a single entity to determine what is right and wrong as a matter of law. The law cannot be questioned or challenged. If a law is violated, punishment will automatically follow. The influence of this theory is evident in the court of last resort: the U.S. Supreme Court. Short of a constitutional amendment, the decisions of the Supreme Court are not subject to any other authority. As much as the founding fathers wanted a government responsive to the people, they also knew that there had to be a final authority to prevent issues from just flowing through the branches with no opportunity for a final resolution.

Another political theory of law that has become an integral part of American law is rooted in social consciousness. This sociological view suggests that people as a group

determine what is and is not acceptable, based on the needs of society at the time.

**Sociological theory** holds that the law is in a constant state of change and adjusts according to the needs of society. Society as a whole decides what is right and what is wrong.

In conjunction with the naturalist theory, the positivist and sociological theories combine to provide the components for a successful and durable government. Today, the majority of law is created by representatives elected to Congress by the population. If citizens believe that a law is wrong, they can lobby to have it changed. If they believe their elected representatives are not enacting laws that embody the beliefs of the people, they can elect new legislators. If the legislature passes a law that appears to violate the Constitution, citizens can challenge the law in the courts, which have the power to resolve the issue by upholding the statute or invalidating it as unconstitutional.

## Balance as the Key to Success

As stated, in some respects, the U.S. government is a product of each of the three philosophies previously discussed. The naturalist theory is reflected in the language of the Constitution and especially the Bill of Rights, which states what was and continues to be considered fundamentally fair. The Constitution and the Bill of Rights also contain statements indicative of the positivist idea of an ultimate authority that interprets the laws and decides in what circumstances they apply and how they should be enforced. This ultimate rule or authority has been embodied in the judiciary. Although laws can be challenged, the Supreme Court is generally the final authority on legal issues. A decision by this court can be affected only by a congressional constitutional enactment or a later decision wherein the Court revises a previous position (both are relatively rare occurrences). The Supreme Court strives to ensure that the laws are applied consistently to all people. The duty of the Court is to guarantee that each individual's rights will be protected against government, persons, or entities that might violate those rights.

The sociological theory plays an important role in our governmental structure because society can influence the government and laws in many ways. The people have the right to periodically elect representatives and senators to Congress and to elect the president. They even have the right to approve or reject constitutional amendments and certain other laws. If society's needs change, the flexible system of government allows the passage of new and different laws, the election of representatives who will enact laws suited to the times and popular sentiment, or both. Evidence of this can be seen in any governmental election. Theoretically, the members of Congress elected by the majority represent the beliefs of the people with regard to the law.

As a practical matter, citizens have more frequent personal contact with the judicial branch than with any other branch of government. Judges hear everything from traffic cases to domestic disputes to claims that Congress has exceeded the limits of its authority by passing laws that violate the Constitution. Since the beginning of the current system of government, courts have continually faced the task of balancing competing interests. These interests are subject to what might be called the **traditional balance** and the **modern balance**, both of which are employed by judges when determining legal claims.

The traditional balance arose from the very heart of our governmental system. The people no longer desired strictly positivist rule from a single source; rather, they wanted to have input into the laws by which they had to live. However, not everyone agrees as to what the law should be in a given situation. Under majority rule, laws are enacted based on what the majority thinks is necessary to protect the rights of the public as a whole. Some individuals, however, maintain that they have a valid right to disobey a particular law or that the law as written does not apply to their particular

### sociological theory

Doctrine following the principle that government should adapt laws to reflect society's current needs and beliefs.

### traditional balance

Goal of the judiciary is to allow maximum personal freedom without detracting from the welfare of the general public.

### modern balance

Goal of lawmaking authorities is to balance the need for consistency and stability against the need for a flexible and adaptive government.

situation. In that event, the judiciary must examine the broadly written laws and apply them to individual circumstances. The challenge facing every judge is to set aside personal beliefs and biases and enforce the laws to the extent necessary to protect the rights of the public, while permitting the greatest amount of personal freedom possible for the individual. Simply stated, the traditional balance weighs The Rights of the People versus The Rights of the Individual.

## PRACTICAL APPLICATION

### 1.3

Lloyd believes he is a strongly patriotic American. He supports a return to a more traditional way of life, when frontiersmen defended their own property and families with little or no reliance on law enforcement or the military. Acting from this belief, Lloyd collects what he thinks will be necessary in anticipation of the day when he believes the government will collapse, and he will be left on his own to fight off others who will fight him for his family's safety and belongings. To have the best chance of survival, Lloyd has stockpiled enormous amounts of explosives, along with automatic weapons and large caches of ammunition. Lloyd makes no secret of his beliefs or his plans. His neighbors are highly concerned that if anything were to cause a detonation of Lloyd's stockpiles, their safety would be greatly endangered. Additionally, as Lloyd's beliefs become more and more radical, neighbors are concerned that he may at some point intentionally detonate his stockpile. Consequently, the neighbors have filed a lawsuit against Lloyd, claiming that his weapons arsenal creates a nuisance that endangers their safety. Lloyd stands on his Second Amendment right to bear arms, but the neighbors claim that he is violating their own rights as individuals and as a community. The neighbors claim that Lloyd's conduct has the effect of limiting the safe use of their own property, thus in effect, creating an unlawful seizure of their property in violation of rights guaranteed by the Fifth and Ninth Amendments.

**Point for Discussion:** At what point should someone's personal right to bear arms be limited?

Initially, judges had only to balance individual freedoms against the good of the nation as a whole. Over time, though, American society became increasingly complex. People from many different cultures, races, and religions came to this country in large numbers. The Industrial Revolution reached full force, followed by the age of advanced technology. The government withstood a civil war, two world wars, and numerous conflicts with other countries using different political structures. The longevity of the U.S. government is largely the result of the willingness of the judiciary and the other branches of government to develop and employ the modern balance in conjunction with the traditional balance.

The modern balance is an especially delicate one. In essence, it weighs the need to enforce existing legal principles based on the Constitution against the need to adopt legal principles that are more reflective of current society. Writing laws that envision and encompass all the potential situations and changes in society for hundreds of years to come is an impossible task. Thus, the judiciary, with the help of the executive branch and Congress, must be able to recognize situations in which modifications in the existing system are warranted. This balance has been accomplished without ever disturbing the fundamental structure set forth in the Constitution. Indeed, the modern balance consists of the ability to enforce law consistently while retaining enough flexibility to adapt to changes in societal standards.

**PRACTICAL APPLICATION****1.4**

When the Supreme Court ruled that the ban on same-sex marriage was unconstitutional, it struck down these laws in a majority of states. The laws were rendered unconstitutional, even though those laws were passed by a majority of the citizens in those states. Numerous states had previously legalized same-sex marriage, and others were on a path to do the same.

**Point for Discussion:** Was it prudent of the Court to act as it did, or should it have waited for the democratic processes at the state level to play out on this issue?

## THE MODERN LEGAL SYSTEM

The U.S. government that enacts and administers federal law in the United States today is far more sophisticated and much larger than the first government that took office under the new Constitution in 1789. That government was a single Congress of senators and representatives from the 13 colonies (the Senate with two senators elected by each state legislature and the House of Representatives with members proportionate to the population of each state), a president whose role was still not well defined beyond the basic duties listed in Article II of the Constitution, and a single court to serve as the judiciary for an entire nation.

Today, that same Congress includes a group of more than 500 voting senators and representatives elected by the population of the 50 states. The presidency has developed into a complex office that not only represents this country in foreign affairs but also oversees the administrative agencies of government and approves or rejects all acts of Congress. The federal judiciary has grown to include three separate levels: the Supreme Court, 13 U.S. circuit courts of appeals, and more than 90 U.S. district courts. Interestingly, all three branches still follow the same basic purposes outlined in the Constitution. The manner in which each of these branches operates today is discussed in greater detail in subsequent chapters.

### The Sources of Law

The primary source of all law in this country is the U.S. Constitution. Added to that are the state constitutions for each of the 50 states. From these flow the other sources of law. A common misconception is that legislatures—either state or federal (i.e., Congress)—are the source of all laws. In reality, legislatures are only one source of law. Law, also known as a **legal standard** or *legal principle*, takes different forms and arises from various different sources. It can apply to people in general, to a particular group of citizens, or to a specific person or entity (such as a corporation).

Each branch of government plays an active role in creating the law of the nation. In addition, each state has a system of government that is similar to the federal structure, and law at the state level is created in much the same way as at the federal level. The distinction is that state governments are responsible for dealing with those issues not addressed by the U.S. Constitution. The following discussion examines the sources of law, as well as their relationship to one another and the hierarchy of law.

**STATUTORY LAW.** As just noted, the most familiar law is legislative—that is, **statutory law**. Such laws are enacted by a state legislature or by Congress. If a state legislature enacts a law, all persons and entities present in, or considered legally connected to, that state must obey it. If Congress enacts a federal law, all persons present

#### legal standard

Legal principle, point of law. May take the form of statutory, judicial, or administrative law.

#### statutory law

A statute; law created by a legislature.

in, or considered legally connected to, the nation are required to follow it. (Chapter 3 addresses the manner in which legislative/statutory law is created.) Once approved by the legislature, a statute will generally continue as law indefinitely, until either the legislature repeals (deactivates) it or the high court of the state or federal government rules it unconstitutional. Federal laws must be consistent with the U.S. Constitution, whereas state laws must be in accordance with both the state and federal constitutions. Similarly, no state constitution can conflict with the U.S. Constitution.<sup>1</sup> The provision of the U.S. Constitution declaring that federal laws take precedence over conflicting state laws is known as the *supremacy clause*.

The language of statutes is usually fairly broad. Such broad language is necessary because the legislature wants to include as many potential situations as possible when it sets down a legal standard of what is right and what is wrong for an entire population. However, there are limits to just how broadly a law can be stated. If a court determines that a law is written so vaguely that citizens cannot determine exactly what is and is not acceptable conduct, the law will not be upheld as valid. The Constitution guarantees the right to fair notice of what is considered illegal conduct. Thus, courts have stricken statutes for being unconstitutional because of overly broad language.<sup>2</sup> The legislature has a particularly difficult but necessary task of establishing laws that apply to all intended persons and situations but that are also specific enough to warn an individual of what is required in a particular situation. Exhibit 1.1 is an example of statutory law.

## EXHIBIT 1.1 Sample Legislative Language

### W.S.A. 802.05

#### 802.05. Signing of pleadings, motions, and other papers; Representations to court; Sanctions

##### Currentness

**(1) Signature.** Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, and state bar number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

**(2) Representations to Court.** By presenting to the court, whether by signing, filing, submitting, or later advocating a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following:

- (a) The paper is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
- (b) The claims, defenses, and other legal contentions stated in the paper are warranted by existing **law** or by a nonfrivolous argument for the extension, modification, or reversal of existing **law** or the establishment of new **law**.
- (c) The allegations and other factual contentions stated in the paper have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.
- (d) The denials of factual contentions stated in the paper are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

**(2m) Additional Representations to Court as to Preparation of Pleadings or Other Documents.** An attorney may draft or assist in drafting a pleading, motion, or document filed by an otherwise self-represented person. The attorney is not required to sign the pleading, motion, or document. Any such document must contain a statement immediately adjacent to the person's signature that "This document was prepared with the assistance of a lawyer." The attorney providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false, or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

**(3) Sanctions.** If, after notice and a reasonable opportunity to respond, the court determines that sub. (2) has been violated, the court may impose an appropriate sanction upon the attorneys, **law** firms, or parties that have violated sub. (2) or are responsible for the violation in accordance with the following:

- (a) *How initiated.* 1. "By motion." A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate sub. (2). The motion shall be served as provided in **s. 801.14**, but shall not be filed with or presented to the court unless, within 21 days after service of the motion or such other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If

## EXHIBIT 1.1 CONT.

warranted, the court may award to the party prevailing on the motion reasonable expenses and attorney fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a **law** firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

2. "On court's initiative." On its own initiative, the court may enter an order describing the specific conduct that appears to violate sub. (2) and directing an attorney, **law** firm, or party to show cause why it has not violated sub. (2) with the specific conduct described in the court's order.

(b) *Nature of sanction; limitations.* A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subs. 1. and 2., the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney fees and other expenses incurred as a direct result of the violation subject to all of the following:

1. Monetary sanctions may not be awarded against a represented party for a violation of sub. (2)(b).

2. Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(c) *Order.* When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(4) **Prisoner litigation.** (a) A court shall review the initial pleading as soon as practicable after the action or special proceeding is filed with the court if the action or special proceeding is commenced by a prisoner, as defined in **s. 801.02(7)(a)(2)**.

(b) The court may dismiss the action or special proceeding under par. (a) without requiring the defendant to answer the pleading if the court determines that the action or special proceeding meets any of the following conditions:

1. The action or proceeding is **frivolous**, as determined by a violation of sub. (2).

2. The action or proceeding is used for any improper purpose, such as to harass, to cause unnecessary delay or to needlessly increase the cost of litigation.

3. The action or proceeding seeks monetary damages from a defendant who is immune from such relief.

4. The action or proceeding fails to state a claim upon which relief may be granted.

(c) If a court dismisses an action or special proceeding under par. (b) the court shall notify the department of justice or the attorney representing the political subdivision, as appropriate, of the dismissal by a procedure developed by the director of state courts in cooperation with the department of justice.

(d) The dismissal of an action or special proceeding under par. (b) does not relieve the prisoner from paying the full filing fee related to that action or special proceeding.

Although the legislatures continue to pass laws that apply to the current needs of society, those laws must remain consistent with the objectives of the original Constitution. If they do not, they will be invalidated by the courts. For example, in recent years, the court struck down gun control laws in two cases because those laws violated the Second Amendment. Subsequent chapters will provide substantial discussion with respect to effective analysis of judicial opinions.

**JUDICIAL LAW.** A second type of law is **judicial law**. The judiciary interprets law from other sources, but also on occasion creates legal standards known specifically as *common law*. Judges may consider a statute and determine whether it was meant to apply to the circumstances of a particular case. Persons in similar situations may then look to the judge's decision to guide their own conduct. Furthermore, the legislature cannot possibly enact laws that would apply to every conceivable circumstance. Therefore, when no law exists, judges are responsible for making law or extending decisions made by judges in previous similar cases.

The tradition of judges looking to rulings in similar past cases is an integral part of the U.S. system of justice. The continuation of existing legal standards provides the element of stability in the modern balance. This process is commonly referred to as **stare decisis**—literally, "Let the decision stand." The doctrine of stare decisis basically holds that following the same legal principles in similar cases gives our legal system consistency. People can look to the past for guidance in what to expect from the courts in the future. The wisdom of past judges is utilized to achieve fair and consistent treatment of persons involved in similar cases.

### judicial law

Opinions, issued by members of the judiciary in legal disputes, that have the effect of law.

### stare decisis

"Let the decision stand." Method used by the judiciary when applying precedent to current situations.

**precedent**

Existing legal standards to which courts look for guidance when making a determination of a legal issue.

When a court applies *stare decisis* and follows the same type of ruling as issued in a previous, similar case, it is following a **precedent**—a previously established legal standard. Courts generally attempt to apply *stare decisis* with respect to precedents unless the prior case is too dissimilar in facts or issues or unless societal standards have changed since the precedent was established, making the former legal principle of the precedent impractical. In such a case, the court does not employ *stare decisis*, but rather rules on the case based on new societal standards and establishes a new precedent for future reference. Chapter 2 presents more information on the way in which precedents are created.

In the opinion that follows, the higher court examines whether the lower court properly applied precedent in its determination of the case. This reliance on previous judicial opinions and following the legal standards within them is an example of *stare decisis*.

**CASE**

*In re Estate of Marc R. Beauregard*,  
456 Mass. 161, 921 N.E.2d 954 (2009)

MARSHALL, C.J. Steven D. Knight appeals from a decree of the Probate and Family Court dismissing his petition for probate of the will of Marc R. Beauregard (decedent). The decedent died at the age of forty years, unmarried and childless, leaving his parents as his sole heirs and next of kin. After his death on July 19, 2003, a judge in the Probate and Family Court appointed Raymond L. Beauregard (Beauregard), the decedent's father, as administrator of his estate. Subsequently Knight, who had the same residential address as the decedent, filed a petition for probate of a "copy of a will." He contended that a document dated June 11, 2003, which bequeathed significant assets to Knight, was a copy of the decedent's last will and testament. Beauregard, the decedent's mother, and his four siblings filed objections to the petition . . .

The trial judge found that the decedent had executed a will on June 11, 2003, and had himself retained the original. Despite the objectors' contention that the will was a forgery or not properly executed, the judge found that the will had been witnessed by two persons in accordance with G. L. c. 191, § 1, and was otherwise proper. Five weeks after the execution of the will, the decedent was murdered.

Because Knight proffered only a copy of the decedent's will, the judge applied the evidentiary presumption that "where a will once known to exist cannot be found after the death of the testator, there is a presumption that it was destroyed by the maker with an intent to revoke it." *Miniter v. Irwin*, 331 Mass. 8, 9 (1954), quoting *Smith v. Smith*, 244 Mass. 320, 321 (1923). The judge concluded that Knight had failed to rebut the presumption, and dismissed his petition. Knight appealed . . .

When a will is traced to the testator's possession or to where he had ready access to it and the original cannot be located after his death, there are three

plausible explanations for the will's absence: (1) the testator destroyed it with the intent to revoke it; (2) the will was accidentally destroyed or lost; or (3) the will was wrongfully destroyed or suppressed by someone who was dissatisfied with its terms. Restatement (Third) of Property (Wills and Other Donative Transfers) § 4.1 comment j (1999). Of these, Massachusetts law presumes the first—that the testator destroyed the will with the intent to revoke it. *Smith v. Smith*, *supra* . . . Knight argues that the presumption should not apply in this case because the will opponents failed to raise it in their pleadings or at trial. The argument is without merit. For more than one century we have recognized the presumption as evidentiary, not an affirmative defense that must be pleaded or otherwise invoked by the opponents. See *Aldrich v. Aldrich*, *supra*; *Newell v. Homer*, 120 Mass. 277, 281 (1876). See 3 W. Page, *Wills*, *supra* at § 29.139, at 845 ("if a will which was in the custody of testator, or to which he had ready access cannot be found, the burden of proof is upon the proponent to show that it was not destroyed by testator with the intention of revoking it"). Knight knew he did not have the original will; he was on fair notice that the presumption would apply . . .

. . . in [the] "absence of a statutory provision to the contrary, the preponderance of evidence standard is the standard generally applied in civil cases". Because of "the other plausible explanations for a will's absence," the presumption should not "be such a strong one" that clear and convincing or another higher burden is required to rebut it. Restatement (Third) of Property (Wills and Other Donative Transfers), *supra* . . .

Accordingly, the proponent of a will that has been traced to the testator's possession (or to which the testator had ready access) but cannot be found after his death must demonstrate by a preponderance of the evidence that

(continued)

the testator did not destroy the will with the intent of revoking it. Whether the evidence is sufficient to meet this burden is determined by the facts and circumstances in each case. See *Matter of the Estate of Leggett*, 584 So. 2d 400, 403 (Miss. 1991), quoting *Adams v. Davis*, 233 Miss. 228, 238 (1958) (“It is difficult to lay down any general rule as to the nature of the evidence which is required to rebut the presumption of destruction”). It is not necessary that the proponent establish that the will was in fact accidentally lost or destroyed, or that it was wrongfully suppressed by someone who was dissatisfied with its terms. The presumption is rebutted if a preponderance of the evidence demonstrates that the testator did not intend to revoke his will, regardless of whether the proponent can demonstrate what may ultimately have become of the will.

In this case, the judge concluded that he “could not draw any inference that the will was accidentally lost by the decedent.” We do not read this to mean that the judge required Knight to prove what had become of the original or that the judge did not consider evidence tending to show that the deceased did not destroy the will with the intent to revoke it. It is apparent that the judge considered all the evidence and made findings sufficient to support his conclusion. The judge first reasoned that the decedent was young, healthy, and fully competent at the time of his death, so it would have been unlikely that he would have lost the original will accidentally. The judge further noted that there was a short period of time between the date on which the will was executed (June 11, 2003) and the decedent’s death (July 19, 2003). Presumably, the judge reasoned that there was little time for the decedent to lose his will or to give it to someone who suppressed or destroyed it against the decedent’s wishes. Both factors the judge cited—the competency of the decedent and the temporal proximity of the creation of the will and the decedent’s death—support his finding that the decedent destroyed the original will intending to revoke it. We read the judge’s decision to mean that the will proponent had not overcome the presumption by a preponderance of the evidence.

This is not to say that the facts in this case could not have been weighed differently. A copy of the will was discovered in the decedent’s home. If he were competent, as the judge found, then he likely would have destroyed any copies, as well as the original, had he intended to revoke the will. Also, the temporal proximity between execution of the will and death provided little time for the decedent to change his mind. However, it is “not enough to show that a different conclusion might well have been reached.” *Smith v. Smith*, 244 Mass. 320, 321 (1923). Our examination of

the evidence does not lead to the inevitable conclusion that the judge’s findings, based on his view of the evidence and his evaluation of the witnesses’ credibility, are clearly erroneous. *Gannon v. MacDonald*, *supra* at 852 . . .

The will executed on June 11, 2003, by its terms revoked all wills previously made by the decedent . . .

Our cases have not always stated explicitly that the presumption arises only when a will that cannot be located after the testator’s death can be traced to the testator’s possession or control. See, e.g., *Miniter v. Irwin*, 331 Mass. 8, 9 (1954) (stating generally that “where a will once known to exist cannot be found after the death of the testator, there is a presumption that it was destroyed by the maker with an intent to revoke it”). However, the facts and reasoning of our cases suggest that this is the case. See *Aldrich v. Aldrich*, 215 Mass. 164, 170 (1913) (noting neither party claimed that will “ever had been taken from the testator’s possession” before applying presumption of revocation). See generally Restatement (Third) of Property (Wills and Other Donative Transfers) § 4.1 comment j (1999) (presumption arises if “a will is traced to the testator’s possession and cannot be found after death”); 3 W. Page, Wills § 29.139 (Bowe-Parker rev. 2004) (presumption arises if will “known to have been in existence during testator’s lifetime, and in his custody, or where he had ready access to it, cannot be found at his death”). If the will is last traced to a relative, for example, and cannot be located after the testator’s death, it may be equally plausible that the relative destroyed or lost the will; an inference that the decedent revoked it is not well founded in such circumstances.

Some jurisdictions require a more stringent standard of proof to rebut the presumption. See, e.g., *Matter of the Estate of Crozier*, 232 N.W.2d 554, 556 (Iowa 1975) (whether presumption of revocation has been rebutted “is one of fact which must be proved by clear and convincing evidence”); *Bowery v. Webber*, 181 Va. 34, 36 (1943) (evidence required to overcome presumption of revocation of will must be “strong and conclusive”). We have not previously had occasion to state that a preponderance of the evidence is the standard of proof by which the presumption of revocation may be rebutted under Massachusetts law. We follow the Restatement (Third) of Property (Wills and Other Donative Transfers), *supra*, on this point, for the reasons explained. Decree Affirmed.

#### CASE REVIEW QUESTION

Why was it important to follow precedent when the court openly acknowledged that a different conclusion could reasonably be reached?

Over the years, countless disputes have arisen that required the interpretation of law to achieve resolution. The legal issues involved in individual cases are not often considered significant or common enough to require a legislative act, so the courts are left to issue rulings to resolve the personal disputes. In this way, the judiciary frequently serves as a valuable bridge between the people and the legislature when it interprets statutory legal standards in highly specific circumstances or creates legal standards where none exist. For example, José Martínez intends to repair his roof. José is seriously injured when the ladder he is climbing collapses. José wants the ladder company to pay for his injuries, but there is no statute that requires ladder companies to pay for injuries caused by faulty ladders. The court, however, may look to prior cases that require manufacturers to be careful in the design and construction of products. Relying on precedent such as those prior cases, the court can apply *stare decisis* and determine whether the ladder company must pay for José's injuries.

Judicial law has indirectly provided guidance to the state and federal legislatures as to the type of laws needed to be enacted. A perfect example of this involves the advent of the automobile. At first, many people were skeptical, and certainly most people never envisioned that motor-driven vehicles would become such an essential part of life. However, as increasing numbers of automobiles were placed on the roads, accidents happened, the need for roadways and traffic control developed, an overwhelming source of jobs was discovered, and mass transit became a reality. For the first time in history, the world became highly mobile with unlimited travel that was convenient and fast. Rules were needed so that people could make, sell, and buy vehicles efficiently and travel in them safely and comfortably.

Until the issues of automobile travel and its accompanying disputes became so significant as to warrant legislation, the judiciary handled them. As the number of automobiles and related legal issues increased, however, the legislature stepped in and established broad legal standards for the manufacture, sale, and operation of motor vehicles.

**ADMINISTRATIVE LAW.** Although the legislature attempts to arrive at legal principles that apply to all persons, the judiciary deals with individual circumstances. Over the years, however, it became increasingly clear that an additional entity that could enforce law and tailor rules for specific groups of citizens or subjects was necessary. In many sectors of our society and economy, large numbers of people or areas of commerce need specific guidelines to properly follow more broadly written congressional directives. One such area is the air-transportation industry, which is overseen by the Federal Aviation Administration (FAA). It is impractical for Congress or even state legislatures to attempt to deal with all of the questions raised by this massive industry. At the same time, it would be unduly burdensome and increase the likelihood of inconsistent decisions from different judges in different areas if the judiciary had to handle all cases that arose. The response to dilemmas of this sort has been the advent of **administrative law**.

The Constitution gives the duty to enforce the law to the executive branch, which has the primary responsibility to determine when a law has been violated or whether the law is even applicable to a particular situation. Administrative agencies, which are the main source of administrative law, are overseen by the executive branch, although they are directly influenced by Congress and the judiciary. At the federal level, the president is assisted by administrative agencies in carrying out the laws enacted by Congress.

Administrative law consists primarily of two elements: administrative regulations (sometimes called *rules*) and administrative decisions. Administrative agencies issue regulations or rules that more specifically define or flesh out the operating details of broadly written statutes. Administrative decisions issued for specific cases have the same effect of law as judicial or legislative law. These cases usually involve persons or entities that challenge the authority of the agency to issue or enforce a particular regulation.

Administrative law is an extension of statutory law established by Congress. Failure to obey administrative law can result in penalties or even criminal prosecution.

### administrative law

Regulations and decisions that explain and detail statutes. Such regulations and decisions are issued by administrative agencies.

Exhibit 1.2 shows an example of administrative law. Administrative law is quite complex and is discussed further in Chapter 4.

## The Hierarchy of Law

Although the sources of U.S. law are the legislature, the judiciary, and the executive branch, the laws from all these sources are all interrelated. If the sources of law were completely independent, then the potential for deadlock would exist if the sources conflicted with regard to the law.

# EXHIBIT 1.2 Entitlement of Tenants to Occupy

### Code of Federal Regulations

#### Title 24—Housing and Urban Development

Subtitle B—Regulations Relating to Housing and Urban Development Chapter II—Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development Subchapter B—Mortgage and Loan Insurance Programs Under National Housing

Act and Other Authorities Part 247—Evictions from Certain Subsidized and HUD-Owned Projects Subpart A—Subsidized Projects Current through September 17, 2002; 67 FR 58678

#### § 247.3 Entitlement of tenants to occupancy.

(a) General. The landlord may not terminate any tenancy in a subsidized project except upon the following grounds:

- (1) Material noncompliance with the rental agreement,
- (2) Material failure to carry out obligations under any state landlord and tenant act,
- (3) Criminal activity by a covered person in accordance with sections 5.858 and 5.859, or alcohol abuse by a covered person in accordance with section 5.860. If necessary, criminal records can be obtained for lease enforcement purposes under section 5.903(d)(3).
- (4) Other good cause.

No termination by a landlord under paragraph (a)(1) or (2) of this section shall be valid to the extent it is based upon a rental agreement or a provision of state law permitting termination of a tenancy without good cause. No termination shall be valid unless it is in accordance with the provisions of § 247.4.

(b) Notice of good cause. The conduct of a tenant cannot be deemed other good cause under § 247.3(a)(4) unless the landlord has given the

tenant prior notice that said conduct shall henceforth constitute a basis for termination of occupancy. Said notice shall be served on the tenant in the same manner as that provided for termination notices in § 247.4(b).

(c) Material noncompliance. The term “material noncompliance with the rental agreement” includes:

- (1) One or more substantial violations of the rental agreement;
- (2) Repeated minor violations of the rental agreement that:

- (i) Disrupt the livability of the project,
- (ii) Adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities,
- (iii) Interfere with the management of the project, or
- (iv) Have an adverse financial effect on the project;

(3) If the tenant:

- (i) Fails to supply on time all required information on the income and composition, or eligibility factors, of the tenant household, as provided in 24 CFR part 5; or
- (ii) Knowingly provides incomplete or inaccurate information as required under these provisions; and

(4) Non-payment of rent or any other financial obligation due under the rental agreement (including any portion thereof) beyond any grace period permitted under State law, except that the payment of rent or any other financial obligation due under the rental agreement after the due date; but within the grace period permitted under State law, constitutes a minor violation.

American law is governed by a distinct hierarchy. First in the hierarchy is the U.S. Constitution. Although technically the Constitution and its amendments are statutory law, they are considered superior to all other law because they established the governmental structure and the process for creating all other law. One concept that has remained consistent throughout the legal history of this country is that all branches of state and federal government and all persons in the United States must function within the parameters of the U.S. Constitution. If at any time the will of the people is in conflict with the Constitution, then the Constitution can be amended through the proper process, which is designed to guarantee that the amendment actually does reflect the will of the majority. Chapter 3 further discusses the process for amendment of the Constitution.

Next in the hierarchy of laws are the legislative (statutory) acts of Congress. Statutes have greater weight than judicial or administrative law because they are enacted by Congress and state legislatures, which are composed of persons elected by the people. Thus, statutes are most likely to represent the laws intended for and desired by the majority.

The judiciary has the authority to interpret legislation and to fill in gray areas where the law is unclear or nonexistent. The judiciary is also obligated to ensure that the law is consistent with the Constitution. We might think of the judiciary as the protectors of the Constitution.

### Exception to the Rule of Hierarchy

In any case in which the judiciary determines that the law does not meet the requirements of the Constitution, it then has the authority to declare the law invalid and thereby supersede the ordinarily superior statutory law. Constitutionality is the only basis for judicial rather than statutory law controlling an issue. A prime example of this is a law that is vague or overbroad. Such a law is unconstitutional because it does not provide fair and clear notice to persons of what is illegal conduct. Such notice is a requirement of the Constitution and its amendments. Thus, the court would have the authority to strike down the statute and dismiss charges against anyone who is alleged to have violated the statute.

Last in the hierarchy is administrative law. Administrative agencies assist Congress by issuing regulations and decisions that clarify and aid in the enforcement of statutes. However, Congress has the right to eliminate an agency or regulations that are inconsistent with legislative objectives. The judiciary also has the authority to overrule an agency's actions when they are unconstitutional. The authority of the judiciary to overrule and invalidate law is not exercised lightly or frequently. The courts generally defer to Congress unless there is a clear constitutional violation.

## ASSIGNMENT

### 1.3

Examine the following situations and explain which source of law would most appropriately deal with each situation.

- 1 The criteria used to determine whether an individual is placed on the "No Fly List" for passengers travelling by air.
- 2 The definition of what constitutes driving under the influence.
- 3 An individual is arrested after purchasing eggs, then hatching and raising several baby chicks

to use in a homeschool science project, on the basis that the individual violated a law prohibiting the harboring of livestock within city limits. At 4 months of age, and the end of the experiment, the chicks were given to a farmer.

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## ETHICAL CONSIDERATIONS

The U.S. legal system at its heart depends on honor and integrity. It is essential not only that the government work as intended, but also that the representatives of that governmental structure act in an ethical manner. Knowing, however, that individuals are fallible and subject to the temptations of power and greed, the framers of the Constitution created a government based on a system of checks and balances that prevents any one person or group of persons from gaining too much power over the government or the population.

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## ETHICAL CIRCUMSTANCE

In the early part of the 20th century, the United States suffered through two world wars and an economic depression of epic proportion. Through the end of those Great Depression years and throughout most of World War II, President Franklin D. Roosevelt led the nation. Although the process was complicated and involved the input of many people, Roosevelt was largely credited with ending the Depression and bringing the war near its conclusion. He died shortly before the end of World War II. Before his unexpected death, however, there was a great deal of support for an unprecedented third and then a fourth term of office for Roosevelt as president. So close on the heels of the rise of Hitler to power in Germany, many people feared that the executive branch was gaining far too much power. Thus, in 1951, the Twenty-First Amendment to the Constitution was ratified, precluding any president from seeking a third term of office by election. This effectively defeated the power of any individual—whether pure in intent or unscrupulous—from gaining such a stronghold in the executive branch of government.

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## CHAPTER SUMMARY

This chapter introduced the origins and development of the U.S. legal system. The system began as a singular governmental structure under the Articles of Confederation, which were found to be ineffective and were replaced by the Constitution and the Bill of Rights. Under the Constitution, the government comprises three separate but interrelated branches designed to provide effective government of, by, and for the people: the judiciary, the executive branch, and the legislature (Congress). The Bill of Rights and subsequent constitutional amendments serve as the framework for the protection of individual rights and establish boundaries between areas subject to state and federal law.

The method of law followed in the United States is actually a combination of three theories: naturalist, positivist, and sociological. The naturalist theory believes that people know the difference between right and wrong and should be held accountable for any wrong conduct that results in injury to another party. The positivist theory is represented by the principle that the supreme authority of a jurisdiction is the final decision in legal matters. Appeals may be made to the highest authority; beyond this, decisions are not subject to challenge or question. The sociological theory tempers U.S. law by providing for changes in the law when they are in the best interest of society as a whole.

The three branches of government are the three sources of law: the legislature (statutes), the executive branch (administrative actions from administrative agencies created by Congress but overseen by the executive branch on a day-to-day basis), and the judiciary (judicial opinions). The legislative body issues broadly written laws



that must be adhered to by all persons. Administrative agencies give definition to and enforce statutory law. Judicial law interprets statutory law for specific individual circumstances.

Inherent in all law—but most obviously so in judicial law—are the balances that enable the American system to function so efficiently. Under the traditional balance, government strives to maintain maximum personal freedom while protecting the interests of society as a whole. The modern balance promotes following existing legal standards to provide stability to the government and give clear guidance to citizens while responding flexibly to changes in societal standards.

One constant in this system is that the Constitution is the supreme law of the land. Ordinarily, statutes have priority over judicial opinions and administrative law. However, if the judiciary finds a statute or administrative law to be unconstitutional, the court has the right to invalidate the statute or administrative law and rule on the case based on judicial precedent or other applicable statutory or administrative law. No law, under any circumstance, can be enforced if it is in conflict with the Constitution. If society demands that such a law be held valid, then the Constitution must be amended.

The following chapters give much attention to the various branches of government. Each should be fully understood before proceeding to subsequent chapters that refer to the sources commonly responsible for establishing legal standards in particular subjects of law. Further, it is helpful in a more practical sense to understand where law originates, as well as the law's place in the hierarchy. Such understanding enables one in a real-life situation to more clearly assess one's position with regard to the law.

## CHAPTER TERMS

administrative law  
 judicial law  
 legal standard  
 modern balance  
 naturalist theory  
 positivist theory  
 precedent  
 sociological theory  
 stare decisis  
 statutory law  
 traditional balance

## REVIEW QUESTIONS

- 1 What was the structure of the U.S. government under the Articles of Confederation?
- 2 What political theories influenced the structure of the U.S. government?
- 3 How does the U.S. Constitution guarantee that power will not fall into the hands of one person?
- 4 Explain how each political theory appears in modern-day government.
- 5 The flexibility and stability elements of the modern balance express what goals of the judiciary?
- 6 The individual elements and the elements of the people as a whole of the traditional balance represent what goals of the judiciary?

- 7 Explain the difference between *stare decisis* and precedent.
- 8 Give two characteristics of each type of legal standard: statute, case, and regulation. (An example of a characteristic would be the source of the legal standard.)
- 9 What is the only situation in which a judicial decision is more powerful than a statute?
- 10 Why does the executive branch have the power to create administrative law through administrative agencies?

### INTERNET ASSIGNMENT 1.1

Locate the official government Web site for each branch of state government where you live.

### INTERNET ASSIGNMENT 1.2

Using the Internet, determine whether the constitution for your state has been amended and, if so, when.

### ENDNOTES

1. *Gonzalez v. Automatic Employees Credit Union*, 419 U.S. 90, 95 S. Ct. 289, 42 L. Ed. 2d 249 (1974).
2. *Schwartz v. Board of Bar Examiners*, 353 U.S. 232, 77 S. Ct. 752, 1 L. Ed. 2d 796 (1957).

# CHAPTER 2

## The Courts

### CHAPTER OBJECTIVES

After reading this chapter, you should be able to:

- Discuss the characteristics unique to judicial law.
- Explain the twofold purpose of judicial law.
- Describe the structure of the federal court system.
- Describe the role of each primary level of federal courts.
- Describe the modern-day function of the U.S. Supreme Court.
- Discuss the types of cases generally considered by the U.S. Supreme Court.
- Describe the two general types of state court structures.
- Discuss the process of legal analysis.
- Apply the process of case analysis to a judicial opinion.

### CHAPTER OUTLINE

#### THE PURPOSE AND EFFECT OF JUDICIAL LAW

Characteristics of Judicial Law  
Clarification of the Law  
Protection of the Law

#### THE STRUCTURE OF THE JUDICIAL SYSTEM

Trial versus Appellate Courts  
The Federal Court System  
The U.S. District Courts  
Special Federal Courts  
The U.S. Courts of Appeals  
The U.S. Supreme Court

#### THE STATE COURT SYSTEM

#### THE PROCESS OF LEGAL ANALYSIS

Legal Analysis of Case Law (Judicial Opinions)  
The Facts  
The Legal Issue  
The Law  
The Rule  
Statutory and Administrative Analysis  
Application of Legal Analysis

## The Court Jester

Although most people think of American courts as a place they never really want to go, courts are often the first line of defense in the effort to maintain order and fairness in our society. There are those few citizens, however, who are always ready to stretch the limits of their civil rights to the maximum, take advantage of all the opportunities the legal system has to offer, and entertain the rest of us in the process. Court isn't just about "getting the bad guy" and "making them pay!" Sometimes it is an opportunity to see more colorful citizens in their element, whether they are parties to a suit or serving their civic duty as jurors. Consider the following actual cases.

A case in New Jersey was filed when a dog owner failed to follow a local ordinance requiring him to seek permission in advance for the dog to defecate on the grassy area claimed as private property by another man.

A California woman was sued for improper election practices when she took snickerdoodle cookies to polling places on election day. The plaintiff in the suit was the political opponent who did not deliver cookies and lost the election by 181 votes—along with the lawsuit.

A West Virginia convenience store worker filed suit alleging that she injured her back while opening a pickle jar. The jury award was nearly \$130,066 in damages, accompanied by \$170,000 for emotional distress and \$2.7 million in punitive damages. The defendant appealed the verdict and the appellate court reduced the pickle-injury verdict to just \$2.2 million.

A woman was awarded over \$600,000 for loss of her psychic powers allegedly caused by a CT scan. The judge granted a new trial citing an excessive jury verdict.

A suit was filed in Illinois by a male customer of a strip club. The customer claimed that the stripper slammed her breasts into the side of his head as he sat near the stage. He sought damages and claimed he was "bruised, contused, lacerated, and made sore by the breasts."

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As explained in Chapter 1, U.S. law is effected by three sources: the legislative, judicial, and executive (or administrative) branches. This chapter focuses on the law established and applied by the judicial branch of government, giving consideration not only to the manner in which the federal and state court systems are structured but also to how they function with each other. In addition, the chapter addresses the method of analyzing past judicial law for current and future application.

## THE PURPOSE AND EFFECT OF JUDICIAL LAW

The sampling of somewhat unusual cases in the opening of this chapter not only demonstrates the extremes to which people will go to pursue what is considered a legal right but also stands for something much more important. In many systems of government, there is little opportunity for the individual citizen to have personal

concerns and issues addressed and legal remedies enforced. A driving force in both the drafting of the Constitution and the establishment of the U.S. legal system was the belief that the government should be responsive to the citizens who were subject to its laws. Although this belief sometimes appears to be tested to its limits, it also reinforces the concept and goal that all citizens are entitled to equal and equitable treatment.

## Characteristics of Judicial Law

All elements of the legal system are equally necessary. The executive branch monitors the conduct of Congress and, through its supervision of administrative agencies, establishes regulations for specific industries and specialized groups. Congress, through legislation, sets down statutory law that guides the conduct of all the people. The judiciary reviews the acts of Congress and the executive branch and also, more importantly, serves as a forum for the people in specific circumstances.

### PRACTICAL APPLICATION

### 2.1

Recently, Congress passed the Stolen Valor Act, which made it a federal offense for anyone to lie about receiving the Congressional Medal of Honor. A man giving a speech falsely tells his audience that he was awarded the Congressional Medal of Honor for service in Iraq. The man is charged under the Act. The prosecutors argue that the law is necessary to preserve the prestige of such a high honor. The man argues that the government is suppressing his free speech rights through this Act.

**Point for Discussion:** The courts are often forced to balance competing interests in reaching a decision. Which side do you think has the better argument? Can you think of ways that the Act can be amended so that it furthers the interest of the Act, without infringing on freedom of speech?

Everyone can have access to the governmental system through the judicial branch, which is designed to provide fairness and enforce the rights of all persons. The judicial branch is the only avenue by which individuals can seek individual resolution of personal legal issues. The court is the only forum in which persons can present information supporting their legal position and request court approval and/or enforcement of legal action. Legislatures enact laws to govern all people in a variety of circumstances. The executive branch, through administrative law, further defines and enforces legislative law. The judiciary, however, considers the situations of individuals on a case-by-case basis and attempts to apply the most appropriate law and reach the result that is most fair under the Constitution. In this way, the courts are the branch of government most responsive to the individual. Because every situation is different in some respect, judges are expected to have the knowledge and objectivity to examine individual situations and determine what legal standards are appropriate and how they should apply.

The legislative and executive branches are more indirect reflections of the needs of society as a whole. These branches are necessary to establish legal standards that the people can, in most situations, follow without the need for judicial intervention. The judicial branch is the only governmental authority with the power to create legal standards to resolve an individual situation when none exists. This is not a violation of the delegation doctrine (introduced in Chapter 1 and further discussed in Chapter 4), which restricts the creation of new law for all the people to Congress. Only on increasingly rare occasions is the court left to establish a legal standard in a unique situation for parties to a specific suit because no applicable or adequate legal principle exists.

## Clarification of the Law

By necessity, statutes are written in general terms that are intended to apply to everyone. As a result, it is often unclear whether a statute encompasses a highly specific situation. This is where the assistance of the judiciary becomes essential. Judges are expected to have sufficient knowledge and training to evaluate statutes and determine whether they apply to a particular situation. This is what is meant by the old phrase “the letter and the spirit” of the law. We must look not only to what the law states on its face but also to the intent that caused it to be written and passed in the first place. If a judge finds a statute inapplicable, another statute or legal principle from a prior case can be applied. In doing so, the judge is performing one of the primary functions of the judiciary: to clarify the law as it applies to specific circumstances.

In the judicial opinion that follows, the court examined how the executive branch, through its prosecution of Dr. Jack Kevorkian for murder, attempted to broaden the language of a state homicide statute to include assisted suicide. This issue is still being debated around the United States. Notably, this decision alone prompted radical changes in the language of legislation, not only in Michigan but all over the country.

## CASE

**People v. Kevorkian,**  
447 Mich. 436, 527 N.W.2d 714 (Mich. 1994)

Chief Justice CAVANAGH, and Justices BRICKLEY and GRIFFIN. . . . Before the [assisted-suicide] statute was enacted, defendant Kevorkian allegedly assisted in the deaths of Sherry Miller and Marjorie Wantz on October 23, 1991. . . . Their deaths occurred before the enactment of Michigan’s ban on assisted suicide, and the question is whether defendant Kevorkian can be prosecuted for his role in the deaths.

Each woman was said to be suffering from a condition that caused her great pain or was severely disabling. Each separately had sought defendant Kevorkian’s assistance in ending her life. The women and several friends and relatives met the defendant at a cabin in Oakland County on October 23, 1991.

According to the testimony presented at the defendant’s preliminary examination, the plan was to use his “suicide machine.” The device consisted of a board to which one’s arm is strapped to prevent movement, a needle to be inserted into a blood vessel and attached to I.V. tubing, and containers of various chemicals that are to be released through the needle into the bloodstream. Strings are tied to two of the fingers of the person who intends to die. The strings are attached to clips on the IV tubing that control the flow of the chemicals. As explained by one witness, the person raises that hand, releasing a drug called methohexital, which was described by expert witnesses as a fast-acting barbiturate that is used under controlled circumstances to administer anesthesia

rapidly. When the person falls asleep, the hand drops, pulling the other string, which releases another clip and allows potassium chloride to flow into the body in concentrations sufficient to cause death.

The defendant tried several times, without success, to insert the suicide-machine needle into Ms. Miller’s arm and hand. He then left the cabin, returning several hours later with a cylinder of carbon monoxide gas and a mask apparatus. He attached a screw driver to the cylinder, and showed Ms. Miller how to use the tool as a lever to open the gas valve.

The defendant then turned his attention to Ms. Wantz. He was successful in inserting the suicide-machine needle into her arm. The defendant explained to Ms. Wantz how to activate the device so as to allow the drugs to enter her bloodstream. The device was activated, and Ms. Wantz died.

The defendant then placed the mask apparatus on Ms. Miller. The only witness at the preliminary examination who was present at the time said that Ms. Miller opened the gas valve by pulling on the screw driver. The cause of her death was determined to be carbon-monoxide poisoning.

The defendant was indicted on two counts of open murder. . . . However, in circuit court, the defendant moved to quash the information and dismiss the charges, and the court granted the motion.

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. . . The Court of Appeals majority relied principally on *People v Roberts*. . . In *Roberts*, the defendant's wife was suffering from advanced multiple sclerosis and in great pain. She previously had attempted suicide and, according to the defendant's statements at the plea proceeding, requested that he provide her with poison. He agreed, and placed a glass of poison within her reach. She drank the mixture and died. The defendant was charged with murder. He pleaded guilty, and the trial court determined the crime to be murder in the first degree. The defendant appealed. He argued, among other things, that because suicide is not a crime in Michigan, and his wife thus committed no offense, he committed none in acting as an accessory before the fact. The Court rejected that argument, explaining: "If we were living in a purely common-law atmosphere with a strictly common-law practice, and defendant were charged with being guilty as an accessory of the offense of suicide, counsel's argument would be more persuasive than it is. But defendant is not charged with that offense. He is charged with murder and the theory of the people was that he committed the crime by means of poison. He has come into court and confessed that he mixed poison with water and placed it within her reach, but at her request. The important question, therefore, arises as to whether what defendant did constitutes murder by means of poison."

. . . [T]he *Roberts* Court concluded: "We are of the opinion that when defendant mixed the Paris green with water and placed it within reach of his wife to enable her to put an end to her suffering by putting an end to her life, he was guilty of murder by means of poison within the meaning of the statute, even though she requested him to do so. By this act he deliberately placed within her reach the means of taking her own life, which she could have obtained in no other way by reason of her helpless condition."

. . . Early decisions indicate that a murder conviction may be based on merely providing the means by which another commits suicide. However, few jurisdictions, if any, have retained the early common-law view that assisting in a suicide is murder. The modern statutory scheme in the majority of states treats assisted suicide as a separate crime, with penalties less onerous than those for murder. . . .

Recent decisions draw a distinction between active participation in a suicide and involvement in the events leading up to the suicide, such as providing the means. Frequently, these cases arise in the context of a claim by the defendant that the prosecution should have been brought under an assisted suicide statute. The courts generally have held that a person may be prosecuted

for murder if the person's acts went beyond the conduct that the assisted suicide statute was intended to cover.

. . . [I]n *State v. Sexson*. . . the defendant was charged with first-degree murder in connection with the fatal shooting of his wife. He was convicted of second-degree murder following a bench trial, and argued on appeal that he should have been prosecuted under the state's assisted suicide statute.

The only fact in dispute in *Sexson* was whether it was the defendant or the decedent who actually pulled the trigger of the rifle that killed her. It was not disputed that there was a suicide agreement between the two, and that the pact was genuine. The defendant claimed simply to have held the rifle in position while the decedent pulled the trigger, and that he had failed to then kill himself because he "freaked out" when the decedent continued to breathe after being shot.

The appellate court rejected the defendant's argument that he could not be prosecuted under the more general murder statute because of the specific assisted suicide statute. In so doing, the court emphasized that the two statutes proscribed different conduct: "The wrongful act triggering criminal liability for the offense of assisting suicide is 'aiding another' in the taking of his or her own life. It is well accepted that 'aiding,' in the context of determining whether one is criminally liable for their involvement in the suicide of another, is intended to mean providing the means to commit suicide, not actively performing the act which results in death. . . ."

Turning to the evidence presented in *Sexson*, the court reiterated that the distinction accepted in other jurisdictions between murder and aiding suicide "generally hinges upon whether the defendant actively participates in the overt act directly causing death, or whether he merely provides the means of committing suicide." This distinction applies even where the decedent has given consent or requested that actual assistance be provided. In *Sexson*, the defendant admitted holding the rifle in a position calculated to assure the decedent's death. The court concluded: "That action transcends merely providing Victim a means to kill herself and becomes active participation in the death of another." . . . In the years since 1920, when *Roberts* was decided, interpretation of causation in criminal cases has evolved in Michigan to require a closer nexus between an act and a death than was required in *Roberts*. . . . In the context of participation in a suicide, the distinction recognized in *In re Joseph G.* . . . constitutes the view most consistent with the overwhelming trend of modern authority. There, the California Supreme Court explained that a conviction of murder is proper if a defendant participates in the

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final overt act that causes death, such as firing a gun or pushing the plunger on a hypodermic needle. However, where a defendant is involved merely “in the events leading up to the commission of the final overt act, such as furnishing the means, . . .” a conviction of assisted suicide is proper. . . .

. . . [T]his Court has modified the common law when it perceives a need to tailor culpability to fit the crime more precisely than is achieved through application of existing interpretations of the common law. . . . For the reasons given, we perceive such a need here. Accordingly, we would overrule *Roberts* to the extent that it can be read to support the view that the common-law definition of murder encompasses the act of intentionally providing the means by which a person commits suicide. Only where there is probable cause to believe that death was the direct and natural result of a

defendant’s act can the defendant be properly bound over on a charge of murder. Where a defendant merely is involved in the events leading up to the death, such as providing the means, the proper charge is assisting in a suicide. . . . In this case, the lower courts did not have the benefit of the analysis set forth in this opinion for evaluating the degree of participation by defendant Kevorkian in the events leading to the deaths of Ms. Wantz and Ms. Miller. Accordingly, we remand this matter to the circuit court for reconsideration of the defendant’s motion to quash in light of the principles discussed in this opinion.

#### CASE REVIEW QUESTION

In this decision, the court is applying a type of judicial balance discussed in Chapter 1. Which type of balance is employed? Why does the court find it necessary?

Judicial interpretations of statutory or administrative law occur any time a statute or administrative regulation or decision is an issue in a case. If, for example, someone challenges a speeding ticket, the government must prove that the statute of maximum miles per hour was violated. The judge must review the statute and the facts of the case. The judge must then determine whether, under the facts, the law applies and whether the law was violated. This is one example of a judicial interpretation of a statute.

As Practical Application 2.2 illustrates, most cases that reach the courts have much more complicated facts than are addressed by the broad language of a statute. There seem always to be specific questions that are not clearly answered or contemplated by the statute and for which the judge must establish answers. This is done by looking to the purpose of the statute and the intent of the legislature in passing the statute. Judges also look at how past similar cases were treated in the courts. Although no two cases are exactly alike, a judge may apply a different ruling in cases that have striking similarities. Such similarities may be in the facts of the case, in the legal issues involved, or in both—but one important distinction can change the outcome. Judges are required to draw on their knowledge and experience to establish a logical and fair interpretation of the statute for each unique situation.

## PRACTICAL APPLICATION

### 2.2

A state law requires all schools to disclose all allegations of sexual misconduct by staff to local law enforcement and immediately suspend the staff member without pay until the matter is resolved by law enforcement. A high school senior reported that the band instructor was sexually inappropriate when he repeatedly wrapped his arms around her during music lessons. The teacher was immediately suspended and criminal charges were filed. The teacher pleaded not guilty and a trial was held. Evidence included testimony by the student that she frequently felt the instructor was acting in a sexual manner toward her and she was traumatized by this. Other students testified unanimously that the instructor usually taught by demonstration and only taught

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