CHAPTER 1

**INTRODUCTION TO LAW**

**LECTURE OUTLINE**

**1-1 Definition of Law (See PowerPoint Slides 1-1 and 1-2)**

* Aristotle – Law Is Reason Unaffected By Desire
* Holmes – Law Embodies the Story of a Nation's Development Through Many Centuries
* Blackstone – That Rule of Action Which Is Prescribed By Some Superior and Which the Inferior Is Bound to Obey
* *Black’s Law Dictionary –* A Body of Rules of Action or Conduct Prescribed By the Controlling Authority, and Having Legal Binding Force
* Rules Enacted By a Government Authority That Govern Individuals and Relationships in Society

**1-2 Classifications of Law**

1-2a Public Versus Private Law (See PowerPoint Slide 1-3)

* Public Law or Statutory Law (discussed later in chapter)
* Private Law – Contracts, Employer Regulations

1-2b Criminal Versus Civil Law (See PowerPoint Slide 1-4)

* Criminal Law – Carries Fine and/or Imprisonment, Governmental Enforcement
* Civil Law – Individual Enforcement, Liability

1-2c Substantive Versus Procedural Law

* Substantive Laws – Gives Rights and Responsibilities
* Procedural Laws – Means for Enforcing Substantive Rights

1-2d Common Versus Statutory Law (See PowerPoint Slide 1-5)

* Common Law
* Began in England (1066)
* Exists today – nonstatutory law
* Exists also in court decisions – *stare decisis*, “let the decision stand,” or following case precedent
* Statutory Law
* Passed by some governmental body
* Appears in written form

1-2e Law Versus Equity (See PowerPoint Slide 1-6)

* In Common Law England, Remedies Were Separated Into Legal and Equitable Remedies
* Legal = money
* Equitable = injunctions, specific performance
* Separated the Remedies So That Courts of Chancery Could Give Remedies When Courts of Law Could Not
* Today All Courts Are Authorized to Award Legal or Equitable Remedies

**1-3 Purposes of Law (See PowerPoint Slide 1-7)**

1-3a Keeping Order

* Examples: Traffic Laws, Criminal Laws (Kidnapping, Murder), Trespass Laws, Property Laws
* Safety – USA Patriot Act
* Reporting requirements
* Search warrants

1-3b Influencing Conduct

Examples: Disclosure statutes for securities, antitrust laws, negligence and standards of normal (acceptable) or liability‑free conduct

1-3c Honoring Expectations

Examples: Contracts, landlord/tenant, securities investment, property ownership

1-3d Promoting Equality

Examples: Title VII (employment discrimination laws), Age Discrimination Act, Pregnancy Discrimination Act, bussing, antisegregation statute, Social Security system, antitrust laws

1-3e Law as the Great Compromiser

Examples: Union/management laws and regulations, contract interpretations, divorce property settlements, probate distributions

**1-4 Characteristics of Law (See PowerPoint Slides 1-8 and 1-9)**

1-4a Flexibility

Examples: On-line transactions and fax machines have made us revisit when a contract acceptance occurs

1-4b Consistency

Allows businesses to rely on law for planning

1-4c Pervasiveness

Point out brief to students and how to do and use case briefs (See Exhibit 1.1 and PowerPoint Slide 1-10).

**CASE BRIEF 1.1**

*Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*

545 U.S. 913 (2005)

*FACTS:* Grokster, Ltd. and StreamCast Networks, Inc. (Respondents/defendants) distribute free software products that allow computer users to share electronic files through peer-to-peer networks. Grokster and StreamCast began distributing their software after Napster was shut down by a judicial finding that it was engaged in copyright infringement.

A group of copyright holders (MGM for short, but including motion picture studios, recording companies, songwriters, and music publishers) (Petitioners) sued Grokster and StreamCast for their users' copyright infringements, alleging that they knowingly and intentionally distributed their software to enable users to reproduce and distribute the copyrighted works in violation of the Copyright Act, [17 U.S.C. § 101](http://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW7.04&fn=_top&sv=Split&tc=-1&findtype=L&docname=17USCAS101&db=1000546&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Westlaw) *et seq.*

Although Grokster and StreamCast do not know when particular files are copied, a few searches using their software would show what is available on the networks through the software. MGM commissioned a statistician to conduct a systematic search, and his study showed that nearly 90% of the files available for download on the FastTrack system were copyrighted works. . . . [t]he probable scope of copyright infringement is staggering.

*DECISIONS BELOW:* The District Court held that those who used the Grokster and Morpheus software to download copyrighted media files directly infringed MGM's copyrights, but granted summary judgment in favor of Grokster and StreamCast as to any liability arising from distribution of the then current versions of their software. The Court of Appeals affirmed. MGM appealed.

*ISSUES ON APPEAL:* Can Grokster and StreamCast be held liable for copyright infringement based on third parties’ unlawful use of its software? What are the legal rights of those whose copyrights are infringed by others using a tool provided by companies such as Grokster?

*DECISION:* The court held that Grokster and StreamCast can he held liable for the infringement by others, not on the grounds of no other lawful use (for there are other lawful uses of their technology), but rather for their intent established by their methods of advertising, their advice to users, and their lack of control over the use of their software or even their knowledge regarding its use for infringement purposes.

**Answers to Case Questions**

1. While both had legal uses beyond the infringement issue, there were several issues that made a difference to the court:
2. Sheer volume of the exchanges over Grokster and StreamCast made it impossible to police (and no one tried to do so).
3. Protection of copyrighted material required some additional effort because otherwise the technology opened up all copyrighted materials to vulnerability.
4. Grokster and StreamCast deliberately advertised their products for infringement use and made their money from ads placed strategically when their service was used.
5. They made money through their ads that appeared as the users downloaded.
6. The failure to develop filtering mechanisms is grounds for imposing liability as is making money from ads related to the infringement. Acting with the intent to allow infringement.

3. The intent of the companies – they were advertising themselves as the replacement for Napster, they were making money, and the more users the more money, and they made no effort to monitor use.

**CASE BRIEF 1.2**

*Viacom International, Inc. v. YouTube, Inc.*

718 F. Supp. 2d 514, 95 U.S.P.Q.2d 1766 (2010)

*FACTS:* YouTube, owned by Google (defendants), operates a website at www.youtube.com where users may upload video files free of charge. Uploaded files are copied and formatted by YouTube's computer systems, and can then be viewed on YouTube. YouTube was not only generally aware of, but welcomed, copyright-infringing material being placed on its website. Such material was attractive to users, whose increased usage resulted in more income from advertisements for YouTube.

Viacom (and other television and production companies) (plaintiffs) claim that tens of thousands of videos on YouTube were taken unlawfully from Viacom's copyrighted works without authorization and that YouTube either knew or was aware of facts or circumstances that indicated infringement was afoot.

Viacom brought suit to require YouTube to actively search for infringing clips and remove them. Viacom argues that YouTube has liability for infringement because it is aware of the uses of the infringing uses of its site and that it should not have to notify YouTube of all infringements.

*ISSUE:* YouTube moved for summary judgment on the grounds that the Digital Millennium Copyright Act’s (DMCA) protected it against direct and secondary infringement claims.

*DECISION:* YouTube was not vicariously liable and was not required to search its site for infringement. Viacom would have to search and notify YouTube. As long as YouTube removed the infringing clips, it was protected under DMCA. YouTube was not required under the “red flag” standard to search for infringement.

**Answers to Case Questions**

1. Grokster facilitated infringement and nearly all of its users were infringing copyrights. Grokster was not a service provider whose forum filled other valid purposes.

2. Requiring YouTube to search would hamper the development of the Internet and impose too much liability and responsibility on service providers when they are not aware of problems.

3. Viacom and other copyright holders will need to search the Internet and notify providers. Internet service providers are not liable unless they are notified or aware of the problems.

***ANSWER TO CONSIDER 1.1:*** The analysis of all “Considers” are at the end of the chapter in the textbook. In *Tiffany Inc. v. eBay Inc.*, 600 F.3d 93 (2d Cir. 2010), the court held that eBay played a role similar to that of YouTube – there is no duty to check for copyrights, but once the sponsor becomes aware or receives notice, it must take action to remove the infringing goods.

***ANSWER TO ETHICAL ISSUES (Copyright Infringement or Friendly Sharing?):*** Even if the practice of peer-to-peer file sharing is not a violation of federal copyright laws, there is the ethical questions of the downloaders taking something that doesn't belong to them. If the downloader's work product or work were taken without compensation, they might feel differently.

An excellent illustration is Shawn Fanning's litigation against a t-shirt manufacturer who used the Napster logo on a line of t-shirts. Fanning called it trademark infringement.

Helps Harms

1. Music listeners 1. Music companies

2. MP3 manufacturers 2. Song writers

3. Computer manufacturers 3. Performers

4. Server companies (more users and use) 4. Record stores

Permission was an alternative. Indeed, permission for a fee appears to be the resolution.

Discuss with students the risks of not protecting copyrights – lack of incentives, lack of development. Discuss cultural differences: some cultures feel no one can own ideas. Have students go to strategy application to do exercise on law applications to business.

Have students discuss these issues:

1. Is downloading infringement?
2. Are they liable for infringement if their computer is used (vicarious liability)?
3. Why is it awkward to discuss ethical issues?
4. What happens when we don’t raise ethical issues?
5. Do we become like so many executives and others who sat by and did nothing?

**1-5 The Theory of Law: Jurisprudence**

* Basic Groups of Legal Philosophers (See PowerPoint Slide 1-11)
* One: Natural law; principles that exist regardless of laws (Natural Law Theory)
* Two: Positive law; law is what is given as law (Power Theory)
* Three: Law is justice or treating everyone according to the same standard (Justice Theory)
* Four: Law is what benefits the people through attaining order (Order Theory)

*ANSWER TO CONSIDER 1.2:* There are several theories of law. One theory holds that natural law supersedes existing laws. Another theory holds that the only valid laws are those that promote equality and justice. Still another theory holds that laws are commands, or orders, that must be followed to maintain a civilized society.

The natural law theory holds that laws cannot infringe basic human rights. The treatment of the prisoners was a fundamental violation of human rights and dignity.

The school of thought on law as a command would say that the law is whatever those in charge say it is, and this is a situation in which people were ordered to do what they did by those in power.

General Taguba and Thomas Taguba would follow natural law: torture is wrong even if commanding officers order it. They were both willing to rebel against those in power because human rights were violated.

Now apply the same reasoning process to the question about being ordered to cook the books. If you refuse, you are following the basic natural law principle of being honest. If you comply, you believe what is legal is what those in charge say it is.

**1-6 Sources of Law (See Exhibit 1.2 in text for overview and PowerPoint Slide 1-12)**

1-6a Constitutional Law (See PowerPoint Slide 1-13)

* At Federal and State Level
* Establishes Government Structure
* Establishes Individual Rights

1-6b Statutory Law at the Federal Level (See PowerPoint Slide 1-14)

* Congressional Law
  + - Enactments of Congress – United States Code

Cite or citation = U.S.C. (e.g., 15 U.S.C. § 77)

Examples: Sherman Act, National Labor Relations Act, Occupational Health and Safety Act, the USA Patriot Act, and all treaties

* Federal Administrative Regulations
  + - Administrative agency regulations – *Code of Federal Regulations*

Cite or citation = C.F.R. (e.g., 12 C.F.R. § 226)

* + - Executive Orders = Presidential Orders

1-6c Statutory Law at the State Level (See PowerPoint Slide 1-15)

* Legislative Law and State Codes
* Enactments of state legislatures – state codes

Uniform laws are part of state codes

Cite = Nevada Revised Statutes – N.R.S.

Examples: Uniform Commercial Code, Uniform Partnership Act, Uniform Limited Partnership Act

* State Administrative Law
* Local Laws of Cities, Counties, and Townships
* Ordinances – zoning, traffic, curfew
* County or city

1-6d Private Laws (See PowerPoint Slide 1-16)

* Contracts
* Leases
* Employer Regulations

1-6e Court Decisions

* Language in Statute Unclear
* Court Provides Interpretation or Clarification of the Law

**1-7 Introduction to International Law**

1-7a Custom (See PowerPoint Slide 1-17)

Country-by-country basis

1-7b Treaties

* Bilateral – Between Two Nations
* Multilateral – Among Three or More Nations
* Geneva Convention – Prisoners of War
* Vienna Convention – Diplomatic Relations
* Warsaw Convention – Air Travel

1-7c Private Law in International Transactions (See PowerPoint Slide 1-18)

1-7d International Organizations

1-7e The Doctrines of International Law

* Act of State Doctrine
* Expropriation
* Confiscation of nationalization
* Taking of private property by a government – see Chapter 6

1-7f Trade Laws and Policies (See PowerPoint Slide 1-19)

* Tariffs
* Treaties, e.g., GATT, NAFTA

1-7g Uniform International Laws

* Contracts for the International Sale of Goods (CISG)
* For Uniformity in International Contracts

**ANSWERS TO CHAPTER QUESTIONS AND PROBLEMS**

1. Gunderson will be incorporated under state legislative law. He will have to make tax elections under federal law. Local zoning laws will affect issues such as where the corporation can operate, signs, etc. His employees will be affected by state compensation laws, federal labor laws, and federal pension plan regulations. In short, there really is not a set of laws that will *not* affect his business.

2. Jeffrey will be going through a criminal procedure; if a fan sues him, it will be a civil process.

3. The layers of law involved are:

a. State laws

b. State regulations

c. Federal regulations

d. Court system and procedural laws

e. Food labeling laws which can be state laws, federal laws, and federal and state regulations

4. It should also be clear to the students that, as the Swedish court concluded, is a clear case of vicarious infringement. It was the U.S. composers and music companies that convinced the Swedish officials to pursue the case. The Swedish court found that the four had violated Swedish copyright law. They were each sentenced to one year in prison and ordered to pay 30 million kronor (about $3.8 million) in damages to various companies that had their materials infringed by Pirate Bay. The site continued to operate during the year-long proceedings. In addition, a recent survey of Swedish citizens revealed that 43% of them planned to download music from the Internet without paying for it at some point during the year. One of the Swedish political parties has a platform for making peer-to-peer file sharing legal. The entertainment industry was represented in the trial and offered evidence that Pirate Bay was the number one source for illegally downloaded music. The founders and operators said they were just promoting free information, that they did not actually “host” any of the copyrighted materials, and they had quite a following during the trial. Pirate Bay t-shirts, sold over the site, did a brisk business and supporters of the site often showed up in busloads as a show of solidarity for the lads.

5. The judge in the case ordered the two men to sell the baseball and split the proceeds. The areas of law involved are private law (stadium rules), property law (probably state court decisions), and perhaps municipal laws. Some additional background:

On October 7, 2001, Barry Bonds hit his 73rd and record-breaking home run at PacBell Park in San Francisco. The event was historical and takes its place among the following markers in baseball:

* 1927 – Babe Ruth hits 60 home runs
* 1961 – Roger Marris hits 61 home runs
* 1998 – Mark MaGwire hit 70 home runs

When the ball headed into a crowd, positioned in a standing-room-only arcade section of the stadium, Alex Popov had his glove on, his arm up, and he was poised to catch the ball in a softball glove he had brought along to the game. Videotape shows that the ball did indeed make it into the tip of his glove’s webbing. But, at that moment, the crowd around him, forming a throng, caused him to lose his balance. The ball then dropped to the ground and there was a mad scramble among the throng to retrieve the ball. No witness and no videotape are clear on whether the ball was securely in the possession of Mr. Popov. Patrick Hayashi emerged from the stampede with the ball. The federal judge in the case describes the behavior of the mob as violent and illegal. Popov sued to get the ball back.

At the trial, the tape of cameraman Josh Keppel was played and seventeen witnesses testified. The witnesses all had different versions of what happened, different vantage points, and some had made prior inconsistent statements with their testimony at trial.

Following a trial that concluded in November 2002, Judge Kevin McCarthy ordered the parties to make arrangements to sell the baseball by December 31, 2002 and split the proceeds. The proceeds are estimated to be about $1,000,000. No sale has been arranged and the parties and the court are still working to arrange for the sale.

Judge McCarthy indicates that Popov must have had possession of the ball prior to the mob descending in order to have title and no testimony offered at the trial was clear on whether he had firm and actual possession.

See the parties on video at: www.celebrityjustice.warnerbrothers.com.

**INTERACTIVE/COOPERATIVE LEARNING EXERCISES**

1. Ask students to find a copy of a local ordinance that has affected them.

2. Have students bring in a copy of a lease, sales contract, or credit agreement and list the following: What laws are involved in the contract (list any statutes specifically mentioned)? How will disputes on the contract be resolved?

3. Ask students to analyze the following hypothetical situation in light of their studies of jurisprudence.

Emma Frank is a cashier at Grocery Bin. Emma is on warning because she has made too many errors at her register. The Walters’ family has a large order Emma checks through for them. She fails to charge them for a large cut of meat. Mrs. Walters notices it and returns to Emma to pay for it. Emma explains, “Just take it. If I have to ring it through I’ll need my supervisor’s approval and I’ll be fired.”

If you were Mrs. Walters, what would you do?

**SUPPLEMENTAL READINGS**

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