

AMERICAN LAW *MADE SIMPLE*

Le droit américain facile



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2^e édition

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What are laws?

Laws are rules that are typically used within the context of institutions. Many types of laws exist, such as Labor Law, Family Law, Contract Law, etc. Some of these laws deal with the private sphere, while others fall under public law: Administrative Law, Constitutional Law, or Criminal Law.

Nature and those of Man. Laws were simply created to bring a bit of justice and equality to our society. The Courts and the governments are responsible for enforcing them and making sure that everyone is answerable to these laws on equal terms within their sphere of influence.

Law provides protection for victims and defines punishment of those who break the laws. Law does not only consist of options among which one may just pick and choose the best solution: those who don't obey it should be aware that they will have to face the consequences. When a society has no legal system that allows each person to live in harmony with others, living well

When a society has no legal system that allows each person to live in harmony with others, living well together is not possible.



together is not possible. In such a society, one might imagine that people would decide everything based only on their own desires, and that they might also commit any and all crimes freely if such was their wish: to steal, kill, injure, destroy, pollute, rape, assault, or terrorize would thus be possible, and no one would be able to stop it.

So, one might say that it would be a disaster if each of us could act upon his or her own desires without any limits. If laws did not exist, nothing would stop people who would be free to take revenge or behave badly, knowing that there would be no consequences, whether we do good or bad. Society is actually brimming with crime, murder and unlawful actions.

Each country needs a legal system to allow people to live freely and in peace. A judicial system is a set of rules for a group of people, which thus corresponds to a specific culture or society. The goals and objectives of laws and rules is to protect the rights of each one.

In the United States, the legal system is a bit complicated, because many legal systems are actually superimposed: at the Federal, State and local levels. Each level creates its own laws, which citizens must obey. Each also has its own judicial organization. Far removed from what their ancestors were doing in the time of the Wild West, American people now easily use, and sometimes overuse, the potential of their legal system to settle their disputes. They have certainly become the world champions for this very particular sport: going to court.

Who creates the laws?

In the United States, the Law is drawn from four sources: Constitutional Law, the laws voted by Congress, the administrative rules, and Common Law, including Case Law. It must be noted that there are three levels of Law, which are Federal, State and local.

How are laws made?

As concerns the laws passed by Congress, everything begins with a Bill, introduced into Congress by one of the two houses (the House of Representatives or the Senate); neither takes precedence over the other. Then, each law is debated in committee before being discussed by members in the respective houses. When adopted by one house, it is then sent to the other house where the process is repeated. Finally, after being passed by both houses, the Bill is then sent to the President, who must either sign it into Law with his signature, or veto it.



ACTIVITY

A. What do you imagine life was like in the Old West?

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B. Is it possible to live in a world without laws?

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C. Why does the American legal system seem to be so complicated today?

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FRONTIER JUSTICE

DOCUMENT 1

Enforcing the law

The three great threats to the lives of the settlers on the frontier were nature and the elements, Native Americans, and lawbreakers. Men like Bat Masterson and Wyatt Earp became famous for enforcing the law. But it was not easy because everyone was armed and a single lawman was often the only law for 200 or 300 miles around. Judges, like the famous Roy Bean, administered law on a circuit and conducted hearings in local saloons with a law book in one hand and a pistol in the other. Desperados were not always the colorful or spectacular kind. Most crime had to do with swindlings and thefts, the work of claim



jumpers, confidence men, card sharks, and rustlers. If caught, these men often faced rough justice, if not at the hands of an individual, then at the hands of vigilantes or a lynch mob. But the Old West had a deep ambivalence about the Law. It admired tough and independent characters, gamblers who took chances and won, people who knew how to fight for, and keep, what was theirs. It admired a tough lawman but was suspicious of government. That ambivalence is apparent in the reputations enjoyed by men like the Dalton boys, Billy the Kid, Sam Bass, and Frank and Jesse James: notorious outlaws who were feared but, in a sense, also admired.

DOCUMENT 2

The O.K. Corral case

In 1876, Wyatt Earp moved to Wichita, Kansas, where his brother Virgil had opened a new saloon. There, he also began working with a part-time police officer on rounding up criminals. The adventure and the little bit of press Earp received from the job appealed to him, and eventually he was made City Marshal in Dodge City, Kansas. He then reinvented himself as a lawman. In December 1879, Earp joined his brothers Virgil and Morgan in Tombstone, Arizona, a booming frontier town that had only recently been erected when a speculator discovered the land there contained vast amounts of silver. His good friend Doc Holliday, whom he'd met in Kansas, joined him. But the silver riches the Earp brothers hoped to find never came, forcing Earp to return to law work. In a town and a region desperate to tame the lawlessness of the cowboy culture that pervaded the frontier, Earp was a welcome sight.

In March 1881, Earp set out to find cowboys that had robbed a Tombstone stagecoach and its driver. In an effort to close in on the outlaws, he struck a deal with a rancher named Ike Clanton, who regularly dealt with the cowboys working around Tombstone. In return for his help, Earp promised Clanton he could collect a \$6,000 reward.

But the partnership quickly dissolved. Clanton, paranoid that Earp would leak the details of their bargain, turned against Earp. By October, Clanton was out of his mind, drunk and parading around Tombstone's saloons, bragging that he was

going to kill one of the Earp men.

Everything came to a head on October 26, 1881, when the Earps, along with Doc Holliday, met Clanton, his brother Billy, and two others, Frank McLaury and his brother, Tom, on a small lot on the edge of town near an enclosure called the O.K. Corral. There, the greatest gunfight in the West's history took place. Over the course of just 30 seconds, a barrage of shots was fired, ultimately killing Billy Clanton and both of the McLaury brothers. Virgil and Morgan Earp, as well as Holliday, were all injured. The only one remaining unharmed was Wyatt. The battle drove tensions between the cowboy community and those who were looking for a more settled West to emerge. Ike Clanton planned the shooting of Virgil Earp and the assassination of Morgan Earp.

As a result of Morgan's death, Wyatt Earp set off in search of vengeance. With Holliday and a group of men, he killed so many people that they made headlines around the nation, earning the group both praise and condemnation for taking on the West's wild cowboy culture.

DOCUMENT 3

Judge Roy Bean

Although many colorful characters have become legends of the Old West, “Hanging Judge Roy Bean,” who held court sessions in his saloon along the Rio Grande River in a desolate stretch of the Chihuahuan Desert of West Texas, remains one of the more fascinating. Calling himself the “Law West of the Pecos,” he is reputed to have kept a pet bear in his courtroom and sentenced dozens to the gallows, saying “Hang ‘em first, try ‘em later.”

Roy Bean was born in Mason County, Kentucky around 1825. At age 15 he left home to follow two older brothers out West seeking adventure. After killing a local hombre in New Mexico, Roy fled to California, to stay with his brother Joshua, who would soon become the first mayor of San Diego. In 1852, Roy was arrested after wounding a man in a duel. He escaped and headed back to New Mexico, where brother Sam Bean had become a sheriff. Roy tended bar in Sam’s saloon for several years while smuggling guns from Mexico through the Union blockade during the Civil War. He married a Mexican teenager.

In 1882, the Galveston, Harrisburg and San Antonio Railroad hired crews in Texas to link San Antonio with El Paso, across 530 miles of scorching Chihuahuan Desert, infested with rattlesnakes and scorpions. Fleeing his marriage and illegal businesses in San Antonio, Roy headed to Vinegaroon to become a saloonkeeper, serving railroad workers whiskey from a tent. As his own best customer, he was often drunk and disorderly.

The nearest courtroom was a week’s ride away and County Commissioners were eager to establish some sort of local law enforcement. They appointed Roy Bean Justice of the Peace for Precinct No. 6, Pecos County, Texas. Roy built a small saloon, and above the door, posted signs proclaiming “ICE COLD BEER” and “LAW WEST OF THE PECOS.” From here Roy Bean began dispensing liquor, justice and various tall tales. Roy Bean’s justice was not complicated by legalities; it was characterized by greed, prejudice, a little common sense and lots of colorful language. “It is



the judgment of this court that you are hereby tried and convicted of illegally and unlawfully committing certain grave offenses against the peace and dignity of the State of Texas, particularly in my bailiwick,” was a typical Bean ruling. “I fine you two dollars; then get the hell out of here and never show yourself in this court again. That’s my rulin’.”

One of Bean’s most outrageous rulings occurred when an Irishman was accused of killing a Chinese worker. Friends of the accused threatened to destroy Roy’s bar if he was found guilty. Court in session, Bean browsed through his law book, turning page after page, searching for another legal precedent. Finally, rapping his pistol on the bar, he proclaimed, “Gentlemen, I find the law very explicit on murdering your fellow man, but there’s nothing here about killing a Chinaman. Case dismissed.”

As a legend, Judge Roy Bean is a merciless dispenser of justice, often called “The Hangin’ Judge.” But that title goes to Isaac Parker of Fort Smith, Arkansas, who sentenced 172 men to hang and actually strung up 88 of them. In his book “*Judge Roy Bean Country*,” Jack Skiles says that although Bean threatened to hang hundreds, “there’s no evidence to suggest that Judge Roy Bean ever hung anybody.” One or two were sentenced and taken to the gallows, but allowed to escape.

ACTIVITY

- A. Read the three documents. Why was it so difficult to enforce the law on the frontier? How would you describe the kind of justice that was administered then?
- B. What legal education did the judges practicing in the West receive? What was the equivalent for an English judge at that time (1850s and after)?

PART 2 – WHAT ARE LAWS?

NATIONAL LAW

STATE LAW

PLAINTIFF

DEFENDANT

LITIGATION

**BEYOND A
REASONABLE
DOUBT**

**PREPONDERANCE
OF EVIDENCE**

So what is a law?

Imagine your family sitting down to play a board game. You need to know the rules in order to play, right? The same thing goes for your day-to-day life – you need to know the rules or laws. Every country has their own set of laws and each is unique to that country. For example, in the United States, the law says that people must drive on the right-hand side of the road. In England, on the other hand, their law States they drive on the left. You could really do some damage if you didn't know that law and started driving on the wrong side of the road!

In the U.S.A., the situation is complex because there are several levels: the Federal and the States levels. Laws can be made by the national government or by individual State governments. National laws are those laws that everyone in the country must follow. Laws made by individual States are only valid in that State. It is also important to distinguish between different types of laws and actions, or lawsuits, brought before the courts and of the redress the law provides in each type of case.

Civil and Criminal

Courts hear two kinds of disputes: civil and criminal. A civil suit involves two or more private parties, at least one of which alleges a violation of a statute or some provision of common law. The party initiating the lawsuit is the plaintiff; his opponent the defendant. A defendant can bring a counterclaim against a plaintiff or a cross-claim against a co-defendant, so long as they are related to the plaintiff's original complaint. Courts prefer to hear all the claims arising from one dispute in a single lawsuit. Business litigations, breach of contract, or tort cases, in which a party alleges he has been injured by another's negligence or willful misconduct, are civil cases.

While most civil litigations are between private parties, the Federal government or a State government is always a party to a criminal suit. In the name of the People, it prosecutes defendants charged with violating laws that prohibits certain conduct as injurious to the public welfare. Two businesses might litigate a civil action for breach of contract, but only the government can charge someone with murder.

The standards of proof and potential penalties also differ. A criminal defendant can be convicted only upon the determination of guilt "beyond a reasonable doubt." In a civil case, the plaintiff need only show a "preponderance of evidence," a weaker formulation that essentially means "more likely than not." A convicted criminal can be imprisoned, but the losing party in a civil case is liable only for legal or equitable remedies.

Courts of Equity

In 13th century England, "courts of law" were authorized to decree monetary remedies only. These damages were sufficient in many instances, but not in others, such as a contract for the sale of a rare artwork or a specific parcel of land. During the 13th and 14th centuries, "courts of equity" were formed. These tribunals created equitable remedies like specific performance. By the 19th century, most American jurisdictions had eliminated the distinction between law and equity. Today, with rare exception, U.S. courts can award either legal or equitable remedies as the situation requires.

Legal and equitable remedies

The U.S. legal system offers a wide, but not limited, range of remedies. The criminal statutes typically list the range of fines or prison time a Court may impose for a given offense. Other parts of the criminal code may allow stiffer penalties for repeat offenders in some jurisdictions. Punishment for the most serious offenses, or felonies, is more severe than for misdemeanors. In civil actions, most American courts are authorized to choose among legal and equitable remedies. The distinction means less today than in the past, but is still worth knowing.

ACTIVITY

A. Why is it important to know the particular laws of a country?

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Civil

B. What different categories of Law can you define?

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Criminal

C. What is an equitable remedy?

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BEING LEGAL

DOCUMENT 4

Great Wedding! But was it legal?

George Clooney to marry Angelina...in the rôle of a priest.

The actor went online to get a licence allowing him to officiate weddings. And his friends said the nuptials of Brad Pitt and Angelina Jolie was his first outing as "Reverend George". The couple tied the knot in a series of summer ceremonies. Brad asked his long-time pal to conduct the service. "He was started being called the Reverend George Clooney. He took it all very seriously and had discussions about what kind of service they'd like."



In an era when couples obsess about the band playlist and hand towels for the rest-rooms, one question may get short shrift: Is the person performing the wedding legally able to do so?

5 Daniel Morales and Gwendolyn Baxter thought they knew. Their outdoor ceremony two summers ago in Farmington, Conn., was performed by a friend who had been ordained online by the Universal Life Church. Having heard of other couples who were married that way, they assumed it was legal.

10 But Connecticut is one of a half-dozen places that do not recognize marriages performed by someone who became a minister for the sole purpose of marrying people. Such a minister "doesn't meet the requirements of the State statutes," said William Gerrish, a spokesman for the Connecticut Department of Public Health. The penalty in Connecticut for an unauthorized performance of a marriage is a fine of up to \$500 and a year in jail for the officiant, though Richard Blumenthal, the Connecticut attorney
15 general, said prosecution is unlikely. As for the marriage, the statute is clear, Mr. Blumenthal said. Nonetheless, he encouraged couples not to panic; unless the issue is forced through divorce or death, the judicial system tends to grant couples the benefit of the doubt. "If the marriage is performed by someone unauthorized, but the two people having the marriage still believe it to be valid, it may continue to be valid until someone challenges it," he said. But, he said, "They are at risk."

20 With so many people turning to friends and relatives to perform their marriage ceremonies, more are bound to discover that they may not be legally married. But finding out what is allowed can be daunting. Marriage laws are often vague and vary from State to State and county by county. And misimpressions are rampant. The Universal Life
25 Church alone has ordained more than 18 million ministers since it was founded in 1959 in Modesto, Calif. The organization ordains 10,000 people a month, twice as many as in 2000, according to Andre Hensley, the church's President. Eighty percent join the fold solely to perform weddings, he
30 said. The Church of Spiritual Humanism, the Rose Minis-

tries and the Temple of Earth, which describes itself as a "religion-free religion," also have online ministry sites.

Somehow forgotten is that marriage is a legal contract. 45 And three States besides Connecticut – Alabama, Virginia and Tennessee – as well as other jurisdictions, prohibit weddings performed by ministers who do not have active ministries. Even in Las Vegas, that city's no-holds-barred image notwithstanding, it is illegal for individuals to perform a marriage if they do not have a congregation. Yes, Elvis may be in the house, but he may face up to six months doing the "Jailhouse Rock" unless an authorized minister is there to sign the license. In many other States, including
50 New York, the rules about ministers ordained online are less clear. Often, even city, county and State officials are uncertain of the parameters.

As a clerk at the Marriage License Bureau in Philadelphia, who did not want to be named because she is not allowed to speak to reporters, said, "People call us and ask if it's legal or not, and we don't know if it's legal." The laws regarding officiants are there to ensure that only people of sufficient standing perform a ceremony that is a keystone of society. Elnora Douglas, the office coordinator of the St. Louis County marriage license department, finds it odd that couples would want to circumvent them. "It's like you want your favorite cousin to do a surgery, so they go online to get a medical degree," she said.

Still, she said, "Everyone saw that episode of 'Friends' where Joey got ordained, and we've been bombarded." 70

DOCUMENT 5

What's wrong?



Five years later

ACTIVITY

- What may be problematic in Brad Pitt and Angelina Jolie's choice of George Clooney as minister for their wedding ceremony?
- Document 5. What do you imagine the final image might be?
- Consider Document 4 and Document 5. Explain if they are Civil or Criminal cases, and why.