

PRINCIPLES OF COMMON LAW: INTRODUCTION TO PRACTICE

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15.09.25

AGENDA

INTRODUCTIONS

LEGAL THINKING > MEMORIZATION

COMMON LAW BASICS

INTERACTIVE CASE EXERCISE

IRAC STRUCTURE



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LEGAL THINKING > MEMORIZATION

Regurgitation is gross

- What is “legal thinking”?
- There are no Stupid Questions
- Don’t trust the trees (they seem kind of shady)
- How big is your brain?
- Who you gonna call?
- IRAC
- Say “Hi”



KEY POINTS AND TAKEAWAYS

- Common law is judge-made and precedent-driven.
- For example, American law amplifies the power of courts
- Practice (precedent, distinguishing, overruling) often matters more than abstract history.

If judges are making law, how do we ensure democracy and accountability?

WHERE DO WE START?



CIVIL LAW TRADITION

- ❖ Sources of law: Codes & statutes.
- ❖ Judges' role: Apply law, limited creativity.
- ❖ Reasoning style: Deductive → general principle → specific case.
- ❖ Effect of judgments: Only bind the parties.





COMMON LAW TRADITION

- ❖ Sources of law: Constitutions, Statutes and Regulations, Cases/Precedent, Restatements & scholarly works (persuasive)
- ❖ Judges' role: Apply and make law through rulings.
- ❖ Reasoning style: Analogical → compare with past cases.
- ❖ Effect of judgments: Binding precedent (stare decisis).





KEY DIFFERENCES

- ❖ Source of authority: Codes vs. Cases
- ❖ Role of judges: Appliers vs. Makers
- ❖ Reasoning style: Deduction vs. Analogy
- ❖ Effect of decisions: Party-Only vs. Binding Precedent.



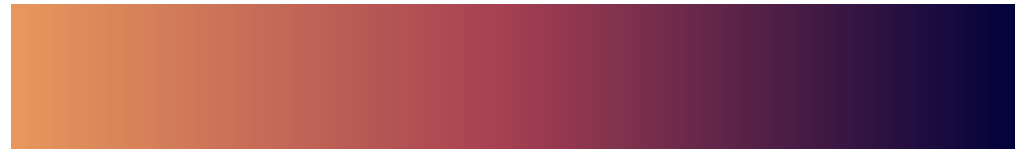
STARE DECISIS

Stare decisis = “to stand by things decided.”

The principle that courts should follow prior judicial decisions when the same points arise again.

Promotes stability, predictability, fairness, and efficiency.

Encourages equal treatment of similar cases.





VERTICAL PRECEDENT

- **Definition:** Lower courts are bound by higher courts in the same jurisdiction.
- **Hierarchy of Courts:**
Trial → Appeal → Supreme Court.
Lower courts bound by higher courts.
- **Example:** A trial court in New York *must* follow the New York Court of Appeals (state supreme court).

A modern workspace with a desk, chair, and computer against a stone wall. The desk is light-colored with a black chair. A computer monitor is on the desk, and a small potted plant is next to it. The wall is made of grey stone blocks. A bicycle wheel is visible on the right side of the desk.

HORIZONTAL PRECEDENT

- **Definition:** A court's relationship to its *own* prior decisions.
- **Example:** The U.S. Supreme Court is not *strictly* bound by its prior rulings but usually follows them (self-binding).
- Lower appellate courts (e.g., the Second Circuit) also generally follow their own past cases unless overruled en banc.
- *If a U.S. federal trial judge disagrees with a Supreme Court case, can they ignore it? (→ No, vertical stare decisis binds them.)*
- *If the Supreme Court itself thinks it was wrong in an earlier decision, must it follow its own case? (→ No, that's horizontal stare decisis; it can overrule itself with justification.)*

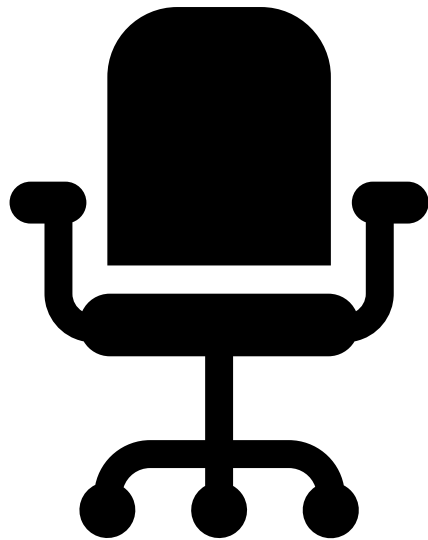
HOW LAW IS MADE & APPLIED

- ❖ In civil law, elected legislators write the code. Judges mostly apply it.
- ❖ In common law, (un)elected judges create binding law through precedent.
- ❖ U.S. judges may cite history, tradition, and moral/political theory in ways uncommon in code-centric opinions.
- ❖ Is there a tension between democratic legitimacy and judge-made law?

Should unelected judges be allowed to “make law” that binds society?

Which system gives citizens more legal certainty? Which adapts better to new problems?

BEING A COMMON LAW LAWYER



Different instincts: Civil law starts with the code; common law starts with a case.

Judicial opinions are sources of law (not just AN application).

Method over memorization: How to read, extract, and apply a holding – argument style

Learn to identify jurisdiction (which court's law?), rank authorities, and ANALOGIZE holdings.

Understand persuasive authorities: Other State law, federal courts interpreting state law, Restatements, leading treatises. “Soft Law”

Method > memory: Your competitive edge is extracting, ranking, and applying authority. HOW does this become more important in the current digital we are in, and entering?



THE SMARTPHONE

IS SOMEBODY IN TROUBLE?

Lucky finds a smartphone on a bench and keeps it.

No statute directly mentions smartphones.

HOW DOES THE LEGAL TRADITION MATTER IN RESOLVING A CLAIM BY THE ORIGINAL OWNER?



THE SMARTPHONE

IS SOMEBODY IN TROUBLE?

CIVIL LAW

CODE ARTICLES

Art. 125 Theft – unlawful appropriation of property.

Art. 233 Lost Property – duty to return found property.

Art. 310 Unjust Enrichment – return gain without legal basis.



THE SMARTPHONE

Article 125 – Theft: “Any person who unlawfully appropriates movable property belonging to another with the intent to gain shall be punished with imprisonment up to three years.”

Article 233 – Lost Property: “A person who finds movable property is obliged to return it to its owner or, if unknown, to the appropriate public authority. Failure to do so constitutes a civil wrong and may give rise to damages.”

Article 310 – Unjust Enrichment: “A person who, without legal basis, gains at the expense of another must return such gain.”



THE SMARTPHONE

Alexander v. Smith (2002)

Facts: Smith found a gold necklace on a restaurant floor. Owner later identified it. Smith kept it

Issue: Is keeping lost property theft?

Holding: Yes. The finder commits theft if they intend to permanently deprive the true owner of the property once ownership is reasonably discoverable.

Reasoning: Even though the property was “lost,” the owner’s rights persist; keeping it without attempting to find the owner shows dishonest appropriation.



THE SMARTPHONE

Hawk v. Brown (1990)

Facts: Brown found a 20USD note in a public park, with no indication of ownership. He kept it.

Issue: Is keeping unidentified lost property theft?

Holding: No. The property was effectively abandoned; no theft occurs if no reasonable way to identify the true owner.

Reasoning: To criminalize all keeping of lost items would be disproportionate where ownership cannot reasonably be established.



THE SMARTPHONE

IS SOMEBODY IN TROUBLE?

COMMON LAW CASES

Alexander v. Smith (2002)

Necklace kept, owner identifiable.

Holding: Theft → if owner is discoverable.

Hawk v. Brown (1990)

Banknote kept, owner unidentifiable.

Holding: No theft → property effectively abandoned.



IRAC STRUCTURE

FRAMEWORK FOR ANALYSIS

- **ISSUE**

State the legal issue(s) to be discussed

- **RULE**

State the relevant statutes and case law

- **ANALYSIS**

Apply the relevant rules to the facts that created the issue

- **CONCLUSION**

State the conclusions (or most likely conclusions) using the logic of the application section



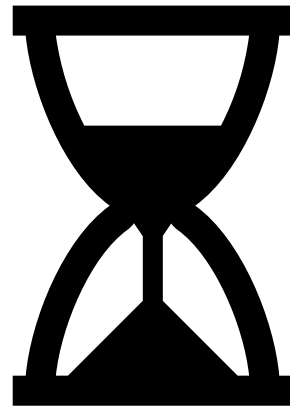
IRAC STRUCTURE

FRAMEWORK FOR ANALYSIS

IRAC THE SMARTPHONE CASE

- **Issue:** Is keeping a found smartphone theft?
- **Rule:** *Alexander* (yes, if owner discoverable) vs. *Hawk* (no, if not).
- **Application:** Phones are traceable → owner discoverable.
- **Conclusion:** Keeping it = theft.

B R E A K



THANK YOU



PLEASE FEEL FREE TO
CONTACT WITH QUESTIONS



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Portions of this lecture were
created or assisted by AI
(Hypotheticals, etc.)

