

Chapter 1

This chapter (as do most chapters in this book) starts with a “scenario”: a fact pattern which creates the setting for the legal issues addressed in that chapter. Because of the very introductory nature of this Chapter 1, the text does not refer back to the scenario. However, in future chapters, the text does refer back to the scenario so the student has a concrete example of how the legal concept being discussed applies in a particular setting. Those references are almost always contained in screened text, so the student rapidly differentiates the legal analysis from the scenario example.

The instructor should view the scenario as a teaching tool. One method is to diagram the parties’ depicted in the scenario on the blackboard, so the student sees in a graphic way the recurring fact patterns characteristic of construction disputes. Of course, the instructor is free to add other parties or other variables to the chapter’s scenario so as to accentuate different issues.

*

While some instructors will decide not to devote any class discussion to this Chapter 1, there are ways of discussing the legal system that can make the topic interesting. For example, the students can be asked to postulate a “lawless” world where there are no state made rules and no places available to hear grievances. This should make them see the importance of law as a method of protecting members of society as well as being essential for economic exchanges.

Ask the students which regulators, legislators, executives (mayors, governors or presidents), administrative agencies or judges are more democratic and more responsive to the will of the people. Focus upon these instruments of government in terms of their ability to protect the minority from the desires of the majority even in a democratic society.

Ask students whether they have ever lived within a “precedent” system. Have they ever asked “have we ever done this before?” Is this a desirable way of running a club, a business or a school?

Answers to Chapter Questions

- 1.) Name at least three areas of the law that have been delegated to the states by the U.S. Constitution.
 - a. *State law determines which contracts will be enforced, the remedies granted for breach of contract, the conduct that gives rise to civil liability, and the laws that relate to the ownership of property. Also regulation of who may act as an architect, engineer and builder is a matter exclusive to states.*
- 2.) What are the three things that the U.S. Constitution regulates power among?

- a. *The three things are (1) the branches of the federal government, (2) the federal government and the states, and (3) all governments and their citizens.*
- 3.) How does a law become a statute?
- a. *A statute becomes the law of the land by first being passed by the legislative branch and then being signed by the executive.*
- 4.) What is the purpose of the separation of powers in the U.S. political system?
- a. *The purpose of the separation of powers is designed to prohibit any of the three branches (executive, legislative, or judicial) from wielding dominant power.*
- 5.) What are the five principal areas of exclusive federal jurisdiction?
- a. *The five principal areas are (1) admiralty, (2) bankruptcy, (3) patent and copyright, (4) actions involving the United States, and (5) violations of federal criminal statutes.*
- 6.) What is the difference between courts of general jurisdiction and those of limited jurisdiction?
- a. *State courts are courts of general jurisdiction, meaning they have authority to hear any dispute, other than those disputes the U.S. Constitution reserves exclusively for federal courts. Federal courts are courts of limited jurisdiction, meaning they have no jurisdiction over a case unless authority is explicitly granted either by the U.S. constitution or by a federal statute.*
- 7.) What are the two primary forms of compensation for contracts for legal services?
- a. *One method is for the attorney to charge an hourly fee. The second is the use of contingency fee contracts, where the lawyers are not paid for legal services if they do not obtain a recovery for the client.*
- 8.) List three examples of professional associations that publish standardized documents for construction services.
- a. *American Institute of Architects (AIA), Engineers Joint Contract Documents Committee (EJCDC), Associated General Contractors of America (AGC), Construction Management Association of America (CMAA).*
- 9.) What are the Restatements of the Law?
- a. *These are many of the common law rules, together with comments and examples that have been compiled and restated in a series of volumes.*
- 10.) Which legal process is used to uncover information in the hands of the other party?
- a. *Discovery*