

# Foundations of laws and rules



Chapter Question No. 4 What is the difference between common law and statutory law? Law are patterns of rules which govern conduct and relationships that are established by society. These can either be common law or statutory law. These types of law differ in nature, enactment, time of effectivity and process of amendments. As to nature, common law are rules which have been declared by the court as time-honored principles or have been established as stare decisis while statutory laws are rules passed by legislative bodies. As to enactment, the former merely requires recognition by the court while the latter requires a formal enactment by the legislative body. As to effectivity, the former takes effect upon the recognition by the court while the latter may take effect at a later date as embodied in the formal instrument. Common law is amended by slow changes over time while statutory laws requires an enactment of either a new law that supercedes, modifies or amends the old law.

Chapter 2, Question No. 6

What can the parties do to ensure that their rights under a failed real estate development is aptly determined by a body knowledgeable in the special field?

The parties can move for arbitration or file a suit. In proceeding to an alternative dispute resolution or arbitration the parties present the facts to arbitrators that are trained experts familiar with the industry practices thus their assessment of the issue may affect the nature and outcome of the dispute. The fears of the parties are put to rest since the arbitrators are well knowledgeable in the problems in real estate development. In filing a suit, the court may be appraised of problems in real estate development through the presentation of an expert witness who has special expertise on the

matter and can explain it to the court (Daubert v. Merrell Dow Pharmaceuticals, Inc). Fears that the court may not be able to grasp the concept must not be entertained since there are ways of discovery that the court can employ like depositions, interrogatories and requests for production of documents. Aside from these, court processes like direct, cross examination, redirect and recross examination open doors for clarifications to give the court a better understanding of the issue at hand.

#### Chapter 2, Question No. 10

John questions the validity of the clause, “ disputes arising under the agreement be submitted to binding arbitration” and seeks his “ statutory rights and protections in court.”

The clause is valid. The Uniform Arbitration Act allows parties to agree in advance that all disputes arising under the contract be submitted to arbitration. Binding arbitration holds parties to respect the decision of the arbitrator as final even if the decision of the arbitrator seems to be wrong. The court will only set aside the decision if “ there is clear proof of fraud, arbitrary conduct, or significant procedural error” (Trans Chemical Ltd. V Chhina Nat. Machinery Import & Export).

John can either send the computer back at the company’s expense or agree to the contract of purchase. If he agrees to the contract, his only recourse to the courts is when there is a clear proof that the decision of the arbitrator is tainted with “ fraud, arbitrary conduct, or significant procedural error.”

#### Chapter 3, Question No. 8

Mary Albert, a longtime NBC sportscaster denied the charges of criminal assault, battery, and sodomy. Due to the testimony of another victim he pled guilty. NBC fired him but later on reinstated him. Decide the following issues.

<https://assignbuster.com/foundations-of-laws-and-rules/>

1. Do you agree with NBC's decision to fire Albert on the ground that his contract prohibited employees from making false statements?

Yes. A contract defines the relationship of the parties and should bind the parties thereto. A strict enforcement of the contract necessitates the said action.

2. Was his personal behavior relevant for his job performance?

No. His personal behavior has no bearing or no effect on the manner in which he performs his tasks at work. But since he is a public figure and carries the name of the company, moral issues come into play.

3. Do you agree that lying to your employer should result in automatic termination?

I would like to qualify my answer. Yes, if the matter pertains to one's work or the performance thereof because this may have an effect on the business operations translating to losses for the company and all stakeholders. No, when the act complained of has no bearing on the performance of one's task. In this case, due process gives the employee the chance to explain his actions.

4. Does Albert's reinstatement mean that moral issues and private conduct are irrelevant in business decisions?

No. Corporate businesses either follow Friedman or Roddicks' stance on social responsibility. It just means that NBC subscribes to Milton Friedman. Issues on morality and private conduct are irrelevant as long as Albert brings in money to the network. This is because, according to Friedman " a corporate executives responsibility is to make as much money for the stakeholders as long as he operates within the rules of the game." It is not

the corporate executives job to delve into issues on morality or social responsibility. According to Friedman, “ when an executive decides o take action for reasons of social responsibility he is taking money away from someone else--stakeholders in the form of lower dividends,...”

#### Chapter 4, Question 5

Is the failure of the gas company in notifying the Crafts of the availability of an informal complaint procedure prior to termination of their gas services violative of due process?

Under the Tennessee Decisional law a utility cannot terminate their services “ at will,” there must be a cause to be determined according to due process or the 14th Amendment.

The Crafts were not advised of the availability of the informal complaint procedure and hence were denied due process under the 14th amendment (Memphis Light, Gas and Water Division v Craft).

#### Chapter 4, Question 13

Is there a reasonable classification or distinction between Cable television services and satellite television service that would allow the State to validly tax the former and not the latter?

The equal protection guarantee prohibits a government from treating one person differently from another when there is no reasonable ground for classifying them differently.

There is a reasonable classification. Cable television makes use of cable wires and thus involves the use of city property while broadcast television requires only a satellite dish. For this reason, the distinction is justified and there is no violation of the equal protection clause (Medlock v. Leathers).

#### Chapter 5, Question 9

<https://assignbuster.com/foundations-of-laws-and-rules/>

Is the Hospitals refusal to employ Dr. Hyde as an anesthesiologist on account of the hospitals existing contract with Roux & Associates wherein the latter is to provide all anesthesiological services required by the hospital's patients in violation of the antitrust laws?

The antitrust laws prohibits anti-competitive behavior, like monopoly and unfair business practices.

The court rejected Dr. Hydies claim for the Court in antitrust cases is concerned with the impact of these practices on the consumer and not the competitors. Dr. Hyde made no claims of providing a competitive alternative and hence the community will not benefit from the case. Dr. Hyde's claim was rejected (Jefferson Parish Hosp. Dist. No. 2 v Hyde).

#### Chapter 5, Question 11

Is the act of Favorite Foods Corp. in selling its food to stores and distributors at a quantity discounted scale violative of the Clayton Act.

The law prohibits price discrimination that occurs when a seller charges different prices to different buyers for " commodities of like grade and quality," with the result being reduced competition or a tendency to create a monopoly (The Clayton Act).

Favorite Foods Corp does not sell below cost or at different prices to harm competitors. It gives a quantity discount similar to volume discounts that are permissible because the marginal costs are different in the larger volume of goods. Hence there is no violation of the Clayton Act.

#### Chapter 6, Question 10

Is the Illinois Pollution Control Boards' decision to expand the boundaries of the landfill controlling over that of the County board?

County boards are administrative agencies in direct supervision of their

areas and are such more knowledgeable of its status and concerns. As such its judgment is heavily relied upon in cases of local improvements or projects rather than state or federal administrative agencies.

Thus the court rules that “ the County board must rely on its own sound judgment in evaluating the location and proposed design. Accordingly, the board may reject a site if it determines that the proposed facility presents a potential health hazard to the community even though compliance with all technical requirements of the IEPA and the Pollution Control Board were met (Tate v, Illinois Pollution Control Board).”

#### Chapter 6, Question 13

The department of health and human services has proposed new guidelines for the interpretation of federal statutes on gifts, incentives, and other benefits bestowed on physicians by pharmaceutical companies. The office of Inspector General is handling the new rules interpretation and has established a public comment period of 60 days. Explain the purpose of the public comment period. What ethical issues do the regulations attempt to address?

A Public Comment seeks to obtain the response of the people affected by the proposed rules. The rules are published and the public is given a length of time to make a response. Letters by those affected are accepted or hearings may be conducted. After said period the agency will decide to either pass or promulgate the rule or withdraw it. In cases where modification is extensive changes will be made and again the rules will be sent out for public comment.

The ethical issues that regulations attempt to address in this case are whether it is morally right to pay doctors to act as consultants or to market

researches for prescription drugs? Would not that be tantamount to inducing doctors to prescribe specific prescriptive drugs to patients in order to obtain pay? Would not this be subject to abuse to the detriment of the patient? The same issue will arise with the regulation on paying pharmacies fees to switch patients to new drugs.

#### Works Cited

Daubert v. Merrell Dow Pharmaceuticals, Inc. No. 509 US 579. 1993.

Jefferson Parish Hosp. Dist. No. 2 v Hyde. No. 466 US 2.

Medlock v. Leathers. No. 842 SW2d 428 (Ark).

Memphis Light, Gas and Water Division v Craft. No. 436 US 1.

Tate v, Illinois Pollution Control Board. No. 188 Ill App 3d 994, 544 NE2d 1176.

The Clayton Act. No. 15 USC Sec 13a.

Trans Chemical Ltd. V Chhina Nat. Machinery Import & Export. No. 161 F3d 314. 1998.