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Introduction

Though this book is designed for use both by instructors with legal training and those with little or no legal training, we feel there are some additional concerns that might need to be addressed. Instructors with legal training but little or no English language teaching experience may encounter some initial difficulties with classroom management issues and some of the generally accepted English language teaching techniques, while instructors with English language teaching backgrounds may experience a bit of initial difficulty when dealing with the legal aspect of the text. Therefore, we have attempted to address what we feel might be the most important issues in the following notes.

Notes to Instructors with No Language Training

One important difference between ESL/EFL instruction and other types of legal instruction is that you will often be functioning as a facilitator rather than as a lecturer. In a classroom filled with students who are learning and refining their own English, one-hour lectures are probably not the most effective method. Remember, students are acquiring the language of law at the same time that they are acquiring knowledge of the basic legal concepts of American law. In order to have an effective classroom, you, as instructor, will be called on to strike a balance between the foci of the course. This means that not only must you take care to present the language aspect of the course in a manner that the students are familiar with, but you also must employ that same manner to impart the legal knowledge.

Teaching in an ESL/EFL classroom is like everything else—there are certain basic concepts that, if incorporated in your classroom, will simplify your task as instructor. These concepts, based on English language teaching theory, are encoded in activities such as warm-ups, brainstorming, group work, and non-verbal activities.

- **Warm-ups** are ways to get the students thinking about the topic of discussion for the day. In the *American Legal English* textbook, you’ll find a section called Discovering Connections at the beginning of every chapter. This sec-
tion is designed to help the students reflect on the legal topic as it exists in their own systems. Once they have done that, it is easier for them to make the transition to reflecting on the American legal system. Think of warm-ups as mental stretching exercises. They are also similar or identical to schema activators or pre-framing exercises. In business presentations you have no doubt been taught to start with an opener to attract the attention of your audience; a warm-up achieves the same purpose in the language classroom.

• **Brainstorming** is used in the ESL/EFL classroom to help students understand important points about a topic without putting them under the pressure of answering questions individually.

To start a brainstorming activity, first write the topic you wish to discuss in the center of the blackboard. Ask a student to go to the board and act as the scribe. Ask the other students to give you as many related terms, ideas, or concepts as possible. You may have them raise their hands to speak or simply shout out the items as they think of them. Your role is that of a dispatcher, not an evaluator. No matter what the students say, your job is just to help the scribe get the statements on the board. Later, you and the class will do exercises, such as categorizing the information for argument development, that focus on the appropriate aspects of the larger topic.

• **Group work** is another technique that can be used in a number of effective ways. As mentioned, the teacher in an ESL/EFL classroom often functions as a facilitator. To accomplish facilitation effectively, it is necessary to shift the focus of the classroom from you to your students, and in order to do that, you must leave the front of the room.

By dividing the class into groups of fewer than six students, you will be able to circulate among the groups, addressing questions and clarifying any confusion the students may have about the material. Working in groups lowers the students’ stress levels. Once you have left the front of the room, you will find that the students ask more questions of you than you can answer individually. Individual interaction between you and the students helps them not only to master the material but to view you as someone who is there to help them instead of as an authority figure.

Group work also helps weaker students by placing them in groups with stronger students. Besides the obvious advantage to weak students, group work allows strong students to share their understanding of the material, which in turn empowers them since they are actually reviewing and therefore relearning as they assist the others.

There are many techniques for putting students into groups. One of the most common is counting off. To determine the number of groups you
need, divide the number of students in the room by the size of the group you want. For example, if there are 30 students and you wish groups of three, you will have ten groups. Now begin the count off. Ask a student to say aloud “one” and then the next “two,” and so on. When a student reaches ten, the next student begins again with “one.” After the count off is finished, direct the students to move into groups with the other students who have the same number.

This method is designed so that the students get to know others in the class rather than always working with their friends, which is likely to occur if they are allowed to choose their own partners. Getting to know their fellow students is one way to ease the stress that some students feel when speaking in front of the class.

• For **pair work**, you can pass out an equal number of red and green cards and say, “Work with someone with the same color card.” For greater variety in forming pairs, pass out multicolored cards and have the students work with someone who has the same color card. Although you may end up with one group of three, that is not a problem.

• There are also non-verbal activities to use. Often legal English classes are quite large. To assist in **active participation**, you can use colored pieces of paper (such as telephone pads or index cards) to help you make sure that everyone is “with the program.” At the beginning of the semester, give each student two cards, one red and one green, that they should bring with them every lesson. During the class, you or others can ask questions that require voting or answering with the cards. For example, if a student answers one of the opinion questions, you can say, “Green if you agree with X; and red if you disagree.” Or, “Green if you think the defendant’s motion will be granted; red if not.” Then all the students must raise the colored card that matches their stance. From the answers shown by the students, you will be able to choose who will have to defend each side of the topic.

This type of activity, requiring movement from the students, is ideal for students who learn using the kinesthetic or tactile learning styles to process information. We all have different learning styles, and one of the teacher’s responsibilities in the classroom is to try to appeal to as many learning styles as possible so that every student has a chance to learn.

• In addition to the techniques discussed, you might also want to give some extra thought to **how you arrange your classroom**. Whenever doing group work, you should encourage students to informally arrange their desks or tables in a circle. Arranging the desks or tables in group circles of six or less physically reinforces the idea that you, as instructor, are only one part of the classroom—not the main part.
Another thing to consider is **how to handle questions.** Since the goal of the course is twofold—teaching English in a legal context and presenting a simplified introduction to legal basics—questions cannot be handled in quite the same way as they might in a law class, where it is the content that is highlighted.

In the language learning environment questions are encouraged because they are attempts to communicate in the target language, and they are also opportunities to reinforce both English and content knowledge.

However, the Socratic method used in many law schools will not always work in other cultures (see Chapter 2, Level IV: high-context/low-context cultures) because students feel singled out for attention and there is too great an opportunity for failure in societies that value consensus, not competition.

We know from cognitive science that students learn best when they feel they are in a safe environment. The instructor must try to lower the stress level in a class so that students can trust the instructor and the other students not to enjoy their mistakes, which will be plentiful as they try new structures and functions.

We hope that these suggestions will prove of assistance to you as you teach your legal English course. There is no way to combine all English language teaching methodology into a few short paragraphs, but with these few notes you will be better equipped to deal with some of the issues in an ESL/EFL classroom.

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**Notes to Instructors with No Legal Training**

Though you may feel daunted by the task ahead of you, remember that you already know how to teach the English aspect of this course, and you will apply many of the same techniques regardless of the content of the course. However, there are some important things to keep in mind.

- American statutes are written in very general terms for a number of different reasons. Case law is the interpretation of those statutes, and case law changes in response to the concerns of the society. This is why attorneys must constantly check to see if new cases have changed the laws they are using in any way that might help or hurt their current case. This aspect of the American legal system allows a great deal of leeway in the discussion of the cases we’ve provided, and it is through that discussion that English is practiced and, hopefully, mastered.
• Use the Internet! We cannot stress strongly enough how much amazing and fairly simple legal information is available for free on the Internet. There are video clips, legal dictionaries, statutes, explanations, sound recordings of famous lawyers and judges, and even parts of complete courses from American law schools! Sample sites include

  www.ilrg.com (Internet Legal Research Group)
  www.law.cornell.com
  www.yahoo.com/law (a Yahoo® directory of law-related sites)
  www.oyez.org (oral arguments for some U.S. Supreme Court cases)
  www.courttv.com (video clips, games, and audio recordings)
  www.justicetalking.org (audio recordings from National Public Radio on a variety of legal topics)

• This course is not intended as a conclusive summary of American law but merely as a brief introduction. Since it is an introduction, it stresses basic skills that all lawyers must master: reading closely and critically, writing clearly, and arguing clearly and concisely. All of those skills you probably have taught before; legal English is merely a refinement of certain aspects of those skills.

• Many of the exercises and activities in the book call for student expertise and opinion. Students bring a huge body of knowledge of their own legal systems and legal experiences into the classroom. You have access to that knowledge and can make use of it through group work, activities, and classroom discussion. We simply put “student opinion” or “student resource” when the students must provide the correct or appropriate material.

• Finally, remember that you are functioning as a facilitator in the classroom and, as such, can guide the students through the book to a greater and more thorough understanding of the language skills that they need in order to handle the content of the course effectively. Enjoy the challenge and enjoy the chance to learn a bit about the law. Remember, we are all learners in the classroom.

**Notes on Using the Exercises**

We have included many types of exercises. Some are quite simple, and others are very complicated.

• As you look through the exercises and prepare for class, don’t hesitate to skip any that seem inappropriate for your students or for you. It is not
essential to do all of them. We would suggest that you alternate between group work, individual work, oral work, and written work.

**Notes on Using the Audio**

- It may be important for you to do a short warm-up for each of the recorded selections. Get the students to talk about the situation they will be listening to. We’ve provided examples of questions you might ask.

- Although the selections are usually short, you may occasionally need to stop the audio to allow students to catch up or to discuss a difficult passage. However, you shouldn’t do an excessive amount of stopping since the purpose of the oral sections is to practice authentic listening situations.

- When you first play a section, you may choose to focus on global issues such as general comprehension rather than individual words. Play a section through and then have the students give you the general content; don’t ask any very specific questions. We provided both types of questions in many of the oral exercises so that you may choose whichever type is most appropriate for your group’s needs.

- Many EFL students want to know and understand every word before they go on to the next word. Remind your students that they need to learn to guess what unfamiliar words mean since they won’t be able to have them repeated in real-life situations.

- Since you have the scripts, you can even create oral cloze tests by “removing” words at regular intervals by clapping or turning down the volume and then asking the students to supply the missing item. This way you can assess not only their vocabulary but also their general understanding of a situation.

- Oral paraphrasing is another good tool for assessing understanding. Students can memorize anything, but they can only paraphrase what they understand. Paraphrasing and summarizing are important tools for students of law.

- Written paraphrasing is also important since lawyers must listen to their clients and then attempt to put in writing what their clients have told them orally. You may wish to begin by using only a paragraph or two from the longer scripts as material to be paraphrased or summarized.
PART 1

Introduction to Law and Its Language
Origins of the American Legal System

Discovering Connections

**ACTIVITY (PAGE 3)**

There are no correct or incorrect answers to this exercise. The students are free to decide on the various events that shaped the legal history of their countries. Practicing attorneys and law students in their second year of legal study should have no difficulty with this. First-year law students might have more problems with it and will need guidance from you.

If you are working with students from the same country, the group work might go more smoothly because the weaker students will be helped by the stronger ones. If you have a mixed class (different countries), and there are at least two people from each country, it would be best to sort the students into groups by country. You will have to ensure that they discuss the issue in English.

If there aren’t at least two students per country, then it is best to have mixed groups (from different countries) so that no one feels left out of the discussion. If necessary, students can draw on ideas from other students/countries to help them with their own legal history.

Mixed groups are also preferable if your students will not speak English to other students who speak their native language.
Legally Speaking

Conversation Model (page 4)

Listening Script
(At a panel discussion)

Taka: Good morning, ladies and gentlemen. Could you please take your seats? Thank you. My name is Taka Kurasawa. I’ll be the moderator for this month’s panel on the origins of American law. Would someone please close the door? Thank you. To save time, I’d like to begin by asking each of today’s speakers to introduce themselves.

Yvonne: Hello, my name is Yvonne Arm. I’m professor of comparative law at Chickasaw University in Memphis, Tennessee. Thank you for inviting me to speak with you today.

Thomas: Morning. What? Oh, they can’t hear me. Would you mind turning up the microphone? Oh, that’s too loud. Please turn it down a bit. Thanks. Good morning. I’m Thomas Simone, senior editor at *Legal History Quarterly*. It’s a pleasure to finally get the chance to see your beautiful city.

Jan: Hello. I’m Jan Trommel. This year, thanks to a grant from your organization and the University of Pilsen, I’m finishing up my dissertation on the influence of politics on elected judges in the United States. Thank you.

Answers for Conversation Model (page 4)

1. A panel discussion
2. The first speaker, Taka
3. No
4. He is trying to save time.
5. Comparative law at Chickasaw University in Memphis, Tennessee
6. The audience can’t hear him because his microphone isn’t turned up high enough.
7. He asks someone to turn up his microphone.
8. Because he is senior editor of *Legal History Quarterly*
   
   [Language note: Tell the students they can also write “senior editor at LHQ.”]
9. Perhaps. He doesn’t say. However, he is not currently working as an attorney. He is senior editor of *Legal History Quarterly*.
10. Those who are elected and not those who are politically appointed
11. He received a grant from the organization hosting the panel discussion and the University of Pilsen.
Applying Your Knowledge (page 4)

The students are free to choose from the list or use their imaginations and make up their own items. The solution is only an example of what the students could have chosen. The choices are a combination from the options given and additions similar to those that students might choose. (The answers are in bold.)

Speaker 1:  
(Good evening). My name is (Thomas Wang). I am (president) of (1—the Law Society). Welcome to our (2—monthly) meeting. Our (3—chair*), (4—Dahlia Tran), will introduce (5—tonight’s) speaker.

[*Note: You might want to mention the use of politically correct language in the United States and how the term chair has replaced the use of chairman or chairwoman in most organizations.]

Speaker 2:  
Thank you, (6—Tom). It’s (7—a pleasure) to introduce our speaker for (8—this) meeting. (9—She) is currently (10—professor) of (11—law) at (12—the University of Shelby) and was also (13—founder) (14—of Dragonfly Software). (15—Join) me in welcoming (16—her).

[Note: The use of Tom is an American usage at meetings that are informal or semiformal. Ensure that the tone of the student responses is consistent.]

Speaker 3:  
Thank you, (17—Ms. Tran) for that (18—kind) welcome. I’m pleased to (19—once again) have the (20—chance) to (21—speak to) this group.

[Note: You may wish to explain to the students that it is often wisest to ask an American directly what he or she wishes to be called. Tell the students, “if you are afraid that you might insult a person you have just met by using his or her given (first) name, call that person Mr. or Mrs. X. If it is appropriate for you to call that person by his or her first name, he or she will normally say, ‘Just call me. . . .’ Of course, you must do the same if it is appropriate. There must be a large status difference (e.g., president of a large company and her administrative assistant) before it is appropriate for you to remain Mr. or Ms. and for you to call the other person by his or her first name.”]
Legal Thumbnail

Exercise A. Review and Discussion

(page 7)

1. Possible answers:
   • It would be more fragmented, perhaps more like the European Union or ASEAN. The states would have retained more power, and the United States might never have become a world power.
   • Since the states were not required to follow federal law, independent nations might have eventually developed. For example, the South might have succeeded in its bid for secession from the Union.

2. Possible answers:
   • There might have been concern about abuse of power by a central authority figure.
   • Each state was jealous of its own powers, and to have a federal executive officer might have diminished some of that power.
   • Switzerland has a federal president on a rotating basis, one with very limited power base.
   • Although not a nation, the European Union also has a rotating “Head of State” with only limited power.

3. Possible answers:
   • Conflicts between the states could arise, especially if the dispute involved the states themselves, such as conflicts over water rights or state boundaries.
   • There might have been more limited opportunities for citizens of different states to obtain justice in the courts.
   • Differing state laws might have led to a total fragmentation of the U.S. legal system. Due to the supremacy of the U.S. Constitution and promulgation of model codes, state laws, though still different, are much more similar than they would have been without the U.S. Constitution.
   • Political squabbling (arguing) might have led to lack of conclusion on different issues or separation of the United States into different nations.
Exercise B. System Comparisons and Discussion

As you read the students’ responses, you should look mainly for clarity and register. Since they should be writing to a senior member of the firm, the students should avoid informal language or slang in such an email. Remember that if you don’t understand the process as it is described by the students, then the recipient wouldn’t either even if he or she is an attorney since systems are so different.

Sample answer based on an American system:

You asked how a new law in the United States is reviewed. Since there are both state and federal laws, I can only give you a very generic answer.

Generally, once a state or federal law has been adopted, it can only be challenged by those affected filing suit in a responsible court. Challenging a law can be complex since a state law may be also be challenged at the federal level if there is a federal question.

There is no way for the supreme court of one of the 50 states or the Supreme Court of the United States to reach down and look at a new law until a complaint has reached them. However, it is possible to ask a responsible court to issue an injunction preventing the enforcement or implementation of a new law while a court challenge is underway. An injunction is not automatic, and even if issued, it can be overturned by a higher court.

If you would like more specific information about a specific state or a federal law, please let me know and I will be glad to give you more specific information. (187 words)

Exercise C. Paraphrasing

1. Sample paraphrase: To become a Senator, a person must be at least 30 years old, have been a U.S. citizen for at least nine years, and legally reside in the state he or she is to represent.

   [Cultural note: Unlike in many countries, there is no requirement to register any change of address even if you move from one state to another,
so proving legal domicile in a specific state is more complicated in the United States than other countries.

2. Note: Working in pairs seems to work best for this exercise. You might want to discuss the punctuation and how it affects the meaning. Each time there is a semicolon, it is as if the phrase “Congress shall make no law respecting . . .” has been repeated. So there are actually three parts separated by semicolons:

1. religion
2. freedom of speech and press
3. right of assembly and petition

Sample paraphrase: Congress shall not pass laws that interfere with religious freedom, freedom of speech, the right of assembly, or the right to petition any branch of the government to remedy wrongs.

Exercise D. System Comparisons and Discussion

(page 11)

1. In this case, students can use informal phrases. For example, in the sample answer, we use comparisons to a soccer match that would be inappropriate in a formal answer. However, clarity is still crucial. Again if you don’t understand the process, the recipient wouldn’t either.

Sample answer based on the American system:

Ivana, John said you wanted to know about the role of the judge in the American court. I’m sure you’ve seen lots of TV and movies and know that American judges don’t normally ask witnesses questions directly. Really, American judges are a bit like referees in a soccer match who try to make sure everybody plays by the rules. But many judges can be really hard on witnesses, the courtroom audience, or the lawyers if they try to cause problems or waste time. They occasionally even put lawyers and witnesses in jail for “contempt of court.” Hope that helps. (98 words)

2. Student resource. If you are teaching in a civil law country, the judge takes a more active role in the trial than in the United States. The attorneys have a more passive role. (How are judges chosen in your system? Are they elected as many American judges are? Are they chosen by politicians as other judges are in the United States? Unlike in many
countries, in the United States there is no school that prepares a lawyer to be a judge. In fact, it was and still is possible to be a judge without being a lawyer, although this is changing.

3. The trials in the United States, both civil and criminal, are adversarial rather than inquisitorial. Basically this means that the attorneys have a more active role and the truth is expected to emerge through the argument between the two sides. In an inquisitorial system, the questioning by the judge, especially in criminal trials, is supposed to lead to the truth. The attorneys play a less active role. In terms of the codification issue, since U.S. attorneys are required to analogize their case to others, there is perhaps more room for creative argument.

**Exercise E. Case Hypotheticals and Discussion**

(page 13)

1. At first glance it doesn’t look very good for the client, so the students would have to read the case closely to convince the judge that there are differences between their case and the one that has already been decided. If the case is from another jurisdiction, that will also make a difference. Then the case is not binding on the court but merely persuasive authority. This is discussed further in the next part of the legal thumbnail.

   Even though the differences are minor, there are some that can be found by the students. Your client is going 10 mph below the speed limit, indicating that he is a careful driver. Since he has been taking the prescription medicine for two weeks, it could be that he has noticed no side effects, so that might not hurt his case.

   We don’t know about the mechanical condition of the car in the other case, but questions to consider when trying to distinguish the cases might be the following. (1) How old were the cars? and (2) How well had they been maintained?

2. Once you have outlined the differences, it would be easy to write an informal email. This is a sample answer (242 words) for this case, which we will call the Ricks case:

   Thanks for calling me about the Ricks case. We’ll need to distinguish our client’s case from the case cited by the executrix’s attorney. First, fortunately, the cited case is just persuasive since it’s from another state. Also, in the other case, the man was driving right at the speed limit (35mph), but our client was actually driving 10 mph below the speed limit because the street was crowded. That should help us prove that he is a careful driver. Next, we need to find out how old and what kind of a car the
other person had. That might make a difference. It may also be our client’s car has had a history of locking column locks. We’ll have to investigate that. Also, we will need to determine if the other man kept his car as well maintained as our client did. I know the other side will try to bring in the prescription medicine issue, but since he’d been taking the prescription medicine for two weeks before the accident, I don’t think this will cause us any problems. He followed the warning and made sure that he didn’t drive until he knew how the medicine affected him. If you can think of any other issues that will help our client or that we need to be able to refute, drop me a quick email or call me.

Thanks.

Cliff

Exercise F. Paraphrasing and Discussion

(page 14)

2. a. at the beginning  c. be flexible and tolerant  e. way people think/act
   b. remember  d. ever-changing society

3. Student resource. The following information might be helpful to you in leading a discussion. Who are the parents of a child in the case of surrogate motherhood? Currently in the United States, the law varies considerably from one state to another. However, in a 1998 California case [Buzzanca v. Buzzanca, 61 Cal.App.4th 1410, 72 Cal.Rptr. 280 (1998)], the court found the parents to be those who had contracted with the surrogate mother to bear the child.

   The following is an excerpt from the Buzzanca case, which you may want to use in class.

   Jaycee was born because Luanne and John Buzzanca agreed to have an embryo genetically unrelated to either of them implanted in a woman—a surrogate—who would carry and give birth to the child for them. After the fertilization, implantation, and pregnancy, Luanne and John split up, and the question of who are Jaycee’s lawful parents came before the trial court.

   Luanne claimed that she and her erstwhile husband were the lawful parents, but John disclaimed any responsibility, financial or otherwise. The
woman who gave birth also appeared in the case to make it clear that she made no claim to the child.

The trial court then reached an extraordinary conclusion: Jaycee had no lawful parents. First, the woman who gave birth to Jaycee was not the mother; the court had—astonishingly—already accepted a stipulation that neither she nor her husband were the “biological” parents. Second, Luanne was not the mother. According to the trial court, she could not be the mother because she had neither contributed the egg nor given birth. And John could not be the father, because, not having contributed the sperm, he had no biological relationship with the child.

We disagree. Let us get right to the point: Jaycee never would have been born had not Luanne and John both agreed to have a fertilized egg implanted in a surrogate.

The trial judge erred because he assumed that legal motherhood, under the relevant California statutes, could only be established in one of two ways, either by giving birth or by contributing an egg. He failed to consider the substantial and well-settled body of law holding that there are times when fatherhood can be established by conduct apart from giving birth or being genetically related to a child. The typical example is when an infertile husband consents to allowing his wife to be artificially inseminated. As our Supreme Court noted in such a situation over 30 years ago, the husband is the “lawful father” because he consented to the procreation of the child. (See People v. Sorensen (1968) 68 Cal.2d 280, 284–286, 66 Cal.Rptr 7, 437 P.2d 495.)

The same rule which makes a husband the lawful father of a child born because of his consent to artificial insemination should be applied here—by the same parity of reasoning that guided our Supreme Court in the first surrogacy case, Johnson v. Calvert (1993) 5 Cal.4th 84, 19 Cal.Rptr.2d 494, 851 P.2d 776—to both husband and wife. Just as a husband is deemed to be the lawful father of a child unrelated to him when his wife gives birth after artificial insemination, so should a husband and wife be deemed the lawful parents of a child after a surrogate bears a biologically unrelated child on their behalf. In each instance, a child is procreated because a medical procedure was initiated and consented to by intended parents. The only difference is that in this case—unlike artificial insemination—there is no reason to distinguish between husband and wife. We therefore must reverse the trial court’s judgment and direct that a new judgment be entered, declaring that both Luanne and John are the lawful parents of Jaycee.
4. This is a sample answer (216 words). Notice that it expresses opinions coupled with facts.

It was really nice talking with you last night. I enjoyed our conversation about the relationship between advances in science and changes in the law. I thought I would follow up our conversation with these thoughts. It seems to me that our courts need to have the most up-to-date scientific information available when they make decisions. For example, now that we can do DNA testing on small samples, several people serving life sentences for rape or other crimes have been freed when the DNA test proved that they could not have committed the crime.

Even commercial law has to change. DVD producers can put small programs on their disks that can identify the exact computer that is used to make an illegal copy of the disk. That information should be used in court.

In fact, the very definition of life is changing. We can now determine with reasonable certainty if someone has suffered brain death. Now the laws need to deal with that fact and decide what we as a society want to do in these cases.

I hope these examples help you see why I said that science can’t be “pure.” Every new advance in science carries a societal consequence. Maybe we can have lunch next week when you are back in town and continue our conversation.

Joan

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**Exercise G. Case Hypotheticals and Writing**

*(page 17)*

1. Facts that can be broadened or left out.

<table>
<thead>
<tr>
<th>Fact</th>
<th>Leave Out or Broaden</th>
<th>Change To</th>
</tr>
</thead>
<tbody>
<tr>
<td>armed robbery</td>
<td>neither</td>
<td>stays the same</td>
</tr>
<tr>
<td>young law student</td>
<td>broaden</td>
<td>person</td>
</tr>
<tr>
<td>bad eyesight</td>
<td>leave out</td>
<td></td>
</tr>
<tr>
<td>law library</td>
<td>leave out</td>
<td></td>
</tr>
<tr>
<td>six-foot-tall blond woman</td>
<td>leave out</td>
<td></td>
</tr>
<tr>
<td>very realistic toy gun</td>
<td>broaden</td>
<td>something that would appear to a reasonable person to be a weapon</td>
</tr>
<tr>
<td>threaten to shoot him in the leg</td>
<td>broaden</td>
<td>threaten</td>
</tr>
<tr>
<td>law books</td>
<td>leave out</td>
<td></td>
</tr>
</tbody>
</table>
2. Sample Answer: The court held that a person is guilty of armed robbery when the person who is robbed is threatened with what would appear to a reasonable person to be a weapon.

**Exercise H. Case Hypotheticals and Role Play**

(page 21)

Divide your students into pairs or teams, depending on class size. Then assign one of the scenarios to each pair or team of students. Each team will present its argument to the class, who as a group will then vote on whether there was reasonable cause to enter the premises without “knocking and announcing.”

When having the class vote, it is sometimes better to have the students vote anonymously by secret ballot, so that there is no pressure to support or attack fellow classmates. A breakdown of the scenarios is as follows.

a. Hot pursuit. Probably acceptable to enter without knocking and announcing.

b. Valid arguments on both sides. Taken in terms of balancing the right to privacy with public safety, the police officer might have been able to knock and announce prior to entering rather than kicking down the door.

c. If it is the police officer’s duty to check on whether the doors of businesses are locked at night, then he might have a reason to enter without knocking. However, you must balance this duty and the right to privacy against the safety concerns of the police officer if he knocks and announces prior to entry.

d. • The police probably could have knocked and announced. However, because the band was considered armed and dangerous, there is also a strong argument in favor of no knock and announce.

• Make sure that the students don’t mix the issues. American students would probably want to discuss whether the evidence that was found at the wrong house can be used. Is that an issue in your system? What are the limitations on the admissibility of evidence?

e. • Note the difference between the search warrant in the other scenes and an arrest warrant here.

• A false identification by the arresting officer can invalidate an arrest. In the case of Richards v. Wisconsin in Exercise L, there was also a false identification in a search warrant case, but the U.S. Supreme Court held that the entry was lawful (no knock and announce needed) under the facts of that case.
Exercise I: Case Comparisons

(page 22)

1. • The case-by-case exception means that each case is looked at specifically and no category of cases is exempted from the requirement to knock and announce.
   • The blanket exception means that the courts/legislature permit exceptions to the knock and announce rule by category, such as in all drug cases.

2. • High risk of injury to the police officers
   • Potential for disposal of the drugs

3. Since the search warrant had already been issued, the public interests outweighed the minimal privacy interests that were infringed in this case.

4. No adherence to the knock and announce principle

5. It was also based on a violation of the knock and announce principle and a motion to suppress evidence obtained because that principle was violated.

Exercise J: Oral Argument

(page 23)

Students have to invent questions and answers based on the Wilson and Richards cases. Provide them with proper terminology for addressing a judge and an attorney in a formal situation: Your Honor or Judge (last name) and Mr. or Ms. (last name).

There are no right or wrong answers. The students should use the cases to develop their arguments. Possible questions/statements for the attorney/judge are included for you to give to students who may be having difficulty with the exercise.

Judge

• Ms. Smith, you realize that the court must be especially careful to balance the constitutional right to privacy against public safety issues, don’t you?

• Why is it so important in this case that the police not be required to knock and announce?

• All decisions must be made on a case-by-case basis. In this instance, you have/have not convinced me that countervailing law enforcement interests outweigh/do not outweigh the privacy interests of the suspect, Ms. Wilson.
Prosecuting Attorney

- Your Honor, we would like to request a no knock and announce search warrant in the case of Sharlene Wilson. She is an armed and dangerous drug dealer, and we are concerned for the safety of the police officers carrying out the search.

- During a meeting with our informant, she was carrying a semiautomatic pistol and threatened to kill the informant.

- Of course, there is also the possibility that Ms. Wilson will have time to destroy the evidence if the officers knock and announce.

Exercise K. Legal Vocabulary

(page 23)
Legal Vocabulary—Other terms may be acceptable. The answers come directly from the legal thumbnail in Level III.

1. ratified
2. settled
3. reconciling
4. reciprocity
5. established
6. remanded
7. appellee
8. probable cause
9. suppress
Legal Authorities and Reasoning

Discovering Connections

**ACTIVITY (PAGE 26)**

Based on the American legal system, this is the preferred order.

1. 3  
2. 4  
3. 1  
4. 2

There may be some difference of opinion regarding the rank order of items 1 and 2, but the student should understand that, provided the statutory elements are met, recent on-point case law is the most persuasive of all of these items.

Legal Listening and Writing

Putting the Terms to Use (page 27)

A. Listening Script

[Note: In the script are several mistakes that are common in spoken English, such as faulty pronoun agreement. These types of mistakes are made by native speakers as well as nonnative speakers and are generally overlooked if made]
infrequently. The mistakes have been underlined so you can discuss the issue with your students if you want to.]

**Jens (a visiting German lawyer)**

**Simone (an American attorney)**

*Simone:* Jens, good to see you again. I’m glad we’re going to be working on this case together.

*Jens:* Me too. You were really a great help in Germany last year.

*Simone:* My pleasure. This time you’ll need to help me pull it out of the fire.

*Jens:* What?

*Simone:* That’s just an expression. It means you’re going to help me save this case that my learned colleague, Ben, says is a lost cause.

*Jens:* Ah, well. I will do my best. One thing bothers me though—I have never actually been in an American courtroom. The only ones I’ve seen have been on TV.

*Simone:* Well, you’ll be relieved to know that procedures in courtrooms bear very little resemblance to those on TV. However, there are some simple rules you might want to keep in mind.

*Jens:* Good. Where do we begin?

*Simone:* There are certain verbal and physical rules to follow. First, always stand when you speak to—we say address—the judge.

*Jens:* What do you call him?

*Simone:* Be careful. Many judges in America are women. You call her “Your Honor.”

*Jens:* Fine. What about the other attorney?

*Simone:* You can just call them “Mr.” whatever.

*Jens:* Mr.? Hmmm, are all American attorneys men?

*Simone:* Touché! Sorry. To be on the safe side use the neutral form “Ms.” for all women unless she introduces herself as “Mrs.”

*Jens:* Miss? I thought that was just for young, unmarried women.

*Simone:* No, not Miss, Ms.—the final sound is a z not an s.

*Jens:* Do I need to stand to speak to them?

*Simone:* No, you only stand to address the “Court.” That’s another way to refer to the judge.

*Jens:* Thanks.
Answers to Putting the Terms to Use (page 27)

Part A
1. The United States
2. To succeed at something
3. You need to remember this . . .
4. No. It’s considered disrespectful.
5. Your Honor
6. No
7. Because she made the same type of sexist error that Jens did, and he called her attention to it
8. “Zee”
9. Yes, unless she indicates that she wants to be called “Mrs.”
10. the “Court”

Part B (page 28)

Memo
Lee, Hall, and Barone, P.C.

To:  Jens Weihrauch
From:  Student’s Name or initials
Subject:  Preliminary Information on the Hradec Case
Date:  Current Date

Simone Fort has asked me to explain the facts and issues of the Hradec case to you. Our client, Loretta Hradec, a well-known dancer, sued the privately funded Maly Ballet of Prague (henceforth MBP) for breach of contract. As attorney for the plaintiff, Ben Johnson attempted to show that MBP had breached the contract signed in New York by not paying Ms. Hradec following her car accident in which she broke her left arm. MBP maintained that it could not be sued in the U.S. since Ms. Hradec was to have performed in MBP’s home theater in Prague, the Czech Republic. The trial court, mistakenly interpreting this case as falling under the Foreign Sovereign Immunities Act, found for the defendant. Ms. Hradec has chosen to appeal the decision. At that point Ms. Fort was given responsibility for the appeal.

As attorney for the appellate, Ms. Fort must file an appellate brief outlining the grounds for the appeal. Ms. Fort feels that our strongest ground for reversal is the jurisdictional issue: Were there sufficient minimal contacts within the United States to grant the court jurisdiction? As a jurisdictional expert, you will prove invaluable in convincing the appeals court to remand the case to the lower court for a reevaluation of the jurisdictional issue.
Legal Thumbnail

Exercise A. Citation Review

(page 31)

United States v. Alvarez:

42 U.S.C.:
1. Statute. 2. United States Code. For statutes, you are given not the page number but the section number and title number of the statute. Title 42, section 9401. 3. Federal statute.

Crompton v. Commonwealth:
1. Case. 2. South Eastern Reporter, 2nd series, volume 389, page 460. The first citation is to a Virginia state reporter. 3. State decision.

Davis v. Monsanto Co.:


Hall v. United States

Exercise B. Listening Comprehension

(page 33)

Attorney: Now that we have discussed the facts of your case, let me explain the filing procedure. We file a complaint at trial court. You would be what is called the plaintiff. The driver of the other car would be the defendant. We would file an initial complaint at trial court level. If we lose, we can always appeal to the court of appeals.
Jane: We aren’t going to lose, are we?
Attorney: We hope not, but it is best to be prepared.
Jane: Does the jury decide about the case?
Attorney: Yes, they return the verdict.
Jane: Will I have to testify?
Attorney: Probably. We may ask you to testify on your own behalf. We will know more after the depositions, which are pre-trial questions of the parties. It is sort of like a “mini-trial” but without the judge.
Jane: What if we win?
Attorney: The defendant can appeal. The intermediate court, the court of appeals, could always reverse the decision.
Jane: Reverse? What happens if the decision’s reversed?
Attorney: It is often remanded for review, given back to the trial court, the one with the jury, for a decision made in accordance with the views of the upper court.
Jane: How long will this take?
Attorney: It depends on whether or not they settle out of court and how crowded the court calendar (or docket) is. We will try for a settlement, of course.
Jane: I just need the hospital bills paid. I don’t have health insurance, and the bills are enormous.
Attorney: I understand.

1. The plaintiff
2. The loser can appeal or accept the judgment of the court.
3. Depositions are oral questions answered in sworn testimony by the parties prior to a trial (a “mini-trial” without the judge).
4. The lower court if the case is remanded to it
5. The court calendar (when certain cases are being heard)
Exercise C. Reading for Details

(page 36)

1. At the trial court level, where fact determinations are made.
2. The Supreme Court is the one with a final say on issues involving the Constitution or any other federal statute. The decisions of the other courts must follow Supreme Court decisions but not the reverse. State supreme courts have the final word on state law issues unless there is a conflict with the U.S. Constitution or federal law.
3. The issue(s) in the case must concern the Constitution or other federal laws.
4. It would mean that his or her request to have the Supreme Court hear the appeal was denied.
5. The majority opinion has greater authoritative weight. A plurality decision means that a majority of the justices do not agree upon the legal reasoning in a given situation. If the court hears a similar case in the future, there is no clear majority reasoning an attorney can rely on to prepare his or her arguments.

Exercise D. Reading for Details

(page 39)

1. Appellee
2. Defendant, White
3. Federal
4. Affirmed
5. All of them because it is a per curiam opinion, which means “by the court.” There is no dissenting opinion.
**Exercise E. Reading for Details**

(page 41)

1. A station wagon
2. The key was in the ignition.
3. Found some money in the car and also siphoned gas from other cars
4. No. There is no evidence to that effect.
5. White discovered the money in the car that was used to pay for gas; he read maps and navigated; he also helped siphon gas.
6. Moving an item from one state to another

**Exercise F. Reading and Analysis**

(page 41)

1. A person must know a vehicle is stolen and transport it across state lines.
2. Yes
3. Things that are known have been proven in some satisfactory manner. One infers by looking at the circumstances and actions surrounding an event.
4. They could infer from his role in the entire event that he had joint control over the vehicle.
5. Because White could not be convicted under the federal statute (18 U.S.C. §2312) unless he crossed state lines with the stolen car

**Exercise G. Statutory Interpretation and Paraphrasing**

(page 43)

2. It is a question of actual physical control over the vehicle. I could “cause” a car to be transported without being anywhere near it. For example, I might offer to pay someone for the delivery of a car—making it clear that I did not care whether or not the car was stolen.
3. One possible rephrasing: The jury had sufficient evidence before it to determine White knew the car was stolen and transported it across state lines.
Exercise H. Writing and Reading for Details

Citation: Smith v. U.S., 385 F.2d 252 (8th Cir. 1967)

Facts:
• Smith, appellant, in two instances, obtained rental cars, using fraudulent checks, driving the cars across state lines even after being notified that one of the cars had been reported as stolen.

Legal History:
• Smith was convicted by a jury under 18 U.S.C. §2312 on two separate counts of interstate transport of a stolen vehicle.
• He appeals on two grounds, only one of which is reported here. He contends that there was insufficient evidence to support a finding of intent under the Act.

Issue:
• Did the jury have sufficient evidence to find that Smith through the taking and abandoning of rental cars obtained via a deposit made with a fraudulent check show the intent required to deprive the owner of use of the cars?

Holding:
• Yes. There is evidence to support the jury’s finding because giving a check with insufficient funds is stealing and no permanent intent to take the cars is required.

Reasoning:
• Using a check with insufficient funds to obtain a vehicle is stealing.
• There is no requirement under the Dyer Act that the vehicle be permanently taken.

Rule of Law:
• The Dyer Act is violated when a person converts a rental car for his own use if state borders were crossed, as they were in this case.
Exercise I. Reasoning

(page 50)

1. • Age of the child
   • Quality of the parental supervision (since this is only implied, students find they can use this element as part of the answer in question 3)

3. Keep in mind that this is the type of question in which cultural differences often manifest themselves. For example, in China the state exerts control over the birthrate by penalizing parents who have more than one child. This could affect the additional factors that a student might feel need to be considered.

Exercise J. Reasoning and Paraphrasing

(page 51)

1.  

<table>
<thead>
<tr>
<th>Case Name</th>
<th>Type of Accident/Action</th>
<th>Cause of Death</th>
<th>Intervening Cause</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jackson</td>
<td>auto accident</td>
<td>auto accident</td>
<td>none</td>
<td>for plaintiff</td>
</tr>
<tr>
<td>Janovitch</td>
<td>auto accident</td>
<td>tuberculosis</td>
<td>none</td>
<td>for defendant</td>
</tr>
<tr>
<td>Janus</td>
<td>heart surgery</td>
<td>anesthesia</td>
<td>none</td>
<td>for plaintiff</td>
</tr>
<tr>
<td>Ji</td>
<td>auto accident</td>
<td>pneumonia caused by injuries from accident</td>
<td>none</td>
<td>for plaintiff</td>
</tr>
<tr>
<td>Jade</td>
<td>plane crash causing son’s death</td>
<td>suicide</td>
<td>yes</td>
<td>for defendant</td>
</tr>
<tr>
<td>Johansson</td>
<td>auto accident</td>
<td>smoke inhalation</td>
<td>none</td>
<td>for plaintiff</td>
</tr>
<tr>
<td>Jerod</td>
<td>public intoxication</td>
<td>suicide</td>
<td>yes</td>
<td>for defendant</td>
</tr>
</tbody>
</table>

2. Sample answer: If the acts of the defendant were the proximate cause of the death, and nothing has intervened between the defendant’s acts and the victim’s death, then even the fact that a victim was already fatally ill will not serve as a defense to a wrongful death action.
Discovering Connections

ACTIVITY (PAGE 25)

1. The more advanced the students, the more difficult it is to get them to discuss moral responsibility. They will try to give you the legal answer based on their system. Push them to look at it from the moral point of view. Attorneys may also say that there is not enough information in the short scenario to decide who is morally responsible. However, the scenario purposely is developed with some of the information left out. Advanced students will notice that in the last line it is left unclear whether Jack could have stopped in time even if he had been sober.

[Language note: When discussing relative issues, it helps to encourage the use of “personalizers” to make the interactions more like conversations than absolute pronouncements. Here are samples of types of phrases you should try to encourage students to use: From my point of view . . . , It seems to me . . . , I view that from a different perspective. . . .]
From Morality to Law

Simplification and Interpretation (page 55)

A. The answers will, of course, depend on whom the students choose to be morally responsible. As you question them, make them explain their choice in terms of *mens rea*: Did he negligently . . . ? Did she purposely . . . ? Did they knowingly . . . ? Did she recklessly . . . ?

[Language note: You may need to work on the difference between reckless and negligent—“I didn’t realize I was speeding” as opposed to “I knew I was speeding but didn’t care.”]

B. It certainly looks as though the bar owner would be liable under this statute since he sold Jack more than enough liquor (alcohol) to intoxicate him.

Dramshop Statute (page 55)

Sample rewriting: Any person injured by an intoxicated person can sue for damages against anyone who sold and served any intoxicating beverage to the person causing the injury when the seller knew or should have known the person was intoxicated or would become intoxicated. If sued, the seller can use as a defense that intoxication was not a factor in the accident.

For comparison, here’s the code from page 55 in the student book.

Every person who is injured in person or property by any intoxicated person, has a right of action in his own name, severally or jointly, against any person who by selling or giving alcoholic liquor, causes the intoxication of such person. [*Lopez v. Maez*, 98 N.M. 625, 651 P.2d 1269 (1982)]

[Cultural note: It may be helpful to pose the following questions to the students. Who is responsible for drunkenness in your country? Is it a question of personal or societal responsibility? Is drunkenness a crime in your system, or are only the acts of the drunk the crime?]

1. Yes, tavern owners have the same liability under both statutes.
2. Under the *Lopez* statute, if you give liquor away—such as at a party—you can be held liable. Under the Iowa code, the liquor must be sold, not given away.
3. Under the *Lopez* statute, yes. Under the Iowa code, no. The Iowa code requires that the seller both sell and serve. A liquor store owner in the United States does not serve alcohol to customers.

4. Yes, under the Iowa code, the seller can show that the intoxication was not a factor in the injurious act.

5. Perhaps, if the owner could demonstrate that Jack’s being drunk had nothing to do with the car’s not being able to stop in time. Perhaps if the brakes had failed completely and suddenly, the tavern owner would have a slight chance to use the defense, but even then the victim’s lawyer could attempt to show that if Jack had not been drunk, he might have been able to steer the car onto the sidewalk and would have been able to avoid killing Jean.

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### Legal Thumbnail

#### Exercise A. System Comparisons and Discussion

(page 57)

Student resource. There may be considerable disagreement. Try to ask questions that lead to consensus that the system may be mixed. Another possibility is to have the students assign a percentage to each category that reflects the weight they feel the particular theory is given in their countries.

If the students are having trouble, discuss the weights you feel the theories are accorded in the U.S. system. Since capital punishment is still legal in most U.S. states, it appears that retribution and deterrence still carry great weight as viable theories in the American legal system.

#### Exercise B: Close Reading

(page 62)

2. In this case, *his* refers to the kidnapped person.
Exercise C. Case Hypotheticals and Pair Work

(page 63)

2. a. Perhaps. It depends on whether ten minutes can be considered a substantial length of time. Obviously, other charges, such as robbery, could be brought against the robber.

b. This is perhaps not a kidnapping since the farmer is not “holding” the hitchhiker nor is there any hint of the farmer terrorizing the man to force him to remain.

c. The boy has unlawfully removed the girl but not for any of the required purposes, so it is not a kidnapping (however, notice the difference in the wording of the Colorado statute that appears in the next exercise).

d. This is difficult. In some cases, it could be considered kidnapping since the court had given custody to the mother and removing her from that custody could be considered interfering with the performance of a governmental function.

e. Most likely to be considered a kidnapping. This is a common crime in the United States. Centers for missing children often send out pictures of a child and of a parent who has unlawfully taken the child.

Many states have now enacted statutes specifically related to the problems addressed in scenarios (d) and (e). The statutes are normally referred to as interference with custody statutes and better address the special problems involved when the kidnapping is done by a parent.

Exercise D. Case Hypotheticals and Pair Work

(page 64)

2. a. Perhaps. However, it appears less likely to be kidnapping than under the MPC. The bank president was not removed from one place to another, but an argument could be made that he was imprisoned.

b. Perhaps. Under the Colorado statute [§18-3-301(1)(b)], this looks now like a kidnapping since the mentally ill man thinks he is under the apparent control of the farmer and will be “held” until he gives up something of value—his labor. However, there was no forcible seizure, so it would have to be an enticement or a persuasion.

c. Still an interesting question, since both “children” are under 18. However, since the boy is 16, it could be argued that he was guilty
since he kept the “child” from her parents for three days. Colo.Rev.Stat. §18-3-302(2).

d. This time the father could most likely be charged with second-degree kidnapping since he “knowingly seizes and carries” without “lawful” justification [Colo.Rev.Stat. §18-3-302(1)]. A child under 18 would not have the legal right to consent to go to Mexico.

e. In the other statute, it might have been kidnapping. Here the issue is that the statute makes a distinct statement that a kidnapped child must be someone else’s.

Exercise E. Statutory Interpretation

(page 66)

3. A person is guilty of burglary if he enters a private building or occupied structure with the intent to commit a crime.

[Sexist language: In statutes, it is to be assumed that “he” refers to all people regardless of gender unless specific exceptions are made such as for the Selective Service registration notice that indicates that every male must register with the Selective Service (the “draft board” that would call men into the armed forces in case of war or other national emergency) within 30 days of his 18th birthday or face punishment.]

Exercise F. Statutory Comparisons

(page 67)

1. Suggest that the students make a chart that shows the differences.

<table>
<thead>
<tr>
<th></th>
<th>MPC</th>
<th>New Mexico</th>
<th>Alaska</th>
</tr>
</thead>
<tbody>
<tr>
<td>intent to commit crime</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>building</td>
<td>yes</td>
<td>yes</td>
<td>yes</td>
</tr>
<tr>
<td>occupied structure</td>
<td>yes</td>
<td>yes</td>
<td>no</td>
</tr>
<tr>
<td>unoccupied structure</td>
<td>no</td>
<td>yes</td>
<td>no</td>
</tr>
<tr>
<td>vehicles</td>
<td>no</td>
<td>yes</td>
<td>no</td>
</tr>
</tbody>
</table>

2. The Alaska statute is more like the MPC statute even though there are significant differences between the two.
**Exercise G. Statutory Interpretation**

(page 67)

1. New Mexico
2. In all three, the would-be burglar must lack permission to be in the building. By default, one normally has permission to enter or remain in one’s own house or building.
3. Yes, New Mexico.
4. Now we would have to add Alaska.

**Exercise H. Writing**

(page 68)

1. Sample 1: A structure is a man-made object adapted for overnight use to accommodate people and to protect them from the elements.
   Sample 2: A structure is a nonmovable object adapted for overnight use to accommodate people and protect them from the elements.
2. Answers will depend on the definition provided. Using our first sample:
   a. Yes
   b. No. It does not protect people from the elements.
   c. No. It has not been modified to accommodate people.
   d. Yes. It was adapted for overnight use and protects people from the elements.
   e. No. An area is not an object.

**Exercise I. Listening**

(page 71)

2. Listening Script

The issue we address is: Given multiple stab and slash wounds, is there sufficient evidence to send the question of premeditation to a jury?

The State argues that *Bingham* is limited to its facts. In *Bingham*, we held that manual strangulation alone shows only an opportunity to deliberate and is insufficient to sustain the ele-
ment of premeditation. The State points out, however, that Bingham recognizes that “[t]he planned presence of a weapon necessary to facilitate a killing has been held to be adequate evidence to allow the issue of premeditation to go to a jury.”

Ollens disputes that the evidence in this case permits the inference that premeditation occurred. He argues that some time did pass during the struggle; however, this passage of time is inherent in the manner of a multiple stabbing death and is mere passage of time, not evidence of premeditation. He also asserts that the manner of death, in other words, violence and multiple wounds, does not support an inference of deliberation actually occurring or of a calmly calculated plan to kill, which is requisite for premeditation and deliberation.

The issue before this court is whether Bingham is controlling in this situation such that given the evidence, no trier of fact could find premeditation beyond a reasonable doubt. We hold that Bingham is distinguishable. First, manual strangulation involves one continuous act. In the case at hand, not only did Ollens stab the victim numerous times, he thereafter slashed the victim’s throat. This subsequent slashing is an indication that respondent did premeditate on his already formed intent to kill. Second, a knife was used in the killing. The strangulation in Bingham did not involve the procurement of a weapon. Third, from the evidence a jury could find that Ollens struck Tyler from behind, a further indication of premeditation.

We hold that there is sufficient evidence to submit to a jury the issue of whether Ollens not only intended to kill the victim, but it was also premeditated. It is properly the function of a jury to determine whether Ollens deliberated, formed, and reflected upon the intent to take Tyler’s life in order to effectuate the robbery. We reverse the Superior Court’s dismissal of the premeditation charge and remand for the continuation of proceedings consistent with this opinion.

a. The supreme court of the state of Washington reversed the superior court’s ruling that there was insufficient evidence to allow the jury to make a determination on premeditation. It was the jury’s duty and right to determine that issue.

b. The state maintained that Bingham was not the appropriate case to use as precedent since it could be distinguished from Ollens. The state has evidence that would allow the jury to decide if there was premeditation: striking from behind, slashing of the throat, procuring a knife, and committing a robbery.
c. Ollens insists that Bingham supports his claim that there was no evidence to discuss premeditation. He reasons that the passage of time—multiple stabbings take time—does not indicate premeditation. Moreover, the violent nature of the crime does not demonstrate cold, reasoned premeditation.

d. There was no evidence in Bingham to suggest that premeditation was involved. Strangulation (Bingham) is one act. On the other hand, there is evidence that suggests premeditation in Ollens. After stabbing the victim many times, Ollens then slit his throat. Additionally, Ollens had to procure a weapon, and, finally, Ollens struck Tyler from behind.

**Exercise J. Discussion**

*(page 72)*

Possible answer: Cooling off is a subjective issue. When some people look as though they have cooled off, they are actually just sunk deep in internal rage that can erupt like a volcano with no true cooling off.

**Exercise K. Writing a Memorandum**

*(page 73)*

You may wish to discuss the American memo at this point since the students are asked to write one.

- The most important points to remember in writing American memos are clarity and directness.

- A memo often contains many short paragraphs since each paragraph should have one clearly identifiable, main point. Remember, however, that this style of writing, which seems choppy to many, is often in direct contradiction to accepted writing practices in other cultures.

- If your students are unfamiliar with American memos, you should begin by having them write extremely short, objective memos first as practice. For example, you might begin by asking them to write a memo telling you they won’t be at work next week. Make sure you remind them it was just an exercise! Have them create a fake law firm (of course you are the boss) using their own names.
Memorandum
Buben, Hall, and Thrush
Memphis TN

TO: Charles Hall, Senior Vice President
CC: Susan Barone
FROM: Debra Lee
SUBJECT: Law School Community Day Reception
DATE: February 5, 2007

As we discussed by telephone this morning, I will not be in Memphis on March 6, 2007.

Since this project is so important to our recruiting efforts, we agreed that Marsha Hurley will represent our firm at the annual Law School Community Day reception on March 6, 2007.

Should you need any additional information, do not hesitate to contact me. Thank you.

Note that although cc originally meant carbon copy, many now refer to it as a courtesy copy. You may wish to point out that the very short paragraphs are separated by double spacing for quick reading.

1. It is possible to decide either way: to prosecute Roth for manslaughter or not to prosecute. Here again argumentation is much more important than the actual decision.

[Cultural note: Each year many people are shot in the United States during the legal hunting seasons. Indeed two friends of one of the authors of this book were shot and killed in separate hunting accidents in the forests of Michigan. In neither case was there an attempt by the families to have the “killers” prosecuted for manslaughter. These events were seen as tragic accidents more akin to traffic fatalities than to killings. Especially tragic in the United States are the many cases of children who
are accidentally shot and killed by other children who find their parents’
guns inside the home and then kill their brothers or sisters while “at
play.” This case would be a good start to discussing the role of guns in
the United States, where the right to own a gun is seen by many as a
fundamental liberty. The Internet can provide much information about
the problems associated with the interpretation and enforcement of the
Second Amendment—the right to bear arms.]

Possible reasons to prosecute:

• Roth shouldn’t have fired till he had positive visual identification. Firing
after seeing the “white flash” (her gloves), which might indicate a white-
tailed deer, is not taking necessary care.

• Since Roth did not see any deer, he could not have first sighted a real
deer and then believed that the white flash was the same deer running
away.

• Roth should have investigated the areas in which he was hunting before
he shot, and then he would have discovered his victim’s house.

• Public policy. A person should not have to fear death in a hunting acci-
dent while in his or her own yard.

Possible reasons not to prosecute:

• The damage that would be caused by Roth’s conviction would far out-
weigh any guilt he might have: the destruction of yet another family, loss
of yet another productive member of society.

• Roth exercised due care before firing at what a reasonable person would
have assumed to be a white-tailed deer in a hunting area.

• Weston knew that it was hunting season and that her house was in a
hunting area. She should not have worn white gloves in her yard.

• Public policy. This was an accident and not an intentional or even a
reckless killing.

[Note: This is an actual case that occurred in Maine. The prosecution took
the case before the grand jury, which refused to indict Roth. However, a
second grand jury did indict him. He was finally acquitted by a jury at trial.]
Exercise L. System Comparisons and Discussion

(page 75)

1. Student resource and opinion
2. Student resource and opinion

Exercise M. Case Hypotheticals and Discussion

(page 76)

1. entrapment 3. duress 5. self-defense
2. insanity 4. necessity

Exercise N. System Comparisons and Discussion

(page 78)

1. Student opinion and resource. Does the home environment of the criminal matter? Does the social status of the criminal matter? Does it matter if the criminal is otherwise a model citizen with a fine family and a steady job?

2. If a student’s home country is multiethnic, are there different laws and expectations for members of the different religions or groups? For example, in the United States devout members of certain religions are exempted from military service (however, they must still prove that they deserve the exemption) or are not required to take oaths in court but rather simply have to “affirm” when testifying. There is also no requirement that a child be educated in English; consequently, there are many groups that maintain separate schools to teach their language and culture to their American-born children.

Does Islamic law govern some members of a society, while a Western civil code is used by others? A legally trite but economically important example is that in the United States Native Americans living on reservations have different laws from their non-Native American neighbors. As a result, there are many gambling establishments on Native American lands even though those lands are in states that forbid gambling.

Other problems have arisen with Asian cultures that use a hot coin to “burn” out sickness from a child. The coin leaves a burn mark that has been mistaken by some non-Asian teachers as child abuse.

In areas in which Sikhs have settled, there have been problems with school officials because the Sikh children are required by their beliefs to
carry a small, ceremonial, but nonetheless potentially dangerous knife. Ask students to explain how that would be a problem for school officials.

**Exercise O. Role Play**

(page 79)

2. Make sure that you find out if the teams are adding any additional facts. You should give those facts to the opposing team too.

3. You may wish to have each team file a “theory of the case” memo with you to tell you how they plan to demonstrate to the jury the necessity of a certain verdict.
Civil Procedure

Discovering Connections

**ACTIVITY (page 81)**

1.

<table>
<thead>
<tr>
<th>Lowest Court</th>
<th>Mid-Level Court</th>
<th>Highest Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>court of first instance</td>
<td>appellate court</td>
<td>highest appellate court</td>
</tr>
<tr>
<td>U.S. District Court</td>
<td>U.S. Courts of Appeal</td>
<td>supreme court (outside NY)</td>
</tr>
<tr>
<td>Supreme Court (NY)</td>
<td>Appellate Divisions (NY)</td>
<td>Court of Appeals (NY)</td>
</tr>
<tr>
<td>trial court</td>
<td>first appellate court</td>
<td>U.S. Supreme Court</td>
</tr>
</tbody>
</table>

2. Federal Court. The District Court is the trial court in the federal court system. Also, the appeal would be to the 6th Circuit Court of Appeals, which is the mid-level appellate court in the federal system.

**Listening Script**

*John:* Hi, Anna. I haven’t seen you in awhile. What’s going on?

*Anna:* Well, we’ve been busy with the latest motion in the Johnson lawsuit.

*John:* What’s happening?
Anna: Well, Martin Corporation filed a motion to dismiss for failure to state a cause of action.

John: I thought there was a contractual breach due to failure to perform.

Anna: Yes, but Martin claims that we haven’t proven failure to perform.

John: Has the District Court ruled on the motion yet?

Anna: Not yet. If they decide against us, we will appeal to the 6th Circuit Court of Appeals, of course.

John: Of course. Well, good luck. Let me know how it goes.

Anna: Will do. See you later.

John: Yeah. ’Til later.

---

**Legal Listening**

**Putting the Terms to Use (page 83)**

**Listening Script**

*Dawn:* Dawn Aurora speaking.

*Adam:* Hi, Dawn. This is Adam Shang.

*Dawn:* Adam, good to hear from you. What’s up?

*Adam:* My crazy neighbor’s at it again. He’s filed another complaint. Of course, I want you to file the answer. That’s the right term, isn’t it?

*Dawn:* Yes, you’re a quick learner, Adam. What’s he alleging this time? I thought he would have given up after the last judge granted our demurrer and dismissed the case.

*Adam:* There you go again. Speak English.

*Dawn:* The judge dismissed the case because your neighbor didn’t have sufficient grounds to sue.

*Adam:* Well, Dawn, this time the trial’s going to be in Montana.

*Dawn:* Montana? What did he ask for—a change of venue because of that horrible newspaper article about him? Did he forget we live in Idaho?
Adam: Venue change? No, it was something to do with my ranch there.
Dawn: No, no. I can’t believe he’s trying for quasi in rem jurisdiction.
Adam: You know I don’t speak French.
Dawn: Adam, that’s Latin, and you know it. Don’t worry. We may try to get it dismissed for lack of jurisdiction.
Adam: Whatever. He yelled over the fence this morning, “I’ve got you this time.”
Dawn: We’ll see what he’s got in discovery. Fax the papers over, and I’ll get started after I come back from court this morning.
Adam: OK, your fax number’s 555-2226, right?
Dawn: Right. I’ll call you back after I’ve had a chance to draft the answer, but it might be tomorrow.
Adam: Great. I’ll be waiting for your call. Thanks. Bye.
Dawn: Bye.

Questions and Answers:
Instead of giving the students written questions, continue with a listening exercise by reading the questions to them.

1. **Why is Adam calling his lawyer?**
   Answer: To tell her that he is being sued again

2. **What happened to the last case the neighbor began?**
   Answer: It was dismissed.

3. **In which state is the conversation taking place?**
   Answer: Idaho

4. **Did the neighbor ask for a change of venue?**
   Answer: No, he didn’t. He’s hoping to establish that the court in Montana has jurisdiction over the case.

5. **What might have been a reason for a change of venue?**
   Answer: The bad publicity that might have prejudiced potential jurors against the plaintiff

6. **For what reason does the attorney think the case may be dismissed?**
   Answer: Lack of jurisdiction

7. **How will the attorney see what new information the neighbor may have?**
   Answer: Through pre-trial discovery
8. How did Adam hear the news about the new lawsuit?
   Answer: The neighbor yelled over the fence and told him.

9. How will Dawn get Adam’s papers?
   Answer: He will fax them to her.

10. When should Adam call the lawyer again?
    Answer: He shouldn’t. Dawn will call him.

**Legal Thumbnail**

**Exercise A. Case Hypotheticals and Pair Work**

(page 84)

1. Exclusively federal—copyright
2. Concurrent
3. Exclusively state—divorce
4. Exclusively state—probate
5. Concurrent—diversity of citizenship

**Exercise B. Reading for Details**

(page 85)

1. a. New York City
   b. Germany
   c. Contracts

2. Perhaps, on the basis of diversity of citizenship. The following additional information is needed: The amount of damages the plaintiff, Bybee, is seeking. When Bybee first filed her suit, damages sought had to be greater than $50,000 for a federal court to have subject matter jurisdiction. (The amount now has to be greater than $75,000 to meet the test.)

3. Yes, in diversity of citizenship cases, both state and federal courts can have subject matter jurisdiction (concurrent jurisdiction).
Exercise C. Pair Work and Oral Presentations

(page 85)

2. Student opinions should be encouraged; the “correct” answer is given in the listening script of Exercise D.
   a. The court thought so because the opera company is state funded. Bybee did not contest this issue.
   b. The court thought so.

3. Give students the following instructions regarding the oral presentation.

   Pay careful attention to pronunciation of numbers and letters in the statutes; mispronunciations could be very dangerous in actual oral arguments since they would be heard as the wrong sections by the listeners and the logic of the case would be shattered.

Exercise D. Listening

(page 87)

1. Answers are boldface and underlined.

   FSIA provisions:
   
   28 U.S.C. §1603 (a) (b) (1) (2) (3) (c) (d) (e)
   28 U.S.C. §1604
   28 U.S.C. §1605 (a) (1) (2)

   Motion: Granted Denied

   Listening Script

   The FSIA provides that a foreign state, including “an agency or instrumentality of a foreign state,” is “immune from the jurisdiction of the courts of the United States” unless it comes within certain exceptions set forth within the FSIA. 28 U.S.C. §§1603(a), 1604.

   Bybee does not challenge defendants’ assertion that they are an agency or instrumentality of a foreign state as defined in the FSIA. See 28 U.S.C. §1603(b). Instead, she claims that the activity in question is within the statutory exception to immunity which provides that a foreign state shall not be immune in any case “in which the action is based upon a commercial activity of the foreign state elsewhere. . . .” 28 U.S.C. §1605(a)(2). . . . Commercial activity is defined as “either a regular course of commercial conduct or a particular commercial transaction or act.” 28 U.S.C. §1603(d). . . .

   The relevant conduct here, engaging an opera singer to perform personal services, constitutes commercial activity, as acknowledged by defendants’ counsel at the end of oral argument.
of these motions. Accordingly, defendants’ motion to dismiss the amended complaint insofar as it was predicated on a lack of subject matter jurisdiction is denied.

2. Student opinion

Exercise E. Information Gap

(page 89)
**Exercise F: Using the Casebook**

(page 90)

1. Chapter 4, Section D
2. Chapter 4, Section K
3. Chapter 2, Subject-Matter Jurisdiction
4. Chapter 4, Section E
5. Chapter 4, Section F

**Exercise G. Statutory Interpretation**

(page 92)

1. purposeful contacts + balancing test = minimum contacts
   Cerny knew or should have known that his actions (driving in an unlawful manner) could give rise to lawsuits. Additionally, since the accident occurred in Tennessee, the state has an interest in seeing that appropriate relief is granted (*World-Wide Volkswagen Corp. v. Woodson*).


3. A possible answer would be as follows.

   Dear Mr. Cerny:

   Under Tennessee law, Tennessee courts are permitted to hear cases involving citizens from other states, such as yourself, if an accident occurs in Tennessee. Because your accident occurred in Bucksnort, Tennessee, and involves a Tennessee citizen, it is highly unlikely that a Tennessee court would agree to dismiss the case for lack of jurisdiction.

   You will need to respond to the complaint filed by Ms. Monterra by next week in order to avoid a default judgment. We will be happy to respond to the complaint for you and attempt to settle with Ms. Montera. Please call me when you get a chance so we can discuss your options.

   Martina Holmes
   Attorney-at-Law
Exercise H. Reading for Details

(page 94)

1. Compuserve
2. Lack of personal jurisdiction
3. Compuserve
4. Note the three requirements from the court’s decision: (1) purposefully doing business in a state; (2) cause of action arises from defendant’s activities in the state; and (3) jurisdiction is reasonable. Patterson is an attorney who signed an agreement that stated that Ohio law applied. The electronic transmission of the distribution agreement for Compuserve to market his product was much more involved than simply contracting with Compuserve to act as his Internet provider.
5. He maintained that he had been damaged by Compuserve by their distributing a product similar to Patterson’s.

Exercise I. Claimant Chart

(page 97)

Claimant Chart

Car One
Pekka Lukonen
Juha Arnheim
Car Two
Jason
Denbreeijen
Car Three
Marushka
Valentova
Jason & Marushka = cross-claimant
Marushka = counterclaimant
Jason = counterclaimant

Exercise J. Statutory Interpretation

(page 97)

2. Student opinion. Here is one sample. We’ve put parentheses around the parts that could be deleted at first and then added back in.

(A) pleading (may) state as (a) cross-claim (any) claim by one party against (a) co-party arising out of (the transaction or occurrence that is the) subject matter (either) of (the) original action or (of a) counterclaim (therein) or (relating to) any property (that is the) subject matter of (the) original action.

(Such) cross-claim (may) include (a) claim that (the) party (against whom it is asserted) is (or may be) liable to (the) cross-claimant for (all or part of a) claim asserted in (the) action against (the) cross-claimant.

Exercise K. Listening

(page 98)

Listening Script

Antonio Perez (attorney for Cherry)

Theda Cherry (client, injured in an auto accident)

Perez: Ms. Cherry, I want to go over the facts of the case one more time before I begin drafting the complaint.

Cherry: Okay, but I really don’t understand why we have to do this again.

Perez: Because it is important that the facts are correct before we submit the complaint to the court. Why don’t you just give me a brief overview of the facts?

Cherry: Well, I was driving to work. Guess it must have been about 9 AM when suddenly this car appeared out of nowhere in my lane and hit my car. I found out after the accident that Gary McCullough was driving that car. He told me he swerved to miss another car backing out of a pay parking lot and lost control of his car.

Perez: Who was driving the other car?

Cherry: I think her name was Janelle Stem.

Perez: Yes, that’s right. I have her name from the police report.
Cherry: I never saw her either before or after the accident. It all happened so suddenly.

Perez: What lane of traffic were you in when the accident occurred?

Cherry: I was in the center westbound lane.

Perez: And since McCullough was driving in the opposite direction, he must have been going east. Was he in the center lane also?

Cherry: Yes. He was in the center eastbound lane.

Perez: Was the area congested?

Cherry: Yes, there was a lot of traffic. I just didn’t see any cars in front of McCullough.

Perez: Let’s go over the police report now. Your address is the same?

Cherry: Yes. 3156 Anchor Lane, Memphis, Tennessee, 38111. My telephone number is 901-555-0300.

Perez: Hmm . . . it says here that McCullough’s address is 1397 W. Bank St. in Memphis and that Stem lives at 1974 Poplar Ave, also in Memphis. Which means all of you are from Shelby County.

Cherry: Whatever you say. I don’t remember their addresses.

Perez: We are going to ask for $5,000 for repair of your car and $300,000 for your personal injuries. That appears to be fair considering the expenses you’ve incurred for your medical bills. Weren’t your personal injuries a broken nose; pain in your knees, hip, and chest; and trauma to your sternum?

Cherry: Yes, that’s right.

Perez: Were you able to go right back to work?

Cherry: No, I missed quite a few days of work the year after the accident. I would say about ninety days, in fact.

Perez: We’ll have to get the exact figure later from your personnel file. An approximate number will do for now. Okay, I’ll put this information together for the pleading so we can have a hearing as soon as possible.

Cherry: Thank you, Mr. Perez. This whole situation has been so traumatic, and you’ve really spent a lot of time on it.

Perez: That’s no problem at all, Ms. Cherry. That is what I am here for—to help you recover for your injuries. Do you have any questions about the trial procedure?

Cherry: Not right now. I’ll depend on you to keep me informed.

Perez: I’ll do that. Thank you for coming in to see me.

Cherry: That’s all right. I just want to get this settled.
Perez: I’ll call you once I hear from the court or one of the other attorneys.

Cherry: Thank you. Have a good day.


Some blanks have been added to test pronoun or article usage, which students should fill in. Other blanks have been added to test the students’ confidence in their listening and reading abilities. That is, some information is not provided on the tape or in Chapter 4 of the student book.

CIRCUIT COURT OF SHELBY COUNTY
MEMPHIS, TENNESSEE

Theda Cherry,

Plaintiff,

v.

Gary McCullough,

Defendant

No. ________________

court docket number—a number the court assigns to each case

and

Janelle Stem,

Defendant.

I

PLAINTIFF’S DOMICILE

Plaintiff Theda Cherry, is resident of Shelby County, State of Tennessee, residing at 3156 Anchor Lane [street address], Memphis [city], 38111 [zip code], (901) 677-0300 [telephone number].

II

DEFENDANTS’ DOMICILE

Defendant Gary McCullough, resides at 1397 W. Bank St. [street address] in the City of Memphis, Shelby County, State of Tennessee. Defendant Janelle Stem, resides at 1974 Poplar Ave. [street address] in the City of Memphis, Shelby County, State of Tennessee.
III

FACTUAL ALLEGATIONS

Plaintiff Theda Cherry on July 10, 20__, at approximately 9 AM was driving west on Jefferson Avenue in Memphis, Tennessee. She was proceeding at about 5 miles per hour in the center westbound lane of the four-lane street when Gary McCullough, the defendant, driving east on Jefferson Avenue, went into a spin and swerved into her lane of traffic, striking the plaintiff’s vehicle on the front driver’s side. At no time did Plaintiff’s car leave the center, westbound lane of traffic. Defendant, Janelle Stem, was backing out of a pay parking lot on Jefferson Avenue into Jefferson Avenue at the time Defendant McCullough’s car was proceeding east on Jefferson Avenue. He alleges that he swerved to miss Defendant Stem’s car and thereby lost control of his vehicle, spinning into Plaintiff’s lane of traffic.

As a result of the negligence of defendants, Plaintiff Cherry was thrown forward sharply, striking various parts of her body, and causing serious and permanent injuries to the Plaintiff.

IV

CAUSES OF ACTION

The collision on July 10, 20__, resulted from the negligence of the Defendant, McCullough, in failing to keep his vehicle under control, in driving at excessive speed in a congested area, and in failing to guide his vehicle so as to avoid colliding with the vehicle of Cherry in violation of Tenn. Code Ann. §55-8-123 of the State of Tennessee, which provides:

Whenever any roadway has been divided into two (2) or more clearly marked lanes for traffic, the following rules, in addition to all others consistent herewith, shall apply:

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety; . . .

And from the negligence of Defendant, Stem, by making an improper move into traffic in violation of Tenn. Code Ann. §55-8-150 of the State of Tennessee thereby causing Defendant, McCullough, to swerve into Plaintiff’s lane of traffic, striking Plaintiff’s vehicle. The statute provides as follows:

The driver of a vehicle within a business or residence district emerging from an alley, driveway or building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway or driveway, and shall yield the right-of-way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on the roadway.
INJURIES SUSTAINED

As a proximate result of the negligence of Defendants, Plaintiff, Cherry, suffered serious injuries, including a broken nose, pain in her knees, hip, and chest, and trauma to her sternum. As a result of such injuries, Plaintiff Cherry has incurred hospital and medical expenses and has sustained physical pain and mental anguish. She has been unable to attend to her duties both at work and at home. [Note: This information is included but not explicitly and not in this form, so it may be difficult for students to fill in this blank.] Plaintiff Cherry was employed at the time of the collision and, as a proximate result of the negligence of Defendants, is now unable to work and has been placed on long-term disability. She will sustain physical pain and mental anguish for the remainder of her life.

Plaintiff Cherry alleges that all charges sustained for medical services are the usual, reasonable, and customary charges for similar services rendered in Shelby County, State of Tennessee. Her injuries, and the effects thereof, are in all reasonable probability of a lasting nature and will handicap Cherry for the remainder of her life. By reason of the negligence of the Defendants, Plaintiff Cherry has been damaged in the sum of $300,000.00.

TOTAL DAMAGES SUSTAINED

Plaintiff’s automobile was damaged and depreciated in the sum of $5,000.00. Plaintiff’s total damages are in excess of the sum of $300,000.00.

Plaintiff avers that she is entitled to recover from Defendants the amount of $305,000.00 Dollars, and requests this court to grant such award [Note: Not in listening exercise—legal terminology], and demands a hearing [Note: Not in listening exercise—legal terminology] to try the cause, and further requests such other relief as this court deems proper.

Signature of Plaintiff

Attorney for ________________________________

Attorney’s Address
Exercise L. Juries through Moral Dilemmas

1. Many answers are possible, ranging from the most severe penalty (expulsion from the LL.M. program as the most appropriate response to an explanation of the cultural ramifications as the most appropriate cultural response. There is no right or wrong ordering here. The purpose of the exercise is to have students think about plagiarism and some of the consequences.

Our negotiated responses (but only ours) might be:

1. failing grade for the paper
2. failing grade for the class
3. expulsion from the class
4. expulsion from the LL.M. program
5. a reprimand and note in his file
6. an explanation of the cultural ramifications

Rankings 4 and 5 come before 6 only because it would be extremely rare for someone to be expelled from an LL.M. program.

2. Student response. Answers will vary by class.

3. Student response. Answers will vary by group.

### Possible Jury Advantages

<table>
<thead>
<tr>
<th>Possible Jury Advantages</th>
<th>Possible Jury Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Negotiated conclusion</td>
<td>Decision difficult to reach</td>
</tr>
<tr>
<td>Multiple viewpoints heard</td>
<td>Juror bias—one juror can hang the jury</td>
</tr>
<tr>
<td>Human rather than objective approach</td>
<td>Emotional rather than objective decision</td>
</tr>
<tr>
<td>Second review of the evidence</td>
<td>Non-legal review of evidence</td>
</tr>
</tbody>
</table>
### Exercise M: Progression of a Lawsuit. Fill in the Chart

<table>
<thead>
<tr>
<th>Date</th>
<th>Activity</th>
<th>Expected Result</th>
<th>Parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>May ‘05</td>
<td>Smith is “injured”—breach of contract</td>
<td><strong>Something will have to be done about the breach of contract</strong></td>
<td>Smith/Jenkins/Metropolitan Opera (Opera)</td>
</tr>
<tr>
<td>June ‘05</td>
<td>Smith hires Pearson as her attorney</td>
<td>filing of lawsuit</td>
<td>Smith/her attorney</td>
</tr>
<tr>
<td>July ‘05</td>
<td><strong>Pearson files lawsuit against the Metropolitan Opera Company (Met) and Jenkins</strong></td>
<td>eventual damages</td>
<td>Pearson/court</td>
</tr>
<tr>
<td>July ‘05</td>
<td><strong>Attorneys for Met and Jenkins file answers to the complaint</strong></td>
<td>eventual resolution of the breach of contract action</td>
<td>Pearson/Opera and Jenkins's attorney (Morris)</td>
</tr>
<tr>
<td>Aug ‘05</td>
<td><strong>Pearson (attorney for Smith) moves for a summary judgment</strong></td>
<td>Summary judgment</td>
<td>Pearson/Morris</td>
</tr>
<tr>
<td>Sept ‘05</td>
<td>Court denies motion for summary judgment</td>
<td><strong>Pre-trial discovery process begins</strong></td>
<td>All parties</td>
</tr>
<tr>
<td>Nov ‘05</td>
<td>Discovery process begins</td>
<td><strong>Obtain the information necessary to conduct the trial</strong></td>
<td>All parties</td>
</tr>
<tr>
<td>Dec ‘05</td>
<td>Pearson to depose Jenkins</td>
<td><strong>Obtain information about the alleged contract</strong></td>
<td>Pearson/Jenkins/Morris/court reporter</td>
</tr>
<tr>
<td>Jan ‘06</td>
<td><strong>Morris (attorney for Jenkins) to depose Smith</strong></td>
<td><strong>Obtain information from the plaintiff, Smith</strong></td>
<td>Morris/Pearson/court reporter</td>
</tr>
<tr>
<td>Feb ‘06</td>
<td><strong>Met's attorney to depose Smith</strong></td>
<td><strong>Obtain information from the plaintiff, Smith</strong></td>
<td>Met's attorney/Pearson/court reporter</td>
</tr>
<tr>
<td>Feb ‘06</td>
<td><strong>Exchange of interrogatories</strong></td>
<td><strong>Obtain information in records or information not obtained during the depositions</strong></td>
<td>All parties</td>
</tr>
<tr>
<td>Mar ‘06</td>
<td>Trial date set for August ‘06</td>
<td><strong>No settlement has been reached; the parties will appear in court</strong></td>
<td>Court/All parties</td>
</tr>
<tr>
<td>Aug ‘06</td>
<td>Trial begins</td>
<td>Someone will “win,”</td>
<td>All parties and judge/jury</td>
</tr>
<tr>
<td>Aug ‘06</td>
<td>Verdict rendered</td>
<td><strong>Jury makes a determination on whether or not there has been a breach of contract.</strong></td>
<td>Jury</td>
</tr>
<tr>
<td>Aug ‘06</td>
<td>Judgment entered</td>
<td><strong>Final determination of the rights of all involved parties</strong></td>
<td>Judge</td>
</tr>
<tr>
<td>Sept ‘06</td>
<td>Post-trial motions filed</td>
<td>Appeal</td>
<td>“Losing” party</td>
</tr>
</tbody>
</table>
**Torts**

**Discovering Connections**

**ACTIVITY (PAGE 111)**

1 and 2. Student resource. These questions have no right or wrong answers; they are merely a request for information. Obviously you will get a variety of different answers since you are soliciting information about your students’ own legal systems. At this point be careful not to impose the American answers onto the question, for the answers under American law will be addressed in the next exercise.

**Legal Discussion**

**Putting the Terms to Use (page 112)**

1. a. Under American tort law, a wrongful death action is possible, though it would be necessary to have more facts to determine that for certain. If a wrongful death lawsuit were possible, it would be brought by the woman’s children, who, if they won the suit, would be awarded monetary damages. Since this situation deals with a loss of life, it might seem that it could also fall under the criminal code. In that instance, the state would prosecute, and if it won, there would be no monetary compensation; instead, the guilty party would be imprisoned. There are instances
in which both types of action are brought. In the O. J. Simpson case, the defendant was found not guilty at the criminal trial, but he lost the wrongful death action.

You might ask your students under what circumstances it would be more desirable to bring a wrongful death action—remember, in that type of action, the plaintiff stands the chance of actually receiving monetary damages.

b. Tort—not addressed in essential terms above. Since Adnan was warned about the possibility of eye injury, he might not be able to recover damages.

c. Tort—false imprisonment

2. The following intentional torts have been committed.

Jennifer and Giorgio were classmates at Cleghorn Community College in Pocahontas, Arkansas. Though Giorgio, a male student from Greece, thought he and Jennifer, a female student from Michigan, were only friends, unbeknown to him, she had become obsessed and determined to marry him at all costs. She began to slip into his yard every night and watch him sleeping through an open window. She never hurt or disturbed anything in the yard; she merely watched him. **Trespass: Jennifer enters Giorgio’s yard without his permission.**

Unfortunately, Jennifer did not know that Giorgio and his fiancée, Mary, whom he met while an exchange student in North Dakota, had already decided to marry but had not announced their engagement. Because Mary was completing her studies at the University of Texas, Jennifer never saw Mary—that is, until the holiday break, when her midnight vigil revealed that Giorgio was not alone anymore. Jennifer was distraught—her dreams dashed. Then she decided if she could make Mary see reason, all was not lost. She cornered Mary in the ladies’ room at the local movie theater, locked her in a toilet stall, and would not let her out, all the while making a plea for Giorgio’s affection. After twenty minutes or so, Mary agreed to give up Giorgio, and Jennifer released her. Mary had lied, as Jennifer’s moonlight vigil soon revealed. **False imprisonment: Jennifer restrains Mary’s movement, that is, locks her in a stall in the restroom, and Mary does not agree to such restraint.**

Jennifer became incensed and stopped Giorgio and Mary at church the next day. She shouted terrible insults at Mary, calling
her vile names and calling on the minister to impose religious sanctions on Mary. Mary was so distressed that she experienced severe panic attacks, developed hives, and lost her beautiful blonde hair. **Intentional infliction of mental distress:** It is safe to conclude that Jennifer’s behavior before Mary’s congregation was designed to cause injury or, at the very least, a reasonable certainty that her behavior would cause injury. **Slander:** Since Jennifer also said things that were designed to interfere with Mary’s good reputation, Jennifer could also be accused of defamation, specifically, slander, since the defamation was oral.

Not satisfied with that, Jennifer typed up a scathing indictment of Mary, complete with picture, and stuck a copy on every car in a department store parking lot. **Libel:** Jennifer is interfering with Mary’s interest in her reputation by distributing a written document containing defamatory language.

Finally, Jennifer began following Mary and bumping, shoving, or tripping her whenever possible, though it always appeared to be an accident on Jennifer’s part. **Battery:** The unlawful interference with another’s person.

Mary can take no more; she seeks legal advice from you, the new lawyer in town.

3. Student opinion

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**Legal Thumbnail**

**Exercise A. Case Hypotheticals and Discussion**

(page 115)

[Note: You should advise your students that they should look at the elements of false imprisonment and think of them in terms of yes and no questions. For example, was there intent to confine the plaintiff? Was there actual confinement? In a court of law, each of the elements must be proven before there can be a finding of false imprisonment.]

1. Yes. The following elements were present: (1) there was intent to confine the crew member on the ship; (2) there was actual confinement; (3) the crew member was aware of the confinement; and (4) there was no safe means of exit from the ship. There does not have to be physical force involved in preventing a person from leaving.
2. No. There is no clear evidence that any of the elements were met, but most assuredly, Jane was not aware of the alleged confinement since she was unconscious nor was she in any way prevented from leaving except by her own self-induced condition.

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**Exercise B. Listening**

(page 117)

Listening Scripts

In both cases, the discussions are between neighbors. In the second case, the neighbors are discussing the flight pattern of the jets at a new airport that has been built close to their housing development.

Case One: Jane and Patrick (neighbors)

*Jane:* Hello. Patrick, is that you?

*Patrick:* Yeah, Jane. What can I do for you?

*Jane:* I was calling about the apple tree that you were trimming yesterday.

*Patrick:* That was hard work.

*Jane:* I’m sure it was. It sure looked difficult. Took you most of the afternoon, too.

*Patrick:* Yeah, I’m sure glad it’s finished. Hauling the branches to the front for garbage pickup was no fun either.

*Jane:* Well, I don’t think you’re quite finished yet. Some of the larger branches fell over into my yard, and I think you should come and get them.

*Patrick:* Listen, Jane, I don’t see why I should do that. You get to eat all the apples that fall in your yard, and you have never complained about that before.

*Jane:* Well, it’s easier to pick up apples than drag tree branches all the way to the curb. My kids pick up the apples, and the branches are just too big for them to drag.

*Patrick:* Well, I guess you’ll just have to do it yourself, Jane. I don’t think it’s my problem.

*Jane:* Patrick, I wish you would reconsider. We’ve always gotten along fairly well, but I think you’re out of line here. The branches are your responsibility.

*Patrick:* Sorry, Jane. I disagree. You take the benefits of the apple tree but refuse to deal with the bad side of it. Besides it won’t take you any time to get the branches out front.
Jane: Patrick, you just said yourself that it was the worst part of the job, dragging the branches off your property. I’m not going to do it. They’re from your tree.

Patrick: Jane, just think about it for a little while. You’re not being fair about this.

Jane: I think I am, Patrick. Get the branches off my property, or I’ll have to sue you.

Patrick: Yeah, for what? You’re taking those law classes too seriously. I’ve got to go. I have to pick up my son.

Jane: You’ll be hearing from me.

Patrick: Yeah, yeah. See you in court, Jane.

Answer: There has been a tort committed—trespass. Remember, trespass covers unauthorized entry of a person or thing on another’s property. The failure to remove something from another’s land can also be considered trespass, so it would appear that Patrick is in more trouble than he thought.

Case Two: Mary and Barb (neighbors)

Mary: Barb, how noisy is it in your place when the planes are flying over?

Barb: I can’t hear a thing anyone is saying, and my dishes even rattle.

Mary: Mine too. The baby was crying yesterday, and I didn’t even hear her at first.

Barb: I just can’t believe that the planes have to fly so low directly over our houses. We ought to get a petition or something.

Mary: We really should do something. Maybe one of us should sue the airport for trespass.

Barb: Trespass? Are they really trespassing?

Mary: I’m not really sure, but I swear I read something about a property owner suing an airport for something similar in the newspaper about three years ago. Maybe Baxter and I should go see that attorney friend of his sister’s and ask him what he thinks.

Barb: That might not be such a bad idea. Sometimes it gets so noisy I can barely think. These houses weren’t built with an airport next door in mind.

Mary: Yeah, the insulation is fine for winter but not for jet engines.
Answer: The rights inherent in the possession of land extend above and below the surface. The airplanes enter that space, and there is some authority to indicate this would be considered a trespass.

**Exercise C. Summarizing**

(page 119)

1. “. . . there was nothing in its appearance to give notice of its contents.”
   “The shock of the explosion threw down some scales at the other end of the platform many feet away.”

2. Sample answer: At one end of a rail platform, a passenger rushing to catch his train dropped an unmarked parcel of fireworks while being helped onto the train by guards who worked for the railroad company. The fireworks exploded, and the shock from the explosion knocked down some scales at the other end of the platform where plaintiff was standing. The scales hit plaintiff, and she is suing the railroad company. We have to decide whether Palsgraf was a foreseeable plaintiff or not.

[Language note: In legal English definite articles are often not used when they would be in normal English. For example: “The scales hit plaintiff. . . .” Do not encourage your students to imitate this usage, but they should be aware of its use in legal documents.]

**Exercise D. Analysis and Collaboration**

(page 121)

1. Student opinion

2. Student opinion. The actual court decisions are provided for your reference.
   a. Strict liability. The lower court first found for the defendants (builders of the reservoir) because there was no negligence. On appeal, however, the court found that damage (weakening of reservoir) that results from an activity that is unusual (building of a reservoir) should result in responsibility for damage (flooding of the mines) caused by the unusual activity.
   b. Negligence. The public service company created an unreasonable risk of harm since the copper wire blended into the landscape.
c. Intent. This is trespass. Remember that a property owner’s interest in the land extends above and beneath his or her property.

d. Negligence. Howard Johnson’s created an unreasonable risk of harm by having sliding glass doors that could be easily opened from the outside.

**Exercise E. Reading for Details**

(page 124)

1. The exclusive right to make, use, sell, and import the invention, the process, or a product made by the process
2. File an application and pay the patent fees
3. 20 years

**Exercise F. Analysis**

(page 125)

1. Infringement. Trademark.
3. Infringement. Trademark. The court held that the Coca-Cola® name was so closely related to the soft drink product that Koke was trying to take advantage of the goodwill and advertising already established by the Coca-Cola® Company.

**Exercise G. Statutory Interpretation**

(page 128)

1. One possible explanation of the fair use exception:

   Fair use is the use of copyrighted material without the intention of depriving the copyright holder of any financial benefit of his or her copyrighted material. For example, a teacher might make copies of a short story that is protected by copyright if the purpose of the copying is to teach. To decide if the use of copyrighted material is covered by this exception, the courts look at four things: the purpose for which the material was used; the kind of copyrighted work; how much of the copyrighted work
was used; and whether the use harms the potential market for the copyrighted material.

2. Varying student responses.

**Exercise H. Analysis and Role Play**

(page 129)

1. The five elements for your use:
   - purpose and character of the use
   - nature of the copyrighted work
   - amount of the work used
   - effect on the potential market for the work
   - transformative use

2. After dividing into teams, direct the students to read Question 2 closely since it sets out arguments that might be advanced by the different attorneys.

[Cultural note: In the United States, no person or topic seems to be too serious to be parodied by someone. You may wish to have your class watch the film *The People v. Larry Flynt*, which contains a famous trial about satire and parody and a well-known religious figure. This film is violent and graphic so you will have to determine if it is suitable for use in your class. Many international students are astonished at the often very rude parodying of the American president or other major figures of authority that appears on TV and in magazines; they see it as a lack of respect while some Americans see it as a proof that we do indeed enjoy freedom of speech.]

Court’s Decision of the Demi Moore case [*Leibovitz v. Paramount Pictures Corporation*]:

Three of the four fair use factors in the present case militate in favor of a finding of fair use, largely because the defendant’s transformation of the plaintiff’s photograph has resulted in public access to two distinct works, serving distinct markets, with little risk that the creator of the first work will be disinclined to create further works that may be open to parody. Because I agree with the Second Circuit that in this case “further protection against parody does little to promote creativity, but it places a substantial inhibition upon the creativity of authors adept at using
parody, . . . ” I hold that the fundamental purposes of copyright are best served by a finding that the defendant’s use of the Moore photograph is a fair one. *Warner Bros., Inc., v. American Broadcasting Companies, Inc.*, 720 F.2d 231, 242 (2d Cir. 1983). Accordingly, defendant’s motion for summary judgment is granted and plaintiff’s motion for summary judgment is denied.

**Exercise 1. Appellate Argument: Oral Communication**

Notes to Instructor that Will Help in Argument Development

The purpose of a synthesis is to use the cases to reflect the clearest meaning of the law. The statutory provisions, plus the fifth element added by the *Campbell* decision, are set forth below.

**Fair use (17 U.S.C. §107) [factors in determining]**

1. “the purpose and character of the use, . . . ;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used . . . ; and
4. the effect of the use upon the potential market . . . ”

a nonstatutory element:

5. the transformative use.

Transformative use requires the transformation of the quoted material: the purpose and the manner of use in the copied work must be different from that of the original work. [*Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 114 S. Ct. 1164, 127 LEd.2d 500 (1994)]
All three cases addressed the question of whether the cases were parodies and as such fell under the fair use exception to copyright infringement. Since each court in these decisions focused primarily on “commercial use” and on the fourth element (“the effect of the use upon the potential market”), the students should be steered in those directions also. Think of the transformational element almost as an exception to the fourth element or as an additional element to be considered in connection with each of the statutory elements. (Though the focal points of all of these cases are the first and fourth elements, the students would probably benefit by taking the statute element by element and discussing how the Dr. Seuss case meets or fails to meet each element.)

**Focus:** The effect of the allegedly violative use on the potential market and the commercial nature of the work. Was the use transformational in nature?

The *Campbell* decision, in which a fifth and nonstatutory element to be considered in a finding of fair use—transformational use—is set out, held the work to be an allowable parody because it “viciously commented on and criticized the original work.”

The court in *Leibovitz* also focused on the transformational nature of the parody, stating that “the more transformational a work is,” the less important the other issues become. The nature of parody is to ridicule or criticize a previous work. The court stressed that the parody in this case was “visually ridiculous” and linked the original of Demi Moore to the parody through the issues of pregnancy and childbearing.

However, the court in the *Dr. Seuss* case found that there was no parody since *The Cat NOT in the Hat* did not ridicule or criticize the previous work but merely capitalized on the best-known features of the original work in order to get attention and thereby make sales.

Looking at all three of these cases in this light, it is clear that in order for the court to sustain a finding of fair use, not only must there be a parody (criticism/ridicule of the original work) but it must be transformational in nature with a purpose and use different from the original.

**What Penguin Books will try to prove:**

- That the use was a parody.

Look at the definition; provide facts to meet that definition.

- That the use was transformational in nature.

Cite statute and first two cases. Show via the facts how *The Cat NOT in the Hat* transformed the original work and did not simply capitalize on its popularity.
What Dr. Seuss Enterprises will try to prove:
• That the use by Penguin was not in the true nature of a parody.

Again, rely on a definition and present evidence to meet that definition.

• Argue that Penguin’s use is not transformational in nature but merely an attempt to benefit from Dr. Seuss’s reputation.

The students must find some way to distinguish this case from Leibovitz and Campbell, and the definition is pivotal here.

Practical Notes

If your class is very large, you may wish to divide it into several groups of two teams each and have each group present its own version of the debate. Have the students look at the issues they debated in the Leibovitz case to give them some ideas on what issues they might want to consider as they prepare for their appellate argument, which is similar to a debate. Remind the students that in a debate they must not only advance their client’s stance but must also think about what issues the opposing side might raise and prepare responses to them. The students might want to consider the technique of taking one’s adversary’s strongest point and defusing it.

The information provided in the case synthesis exercise can also be of use in this section. Simply because the Court of Appeals for the Ninth Circuit found that there was no fair use in The Cat NOT in the Hat does not mean that another appellate court in another circuit would decide the case in the same fashion.

This exercise also gives the students an opportunity to conduct some online research. The sites listed in the student book are full of information that students may use for this exercise and in the future.
Products Liability

Discovering Connections

ACTIVITY (PAGE 132)

Since this exercise involves MORAL decisions and not legal ones, there are no correct answers. Rather, the students should be encouraged to develop the “why” or the reasoning that led them to their answers.

Legal Listening

Putting the Terms to Use (page 134)

Listening Script

Perhaps one of the most widely reported injury cases is Lieback v. McDonald’s Corp. We’ve all heard of the seventy-nine-year-old New Mexico woman who suffered third-degree burns as a result of spilling a cup of coffee she had bought at a McDonald’s® drive-thru. Many people, and even legal scholars around the world, have made fun of this case and, by extension, the American legal system. Most assume Ms. Lieback received millions of dollars simply because she spilled a cup of coffee on herself while driving. On closer examination, however, the facts show that this case was actually an example of how the American
products liability system works to change corporate behavior and protect consumers.

In pretrial discovery, the attorney for Ms. Lieback learned from McDonald’s that the corporation had already been sued more than seven hundred other times for burns and injuries caused by the temperature of the coffee. In each case, the injured party had settled with McDonald’s. As part of the settlement, the injured party was required to sign a confidentiality agreement that would bar the plaintiff from talking about the nature of the settlement.

During the trial it was established that in the U.S. coffee is routinely served at 135–45 degrees Fahrenheit (57–68 degrees Celsius) at home and in restaurants. In contrast, McDonald’s served its coffee in its American stores at 180–90 degrees (82–87 degrees Celsius). When liquids that hot touch human skin, they can be very dangerous.

On the day of her injury, her grandson, the driver of the car in which Ms. Lieback was a passenger, came to a complete stop so that Ms. Lieback could add cream and sugar to the coffee she had just received from the drive-thru clerk. Ms. Lieback placed the cup between her knees and attempted to remove the plastic lid from the cup. As she removed the lid, the entire cup of coffee spilled into her lap. Because of the high temperature of the coffee, the burns were immediate, painful, and serious. Consequently, Ms. Lieback incurred medical bills more than $10,000 for skin grafts and several weeks of hospitalization. During later negotiations for reimbursement for the medical bills paid, McDonald’s attempted to settle for $800. Unable to reach a settlement, the family filed a lawsuit.

At the trial, a McDonald’s spokesperson held that although customers were going to be injured, it was appropriate to continue to serve the coffee at that temperature since the number of burned people would be “statistically insignificant.” Although it seemed as though the jury initially found the case ridiculous, the members were so angered by McDonald’s attitude that they found for Ms. Lieback. She was awarded $200,000 in compensatory damages, which was reduced to $160,000 when the jury determined that she was 20 percent responsible for the accident.

As punitive damages, they awarded an amount equal to McDonald’s U.S. earnings from two days of coffee sales: $2.7 million. Even though the judge later reduced the amount to
$480,000 and the parties actually settled for even less money, the news media erroneously reported that Ms. Lieback was awarded “millions.”

In response to this case, McDonald’s began serving coffee at a lower temperature. This case serves as a good example of how the system actually does work to protect the consumer by changing corporate behavior.

1. The others settled out of court and signed a confidentiality agreement (nondisclosure).
2. New Mexico. You may wish to point out this state on a map.
3. As she removed the lid, the entire cup of coffee spilled into her lap, causing immediate serious burning.
4. She suffered third-degree burns that required skin grafts.

*Degrees of Burns*

First-Degree Burns:
Not serious but painful, superficial: mild sunburn or simple burn

Second-Degree Burns:
Deeper burns, cause blistering: severe sunburn or scalding with boiling water. Usually little if any scarring, which often fades with time.

Third-Degree Burns:
All layers of the skin are destroyed, and damage extends into deeper tissue. Since the nerves are destroyed, these types of burns are often painless. Usually result in much scarring and infection. A doctor must be consulted immediately. In many cases skin grafts are required.

5. 20 percent
6. $160,000 ($200,000 minus 20 percent.) No.

[Note: This is a good entry into the high cost of health care in the United States and the fact that there is no universal health care system. In fact, many who work full time have no health insurance.]

[Note: Notice that in the United States, we use a comma to separate the thousands from the hundreds. A period is used only to represent decimal fractions. Thus, $2.75 equals two dollars and seventy-five cents. You may wish to review the names for large numbers with the students.]
thousand 1,000
million 1,000,000
billion 1,000,000,000 (also called a thousand million in international circles to avoid confusion since it is sometimes called milliard by the British)
trillion 1,000,000,000,000 (sometimes billion by the British)
quadrillion 1,000,000,000,000,000 (British: septillion)

7. It was a statistically insignificant problem.
8. The actions and the attitude of the company
9. No, we can’t tell from the text.
10. The company lowered the temperature of the coffee, which made it safer for its customers.

[Legal note: In a tobacco case being decided as this book is being written, the plaintiff’s attorney has asked for punitive damages against the cigarette company equal to a day’s profit. This use of a day’s earnings makes the award look very reasonable in comparison to the profits the large corporations make. You may wish to follow the progress of this products liability case, discussed below, which is likely to be important.]

Widdick v. Brown and Williamson. A jury in Jacksonville, Florida, found cigarette manufacturers Brown & Williamson guilty of negligence and of manufacturing a defective product in Lucky Strike cigarettes, the brand Mr. Maddox (the father of the main plaintiff, Ms. Widdick) smoked for almost 50 years before his death from cancer.

The jury awarded about $52,000 to the Maddox family for medical expenses, $500,000 in compensatory damages to the widow for her loss of companionship and her husband’s earnings, and $450,000 in punitive damages. On appeal, that verdict was overturned because the trial had been held in the wrong county in Florida.
Legal Thumbnail

Exercise A. Case Hypotheticals and Discussion

(page 135)

Student opinion. The quality of argumentation is more important than the actual answer. We’ve also provided the legal answer to a similar (but not identical) case in the United States. Remember, however, that since products liability laws differ in each jurisdiction, there may be different legally correct answers.

1. The drunk man and the clerk. Although you have the right to sell most things to a drunk man, there is public policy against the combination of guns and alcohol—and, of course, alcohol and driving. As a result of that clear public policy, the gun dealer can be held responsible. *K-Mart v. Kitchen*, 22 Fla. L. Wkly. S435 (Fla. July 17, 1997).

2. The rental agent in Florida can’t rent “unseaworthy” vessels. *Meyers v. Scoot-a-way Corp.*, 20 Fla. L. Wkly. D2492 (Fla. 3d DCA 1995). This case shows the importance of local laws in assigning legal responsibility.

3. The murderer was able to sue Upjohn (the pharmaceutical company), but Upjohn was not charged with any criminal misdoing in the murder. *Jones v. The Upjohn Co.*, 20 Fla. L. Wkly. D2271 (Fla. 2d DCA 1995).

4. There might be comparative fault even in a strict liability case. The jury would be able to consider the dead man’s role in causing the accident, so both may be responsible in some jurisdictions. *Kidron, Inc. v. Carmona*, 20 Fla. L. Wkly. D2666 (Fla. 3d DCA 1995).

5. Based on but different from *Publix Super Market, Inc. v. Sanchez*, 22 Fla. L. Wkly. D2173 (Fla. 3d DCA 1997). The customer is responsible since leaving cake out is not inherently dangerous and the customer couldn’t prove that the store knew that the cake was on the floor and just ignored it.
Exercise B. Reading for Details

(page 137)

1. §402A (2)(b)
2. Yes. §402A (1)(a)
3. a. Product is unreasonably dangerous.
   b. No change in condition before it reaches the consumer.
   c. The seller is a professional seller (merchant).
   d. The product is defective.
4. Student resource. Have them explain what is necessary for liability.
5. Someone must pay for the damages, and that someone is usually the party or parties with the most money. Again, you can bring up the high cost of health care. Perhaps if health care were “free,” strict liability would not be as attractive.

Exercise C. Writing and Pair Work

(page 139)

1. Student opinion. Do check that, regardless of the method used, the students include the key terms such as
   - a warranty is implied
   - seller is a merchant
   - pass without objection
   - fair average quality
   - fit for the ordinary purposes
   - of even kind, quantity, and quality
   - adequately contained, packaged, and labeled
   - promise made on the container

2. Elements
   a. Is the defendant a merchant?
   b. Is there a disclaimer?
   c. Are the goods merchantable?
      (1) trade accepted
      (2) fair average quality
      (3) fit for ordinary use
      (4) of similar kind, quantity, and quality
      (5) adequately packaged and labeled
      (6) match promises on the label.
Here is a sample letter using the elements listed.

Said & Lithgow, LLC
1020 Main Street
Memphis TN 38104
April 15, 2008

Mr. Scott Healey
48 N Larchdale Ave.
Memphis TN 38111

Dear Mr. Healy:

Thank you for your phone call. Since you asked, we would like to review the essential elements that are required to prove a breach of warranty of merchantability (the product is fit for general purposes) that is the basis of your case against the defendant. This should help you understand the situation and prospects for your case. We’ll list them for you one by one:

1. The defendant must be a merchant.
2. Next, was there any type of disclaimer, such as noting that it should not be used outdoors or in wet conditions?
3. The product had to be merchantable. This issue has several parts.
   a. It must be accepted by the trade without objection.
   b. It must be of at least fair average quality.
   c. It must be fit for ordinary use.
   d. All the pieces must be of the same quality and quantity as specified within the contract.
   e. It must be adequately packaged and labeled.
   f. It must match the promises on the label.
4. Finally, there is the issue of foreseeability, which simply means that we could assume that everyone in your house, including guests, would use the product.

We hope this list helps you understand the points and issues we must prove in order for your case to be successful.

Before our meeting with the defendant’s attorney, we would like to meet with you once again to go over the legal issues and discuss the options we have in your case. We know this will be difficult for you, but we hope that you will be able to meet with us one day next week. I will call you on Monday to schedule a time that is best for you.

I hope that this answers your question about your case. If you have further questions, please call or we can discuss them in detail at our meeting.

Sincerely,

Maya Garcia
Attorney-at-Law
Exercise D. Case Hypotheticals and Pair Work

(page 140)

1 and 2. a. Yes—merchantability, not fit for ordinary purpose: eating! [U.C.C. §2-314 (1) included serving of food or drink as a sale.] You might wish to ask why moldy bread is “bad” while moldy cheese (brie, bleu cheese) is “good” to get to the heart of the idea of “ordinary purpose.”

b. Most likely—merchantability, since you are using it for its ordinary purpose

c. Yes—fitness for a particular purpose discussed with the clerk. U.C.C. §2-315.

d. Probably. In this case, however, you have an express warranty. You will also have to show that you used the product as directed.

e. Perhaps. Certainly a good argument could be made that using a knife as a screwdriver is a common use that should be foreseeable by the manufacturer. See the kitchen chair example.

Exercise E. Writing and Pair Work

(page 141)

1. Student opinion; however, we have underlined many of the terms that could be left out.

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Neither Dragonflyer, Inc., nor any of its employees make any warranty, express or implied, including the warranties of merchantability or fitness for a particular purpose, or assume any legal liability or responsibility for the accuracy or completeness of any information contained in this manual or represent that its use would not infringe privately owned rights. Information provided in this manual by Dragonflyer, Inc., is provided “AS IS,” and any express or implied warranties of merchantability and fitness for a particular purpose are disclaimed. In no event shall Dragonflyer, Inc., or its employees be liable for any direct, indirect, incidental, special, exemplary, or consequential damages (including but not limited to, procurement of substitute goods or services; loss of use, data, or profits; or business interruption) however caused and on any theory of liability, whether in contract, strict liability, or tort (including negligence or otherwise) arising in the use of this information.
2. *Example:* Dragonflyer, Inc., makes no warranty, express or implied, nor assumes any legal liability or responsibility. Information provided in this manual by Dragonflyer, Inc., is provided “AS IS.” In no event is Dragonflyer, Inc., liable for any damages arising in the use of this information.

*Grammar note: Point out to the students that after the strong negative (*in no event*), an inversion occurs (*is Dragonflyer, Inc.*); if the main verb were anything but *to be* you would need to add *do* (e.g., “In no event does Dragonflyer owe the client . . .”). This inversion only occurs after strong negatives such as *rarely, barely, or under no circumstances.*]

**Exercise F. Reading Comprehension**

*(page 143)*

1. Negligence
2. No. It is only one of four central requirements.
3. a. Is the defendant a merchant?
   b. Is there a disclaimer?
   c. Is the use ordinary?
   d. Has the warranty been breached, and does the warranty flow from the defendant to the plaintiff (foreseeable plaintiff)?
4. Advise consumers of possible dangers
5. Claimant (plaintiff)

**Exercise G. Analysis**

*(page 144)*

1. Use the three issues in *BMW v. Gore* to make the determination.
   a. Was the conduct reprehensible? Is filling a bottle with iced tea that perhaps contains a living mouse reprehensible? Did the company try to hide its action?
   b. Is the ratio between compensatory and punitive damages acceptable? 1 to 100. Compare to *BMW* 1 to 500. Your call. In the *McDonald’s* case, the punitive damages determination was based on total coffee sales in the United States by McDonald’s®.
   c. Is there a difference in civil and criminal penalties? No criminal charges were brought against the bottling company.
2. Student resource
Exercise H. Analysis

(page 146)

1. Student opinion. However, the requested award of $100 million would most likely have been seen as excessive under BMW v. Gore; thus, the company might have risked the trial.

2. Student opinion. Possible answers would include different attitudes toward publicity, trust in the system, or willingness to gamble.

Exercise I. Reading for Details

(page 146)

1. No privity of contract is necessary anymore.

2. Not exclusive

3. Other duties, such as duty to warn or the issue of foreseeability, and the implied warranties

4. Not really. However, strict liability as it now exists in tort law is a 20th-century development. Negligence has been part of the system for a long time.

5. No. Compensatory damages are designed for that purpose.

6. Must be causally related

7. Just the opposite

8. Not that simple. You must prove all the elements of your claim.

9. A plaintiff can recover if the use is foreseeable (common): for example, standing on a chair to put a book on a high shelf. Using a computer mouse to drive a nail into a wall would not be a foreseeable use for a computer mouse.

10. Also cost of litigation and bad publicity
Contracts

Discovering Connections

**ACTIVITY (PAGE 148)**

Part A:

For these activities, reasoning and discussion are more important than the correct answers. The cultural aspects of rental contracts are very important and should be explored. International rentals are often very complex because each side carries his or her own cultural expectation. What is standard in your country? No detail is too small to be discussed since it may not seem small to the other side. Does your rental contract include a requirement that the participants help clean the common areas? In some countries it does. Does a rented apartment have to have appliances, such as a stove and refrigerator? Do you assume there is hot water? We do in the United States; look at this example from the Fairfax County, Virginia web page:

Lack of heat (in season) and hot water (year round) are violations of the Virginia Uniform Statewide Building Code (VUSBC), and of your lease. Contact the Fairfax County Health Dept. at 703-246-2300, TTY 711, to request an inspection, and, if the landlord doesn’t respond, file a complaint form with the Consumer Protection Division at 703-222-8435, TTY 711.

Source: www.fairfaxcounty.gov/consumer/tenant/tenant_landlord_faq.htm#question13
B. Listening Script

Mrs. Gonzales: Good morning, Ms. Sujan. How are you doing?

Ms. Sujan: Good morning, Mrs. Gonzales. It’s good to see you again.

Mrs. Gonzales: My secretary tells me that you want to sell your car.

Ms. Sujan: Yes, you know I never really cared for it. It was my late husband who was crazy about it.

Mrs. Gonzales: You know, it’s only been two months since your husband died. Are you sure you want to get rid of it?

Ms. Sujan: I’m sure. It just reminds me of my husband.

Mrs. Gonzales: Have you found a buyer?

Ms. Sujan: That’s why I am here. I need you to handle the sale for me.

Mrs. Gonzales: You know, you could really handle this matter yourself.

Ms. Sujan: I know, but I’d prefer that you do it.

Mrs. Gonzales: Okay. Let’s start with the car. What year and make is it?

Ms. Sujan: A 1931 Cadillac convertible coupe. It has a Fleetwood custom body, white, with a rumble seat. Ted told me when he bought it that it was in mint condition—the original paint and upholstery.

Mrs. Gonzales: What is the vehicle identification number?

Ms. Sujan: I have it right here—CA49862.

Mrs. Gonzales: Who is the buyer?

Ms. Sujan: Arnold Stallone. He’s offered me $190,000.

Mrs. Gonzales: Are you sure that is a fair price?

Ms. Sujan: Oh, yes. Ted had it appraised just six months ago, and it’s fair.

Mrs. Gonzales: Let me check your personal information to make sure everything’s current. Martha A. Sujan, living at 1610 N. Wilcrest Blvd., Tucson, Arizona 85701.

Ms. Sujan: Yes.

Mrs. Gonzales: Telephone number: 520-555-4591.

Ms. Sujan: Yes.
Mrs. Gonzales: When are you planning to transfer title to the car?

Ms. Sujan: If you can have the papers ready by next Friday, I’d like to transfer it then.

Mrs. Gonzales: Why don’t we just say next Friday at 2:00 PM?

Ms. Sujan: Fine, I’ll see you then.

Client Worksheet for Sale of Goods

Client’s Full Name: Martha A. Sujan
Address: 1610 N. Wilcrest Boulevard, Tucson, Arizona 13560
Telephone Number: 520-236-4591
Description of property to be conveyed: 1931 Cadillac convertible coupe, white, Fleetwood custom body with rumble seat, VIN CA49862
Buyer: Arnold Stallone
Seller: Martha A. Sujan
Consideration: $190,000.00
Date for execution that should appear on contract: Next Friday from the current date

1. The answers are in bold and underlined in the bill of sale.

BILLS OF SALE

Dated: The next Friday after the current date. You might want to discuss the difference between “next Friday” and “this Friday” if it is a problem area for your students.

Martha A. Sujan, referred to as “SELLER,” sells, bargains and conveys all of SELLER’S rights, title and interest in:

Make: Cadillac
Model: Convertible coupe, Fleetwood body [You may need to tell the students that a coupe (pronounced “coop”) has two doors.]
Style of the vehicle: two door with rumble seat
Year of vehicle: 1931
Vehicle Identification Number (VIN): CA49862
to Arnold Stallone, referred to as “BUYER”, his heirs and assigns.

Martha A. Sujan acknowledges receipt of a total of $10,000.00 [this is not on the tape so students can enter any amount they want to, but they should notice that this information is not available on the tape] (ten thousand & no/100 Dollars) from Arnold Stallone, BUYER, in partial payment of the agreed total sales price of $190,000.00, (one hundred and ninety thousand & no/100 Dollars).

Martha A. Sujan, SELLER, shall remain fully liable for any undisclosed liens or encumbrances. SELLER, Martha A. Sujan, warrants that there are no liens or encumbrances on the goods sold, and that SELLER’s title to the goods is clear and merchantable. Martha A. Sujan, SELLER, shall defend Arnold Stallone from any adverse claims to SELLER’s title to the goods sold.

The goods sold herein are not sold by a merchant in the field. THESE GOODS ARE SOLD WITHOUT U.C.C. WARRANTY OF ANY KIND, including MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The BUYER, Arnold Stallone, acknowledges examining the goods sold herein. This provision may not be applicable, and legal rights may vary between states.

The parties agree to the terms and conditions stated herein:

_____________________________________, SELLER (signature)
Martha A. Sujan (typed name)
_____________________________________, BUYER (signature)
Arnold Stallone (typed name)
Legal Thumbnail

Competent Parties (page 152)

The Kiefer case is interesting to discuss further in class. Excerpts from the case are included for your use. The dissent talks of necessities. In the 1960s, the dissenting judge considered a car a necessity. This might be more true in the 1990s. In some countries having a car to get back and forth to work is not a necessity, so this is also an interesting place to bring in cultural differences.

*Kiefer v. Fred Howe Motors, Inc.*, 39 Wis.2d 20, 158 N.W.2d 288 (1968)

Majority Opinion

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The general rule is that “…the contract of a minor, other than for necessaries, is either void or voidable at his option.” The only other exceptions to the rule permitting disaffirmance are statutory or involve contracts which deal with duties imposed by law such as a contract of marriage or an agreement to support an illegitimate child. The general rule is not affected by the minor’s status as emancipated or unemancipated.

Undoubtedly, the infancy doctrine is an obstacle when a major purchase is involved. However, we believe that the reasons for allowing that obstacle to remain viable at this point outweigh those for casting it aside. Minors require some protection from the pitfalls of the market place. Reasonable minds will always differ on the extent of the protection that should be afforded. For this court to adopt a rule that the appellant suggests and remove the contractual disabilities from a minor simply because he becomes emancipated, which in most cases would be the result of marriage, would be to suggest that the married minor is somehow vested with more wisdom and maturity than his single counterpart. However, logic would not seem to dictate this result especially when today a youthful marriage is oftentimes indicative of a lack of wisdom and maturity.

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Dissenting Opinion

[A]n automobile to this respondent was a necessity and therefore the contract could not be disaffirmed. . . . Automobiles for parents under 21 years of age to go to and from work in our current society may well be a necessity, and I think in this case the record shows it is. . . .

Legal Consideration (page 153)

This is a very brief introduction to consideration and in no way covers the complexity of the requirement.

Exercise A. Listening (page 153)

1. Listening Script

   A. In the park

   Joe: Hey, you’re Bert, right? Sam says you always have good stuff.

   Bert: I don’t know any Sam. What are you talking about?

   Joe: You know stuff, you know, blow, nose candy.

   Bert: Oh?

   Joe: Cocaine.

   Bert: Oh, that stuff.

   Joe: So you have it?

   Bert: Maybe. What’s it worth to you?

   Joe: It’s a hundred, right?

   Bert: Beat it. Don’t waste my time. How old are you anyway? 16, 17?

   Joe: So how much do you get?

   Bert: One and a half.

   Joe: $150!!!!! What kind of stuff have you got?

   Bert: Shut up, you’re advertising. You’re not interested; lots of others are.

   Joe: No, no, I’m cool. Here’s my money.

   Bert: Here’s your stuff.
B. On the beach

*Mary:* That’s really a beautiful painting. Do you do portraits?

*Artist:* Only when I really need the money.

*Mary:* Do you need the money now?

*Artist:* Actually, I do. I need more supplies. Name’s John, by the way.

*Mary:* Well, John, I’d like to talk with you about painting a portrait of my daughter. How much do you charge?

*Artist:* What size portrait were you talking about?

*Mary:* It doesn’t have to be huge.

*Artist:* How about 18 by 24? I could do a nice sketch here on the beach for 45 bucks, but if you want a formal portrait, I charge $300.

*Mary:* I want the portrait, not the sketch. How do you want me to pay you?

*Artist:* You pay me half now and half when it’s done. Would she come to my studio, or would I have to drive to her house?

*Mary:* Oh, we live up the beach. Do you see that yellow house up there? That’s ours. You could come to our house.

*Artist:* How soon do you want the portrait?

*Mary:* Well, her father’s birthday is in a couple of weeks, and I’d like it by then.

*Artist:* When do you want me to start?

*Mary:* Tomorrow, if it’s okay. I don’t have a check with me now, but I’ll have one for you tomorrow when you come. Is 10 okay? Here’s the address and my telephone number. Call me if there’s any problem.

*Artist:* See you tomorrow at 10.

2. Here is a summary of the elements that students should use as a basis for their decisions.

A. In the park—no contract

1. Competent parties: One is a minor (teenager and a drug dealer).
2. Subject matter: Illegal sale of cocaine
3. Legal consideration: Money ($150)
4. Mutuality of agreement: Both knew what was going on.
5. Mutuality of obligation: Neither would be bound because of the illegal subject matter.
B. On the beach—probably, although mutuality of agreement is arguable

(1) competent parties
Yes, from the information you are given both parties appear to be competent.

(2) subject matter
Portrait painting is legal.

(3) legal consideration
Money ($300)

(4) mutuality of agreement
It depends on the definition of a formal portrait. If the artist painted an abstract portrait, is that what was agreed to? What if the artist uses watercolors instead of oil paints?

(5) mutuality of obligation
Yes, oral contracts are binding. The problem always is proving that there was an oral contract.

Exercise B. Reading for Detail

(page 154)

1. Arnold Stallone
2. Martha A. Sujan
3. $190,000.00
4. Yes. All contractual elements are met.

Offer (page 155)

If you want to discuss noncompetition clauses in greater depth, an interesting case involving a noncompetition agreement for veterinary services in Laramie, Wyoming, is *Hopper v. All Pet Animal Clinic, Inc.*, 861 P.2d 531 (1993).

Other sources on noncompetition agreements are:

- *Restatement (Second) of Contracts*, §188
**Exercise C. Review, Summarizing, and Analysis**

(page 157)

1. The court held that there was a valid contract, but if Mr. Zehmer’s offer had been made in jest, there would not have been a valid contract. So either answer is acceptable here as long as it is supported by the students with facts from the case.

2. Extremely important. See answer to Question 1.

3. It depends on the students’ answers to Question 1. In the actual case Zehmer was required to sell his farm to Lucy because Lucy requested specific performance rather than monetary damages.

5. Intent is what causes a person to act. Normally intent is implied through circumstantial evidence because we can’t read a person’s mind to see what he or she was actually thinking at the time. Student answers will vary for the last portion of the question.

6. Yes. If that could be proven through circumstantial evidence.

**Exercise D. Role Play**

(page 157)

Students may try to introduce additional facts. Information from the case is provided here for you to give the students as they are preparing their arguments.

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In his testimony Zehmer claimed that he “was high as a Georgia pine,” and that the transaction “was just a bunch of two doggoned drunks bluffing to see who could talk the biggest and say the most.” That claim is inconsistent with his attempt to testify in great detail as to what was said and what was done. It is contradicted by other evidence as to the condition of both parties, and rendered of no weight by the testimony of his wife that when Lucy left the restaurant she suggested that Zehmer drive him home. [Lucy v. Zehmer, 196 Va. 493, 84 S.E.2d 516 (1954)]

---
Other factual evidence discussed by the court is

- Zehmer did not deliver the “memorandum” to Lucy.
- Zehmer refused to accept Lucy’s $5 to “seal the bargain” and told Lucy that he did not intend to sell the farm and that it was all a joke.
- Zehmer wrote two agreements, changing the “I” in the first agreement to “We” (“We hereby agree to sell . . .”) in the second agreement.
- Lucy and Zehmer discussed the sale for 40 minutes before signing the “agreement.”

See Part 3, Text 6 (page 279) for the court’s Zehmer holding.

**Exercise E. Analysis**

(page 159)

1. The first paragraph mentions the consideration and limits the noncompetition agreement to a certain number of years, and the term *not compete* is defined in the second paragraph.

2. Probably not. It is too broad. In *A.E.P. Industries, Inc., v. McClure*, 308 N.C. 393, 302 S.E.2d 754 (1983), several factors were listed that are necessary for a valid and enforceable covenant not to compete. The covenant must be
   - in writing
   - part of a contract of employment
   - based on reasonable consideration
   - reasonable in duration and geographic limitations
   - not against public policy

In the statement here, there are no time or geographic limitations, and U.S. public policy favors free competition.

**Exercise F. Case Hypotheticals and Discussion**

(page 160)

1. Yes. Under U.S. law they will have to issue rain checks because there was no indication in the ad that the stock was limited and the ad did not state “no rain checks issued.” Student resource for information about law in other countries.

2. No. In consumer protection law, however, if an ad is placed that is sim-
ply a lure to get customers into the store and reasonable stock is not on hand, the store could be sued or fined. The difference lies in the fact that in the second ad, there was notice to the customers that the offer was limited to stock that was in the store.

**Exercise G. Role Play**

*(page 162)*

We’ve given a sample simplification of U.C.C. §2 207. You may want to elicit other possibilities from the students before they begin the role play.

Sample answer:

**U.C.C. §2-207**

(1) An offer is accepted if acceptance is sent within a reasonable time, even if the acceptance contains additional or different terms, unless the acceptance requires consent to the additional or different terms.

(2) Additional terms are proposals for additions to the contract. Between merchants the proposals become part of the contract unless (a) the offer has limited acceptance solely to the terms of the offer; (b) the terms materially alter the contract; or (c) the offeror has objected or objects to the terms within a reasonable time after notification.

(3) You do not have to have a written sales contract if conduct of the parties establishes the fact that there is a contract. The terms of the contract are based on writings that both parties agree to, plus additional terms that can be added under other sections of the U.C.C.

Client Explanation: Audience analysis is involved here. The students should be aware that explanations to clients will vary depending upon the client’s level of legal expertise. You can’t offer the same explanation to each client.

Sample explanation for a merchant client with limited legal knowledge: Since you are in the business of selling goods, any changes in a contract that are minor become part of the contract unless acceptance to the changes is required. You can avoid this by stating in the offer that changes are unacceptable, or you can object to the changes once you become aware of them.

Additionally, a contract can be implied through your conduct even though there is no written contract. Terms of the contract will be based on writings that you have agreed to and additional terms that can be added under other sections of the U.C.C.
Consideration (page 162)

This is a difficult area for most students whether from a common or civil law system. The instructor should decide how much time to spend on consideration. Additional materials are included here for your use.

Excerpt from *Hamer v. Sidway*, 124 N.Y. 538, 27 N.E. 256 (1891)

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The defendant [executor of the uncle’s estate] contends that the contract was without consideration to support it, and, therefore, invalid. He asserts that the promisee by refraining from the use of liquor and tobacco was not harmed but benefited; that that which he did was best for him to do independently of his uncle’s promise; and insists that it follows that unless the promisor was benefited, the contract was without consideration, a contention which, if well founded, would seem to leave open for controversy in many cases whether that which the promisee did or omitted to do was, in fact, of such benefit to him as to leave no consideration to support the enforcement of the promisor’s agreement. Such a rule could not be tolerated, and is without foundation in the law. The Exchequer Chamber, in 1875, defined consideration as follows: “A valuable consideration in the sense of law may consist either in some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other.” Courts “will not ask whether the thing which forms the consideration does in fact benefit the promisee or a third party, or is of any substantial value to any one. It is enough that something is promised, done, forborne, or suffered by the party to whom the promise is made as consideration for the promise made to him.” Anson’s Prin. of Con. 63.

....

Pollock, in his work on contracts, page 166, after citing the definition given by the Exchequer Chamber already quoted, says: “The second branch of this judicial description is really the most important one. Consideration means not so much that one party is profiting as that the other abandons some legal right in the present or limits his legal freedom of action in the future as an inducement for the promise of the first.”
Now, applying this rule to the facts before us, the promisee used tobacco, occasionally drank liquor, and he had a legal right to do so. That right he abandoned for a period of years upon the strength of the promise of the testator that for such forbearance he would give him $5000. We need not speculate on the effort which may have been required to give up the use of those stimulants. It is sufficient that he restricted his lawful freedom of action within certain prescribed limits upon the faith of his uncle’s agreement, and now having fully performed the conditions imposed, it is of no moment whether such performance actually proved a benefit to the promisor; and the court will not inquire into it, but were it a proper subject of inquiry, we see nothing in this record that would permit a determination that the uncle was not benefited in a legal sense.

Exercise H. Analysis

(page 162)

1. The nephew’s forbearance. He had a legal right to drink, smoke, swear, and gamble, which he then did not do.

2. Consideration must be legal. If the nephew has no legal right to do those things in 2007, then his forbearance would not be consideration.
## Exercise I. Listening and Writing

2.

<table>
<thead>
<tr>
<th>Date</th>
<th>D &amp; G Stout (General)</th>
<th>Bacardi</th>
<th>National</th>
</tr>
</thead>
<tbody>
<tr>
<td>April</td>
<td>wholesale distributor of liquor in Indiana</td>
<td>liquor manufacturer using General as distributor</td>
<td>another wholesale liquor distributor in Indiana</td>
</tr>
<tr>
<td>July 8</td>
<td>enters negotiations with National for sale of General to National</td>
<td>promises to continue to use General as a distributor</td>
<td></td>
</tr>
<tr>
<td>July 9</td>
<td></td>
<td></td>
<td>negotiations finalized with General</td>
</tr>
<tr>
<td>July 22</td>
<td>tells Bacardi that they intend to reject National’s offer</td>
<td>Bacardi again assures General that the product line will remain with General.</td>
<td></td>
</tr>
<tr>
<td>July 23 AM</td>
<td>rejects National’s offer</td>
<td></td>
<td></td>
</tr>
<tr>
<td>July 23 PM</td>
<td></td>
<td></td>
<td>Bacardi decides to withdraw line from General.</td>
</tr>
<tr>
<td>July 30</td>
<td>learns of Bacardi’s decision to withdraw its product line from their distributorship</td>
<td></td>
<td></td>
</tr>
<tr>
<td>August 3</td>
<td>loses another product line, in part due to Bacardi’s withdrawal of its products</td>
<td></td>
<td></td>
</tr>
<tr>
<td>August 6</td>
<td></td>
<td></td>
<td>enters into negotiations to buy General</td>
</tr>
<tr>
<td>August 14</td>
<td>executes a contract with National selling at $550,000 below the price agreed to in mid-July</td>
<td></td>
<td></td>
</tr>
<tr>
<td>November</td>
<td>files suit against Bacardi</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Two attorneys are reviewing the facts in the Bacardi case.

John: Angela, let’s go over the dates on this Bacardi case one more time. I’ve made up a time chart, but some of the dates appear to be missing.

Angela: Fine, I’ve got the file right here. I was just drafting the complaint.

John: Okay, up until July 9th, I have the complete information. What happened on July 9th?

Angela: Let’s see. On that date, I have Bacardi promising to continue to use General as a distributor.

John: Then let’s skip to July 30th. What happened then?

Angela: Ummmm. That was when General learned that Bacardi intended to withdraw its product line. In other words, General would no longer be the distributor for Bacardi in that region. That must have hurt.

John: No doubt. But I think we will be able to build a strong case for them based on detrimental reliance.

Angela: I think so, too. Especially considering the case law in this jurisdiction. Any more dates you want to verify?

John: Just one more. What happened on August 14th?

Angela: That’s the day General executed a contract with National selling at $550,000 below the price they had agreed to in mid-July. A lot of money to lose.

John: Yeah. Though I think we’ll be able to recover it for them.

Angela: I’m pretty certain of that also. We have a strong case.

3. Is Bacardi responsible for the loss suffered by General’s reliance on Bacardi’s promise to continue using General as a wholesaler?

4. Student opinion. Any answer, as long as supported, is acceptable.

5. Listening Script

The appellate court remanded the case to the district court for trial on General’s allegations. However, the court stated that under Indiana law, it felt that Bacardi’s promise was of a type upon which General could have relied. On remand, the district court found that General’s reliance on Bacardi’s promise was reasonable.

Student opinion/resource. Any answer, as long as supported, is acceptable.
Exercise J. Case Hypotheticals and Discussion

(page 166)

1. Go through the elements of specific performance with the students.
   - Is the property unique? The trial court thought so.
   - Will monetary damages be sufficient?
   - It is not a personal services contract.
   - We don’t know what the hardships to the parties might be.

2. Since Klein made offers on two other G-IIs, the uniqueness of the plane is questionable. The court of appeals held that the plane was not unique even though only three comparable planes existed. Under the facts in this case (the other planes had been offered to Klein), the court found that monetary damages could sufficiently remedy the situation and declined to grant specific performance.

3. If the property had been owned by a famous person, then that would increase its uniqueness factor. In that case, monetary damages might not be sufficient.

Exercise K. Legal Drafting

(page 169)

There is no one right answer to the redrafting of the contract. In terms of language practice, one of the best exercises is to have the students turn in their copies of the rewritten contract and make overheads of language problem areas that were “created” through the redrafting or problems that weren’t corrected.

A sample corrected version is included for your use. In the sample version assumptions were made based on what the parties most likely intended. However, other variations are possible.
AGENCY AGREEMENT

THIS AGREEMENT, made and entered into as of 15 June, 1998 by and between Dominican Manufacturing, Inc., Principal, and Singh Engineering, Inc., Agent.

Principal is a company incorporated under the laws of France and with its principal place of business in Toulouse, France; and Agent is incorporated under the laws of India and has its principal place of business at Mumbai, India.

The Principal produces and exports mineral drilling equipment and other products as set forth and specified in Appendix 1 ("Products"); and

The Agent desires and possesses the capacity, knowledge, and capability to market and sell the Products in India and Sri Lanka ("Territory").

The Parties have agreed as follows:

1. APPOINTMENT

1.1 The Principal appoints the Agent as the exclusive sales agent in the Territory.

2. RIGHTS AND DUTIES

2.1 The Agent shall promote the sale of the Products.

2.2 The Agent shall not solicit or negotiate contracts for sale of the Products to customers outside the Territory or to customers whom he knows or should know are likely, to reexport the Products outside the Territory.

2.3 The Agent shall forward any inquiries for Products to be used outside the Territory to the Principal. The Principal may extend to the Agent written approval to handle such inquiries. If such approval is granted, the Agent shall ascertain the ultimate destination of the Products. The Agent shall not quote or furnish any information received under this Agreement to the prospective client without prior written receipt of the Principal's approval.

2.4 The Principal is entitled to revise its list of Products at any time, either adding or deleting items from the list. The revisions shall be effective upon the Agent's receipt of notification of the changes. If, however, the Principal stops production of a product or a production line, the change shall be effective upon stopping of the line and not upon receipt of notification by the Agent.

2.5 The Principal reserves the right, at its sole discretion, not to accept an order. However, the Principal shall assist the Agent in the performance of its duties by informing the Agent on a continuous basis of current delivery terms and of changes in expected delivery dates.

2.6 The Principal shall inform the Agent within 10 working days whether it accepts the orders forwarded by the Agent.

2.7 The Principal shall furnish the Agent with price lists and catalogues and shall notify the Agent within 5 working days of any changes thereto.
3. COMMISSIONS

3.1 The Principal shall pay the Agent commissions which it is entitled to in accordance with the provisions set forth in Appendix 2.

3.2 The Principal shall calculate and pay commissions quarterly based on a calendar year. Commission shall be calculated based on Products which have been delivered to and paid in full by the customer within the quarterly period under consideration. Principal shall pay the Agent within 30 days following completion of the calculations.

Appendix 2

COMMISSIONS

For sales of Products listed in Appendix 1, Agent shall be paid commissions based on the following schedules:

• When Agent completed the sale alone or with the Principal: An ex works price of 10%.

• When sales were made in the Agent’s Territory by the Principal, its Affiliate Companies, or regularly appointed agents or representatives: 50% of the commission payable to the Principal by its Affiliate Companies or its Appointees.

• When orders are obtained from third parties outside the Agent’s Territory for the delivery of the Products into the Agent’s Territory: one-third of the Agent’s 10% ex works commission.
ACTIVITY (PAGE 172)

1. Student Resource. Many answers are possible. You may have to remind students that simple bargaining during a trip to the market can also be viewed as a negotiation, as well as arranging to have dinner with friends.

2. Student Resource. Possible answers include:
   a. Listen. Listen to the other person.
   b. Compromise. Reach an acceptable compromise (the win/win negotiation).
   d. Be concise. People do not normally listen well. The shorter your conversation, the more they remember.
   e. Point out the benefits. Make sure that the other party understands the benefits of your offer. They may not be seeing the negotiation as you do. This aids in your communication. If you don’t understand one another, you cannot reach agreement.
Legal Listening

( page 173)

1. An agreement with a former television star to direct a Broadway musical.
2. No. His stardom ended years ago.
3. Nextdoor Productions. The company that wants to produce the Broadway musical.
5. Cochran, the former TV star, needs more money because he has a cash flow problem after buying property in Malibu.

Listening Script

Margaret: James, you simply would not believe the arrogance of Martin Cochran. He was a television star years ago and has no directing experience and little Broadway experience.

James: What happened?

Margaret: Well, the negotiation opened with a demand for total directing control and executive producer rights.

James: What? I thought Nextdoor Productions wanted to give him Assistant Director credit for a short run if he was willing to act in the production also.

Margaret: Exactly, but apparently Mr. Cochran is determined not to be an “assistant” anything. He was a big TV star, you know (sarcasm).

James: Was he at the negotiation?

Margaret: No, just his attorneys. However, they had no authority to make a deal. I am certain that he told them to refuse all offers involving “assistant” titles unless it involved a sizeable increase in salary.

James: A salary increase? Besides, couldn’t you come up with some other designation other than “assistant” that still means he is not in charge.

Margaret: Well, we offered to credit him as “co-director” with no salary increase. The attorneys are going to get back to us after they consult with their client.

James: It doesn’t sound like you will ever reach agreement.

Margaret: I think this is just a ploy to get more money. Rumor has it that he has a cash flow problem after buying that large
estate in Malibu. One of the negotiators mentioned a fee increase, but we didn’t follow up on it. Our clients believe Mr. Cochran has been offered enough.

*James:* Well, let me know how it goes.

**Setting Up the Negotiation (page 173)**

1. So that you do not have to make copies for the students, the point values for both sides have been included in Part 2, Texts 1 and 9. You will have to ensure that neither party sees the point values for the other or the negotiation will not work properly.

2. You may want to start the exercise with a brainstorming activity, reviewing the language of negotiations. Using a cluster brainstorm, begin with negotiation and ask students to simply shout out words that remind them of negotiations. After the brainstorm, work together to connect similar words and then review the language that could be used to achieve the objectives/ideas behind the brainstorm.

3. The students will need 45–60 minutes to review the materials, assign roles, and practice the language of negotiations. The negotiation itself can be done in approximately 60 minutes.

4. Although the issues are inter-related, to ensure that everyone is involved in the negotiation, it helps to have the students assign one person to speak on different negotiation points. Possible divisions of labor include:
   a. Hotel Personnel
   b. Dive Sites
   c. Desalination Plant
   d. Resort Size
   e. Money Exchange Controls
   f. Resort Tax Status

5. Remind students that ten points will be deducted for each person on a team who does not participate actively in the negotiation. The teacher is the final arbiter of negotiation participation.

6. Of course, as with any oral communication activity, if you have access to a video camera, it is best to take the negotiation for language review during another class session. You do not want to interrupt the negotiation to discuss language points. Once the negotiation starts, only the students should be talking. You may want to take notes and/or videotape the negotiation.
PART 2

Further Language Development
Writing Activities

Language Activity 1: Audience, Purpose, and Tone (page 177)

Exercise A

(page 178)

1. B: To your boss
2. B: To your instructor
3. A: To the judge in traffic court
4. A: To your boss
5. B: To your instructor

Exercise B

(page 179)

One possible answer for each purpose is included below:

1. To relate an incident: Reporting a traffic accident to a police officer
2. To describe a person or thing: Describing a burglar to the police
3. To explain a process: Explaining to the jury how the defendant set up his methamphetamine lab
4. To request information: Asking the court clerk about proper filing procedures
5. To give an opinion: The conclusion section of a memorandum where you give a brief opinion with support about whether your client should sue or not.

Exercise C

(page 180)

formal 2. Mr. James, please report to the court no later than 7 AM on polite Friday.

informal 3. I would like to have the report by Monday if at all possible.

polite informal 4. Do not forget to forward the brief to the court.

impolite (unless said to a friend)

formal polite 5. Would you mind forwarding a copy of the brief?

Language Activity 2: Paraphrasing (page 180)

Exercise A

(page 182)

You may want to take your students through the four steps with this example the first time (informally) and then have them do the formal paraphrase on their own.

Note: You may wish to ignore the problem surrounding the original meaning of men in the quote. However, it may be an interesting point to discuss sexist language and the culturally appropriate forms and usage for your context.

1. Sample answer: Paraphrase the sentence in a very informal way as though you were just talking about it with a friend in a normal conversation.

   People set up and give power to governments to make sure their rights are protected.

2. Sample answer: Paraphrase the sentence for an educated adult in a style that would be appropriate for a formal letter to the editor of a newspaper.

   It is the people who establish and empower the government so that it can protect our rights.
**Exercise B**

(page 182)

1. Sample answer: Paraphrase it for a colleague.

   A person who was licensed to sell alcohol by the drink can be sued for damages if it is clearly proven that he or she knew or should have known he or she served a customer who was obviously intoxicated or who was under twenty-one.

2. Sample answer: Paraphrase it for a bar owner who has been charged with selling beer to a 17 year old. You can be sued for the damages because you served her and the other side can prove that you should have known that she was under twenty-one.

**Exercise C**

(page 183)

Very simple sample answer:

If an officer announces that she or he is a police officer, has a search warrant, and is not allowed into a house, she or he can break a door, a window, or anything in the house to carry out the warrant or if necessary to free himself or herself or any person helping him or her carry out the warrant.

**Language Activity 3: Summarizing (page 183)**

**Exercise A**

(page 184)

When doing a summary, it’s important that only the main ideas be retained. This can be difficult for students from civil code countries who think that nothing should be left out. You might want to first practice using oral summaries of movies or stories that are well known. Give the students a very strict word limit [50–75 words] to summarize the movie or story. They should be able to do it orally and then in writing.
Language Activity 4: Email (page 184)

Exercise A

(page 188)

The numbers in the left-hand column refer to the Ten Suggestions for Better Emailing in the student text, page 184.

| A. 1 | from: Craftylawyer@rentalawyer.com not a very professional email address |
| B. 10a | to: Jan Drummer should be to Ronaldo! |
| C. 0 | cc: |
| D. 0 | bcc: |
| E. 0 | date: Nov. 17, 2007 |
| F. 10f | forgotten attachments! |
| G. 2 | subj: RE: always use a good subject line! |
| H. 8 | Ronaldo, Sorry it’s taken me two weeks to answer your mail. |
| I. 10f and 4 | I’ve attached a couple of short comments for you to read. |
| J. 9 10b | Also sorry I didn’t understand that you had already settled out [of is missing] court. I should have read your other emails before I called Drummer’s lawyer and yelled at him. |
| K. 7 | Well, Drummer will get over it. |
| L. 5 | You really were stupid to give him that information; his lawyer would have never found it the way we had hidden it. |
| M. 5 | Make sure you don’t give those other emails to anyone, ok? They could really get us in trouble. |
| N. 7 | Now I need you to fill out these forms so that I can get paid by your company. |
| O. 3 | Call me if you need anything else, |

Carl
Exercise B

Sample answer:

Thanks for your message and invitation. We can meet on Tuesday at noon at Sam’s, but I think it’s my turn to pick up the check. I’ll be glad to go over the merger papers then, too. I’ll tell Jenny you said hello. Let me know if something comes up before then.

Thom

Exercise C

Sample answer:

Fred:

Call me as soon as you receive this message. It seems that we will need to meet tomorrow to prepare a presentation for the director at this week’s meeting. Do you have any ideas? Unfortunately, the man in advertising who helped us before is no longer working with us. That means that we are on our own. Looking forward to hearing from you. Best wishes,

Charles
Language Activity 5: Client Letters (page 191)

Exercise A

This letter is a sample. Of course, many other variants of the letter are possible. With this exercise, you will be able to explain that the format for a letter provided in Part 2, Client Letters (page 191), is a guideline only. The letter does not follow the five-part form because it is a simple letter arranging for an appointment.

Jennifer Holder
1020 Marcus Ave.
Lexington, KY 20334

April 14, 20—

Mrs. Penelope Rosewood
349 Culpepper Drive
Lexington, KY 20333

Dear Mrs. Rosewood:

As you know the negotiations for the property settlement agreement for your divorce have been going well. Mr. Rosewood has been cooperative and agreed to most of your requests for property division. One item remains in contention, however: the ownership of your champion racehorse, Bonnie Blue. Your husband’s lawyers have been authorized to offer you a $1,000,000 lump sum payment if you agree to transfer your share of the horse to Mr. Rosewood.

In light of our review of your husband’s financial records, we believe the financial offer is an excellent one. However, we are aware that not only finances are involved in property settlement agreements. Therefore, we would like to meet with you next week to hear your views on this offer.

My secretary will call you Monday to arrange a time that is suitable for you to meet with us. We look forward to seeing you next week. In the meantime, if you have any questions, please do not hesitate to call me.

Sincerely,

Jennifer Holder
Jennifer Holder
Attorney-at-Law
Language Activity 6: Legal Memoranda (page 194)

This brief appendix is not intended to take the place of the numerous course books on legal writing that can be found in the United States. In fact, if you plan on working extensively on legal memoranda with your students, we recommend that you review some of these books. Two books that we have found helpful when working with non-native speakers of English are:


Exercise A

(page 197)

Discussion (of one element for the sample answer):

Jason Point was not old enough to be left alone outside to play in an unfamiliar neighborhood. In Louisiana, the courts look to the age of the child to determine whether a parent can be held contributorily negligent for the wrongful death of a child. *Simmons v. Whittington*, 444 So.2d 1357 (La. 1984). The courts in Louisiana have found parents contributorily negligent when children six and under have been killed while under the supervision of the parent or their appointed babysitters. *Humphries v. T.L. James & Co.*, 468 So.2d 819 (La. 1985); *Anderson v. New Orleans Public Service, Inc.*, 572 So.2d 775 (La. 1990). When the children have been nine or over, courts have not found the parents contributorily negligent. *Simmons* at 1359; *Argus v. Scheppregell*, 472 So.2d 573 (La. 1985). In *Humphries*, the mother was found contributorily negligent when her six-year-old son drowned in a nearby gravel pit while under her supervision. The Pointer case is distinguishable from *Humphries* because in *Humphries* the mother was familiar with the area, whereas the Pointers were new to the neighborhood and did not know about the neighbor’s pool. However, Jason Pointer was even younger than the Humphries child, and courts in Louisiana have traditionally looked to the child’s age when making a determination of contributory negligence.

Although the Pointer case is factually similar to *Simmons*, Mrs. Pointer, as Mrs. Simmons, did not know of the existence of a swimming pool in the neighborhood, the child in *Simmons* was nine, and Jason was five. In terms of cognitive develop-
ment and recognition of dangers, a five-year-old is much more similar to a six-year-old, as in Humphries, than to the nine-year-old boy in Simmons. A court will most likely find that Jason was not old enough to recognize the danger of the swimming pool without the guidance of his mother.

Reading Activities

Language Activity 7: Skimming and Scanning (page 198)

Exercise A

(page 198)

2. Ms. Cardwell was able to give consent to the medical treatment even though she was still a minor.

Exercise B

(page 199)

1. every 2 years
2. 30 years old
3. 9 years
4. 7 years
5. the Vice-President of the United States
6. the legislators of each state (not the people!)
Mary Ann Baines, the mother of the child, filed this divorce action in the Circuit Court for Davidson County seeking a divorce from Gregory Todd Baines and custody of their only child. Process was served on the father to which he filed responsive pleadings seeking *inter alia* custody of their child. After commencing this action, the mother moved to Wilson County to live with her parents while the divorce was pending. While living with her parents, the mother entered a drug rehabilitation program following which her parents filed a dependency and neglect action in the Juvenile Court of Wilson County, seeking an emergency order for custody.

For reasons not fully explained, the dependency and neglect petition filed by the grandparents indicated the petitioners did not know where the father could be served. Although the mother and her parents knew the address of and how to contact the father, he was not given notice of the filing of the dependency and neglect petition or the emergency hearing. Moreover, he was never served with process. Following an emergency hearing, the Juvenile Court awarded temporary custody to the maternal grandparents. Shortly thereafter, the mother consented to her parents’ petition, and the Juvenile Court awarded custody to her parents, all of which occurred without the father’s knowledge or consent.
**PROCEDURAL HISTORY**

Being ignorant of the proceedings in the Wilson County Juvenile Court, the father pursued this action to obtain custody of their child. Prior to the final hearing in this action, the father learned of the dependency and neglect proceeding. He voluntarily intervened in that action and, following a hearing, was awarded custody of the child. At the conclusion of that hearing the Juvenile Court Judge announced he was dismissing the grandparents’ petition; however, no order was entered following that hearing.

**PROCEDURAL HISTORY**

Subsequent to the Juvenile Court hearing referenced above, the mother and father voluntarily proceeded with the divorce and custody action in the Circuit Court of Davidson County, during which each of them was represented by counsel at all material times. It is significant to note that the mother participated without advising the Circuit Court of her contention that the Juvenile Court had exclusive jurisdiction over the custody issue. Being unmindful of a potential jurisdictional issue, the Circuit Court Judge dutifully presided over this divorce and custody action to a final hearing. Following a full evidentiary hearing, in which the mother and father and their respective counsel participated, the Circuit Court granted the parties a divorce and awarded custody of the child to the father.

**PROCEDURAL HISTORY**

Within thirty days of that order being filed, the mother filed a motion to declare the order of the Circuit Court of Davidson County void, contending the Juvenile Court of Wilson County had exclusive jurisdiction pursuant to Tenn. Code Ann. §37-1-103(a) and (c). The father opposed the motion contending the Juvenile Court had dismissed the dependency and neglect petition and awarded custody to him.

**PROCEDURAL HISTORY**

To resolve the conflicting representations of the parents, the Circuit Court, Judge Carol Soloman, corresponded with the Juvenile Court, Judge Barry Tatum. Judge Tatum provided a written reply advising that although the order had not been entered, he dismissed the dependency and neglect proceedings. In furtherance of that, Judge Tatum entered an order confirming the dismissal of the dependency and neglect petition and provided a copy of the order to the Circuit Court. In the same correspondence Judge Tatum advised that “jurisdiction over the minor child, . . . has been and shall continue to be with the Eighth Circuit Court of Davidson County, Tennessee.” After corresponding with Judge Tatum, the Circuit Court denied the mother’s motion to declare the divorce and custody order void, from which post trial order the mother appeals.
| LEGAL ISSUE | The mother’s appeal is based upon subject matter jurisdiction, contending once the Juvenile Court attains jurisdiction in a dependent and neglect action, it retains exclusive jurisdiction pursuant to Tenn. Code Ann. §§37-1-103(a) and (c) until the child reaches the age of majority or the case is dismissed. She also contends the courts cannot confer subject matter jurisdiction on a court that does not have subject matter jurisdiction, their agreement notwithstanding. We find no merit with this contention because it fails to recognize the authority of the Juvenile Court to dismiss a dependency and neglect petition, which was done in this matter although the requisite paper work to confirm the dismissal was less than timely. Moreover, when the mother voluntarily participated in the final hearing in this matter, the focus of which was the issue of custody, she was fully aware of the fact the Juvenile Court had announced that it was dismissing the dependent and neglect petition. The fact the paper work necessary to memorialize and authenticate the dismissal had not been entered was as much her fault as it was the father’s. Finding this is not one of those cases for which we should place form over substance, or to reward a litigant for being less than candid with the Circuit Court prior to and during the final hearing, we therefore affirm the decision of the Circuit Court of Davidson County to deny her post trial motion. |
| HOLDING | The father requests that we declare the appeal frivolous. Although this appeal is perilously close to being frivolous, we decline the invitation to declare it as such. |
| REASONING | The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against appellant, Mary Ann Baines. |

**Language Activity 9:**
**Statutory Interpretation (page 207)**

After reviewing the information on flow-charting statutes in Part 2, Statutory Interpretation (page 207), you may want to have the students create a chart of a translated statute involving fair use (if fair use exists) for the laws of their own countries. They can then explain their statutes to their classmates.
Oral Communication
Activities

Language Activity 10: Word Stress (page 209)

Exercise A

1. a. OBJECT  
   b. SUBJECT  
   c. RECORD  
   d. CONVICT  
   e. DIGEST  
   f. AFFECT  
   g. DLIBERATE  
   h. CONDUCT  
   i. CONTEST  
   j. CONTENT

   Listening Script
   a. ob JECT  
   b. SUB ject  
   c. re CORD  
   d. conVICT  
   e. DI gest  
   f. af FECT  
   g. de Li ber ate  
   h. CON duct  
   i. CON test  
   j. con TENT

2. Sample sentences are below. Many other options are possible.

a. The defense attorney objected to the introduction of the glove as evidence.

b. The attorney could not get his client to stay on the subject of her intoxication.

c. The police recorded the confession of the defendant.

d. We need luck to convict this defendant. The evidence is not that strong.

e. Check the digest to see if any new cases have been decided on probable cause.

f. Too much publicity can affect the outcome of a trial.
g. The jury deliberated for more than ten hours before reaching a verdict.

h. His conduct during the trial was impeccable.

i. The US legal system is often like a contest between attorneys.

j. My client was happy with the verdict. She told me how content she was just after the trial.

Language Activity 11: Obtaining Information (page 211)

Exercise A. Changing Sentences

1. Is he free?
2. Would you like coffee while you wait?
3. Is it 1 PM already?
4. Don’t you need more time before you see me?
5. You brought the corrections to the contract I faxed you, didn’t you?

Exercise B. Sentence Formation

2. Yes, I am. But I came to the United States when I was very young.
3. No, I’m not. I practice trust and estate law.
4. Yes, I did. Her name really is Chocolate Tort.
5. No, I’m not. I work on the 97th floor.
6. No, I wasn’t. I always intended to be a lawyer.
7. No, I didn’t. I graduated at the top of my class.
9. Yes, that’s right. My legal name is Naimin.
10. No, I wouldn’t agree. I think that trusts and estates are interesting.
Language Activity 12: Register Analysis (page 215)

Exercise A. Sentence Correction

(page 215)

1. • Could I have the latest copy of the *Cornell Law Review*?
   • Can I have the latest copy of the *Cornell Law Review*, please?

2. • Could I have your name, address, and account number, please?

3. • Please turn in your briefs.
   • Don’t forget to turn in your briefs.

4. • Please keep it down.

5. • Go on talking. I’ll be right back.
   • Sure. Don’t hurry.

Language Activity 13: Debate (page 216)

After reviewing the information on agreeing and disagreeing found in Part 2, Debate (page 216), you may want to have the students conduct a debate on an issue that is important to the class. In setting up debate teams, it is often helpful to have students argue the opposite of what they believe. For example, if you decide to debate gun control, a hot topic in the United States, students in favor of gun control should argue against it and vice versa. It is often easier for students to leave the emotion out of debate and concentrate on the issues if they do not argue in favor of their beliefs.

Make sure the the topic you choose for students to debate is one they want to discuss and not just what you are interested in discussing. Hot topics in the United States include

a. *Roe v. Wade* (abortion)
b. euthanasia (right to die)
c. gun control
d. war on terrorism
e. gay rights/marriage
Grammar Activities

Language Activity 14: Verb Forms, Tense, Time, and Aspect (page 218)

Exercise A

(page 219)

1. past
2. base form or infinitive
3. present participle
4. past or past participle
5. (singular) past

Exercise B

(page 222)

1. future, present
2. timeless, present
3. present, future with will
4. future, present perfect
5. future, present continuous
6. past, past continuous
7. timeless, present
8. future, future with going to
9. timeless, present
10. present, present continuous

1 Note: Many refer to continuous forms as progressive; both are correct.
Exercise C

(page 224)

1. b.
2. d.
3. e.
4. a.
5. e.

Language Activity 15: Simple Past and Present Perfect (page 226)

Exercise A

(page 227)

1. Kim Anderson testified that on the day of the accident while she was staying at her Aunt Gail Bailey’s apartment in the Calliope Project, she experienced stomach pains. She asked Gail Bailey to watch the children because Ms. Anderson felt drowsy after taking medicine. Ms. Anderson then fell asleep. Moses Pettis, the investigating officer, testified that he interviewed the three children who were with Dennis (the boy who was killed) on the day of the accident. Cornell Webb stated to the officer that Kim Anderson gave Dennis permission to go swimming with the other children.

2. Because all the activities were completed in the past.

3. The plaintiff, Billy Minor, sustained a severe head injury with underlying concussion and contusions of the brain, causing plaintiff to suffer headaches, dizziness, and a marked change in his personality. Plaintiff further sustained a severe injury to his left wrist and lower arm as a result of which tendons, tissues, blood vessels, muscles, nerves, and ligaments were cut, torn, and bruised, whereby scar tissue has formed, leaving his wrist stiff, weak, deformed, painful, and capable only of limited motion and use. As a result whereof the plaintiff has suffered, and will in the future continue to suffer permanent crippling, discomfort, and physical and mental impairment.
By reason of the injuries complained of the plaintiff was forced to expend and to this date has expended the sum of $35,000, for medical attention, hospitalization, and drugs, of which the following is an itemized statement:

4. The three instances of simple past are describing activities that were completed in the past, so the simple past tense is needed. Present perfect is needed in three locations because the action began in the past and continues to the present.

**Exercise B**

**(page 228)**

**Attractive nuisance** [A dangerous feature on land that may cause children to investigate it. For example, a swimming pool has sometimes been found to be an attractive nuisance.] is a doctrine that has been around for a long time. However, the courts have not found a way to agree on the best way to approach the doctrine. When considering the applicability of the doctrine, some courts have looked to the Restatement of Torts. In the comments to Rest. Torts §339, when considering the applicability of the doctrine to children, the following is said:

In the great majority of the cases in which the rule has been applied, the plaintiff was a child of not more than twelve years of age. The earliest decisions all involved children of the age of mischief between six and twelve. The later cases, however, included a substantial number in which recovery has been permitted, under the rule, where the child is of high school age, ranging in a few instances as high as sixteen or seventeen years.

In the Simmons case discussed earlier in the chapter, the court did not find the mother negligent when her son, aged nine, drowned in the neighbor’s pool.
Since graduating from law school, Martin has worked at Wuttke Associates in New York City. Lately, however, he has considered looking for a new position in a family law firm. In law school, he wanted to work on child custody issues because of his own background. His parents divorced when he was a child and have had a long, bitter custody battle over him and his sister. He entered law school because he wanted to help other children in similar situations. However, upon graduation, he was offered a great job in a top law firm and could not resist the offer. Now, after two years at the firm, he has decided to seriously reconsider his legal focus. The eighty-hour work weeks leave him no time to even volunteer in a family law clinic. He believes the time has come to make a change in his legal career.

Language Activity 16: Modals and Semi-Modals

(Language note: It is important to encourage students to use modals since they are among the simplest ways to hedge in both speech and writing. A good lawyer should know when to hedge. For example:

Mother: Marsha, did you eat the last candy bar?
Marsha: Why should I do that?
        Why would I do that?
        How could I do such a thing?

These are sneaky ways to imply an answer without having to lie—the average person interprets this as “no,” but the future lawyer hasn’t answered anything—he or she has merely asked a second question.]
Exercise A: Writing

Here is an example of a standard letter format that may be used for informal and formal business situations. As in memo writing, the paragraphs should be relatively short and separated by double spacing.

653 Pleasant View #309  return address—address of the letter writer
Memphis TN 38111

November 7, 2000  date

Ms. Judy Hwang  recipient of the letter with her title
United Delivery Service  name of company (if there is one)
48 North Larchmont Cove  inside address—address of the recipient
Memphis TN 38111  note order: name, street, city, state, zip code

Dear Ms. Hwang:

Thank you for asking me why you should study law at Memphis College of Law.

Sincerely,

Deepak Patel  letter writer’s name must be typed

Of course the answers will depend on student resources, but here is one possible answer to each of the questions.

1. Law could be a good preparation for a career in business.
2. Many would say that it is the best law school in the country.
3. No, Latin wouldn’t be essential to your success in law school.
4. You would have to take the same courses that every other first-year student takes. We have no electives until the second year.
5. I would take the courses with the most difficult professors. They would challenge you to learn more.

6. Yes, but then you would fail the exams.

7. I would suggest that you read as much as you can about the legal system of our country.

8. You could talk to people who have taken it at different times. It might change every year.

9. You could get a position in one of our embassies or with an international law firm working on corporate matters.

10. I would suggest studying poetry and linguistics, but then you would never earn a living doing what you liked.

**Exercise B. Fill in the Blanks**

(page 231)

1. shall
2. shall/may
3. shall
4. shall
5. shall
6. may
7. shall
8. shall
9. shall
10. may/may

**Exercise C. Listening**

(page 233)

Listening Script

*Zane:* Hey, Frank. How are you? Great day, wouldn’t you say?

*Frank:* Normally I would agree with you, but I just got back from hospital seeing Dieter and Pam, that couple from down the street. They are in bad shape. The doctor isn’t sure that Pam will make it.
Zane: That’s horrible. I sure hope she makes it. What happened to them?
Frank: Didn’t you hear? They were in a terrible accident. They were hit by a bakery truck just around the corner last night. It looks like the driver was at fault.
Zane: I heard a lot of noise last night.
Frank: This is going to be a mess. Dieter’s brother told me that they found out the truck driver’s license had been suspended last month for DUI. (DUI = driving under the influence of alcohol or drugs)
Zane: DUI? Was he drinking last night too?
Frank: Looks like it, and maybe something stronger. There was a police guard outside his room at the hospital.
Zane: Hmm. Will he make it?
Frank: You know how it is. The drunk ones always survive and kill the innocent ones.
Zane: Is there anything I can do for them? Who’s looking after the kids?
Frank: Pam’s mother came and got them this morning. You know his mother is in Germany. I’m sure she’ll be on the next plane.
Zane: Frank, that’s awful. I’ve got to go now. Say, should I go on over to the hospital this afternoon?
Frank: No, maybe tomorrow to try to give the relatives a break. Be careful.
Zane: Thanks, bye.

Use a modal to answer these questions based on the information you just heard.

Example: How did Frank know to go to the hospital?

Possible answers:
He might have seen the accident.
Someone might have called him.

1. Pam is in intensive care and may not make it. Why?
   Possible answer: She might have been injured too seriously in the automobile accident.

2. What was the noise Zane heard?
   Possible answer: It might have been the automobile accident.
3. **Why was the truck driver’s license revoked?**
   Possible answer: It must have been because of the DUI conviction that Dieter’s brother heard about.

4. **Was the truck driver drinking last night?**
   Possible answer: He might have been, but we don’t know.

5. **Was the truck driver seriously hurt?**
   Possible answer: He must not have been if there is a police guard outside his room.

6. **Why is there a police guard outside the truck driver’s hospital room?**
   Possible answer: The police could be afraid that he will try to escape if he isn’t seriously hurt.

7. **Will the truck driver be charged with a crime?**
   Possible answer: If it can be proven that he was at fault and Pam dies, he could be charged with vehicular homicide.

   [Note: Since we don’t know for certain that the accident was his fault or that he was drinking or using drugs, we can’t be certain that he will be charged with any crimes.]

8. **Is Dieter German?**
   Possible answer: He might be, but we’re not certain.

   [Note: In spite of the circumstantial evidence (his name and the fact that his mother is in Germany), we cannot be certain that he is German; it is still only a possibility.]

9. **Why did Pam’s mother get the children?**
   Possible answer: There must be no one else to care for the children while their parents are in the hospital.

10. **When is the best time for Zane to go to the hospital?**
    Possible answer: He should wait till tomorrow to give the relatives a break.
Language Activity 17: Active and Passive Voice (page 234)

Exercise A

1. Active: The attorney made an objection.
2. Active: The judge declared a mistrial.
3. Already active
4. Active: Someone removed the evidence from the crime scene.
5. Active: The attorney filed the motion.

Language Activity 18: Conditionals (page 237)

Exercise A. Sentence Combining

1. If your father signs the contract for you, we can sell you the car.
2. If you don’t smoke cigarettes, your life insurance premiums will be lower.
3. If the company hires you, you must agree not to compete with them later.
4. If the contract is ready next week, my clients won’t object to the extra costs for express mail delivery.
5. If the Lucy brothers accept that the Zehmers were joking, the judge hopes to be able to dismiss the case.
Exercise B. Sentence Combining

(page 239)

1. If the appeal were timely, the panel would review your case.
2. If the paper had not been too long, we would have accepted it for publication.
3. If the land reform laws had not been passed, the family would not have lost the land.
4. If I had read the journal article, I would have known about the change in the law.
5. If the lawyer had not missed the filing deadline, the case would not have been dismissed.
6. If the students had studied, they would not have failed their exams.
7. If the guard had not found the burglar, the diamond would have been stolen.
8. If the deed had not been found in his safe, we could not have proved ownership.
9. If an important client were not coming to see me later, I would not be working here at the office on Sunday.
10. If she were not very intelligent, she would not be working for the Ministry of Justice.

Exercise C. Sentence Combining

(page 241)

1. If they have not left a credit card as a deposit, they must pay the full amount in advance.
2. The contract requires them to complete the work by next week unless it rains.
3. Unless both parties are competent, the contract is not enforceable.
4. Generally, acceptance must mirror the terms of the offer if you do not use boilerplate forms.
5. If it is not market practice, silence doesn’t normally constitute acceptance.
**Exercise D. Simplification**

(page 242)

If any record is transmitted to this Court, and if there is any material written in a foreign language, and if there is no translation made under the authority of the lower court, or if there is no translation that is admitted to be correct, then the clerk of the court transmitting the record shall advise the Clerk of this Court immediately so that this Court may order that a translation be supplied, and if necessary, printed as part of the joint appendix.

**Language Activity 19: Gerunds, Infinitives, and That Clauses (page 242)**

**Exercise A. Sentence Combining**

(page 244)

2. Last week the teacher reminded us to study for our products liability exam.

3. I asked the study group to help me understand strict liability in tort.

4. I forced myself to study every day last week.

5. The work and effort permitted us to pass those difficult exams.

**Exercise B. Rewriting Sentences**

(page 246)

1. All the employees, whom I'm representing in the negotiations, agreed not to ask for a raise for one year.

2. The union members decided not to strike while talks continued.

3. For its part, the company did promise not to cut health benefits.
4. Everyone expects next year not to be as difficult as last year.
5. Most employees are simply glad not to be fired from their jobs.

**Exercise C. Rewriting Sentences**

(page 247)

1. To follow the code of ethics at all times is a moral imperative.
2. To put aside your personal beliefs when representing a client who you believe might be guilty is not easy.
3. Not to be as prepared as possible for each case would be unethical.
4. To prove unethical behavior would be necessary before an attorney could be disbarred.
5. Even if she were a personal friend, to address a judge by her given name is improper.

**Exercise D. Rewriting Sentences**

(page 249)

[Spelling note: You may need to review the spelling rules that govern whether or not one doubles the final consonant of a verb when adding -ing. Remember that there are some slight differences between American and British usage: For example, travelling versus traveling, the second being the standard American form.]

1. The manufacturer insisted on his being able to produce a safer product.
2. He intended on his settlement offer satisfying those filing the class action suit.
3. Of course, the plaintiffs’ attorneys were confident about winning the case.

[Note: Consonant must be doubled to keep vowel “short.”]

4. As a result, they weren’t at all doubtful of their clients’ being awarded a large settlement by the court.
5. The manufacturer wasn’t yet aware of the attorneys’ being able to gather so much clear-cut evidence of negligent behavior.
Exercise E. Fill in the Blanks

(page 251)

2. to take
3. smoking
4. to buy
5. seeing

Exercise F. Sentence Combining

(page 252)

1. The judge ordered that the lawyers not discuss the case until then.
2. He stressed that it was important that everyone have equal access to the information.
3. Furthermore, he threatened that he would charge anyone who spoke to the press before then with contempt of court.
4. My colleague proposed that we hold a joint press conference.
5. We think that would meet the requirement that no one leak the news of the settlement.

Language Activity 20: Reported Speech (page 253)

Exercise A. Reported Speech in the Past

(page 255)

1. Mr. Coke asked Mr. Sammy where he was on December 21, 1996.
2. Mr. Sammy replied that he had been at home with his wife.
3. Mr. Coke asked whether (or if) anyone other than his wife had seen him there.

[Note: Removed from context, it is hard to determine just who *his* and *him* refer to. It’s often better in a legal document to repeat nouns more often than is normal in standard prose in order to avoid any pronoun reference problems.]
4. Mr. Sammy whispered that he guessed not.

[Note: In a more formal form, we might wish to write: that he didn’t think so or that he guessed no one had.]

5. The district attorney said that he had no further questions and thanked Mr. Sammy.

**Exercise B. Modals in Reported Speech**

*(page 256)*

1. The client asked his lawyer, Ms. Anna Janovich, if she thought he should plead guilty.

2. Startled, Ms. Janovich asked if there was something she should know.

3. The client replied that perhaps he could have been wrong about the amount he had asked the accountant to put on the form.

4. She asked (wondered to, etc.) herself if he could really not remember or if he was just trying to bluff her.

   [Note: It would be very difficult to make a correct sentence with thought, so we must change it to a verb more easily used in indirect speech.]

5. He mumbled that it could have been closer to a million as Mr. Able said it had been.

**Exercise C. Reporting on a Conversation**

*(page 257)*

<table>
<thead>
<tr>
<th></th>
<th>Drafting Date</th>
<th>Settlement</th>
<th>Injunction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chemcorp attorney</td>
<td>next week</td>
<td>Client wants settlement; Chemcorp doesn’t.</td>
<td>will file a motion requesting an injunction</td>
</tr>
<tr>
<td>Colleague on subway</td>
<td></td>
<td>asks about settlement possibilities</td>
<td>asks if going to request an injunction</td>
</tr>
</tbody>
</table>
Listening Script

Woman (attorney working on the Chemcorp case)

**Woman:** I’ll be through drafting the lawsuit against Chemcorp next week.

**Man:** They won’t work out a settlement with your client?

**Woman:** My client and I tried to settle this informally, but it became clear we’d have to sue them.

**Man:** Are you going to file an injunction, too?

**Woman:** Yes, we’re going to try to halt their shipments. Maybe they’ll be more eager to listen to my client then.

Reported speech:

- She said that she would be through drafting the lawsuit against Chemcorp the following week.
- He asked if Chemcorp couldn’t work out a settlement with her client.
- She maintained that she and her client had tried to settle the case informally but that it had become clear that they would have to sue Chemcorp.

**Note:** When there are too many instances of *they*, it is best to replace a pronoun with a noun to avoid any problems that could arise from vague pronoun reference as in *they would have to sue them*—who would sue whom?

- The man asked the attorney if she was going to also file an injunction.

**Note 1:** The speaker who is a nonnative speaker of English incorrectly stated the question about the injunction. The question was understood and answered properly by the native speaker. You can use this as an introduction to the communicative aspect of language: mistakes that do not interfere with communication are easily forgiven and ignored by native speakers of English. In fact, many native speakers make mistakes when speaking. The correct form is file for an injunction.

**Note 2:** Many careful writers try to avoid “split infinitives” such as in *going to also file*, preferring *going also to file*. However, most nonacademic writers are not bothered by the split forms, which sound much more natural to most American speakers of English.

- The attorney mentioned that she and her client [again avoiding too many uses of *they*] were going to try to halt Chemcorp’s shipments. She thought that maybe then Chemcorp would be more eager to listen to her client.
Exercise D. Changing Reported Speech to Direct Speech

(page 258)

Of course, there are many correct variants possible; we’ve just provided one to show you roughly what could be done.

1. **Lawyer:** “What was the posted speed limit? Was there anything unusual about the car?”
   
   **Hughes:** “The posted speed limit was 55 miles per hour, and the car didn’t have a regular license tag.”

   [Note: *Had no* is a formal written form while *didn’t have a* is more typical of speech.]

2. **Lawyer:** “What happened after you first noticed the car?”
   
   **Hughes:** “I turned on my lights and siren to signal the car to pull over, but it just kept driving for about a mile and a half until it finally stopped.”

   [Note: *Activated* and *continued* are more likely to be used in writing while *turned on* and *kept* are more frequently spoken forms.]

3. **Lawyer:** “How many people did you see in the car?”
   
   **Hughes:** “During my pursuit, I noticed that there were three people in the car.”

4. **Lawyer:** “What happened when the car finally stopped?”
   
   **Hughes:** “I started to walk to the car when the driver got out and met me halfway. He was trembling and seemed to be extremely nervous, but he still gave me his valid Connecticut driver’s license.”

5. **Lawyer:** “What did you do then?”
   
   **Hughes:** “I told the driver to go back to his car, and he did.”

6. **Lawyer:** “Did you notice anything unusual while you were talking to the driver?”
   
   **Hughes:** “Yes, the passenger in the front seat—that’s him over there—was sweating and seemed to be really nervous.”

7. **Lawyer:** “Tell me what happened next.”
   
   **Hughes:** “Well, the driver was sitting in his seat looking for some papers, and I told Mr. Wilson to get out of the car.”
8. **Lawyer:** “Did anything odd happen when Mr. Wilson got out of the car?”

   **Hughes:** “Yes, as he got out, several packages of what looked like crack cocaine fell out of the car onto the ground. I arrested him and charged him with possession of cocaine with intent to distribute.”

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**Exercise E. Role Play**

(page 260)

Student opinion and resource. You should act as the judge if the teams disagree on whether a question is valid or not.

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**Language Activity 21: Building Connections between Clauses (page 260)**

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**Exercise A. Sentence Combining**

(page 262)

1. We bought a new house last year, and we moved into it in April. (If you delete the second we, you must also delete the comma: We bought a new house last year and moved into it in April.)

2. The neighbors seemed very nice, so we expected to get along well with them.

3. We tried to get to know them, but they acted cold and unfriendly.

4. Their dog barked all night, so we didn’t get any sleep.

   [**Cultural note:** Letting your dog bark is an offense in many cities, but it is rarely enforced.]

5. We asked them to stop the dog from barking, yet they didn’t pay any attention.

6. We couldn’t talk or watch television, for their stereo blasted loudly all day and all night.

7. They wouldn’t discuss the problems with us, nor would they respond to letters we sent them.
[Language note: Provide students with the information that follows about strong negatives. Remember that after strong negatives such as nor the normal subject auxiliary verb order must be reversed.

... nor have we ever seen him again

... nor will he pay the fine

If there is no auxiliary, you must add the correct form of do. “She doesn’t live in New Mexico” becomes “… nor does she live in New Mexico.”]

8. We decided we could sue them, or we could move out. (Also possible: We decided we could sue them or move out.)

9. We moved out of the house, and the neighbors’ best friends bought it!

10. We think they made us miserable on purpose, but we’ll never know for sure.

Exercise B. Error Identification and Correction

(page 264)

_a_ 1. Normally, trespassing is a property tort, but it can also be a crime.

_c_ 2. Damages are not required for intentional trespass; only for negligent trespass must damages be shown. (You can add a semicolon or make two sentences.)

_a_ 3. Last year I was charged with trespass, and the owner took me to court.

[Note: When the clauses are as short as these are, many Americans do not use a comma. It is best, however, to ask your students to use a comma to avoid having to make judgment calls about what is short enough.]

_b_ 4. I really thought that I was still inside the city park. The land belonged to a Mr. Ubel. (Since this is a comma splice, it can be corrected by adding a conjunction such as but.)

_d_ 5. As he jumped out from behind that tree, he frightened me, and I nearly fainted.

_c_ 6. Then he pointed his shotgun at me. I had to go with him to his house. (You can also correct this sentence by adding and and a comma after me.)

_b_ 7. He called the local sheriff, and we waited for a couple of hours for him to show up.
8. I was very embarrassed, but the sheriff seemed to think it was funny.
9. As he drove me into town to fill out the papers, he told me funny stories about others who had trespassed on Ubel’s land.
10. Well, he may have thought it was funny, but I didn’t when I had to pay more than $200 in fines and fees!

**Exercise C. Fill in the Blanks**

(page 267)

Sample answers.

In law schools, torts is a required course because the methods and concepts are fundamental to functioning as a lawyer although it is in more advanced courses where students learn jurisdiction-specific information and practice-oriented skills. Although torts focus on the empirical and sociological realities of how the system of civil justice works, students should also consider what is happening in the real world. Since this is the case, practicing lawyers often visit these classes once these courses begin.

**Exercise D. Fill in the Blanks**

(page 270)

Of course, there are many possible answers; we have given you just one for each item.

1. As
2. so
3. however
4. additionally
5. At last
6. and
7. When
8. but
9. as a result
10. After
Exercise E. Error Identification and Correction

(page 271)

We have put an asterisk (*) where a correction has been made.

1. Although* we don’t always realize it, *people who commit crimes are not very smart. For example,* one man in California was arrested* after he tried to steal a stereo from a car. He broke into the car,* then he climbed into the trunk to disconnect the speakers. While he was in the trunk, the lid closed,* so* he was locked in. When neighbors heard him yelling and pounding on the trunk lid, they *called the police. The police officer reported hearing the man yell, “Let me out!”

2. In another case, a man was trying to rob a bank. He asked the teller to give him all the money.* W*hen she told him that bank regulations required him to give his name and address,* h*e wrote the information on a piece of paper;* *she gave him the money. Because he *had given* the correct address,* t*he police were able to arrest him an hour later. While some criminals may be the masterminds we see on television shows, in general I think crooks are pretty stupid!

Culture Activities

Language Activity 22: High-Context and Low-Context Communication (page 272)

Exercise A. Case Hypotheticals and Discussion

(page 273)

1. a. This would seem to be typical of a low-context culture in which time is of the essence. Silence is almost always seen as negative.

b. High context. The businessmen must first determine if they wish to establish the personal relationship it takes to do business in a high-context culture. One does not just “do” a deal as the low-context businessman might.

c. Low context. This very self-disclosing action would be a major loss of face in a high-context culture where spouses and parents are highly respected.
d. High context. Since there is a personal relationship among businessmen; more significantly, one’s honor (also known as one’s word) is important. Also in a high-context culture, the “contract” might be seen as fluid and flexible; it is sometimes the beginning of negotiations, whereas in a low-context culture the contract, because it is written, is seen as the end of the negotiation.

e. Low context. Status is not as important. Given names are used, and there is little ritual in the introduction of the higher status person to the lower status person.

2. a. The American sees questions as approval; the students are interested in the subject. The Japanese may see questioning as a sign that the instructor is not a very good teacher or the students wouldn’t have had questions.

b. In the high-context corporation, “everyone” knows the unwritten rules.

c. In a high-context culture, titles of respect, social distance, and relationships are important.

d. The Japanese may have perceived the Americans as rude since they did not attempt to get to know the businesspeople before they launched into the “meat” of the deal.

e. The high-context student takes the low-context teacher at her literal word.

Language Activity 23: Silence (page 274)

- This is a good time to bring up cultural differences. Use your students as resources. If they have visited or lived in other countries, find out if they have had problems with communication due to silent periods or if there was not enough silence and they always felt rushed.

- An example you could use is the length of the silent period in Finland. The Finns are accustomed to a much longer silent period than what is comfortable for an American. Therefore, an American teacher working in Finland must learn to wait for students to answer the questions from 30 seconds (very quickly) or even up to three minutes or longer. The silence is quite normal in Finland but disconcerting for an American who is used to the American habit of thinking out loud. Many students in the United States will begin to answer a question before they are certain of the answer and
may even change their minds about the correct answer while they are talking.

[Language and cultural note: Note the number of American game shows on TV that reward instantaneous answers. They reflect the cultural status given to quick thinkers and speakers.]

**Exercise A. Listening**

(page 274)

Listening Script

In the overseas office of an American corporation

*Ray:* Sami, can I speak with you?

*Sami:* [a bit of a pause] Yes, Ray.

*Ray:* [no pause and quickly] Did you delete the Sanders file?

*Ray:* [pause] What did you do with the Sanders file?

*Sami:* [pause] What?

*Ray:* [a bit irritated] Did you discard the Sanders file?

*Sami:* discard Sanders?


A few minutes later

*Ray:* Ms. Shane, I’m afraid that Sami really doesn’t understand English as well as I thought she did.

*Ms. Shane:* Let’s give her a little more time; it might be our accents.

In the outer office

*Sami:* Marsha, Ray asked me about the Sanders files. He thought I had deleted it. I was trying to remember who had taken the file, but all of a sudden Ray just got angry and stormed off to Ms. Shane’s office.

*Marsha:* I know, he really is moody sometimes, isn’t he?

[Note: The fact that the speaker used the plural form *files* in the first sentence and later uses *it* as the pronoun and *file* is an example of a typical mistake that both native and non-native speakers make in spoken English. The communicative purpose of the exchange has still been served, and neither party is greatly disturbed by the mistake.]
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