CHAPTER I: INTRODUCTION TO THE AMERICAN LEGAL SYSTEM COURSE

The American Legal System course is a general introduction to the United States legal system. The course will examine the structure of the legal system including its division into state and federal courts at both the trial and appellate levels. It will explore the basic aspects of litigation in those courts including the difference between civil and criminal cases, the parties who appear before the courts including plaintiffs, defendants, appellants and appellees, and the remedies available in civil suits including damages and injunctions. It will introduce the tools of legal reasoning including the use of precedent and reasoning by analogy. It will also examine the sources of law relied on in American courts including the United States Constitution as well as state constitutions, federal and state statutes, regulations, common law principles, and judicial decisions. Finally, the course will explore selected concepts in core areas of the law including constitutional law, criminal law, criminal procedure, torts, and contracts.

A. Structure of the American Court System

The structure of the American judicial system parallels the division of the American system of government into sovereign states and a sovereign federal government. This system of divided sovereignty includes states and a federal governments with executive, legislative, and judicial branches. Each state has a judicial system consisting of trial courts, intermediate courts of appeals, and a highest court. A system with a similar general structure exists at the federal level as well.

1. State Courts

Each state organizes its own court system. At a very general level, state courts mirror the hierarchical structure that is common to all court systems. Cases begin in a particular court, the court of first instance or trial court, are appealed to an intermediate appellate court, and in some circumstances may be able to be appealed to the highest state court.

Aside from this very general scheme, however, state court systems vary in their details. Those details include even what they name their courts. For example, while the highest state court is usually called the state supreme court, that is not always the case. In New York, the highest court is the New York Court of Appeals and in Massachusetts it is called the Supreme Judicial Court. Adding to the confusion, New York calls its trial courts of general jurisdiction the New York Supreme Court and that court is divided into a trial division as well as an appellate division and an appellate term which serve as intermediate appellate courts.

Aside from differences in the names of courts, the states also differ in other aspects of how they organize their courts. States usually have both trial courts of general jurisdiction as well as some courts of limited jurisdiction including specialized courts that hear cases falling within a particular subject area. In New York, there are family courts (hearing cases

involving guardianships, adoptions, foster care issues, juvenile delinquency, child abuse and neglect, family violence, child support, child custody, and visitation), surrogate's courts (ruling on the validity of wills and handling the administration of estates), and courts of claims (hearing lawsuits seeking money damages from the state). In addition, courts are often organized by geographic reach. The New York judicial system has county courts, district courts, city courts, town courts, and village courts operating in various parts of the state. Another distinction is the treatment of criminal cases versus civil cases. Some states use the same courts for both and others sometimes divide the two. The organizing scheme is further complicated in New York by a different judicial organization for New York City as compared to the rest of the state. For example, New York City has separate civil and criminal terms of the supreme court for each borough except Staten Island whereas in the rest of the state the supreme court hears civil matters and the county courts hear criminal matters.

In addition to its organizational scheme, state courts also vary in how they select judges. States may elect judges, appoint judges, or use some combination of those two methods varying with the particular court. In New York, for example, appellate court judges are appointed and trial court judges are elected. The methods used for selection can also vary in other ways with some states using a partisan appointment or election process and others using a nonpartisan or merit selection method. New York's appointment system for appellate judges utilizes a judicial nominating commission to create a list of potential candidates from which the Governor selects a nominee. The nominee must then be confirmed by the State Senate.

The court system also requires rules of procedure that describe many details about the operation of the courts. In New York, the Civil Practice Law and Rules and the Criminal Practice Law contain those provisions. The federal court system rules are the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure and many states have adopted the federal rules in whole or in part to govern their state courts.

2. Federal Courts

The federal court system consists of trial courts, called federal district courts, intermediate appellate courts, called courts of appeals, and a highest court, called the United States Supreme Court. In the U.S. Constitution, the only aspect of the federal judicial system that is constitutionally mandated is the existence of the Supreme Court, although no specific number of justices is required.

The rest of the federal court system is left to the discretion of Congress which has the power to "ordain and establish" "inferior Courts." Art. III, Section 1. Congress began to exercise that power as early as 1789 when the Judiciary Act of 1789 was enacted during the first session of the First Congress of the United States. The Judiciary Act of 1789 created 13 federal districts in the 11 states that had ratified the Constitution, as well as circuit courts that had the power to serve as trial courts for some categories of cases, and hear appeals from the district courts. The circuit courts had no specially appointed federal

circuit court judges, but were staffed by district court judges and Supreme Court Justices who "rode circuit" to hear cases before the various circuit courts.

The general contours of this system remain to the present day, although on a much larger scale. There are now 89 districts in the 50 states, and at least one district for each state. There are also federal districts in Puerto Rico and in various U.S. Territories. These district courts can hear both civil and criminal cases.

Federal judges are nominated by the President of the United States exercising the appointment power described in Article II, Section 2, and confirmed by the United States Senate under that same provision in the Constitution. These appointed federal judges have lifetime tenure, but "hold their offices during good Behavior," Art. III, Section 1, and can be removed from office by impeachment, Article I, Section 3.

The circuit courts are now called United States Courts of Appeals for the various federal circuits. They serve as the intermediate appellate courts for the federal court system. There are 13 federal circuits, 11 of which are numbered 1 through 11, with the Second Circuit hearing appeals from the district courts in Connecticut, New York, and Vermont. There is also a United States Court of Appeals for the District of Columbia and a United States Court of Appeals for the Federal Circuit. They are separately staffed by courts of appeals judges, although district court judges can sit by designation when needed. Congress has authorized 179 judges to sit on the United States Courts of Appeals, although at any given time some of those positions are unfilled due to vacancies.

The United States Court of Appeals for the Federal Circuit is a specialized court that hears appeals from district courts throughout the country based on their subject matter. Those include cases involving patents, and various issues involving U.S. energy policy and international trade. It also hears appeals from various specialized courts including the United States Court of Federal Claims, the United States Court of Appeals for Veterans Affairs, and the International Trade Commission. These specialized courts are created by Congress under its Article I regulatory powers rather than under Article III.

The jurisdiction of the Article III federal courts is described in Article III of the U.S. Constitution. It describes the categories of cases which the federal courts have the authority to adjudicate. They include cases involving issues arising under the U.S. Constitution, federal statutes, treaties, disputes between states, cases in which the United States is a party, diversity jurisdiction, and several other categories.

At the top of the federal judicial system is the U.S. Supreme Court. The Supreme Court also sits at the top of the judicial structure of the state courts on issues relating to federal law and the U.S. Constitution. Since 1869 the number of justices has been fixed at nine. Currently, the bulk of the Court's jurisdiction is discretionary rather than mandatory. That means that the Court is free to choose the cases it hears from the thousands that seek review each year. This is done by the certiorari process.

A petition for a writ of certiorari (an order issued by a higher court to a lower court ordering the court to send the record of a case for review) is filed by a party seeking review

of an adverse decision issued by a lower court. The party filing the petition states the reasons why the case is appropriate for Supreme Court review. The winning party below can file a petition in opposition to granting the writ of certiorari. The petition states the reasons why the court should not agree to review the case. Four members of the Court must vote in favor of the petition for it to be granted. Under 100 cases are granted review in any Term of the Court which begins each year on the first Monday in October and typically ends during the last week in June.

B. Reading a Judicial Decision

An opinion of a court announces the outcome of the case and states the reasons for the decision reached by the court. The opinion will contain a variety of pieces of information. One is the caption or title of the case. This consists of the names of the litigants. If the case is a civil suit, when it is first filed the caption will include the plaintiff(s), the party or parties bringing the lawsuit, and the defendants, the party or parties being sued separated by "v." which stands for versus. While the full name may include multiple parties, cases are typically known by a shorthand caption which lists one plaintiff and one defendant. In a criminal case, the party bringing the suit is the government and the person charged with a crime is the defendant.

In addition to the case name, other information about the case is included such as the court that decided the case and the date of the decision. This information may appear in the form of a citation, which is a series of abbreviations including information such as the series of books, called reporters or reports, that contain the decision, the volume in the series, the first page of the decision, the court, the jurisdiction, and the date.

An example of a citation to a United States Supreme Court decision following these rules is 393 U.S. 503 (1969). This refers to volume 393 and page 503 of the United States Reports, a series that only contains decisions of the U.S. Supreme Court, and the date of the decision. As of January, 2019, there were 570 bound volumes of this series with the most recent volumes including cases from the 2012 Term. More recent opinions are printed first on the day of decision in the form of a "bench opinion," a few days later as a "slip opinion," later in a preliminary soft cover volume of the U.S. Reports, and finally in a hard cover bound volume. Between three and five volumes are added per Term of the Court. The United States Reports is the official government publication of U.S. Supreme Court opinions. In addition, U.S. Supreme Court opinions are published in bound volumes by two unofficial sources, the Supreme Court Reporter (West Publishing Co.) and the United States Supreme Court Reports, Lawyer's Edition (Lexis). Decisions are also available from multiple online sources.

In most cases, the opinion will next include the name of the judge who wrote the opinion. One exception is an opinion that begins "per curiam." Per curiam is a Latin phrase meaning by the court. A per curiam decision is a majority opinion issued by an appellate court with multiple judges deciding the case. In the federal court system, multi-member decisional bodies include three judges on a panel of the court of appeals for a particular

federal circuit, an en banc opinion by the full bench of one of the federal circuits, or the nine U.S. Supreme Court justices. The per curiam designation means that the judges who joined the opinion are acting collectively and no individual judge is signing the opinion. Per curiam decisions usually deal with uncontroversial issues where the court is relying on established legal principles rather than altering the law in some way. However, there are exceptions where the per curiam designation has been used even though the decision is far from routine. The use of a per curiam decision has been criticized when used in this way.

Judicial opinions typically begin with an introductory paragraph announcing the issue or issues to be decided and possibly the outcome as well. That paragraph is followed by a description of the facts relevant to the dispute as well as the prior judicial history of the case if the opinion is an appeal from a lower court decision. In an appeal, the party who lost in the court below and who is appealing to a higher court may be referred to as the appellant or the petitioner. The party that won below is the appellee or respondent.

Following the facts and procedural history, the decision will discuss the law relevant to the first issue to be decided, if there are more than one, whether it is a constitutional provision, statute, a regulation, a common law principle, or some combination of these. The opinion will also discuss previous cases that have addressed the same or a similar issue that will be useful to the court in reaching its decision either because they are binding precedent that the court must follow or because their reasoning is persuasive and the court decides to adopt the same or a similar analysis. Sometimes there may be conflicting precedent, and the court may have to decide which decision to follow and which to reject, assuming neither are binding.

Binding precedent exists where an earlier opinion has decided the exact same issue that the court is now presented with and the court deciding the case is a higher court that the lower court now confronted with the issue is required to follow. The lower court can, for example, be a state trial court required to follow an appellate court of that same state. If the precedent is a decision of the U.S. Supreme Court interpreting the federal constitution or a federal statute or regulation, that decision would be binding on all state and federal courts.

Once the court determines the applicable law, it will then apply that law to the facts of the case. As necessary, it will follow the same process with all issues relevant to reaching a decision in the case. The opinion will usually end by announcing what action the court is taking. In an appellate court, that will typically be framed in terms of the impact of the decision on the lower court decision. The appellate court may affirm the decision below, reverse the decision, or remand to the lower court for further proceedings.

If the case is decided by more than a single judge, there may be opinions in addition to the opinion of the court. There may be concurring opinions that agree with the outcome reached in the court's opinion, but not the reasons given. Concurring opinions may rely on different reasoning or, at least, announce some limiting principle that may be relevant in future cases that are similar, but not identical. There may also be dissenting opinions that disagree in both outcome and rationale. Identifying the views of the judges can sometimes be complicated because judges can join parts of opinions, rather than the entire opinion.

A question often asked by students assigned to read cases is "what do I need to know when a case is assigned as reading?" That isn't an easy question to answer. A case tells a story. You need to understand that story from beginning to end. It starts with the facts, what happened that resulted in a lawsuit being filed, and what procedural history led to the case being before the court issuing the opinion. It goes on to identify the issue or issues that the court must resolve to reach a result in the case and why those issues are critical to the outcome of the case. For each issue, the court identifies a chain of reasoning that leads it to reach a particular conclusion. That chain of reasoning, as described above, will include the source of law that applies to the situation before the court. It may also include prior cases that decided the same or similar issues that need to be considered in reaching a resolution of a particular legal issue, similarities and differences between those cases and the one before the court, the policies at issue in reaching a decision in the case, the application of the facts of the case to the legal principle the court has decided governs the case, the rationale for the decision reached, and the outcome of the case. In some opinions, a court will also consider the implications of the decision for other cases not before the court. This tells you how broad or narrow the ruling in the case is and what implications it has for subsequent cases.

In addition to the reasoning of the court, the opinion may include information about the arguments made by each of the parties and how the court responds to those arguments. This allows you to think about the case from the point of view of the parties rather than the judge writing the opinion. Did the parties make the right arguments? In a subsequent case, is there some way for a party who appears to be on the losing side to re-frame the issue to avoid defeat?

If there is more than one opinion in the case, you need to also understand the reasoning that underlies each concurring and dissenting opinion. These opinions may help you to think critically about the majority opinion. You may conclude one of the other opinions is better reasoned than the majority opinion. In addition, a concurring opinion may give you some insight into the scope of the majority decision as precedent, particularly when a judge whose vote is essential to the outcome announces that the judge would not reach the same result if the facts were somewhat different.

Below is an example of a judicial opinion. Identify the various parts of the opinion and try to understand why the court decided the case the way that it did.

CONTI v. ASPCA
77 Misc.2d 61, 353 N.Y.S.2d 288 (N.Y. Civil Court, Queens County, 1974)

RODELL, J.

Chester is a parrot. He is fourteen inches tall, with a green coat, yellow head and an orange streak on his wings. Red splashes cover his left shoulder. Chester is a show parrot, used by the defendant ASPCA in various educational exhibitions presented to groups of children.

On June 28, 1973, during an exhibition in Kings Point, New York, Chester flew the coop and found refuge in the tallest tree he could find. For seven hours the defendant sought to retrieve Chester. Ladders proved to be too short. Offers of food were steadfastly ignored. With the approach of darkness, search efforts were discontinued. A return to the area on the next morning revealed that Chester was gone.

On July 5th, 1973 the plaintiff, who resides in Belle Harbor, Queens County, had occasion to see a green-hued parrot with a yellow head and red splashes seated in his backyard. His offer of food was eagerly accepted by the bird. This was repeated on three occasions each day for a period of two weeks. This display of human kindness was rewarded by the parrot's finally entering the plaintiff's home, where he was placed in a cage.

The next day, the plaintiff phoned the defendant ASPCA and requested advice as to the care of a parrot he had found. Thereupon the defendant sent two representatives to the plaintiff's home. Upon examination, they claimed that it was the missing parrot, Chester, and removed it from the plaintiff's home. Upon refusal of the defendant ASPCA to return the bird, the plaintiff now brings this action in replevin.[1]

The issues presented to the Court are twofold: One, is the parrot in question truly Chester, the missing bird? Two, if it is in fact Chester, who is entitled to its ownership?

The plaintiff presented witnesses who testified that a parrot similar to the one in question was seen in the neighborhood prior to July 5, 1973. He further contended that a parrot could not fly the distance between Kings Point and Belle Harbor in so short a period of time, and therefore the bird in question was not in fact Chester.

The representatives of the defendant ASPCA were categorical in their testimony that the parrot was indeed Chester, that he was unique because of his size, color and habits. They claimed that Chester said 'hello' and could dangle by his legs. During the entire trial the Court had the parrot under close scrutiny, but at no time did it exhibit any of these characteristics. The Court called upon the parrot to indicate by name or other mannerism an affinity to either of the claimed owners. Alas, the parrot stood mute.

Upon all the credible evidence the Court does find as a fact that the parrot in question is indeed Chester, the same parrot which escaped from the possession of the ASPCA on June 28, 1973.

The Court must now deal with the plaintiff's position, that the ownership of the defendant was a qualified one and upon the parrot's escape, ownership passed to the first individual who captured it and placed it under his control.

The law is well settled that the true owner of lost property is entitled to the return thereof as against any person finding same. (*In re Wright's Estate*, 177 N.Y.S.2d 410

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[1] Professor's Note: Replevin is a legal action in which the court orders the sheriff to seize personal property that has been wrongfully held and return it to its owner.

(1958). This general rule is not applicable when the property lost is an animal. In such cases the Court must inquire as to whether the animal was domesticated or ferae naturae (wild).

Where an animal is wild, its owner can only acquire a qualified right of property, which is wholly lost when it escapes from its captor with no intention of returning. Thus in *Mullett v. Bradley*, 53 N.Y.S. 781 (1898), an untrained and undomesticated sea lion escaped after being shipped from the West to the East Coast. The sea lion escaped and was again captured in a fish pond off the New Jersey Coast. The original owner sued the finder for its return. The court held that the sea lion was a wild animal (ferae naturae), and when it returned to its wild state, the original owner's property rights were extinguished. In *Amory v. Flyn*, 10 Johns. 102 (NY Sup. Ct. 1813), plaintiff sought to recover geese of the wild variety which had strayed from the owner. In granting judgment to the plaintiff, the court pointed out that the geese had been tamed by the plaintiff and therefore were unable to regain their natural liberty. This important distinction was also demonstrated in *Manning v. Mitcherson*, 69 Ga. 447, 450--451(1883), where the plaintiff sought the return of a pet canary. In holding for the plaintiff the court stated "To say that if one has a canary bird, mockingbird, parrot, or any other bird so kept, and it should accidentally escape from its cage to the street, or to a neighboring house, that the first person who caught it would be its owner is wholly at variance with all our views of right and justice."

The Court finds that Chester was a domesticated animal, subject to training and discipline. Thus the rule of ferae naturae does not prevail and the defendant as true owner is entitled to regain possession.

The Court wishes to commend the plaintiff for his acts of kindness and compassion to the parrot during the period that it was lost and was gratified to receive the defendant's assurance that the first parrot available would be offered to the plaintiff for adoption.

Judgment for defendant dismissing the complaint without costs.

C. Sources of Law: Common Law, Stare Decisis and the System of Precedent

The United States legal system is rooted in English common law which began to develop in the eleventh century. The common law was exported to the American colonies and even now continues to be an important source of law for areas of the law that have not been altered by constitutional or statutory law. The common law is particularly important in the areas of property, torts, and contract law. Of the American states, only Louisiana's civil legal system does not have English common law origins. It is instead rooted in the French civil law system which is based on the Napoleonic Code and earlier Roman counterparts. However, the criminal law system of Louisiana is based on the common law.

Common law principles are found in judge-made law and not law embodied in statutes. Common law principles evolve over time by courts deciding individual cases and writing legal opinions explaining the basis for the result in a particular case. Legal principles described in these opinions are then applied to other similar cases. The earlier cases are

relied on as precedent. Precedent constrains judges so that they are not free to ignore earlier cases, but are instead bound by the principle of stare decisis.

Stare decisis means "to stand by things decided." According to the United States Supreme Court, stare decisis "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne v. Tennessee*, 501 U.S. 808, 828 (1991). The doctrine also has some negative consequences. It can permit decisions to continue to be relied on despite recognition that the decision is erroneous and it can slow down the ability of the legal system to adapt to changes in society.

However, the system of following precedent is not as simple as it sounds. It is easy to identify the appropriate precedent if two cases raise the exact same legal issue and are identical in all aspects, but that is rarely the case. More likely, the case before the court will be similar to, but not identical to an earlier case. In deciding whether to follow precedent in that situation, the court must decide if the similarities between the two cases requires the court to follow the earlier case despite the differences or not.

If the differences are viewed as insignificant in relation to the legal issue before the court, the court will decide to follow the precedent despite the differences. By contrast, if the differences are significant in light of the legal issue before the court and the policies that underlie the legal rule applied in the precedent, the court may decide to carve out an exception to the rule applied in the earlier case because the differences require a different legal rule. In some cases, there may be two or more potentially applicable precedents. In that circumstance, the court must decide which is the most relevant precedent based on the similarities and differences between the applicable cases and the policies at issue.

While relatively rare, it is also possible for a court to explicitly overturn an earlier decision. Although courts seldom overrule precedent, Chief Justice Rehnquist explained that stare decisis is not an "inexorable command." However, any decision to overrule precedent is made cautiously.

Overturning a precedent also relates to the hierarchical nature of the court system and whether the court has the authority to overturn an earlier decision or not. Not surprisingly, the court that most frequently overturns its own precedents is the United States Supreme Court. As the highest court in the nation on all issues of constitutional law and federal statutory law, it is not bound by the decisions of any other court in deciding such issues and, therefore, it is free to reject even its own precedent. It occasionally does so because the earlier decision has been eroded by changes in legal doctrine, because the decision has become unworkable in practice, or because changes in society have caused the Court to rethink the earlier precedent. This ability to overturn its own past decisions with greater frequency than lower courts is also true for the highest state court on an issue of state law.

Despite the U.S. Supreme Court's ability to overrule its own past decisions, stare decisis still plays a major role in convincing the Court to adhere to precedent. In a 2015 opinion in *Kimble v. Marvel Entertainment LLC*, 135 S. Ct. 2402 (2015), Justice Kagan wrote about stare decisis:

> Respecting stare decisis means sticking to some wrong decisions. The doctrine rests on the idea, as Justice Brandeis famously wrote, that it is usually "more important that the applicable rule of law be settled than that it be settled right." Indeed, stare decisis has consequence only to the extent it sustains incorrect decisions; correct judgments have no need for that principle to prop them up. Accordingly, an argument that we got something wrong—even a good argument to that effect—cannot by itself justify scrapping settled precedent. Or otherwise said, it is not alone sufficient that we would decide a case differently now than we did then. To reverse course, we require as well what we have termed a "special justification"—over and above the belief "that the precedent was wrongly decided."

Some recent Supreme Court decisions suggest that some members of the Court are now willing to depart from stare decisis more frequently. For example, in 2018 in *Janus v. American Federation of State, County and Municipal Employees, Council 31*, in an opinion by Justice Alito upholding a free speech claim, he overturning *Abood v. Detroit Board of Education,* a 40 year-old precedent. In doing so, he wrote that the doctrine of stare decisis "applies with perhaps least force of all to decisions that wrongly denied First Amendment rights." In her dissenting opinion, Justice Kagan responded to the majority's willingness to overturn precedent, writing that "the worse part of today's opinion is where the majority subverts all known principles of stare decisis," overturning "*Abood* because it wanted to."

Whether a precedent is binding on a court depends on which court decided the original case and which court is now faced with the decision of whether or not to adopt the reasoning of the earlier decision. This question relates back to the structure of the American court system. On issues of state law decided by state courts, lower courts in that state are bound by the decisions of higher courts, but not courts at the same level or below them. In the federal court system, federal district courts must follow the decisions of the court of appeals for the federal circuit they are part of as well as decisions of the United States Supreme Court, but not the decisions of other circuits. When precedent is not binding, however, it can nevertheless be followed because a court faced with the same issue can find its reasoning to be persuasive and, therefore, adopt its analysis. Because of the existence of both binding and nonbinding precedent, there may be a conflict in the precedent with some cases deciding the issue one way and other cases another way. In that circumstance, a court that is not bound by any of the earlier cases can choose among the conflicting precedents or carve out yet a different justification for its decision.

When an issue is resolved by a large number of courts who are not bound by each other's rulings, as frequently happens among the U.S. Courts of Appeals for the various federal circuits, the opinions present a dialogue on the issue with each new decision commenting on the earlier decisions and agreeing or disagreeing with various parts of the analysis presented. Often, if the issue is one that falls within the jurisdiction of the U.S. Supreme Court, the Court will wait to resolve the issue until a number of circuits have ruled on the issue in order to get the benefit of that ongoing dialogue.

In addition to case law altering the common law over time, the common law can be superseded by the adoption of statutes. Statutes can convert a common law principle into statutory law, modify the common law principle or replace the common law principle entirely. A common law rule can also be changed by an amendment to the state constitution or found to be unconstitutional under either the state or federal constitution.

D. Tools of Legal Reasoning: Analogy and Precedent

One of the major forms of reasoning used in legal analysis is reasoning by analogy. As described above in discussing precedent, the process of deciding whether to apply a particular precedent utilizes analogical reasoning to compare the similarities and differences between the current case and past cases to decide if an earlier case should or should not govern a case before the court.

In addition to using reasoning by analogy to resolve the specific question of which precedent to apply, analogical reasoning is also used more generally in legal analysis. The legal system is constantly required to decide how to treat something new, a new technology or invention, new social norms, or other forms of behavior. Sometimes the legal response comes through legislation. For example, the legislature may decide to enact rules to control the use of new technology such as drones, hoverboards or self-driving cars to protect public safety. Even in the absence of new legislation, however, the issue is likely to come before the courts for resolution. For example, if a drone damages someone's property, that person may sue claiming the owner of the drone was negligent. A court will then have to decide how the law should treat a drone for purposes of liability. In reaching a decision, the court will have to compare drones to technology that the law has already dealt with to find the best comparison. This process of using existing law to deal with new issues can be described as "new wine in old bottles." The legal system's capacity to deal with new issues without starting from scratch is important to its functioning. The next case, *Adams v. New Jersey Steamboat Co.*, is an example of such a use of reasoning by analogy.

ADAMS v. NEW JERSEY STEAMBOAT CO.
151 N.Y. 163 (1896)

O'BRIEN, J.

On the night of the 17th of June, 1889, the plaintiff was a cabin passenger from New York to Albany on the defendant's steamer Drew, and for the usual and regular charge was assigned to a stateroom on the boat. The plaintiff's ultimate destination was St. Paul, in the state of Minnesota, and he had upon his person the sum of $160 in money for the purpose of defraying his expenses of the journey. The plaintiff, on retiring for the night, left this money in his clothing in the stateroom, having locked the door and fastened the windows. During the night it was stolen by some person, who apparently reached it through the window of the room. The plaintiff's relations to the defendant as a passenger, the loss without negligence on his part, and the other fact that the sum lost was reasonable and

proper for him to carry upon his person to defray the expenses of the journey, have all been found by the verdict of the jury in favor of the plaintiff. The appeal presents, therefore, but a single question, and that is whether the defendant is, in law, liable for this loss without any proof of negligence on its part. The learned trial judge instructed the jury that it was, and the jury, after passing upon the other questions of fact in the case, rendered a verdict in favor of the plaintiff for the amount of money so stolen. The judgment entered upon the verdict was affirmed at general term, and that court has allowed an appeal to this court.

The defendant has, therefore, been held liable as an insurer against the loss which one of its passengers sustained under the circumstances stated. The principle upon which innkeepers are charged by the common law as insurers of the money or personal effects of their guests originated in public policy. It was deemed to be a sound and necessary rule that this class of persons should be subjected to a high degree of responsibility in cases where an extraordinary confidence is necessarily reposed in them, and where great temptation to fraud and danger of plunder exists by reason of the peculiar relations of the parties. The relations that exist between a steamboat company and its passengers, who have procured staterooms for their comfort during the journey, differ in no essential respect from those that exist between the innkeeper and his guests. The passenger procures and pays for his room for the same reasons that a guest at an inn does. There are the same opportunities for fraud and plunder on the part of the carrier that was originally supposed to furnish a temptation to the landlord to violate his duty to the guest. A steamer carrying passengers upon the water, and furnishing them with rooms and entertainment, is, for all practical purposes, a floating inn, and hence the duties which the proprietors owe to the passengers in their charge ought to be the same. No good reason is apparent for relaxing the rigid rule of the common law which applies as between innkeeper and guest, since the same considerations of public policy apply to both relations. The defendant, as a common carrier, would have been liable for the personal baggage of the plaintiff, unless the loss was caused by the act of God or the public enemies; and a reasonable sum of money for the payment of his expenses, if carried by the passenger in his trunk, would be included in the liability for loss of baggage. Carr. § 24; Ang. Carr. § 80. Since all questions of negligence on the part of the plaintiff, as well as those growing out of the claim that some notice was posted in the room regarding the carrier's liability for the money, have been disposed of by the verdict, it is difficult to give any good reason why the measure of liability should be less for the loss of the money, under the circumstances, than for the loss of what might be strictly called baggage.

It was held in *Carpenter v. Railroad Co.*, 124 N. Y. 53, 26 N. E. 277 (1891), that a railroad running sleeping coaches on its road was not liable for the loss of money taken from a passenger while in his berth, during the night, without some proof of negligence on its part. That case does not, we think, control the question now under consideration. Sleeping-car companies are neither innkeepers nor carriers. A berth in a sleeping car is a convenience of modern origin, and the rules of the common law in regard to carriers or innkeepers have not been extended to this new relation. This class of conveyances are attached to the regular trains upon railroads for the purpose of furnishing extra accommodations, not to the public at large, nor to all the passengers, but to that limited

number who wish to pay for them. The contract for transportation, and liability for loss of baggage, is with the railroad, the real carrier. All the relations of passenger and carrier are established by the contract implied in the purchase of the regular railroad ticket, and the sleeping car is but an adjunct to it only for such of the passengers as wish to pay an additional charge for the comfort and luxury of a special apartment in a special car. The relations of the carrier to a passenger occupying one of these berths are quite different, with respect to his personal effects, from those which exist at common law between the innkeeper and his guest, or a steamboat company that has taken entire charge of the traveler by assigning to him a stateroom. While the company running sleeping cars is held to a high degree of care in such cases, it is not liable for a loss of this character, without some proof of negligence. The liability as insurers which the common law imposed upon carriers and innkeepers has not been extended to these modern appliances for personal comfort, for reasons that are stated quite fully in the adjudged cases, and that do not apply in the case at bar.

But, aside from authority, it is quite obvious that the passenger has no right to expect, and in fact does not expect, the same degree of security from thieves while in an open berth in a car on a railroad as in a stateroom of a steamboat, securely locked, and otherwise guarded from intrusion. In the latter case, when he retires for the night he ought to be able to rely upon the company for his protection with the same faith that the guest can rely upon the protection of the innkeeper, since the two relations are quite analogous. In the former the contract and the relations of the parties differ at least to such an extent as to justify some modification of the common-law rule of responsibility. The use of sleeping cars by passengers in modern times created relations between the parties to the contract that were unknown to the common law, and to which the rule of absolute responsibility could not be applied without great injustice in many cases. But in the case at bar no good reason is perceived for relaxing the ancient rule, and none can be deduced from the authorities. The relations that exist between the carrier and the passenger who secures a berth in a sleeping car or in a drawing-room car upon a railroad are exceptional and peculiar. The contract which gives the passenger the right to occupy a berth or a seat does not alone secure to him the right of transportation. It simply gives him the right to enjoy special accommodations at a specified place in the train. The carrier by railroad does not undertake to insure the personal effects of the passenger which are carried upon his person against depredation by thieves. It is bound, no doubt, to use due care to protect the passenger in this respect; and it might well be held to a higher degree of care when it assigns sleeping berths to passengers for an extra compensation than in cases where they remain in the ordinary coaches, in a condition to protect themselves. But it is only upon the ground of negligence that the railroad company can be held liable to the passenger for money stolen from his person during the journey. The ground of the responsibility is the same as to all the passengers, whether they use sleeping berths or not, though the degree of care required may be different. Some proof must be given that the carrier failed to perform the duty of protection to the passenger that is implied in the contract, before the question of responsibility can arise, whether the passenger be in one of the sleeping berths, or in a seat in the ordinary car. The principle upon which the responsibility rests is the same in either case, though the

degree of care to which the carrier is held may be different. That must be measured by the danger to which the passenger is exposed from thieves, and with reference to all the circumstances of the case. The carrier of passengers by railroad, whether the passenger be assigned to the ordinary coaches or to a berth in a special car, has never been held to that high degree of responsibility that governs the relations of innkeeper and guest; and it would perhaps be unjust to so extend the liability, when the nature and character of the duties which it assumes are considered. But the traveler who pays for his passage, and engages a room, in one of the modern floating palaces that cross the sea or navigate the interior waters of the country, establishes legal relations with the carrier that cannot well be distinguished from those that exist between the hotel keeper and his guests. The carrier in that case undertakes to provide for all his wants, including a private room for his exclusive use, which is to be as free from all intrusion as that assigned to the guest at an hotel. The two relations, if not identical, bear such close analogy to each other that the same rule of responsibility should govern. We are of the opinion, therefore, that the defendant was properly held liable in this case for the money stolen from the plaintiff, without any proof of negligence.

E. Law vs. Equity

The English court system consisted of both Courts of Law and a Court of Chancery. Law courts administered the formal law consisting of common law principles and the technicalities associated with the enforcement of those principles. Law courts were not designed to act based on general principles of justice. The law courts administering the common law recognized the existence of only particular causes of action (legal theories) that justified awarding the plaintiff a remedy. The Court of Chancery, by contrast, followed general principles of fairness and justice, referred to as principles of equity.

The Court of Chancery had its origin in the fact that people who could not obtain a remedy from the law courts would appeal to the King for justice. The King assigned to the King's Chancellor, originally a member of the clergy, the task of hearing these appeals and making decisions based on principles of equity. Instead of using juries, cases before the Lord Chancellor would be heard by the Chancellor who would find the facts and apply equitable principles to reach a result.

The Court of Chancery also made available remedies that were not available in the law courts. For example, while courts of law could order damages to be paid as compensation for an injury, the Chancery Court could issue an order to require the losing party to do or refrain from doing something in order to prevent future harm or, where possible, to remedy past harm.

The U.S. legal system originally separated law and equity courts following the English practice. However, the merger of the two court systems began in the middle of the 19th Century. New York was an early adopter of a merged court system which began as early as 1848. The federal courts abandoned the separation of law and equity in 1938 when the Federal Rules of Civil Procedure were adopted.

In the United States today, the federal courts and most state courts have merged law and equity in the courts of general jurisdiction although some specialized courts retain their equitable character. Thus, today the same court can hear legal and equitable claims and issue legal and equitable remedies. This is a change from the previous system where legal and equitable claims had to be brought separately. In addition, equitable principles have been incorporated into both the substantive and procedural aspects of the law in a variety of ways. However, the distinction between law and equity is still important in several ways.

One of the most important ways concerns the remedies available. In general, equitable remedies are viewed as remedies of last resort and are only available if the plaintiff can show that legal remedies are not adequate to redress the wrong suffered by the plaintiff. This is particularly true in cases asserting common law claims, but it is often the case even with statutory claims unless the legislature makes clear that certain equitable remedies are available as a matter of right. For example, in a civil rights statute redressing employment discrimination, the legislature can make clear that a discharged employee can be reinstated as a generally available remedy that will only be denied by a court if equitable considerations make reinstatement inappropriate under the circumstances. Such a statute alters the traditional remedial priorities. However, in most circumstances equitable remedies, such as court orders in the form of injunctive relief that require the defendant to do or refrain from doing something, are not as easily available as money damages, the most common legal remedy.

Another difference between law and equity that still exists concerns jury trials. Before the merger of law and equity, law courts used juries and courts of equity did not. This distinction continues despite the merger. After the merger, jury trials are available as of right if a legal claim is asserted, but equitable claims are decided by the judge. Therefore, in a case where legal and equitable claims are both asserted, issues that relate to the legal claims are presented to a jury, unless, as frequently happens, the plaintiff waives the right to a jury trial, but issues that relate exclusively to the equitable claims are decided by the judge. To avoid eroding the Seventh Amendment civil jury trial right, a series of Supreme Court cases has protected this distinction in the federal courts as well. Nevertheless, despite the preservation of the federal civil jury trial right, for a variety of reasons there has been a precipitous decline in the number of civil trials in the federal courts with most federal civil cases being resolved before trial.

F. STATUTES AND STATUTORY INTERPRETATION

Statutes are enacted by legislative bodies (U.S. Congress, state legislatures, city councils, etc.) and are an important, if not the most important, source of law in the United States. However, statutory language is not always completely clear in its meaning. Therefore, statutes are often interpreted by courts and administrative agencies charged with enforcing them to discern their meaning and apply them to particular sets of facts.

While courts and administrative agencies are the definitive interpreters of statutory language, many other people also seek to understand the meaning of statutes. Sometimes