CHAPTER 1

**INTRODUCTION TO LAW**

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**LECTURE OUTLINE**

**1-1 Definition of Law (See PowerPoint Slides 1-1 and 1-2)**

* Aristotle – law is reason unaffected by desire
* Holmes – law embodies the story of a nation's development through many centuries
* Blackstone – that rule of action which is prescribed by some superior and which the inferior is bound to obey
* *Black’s Law Dictionary –* a body of rules of action or conduct prescribed by the controlling authority, and having legal binding force
* Rules enacted by a government authority that govern individuals and relationships in society

**1-2 Classifications of Law**

 1-2a Public versus Private Law (See PowerPoint Slide 1-3)

* Public law or statutory law (discussed later in chapter)
* Private law – contracts, employer regulations

 1-2b Criminal versus Civil Law (See PowerPoint Slide 1-4)

* Criminal law – carries fine and/or imprisonment, governmental enforcement
* Civil law – individual enforcement, liability

 1-2c Substantive versus Procedural Law

* Substantive laws – gives rights and responsibilities
* Procedural laws – means for enforcing substantive rights

 1-2d Common versus Statutory Law (See PowerPoint Slide 1-5)

* Common law
* Began in England (1066)
* Exists today – nonstatutory law
* Exists also in court decisions – *stare decisis*, “let the decision stand,” or following case precedent
* Statutory law
	+ - Passed by some governmental body
		- Appears in written form

 1-2e Law versus Equity (See PowerPoint Slide 1-6)

* In common law England, remedies were separated into legal and equitable remedies
* Legal = money
* Equitable = injunctions, specific performance
	+ Separated the remedies so that courts of chancery could give remedies when courts of law could not
	+ Today all courts are authorized to award legal or equitable remedies

**1-3 Purposes of Law (See PowerPoint Slide 1-7)**

 1-3a Keeping Order

* Examples: Traffic laws, criminal laws (kidnapping, murder), trespass laws, property laws
* Safety – USA Patriot Act
* Reporting requirements
* Search warrants

 1-3b Influencing Conduct

 Examples: Disclosure statutes for securities, antitrust laws, negligence and standards of normal (acceptable) or liability‑free conduct

 1-3c Honoring Expectations

 Examples: Contracts, landlord/tenant, securities investment, property ownership

 1-3d Promoting Equality

 Examples: Title VII (employment discrimination laws), Age Discrimination Act, Pregnancy Discrimination Act, bussing, antisegregation statute, Social Security system, antitrust laws

 1-3e Law as the Great Compromiser

 Examples: Union/management laws and regulations, contract interpretations, divorce property settlements, probate distributions

**1-4 Characteristics of Law (See PowerPoint Slide 1-8)**

 1-4a Flexibility

 Examples: On-line transactions and fax machines have made us revisit when a contract acceptance occurs

 1-4b Consistency

* Allows businesses to rely on law for planning

 1-4c Pervasiveness (See PowerPoint Slide 1-9)

Note: Point out brief to students and how to do and use case briefs (See Exhibit 1.1 and PowerPoint Slide 1-10).

**CASE BRIEF 1.1**

*Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*

545 U.S. 913 (2005)

*FACTS:* Grokster, Ltd. and StreamCast Networks, Inc. (Respondents/defendants) distribute free software products that allow computer users to share electronic files through peer-to-peer networks. Grokster and StreamCast began distributing their software after Napster was shut down by a judicial finding that it was engaged in copyright infringement.

A group of copyright holders (MGM for short, but including motion picture studios, recording companies, songwriters, and music publishers) (Petitioners) sued Grokster and StreamCast for their users' copyright infringements, alleging that they knowingly and intentionally distributed their software to enable users to reproduce and distribute the copyrighted works in violation of the Copyright Act, [17 U.S.C. § 101](http://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW7.04&fn=_top&sv=Split&tc=-1&findtype=L&docname=17USCAS101&db=1000546&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Westlaw) *et seq.*

Although Grokster and StreamCast do not know when particular files are copied, a few searches using their software would show what is available on the networks through the software. MGM commissioned a statistician to conduct a systematic search, and his study showed that nearly 90% of the files available for download on the FastTrack system were copyrighted works. . . . [t]he probable scope of copyright infringement is staggering.

*DECISIONS BELOW:* The District Court held that those who used the Grokster and Morpheus software to download copyrighted media files directly infringed MGM's copyrights, but granted summary judgment in favor of Grokster and StreamCast as to any liability arising from distribution of the then current versions of their software. The Court of Appeals affirmed. MGM appealed.

*ISSUES ON APPEAL:* Can Grokster and StreamCast be held liable for copyright infringement based on third parties’ unlawful use of its software? What are the legal rights of those whose copyrights are infringed by others using a tool provided by companies such as Grokster?

*DECISION:* The court held that Grokster and StreamCast can he held liable for the infringement by others, not on the grounds of no other lawful use (for there are other lawful uses of their technology), but rather for their intent established by their methods of advertising, their advice to users, and their lack of control over the use of their software or even their knowledge regarding its use for infringement purposes.

**Answers to Case Questions**

1. While both had legal uses beyond the infringement issue, there were several issues that made a difference to the court:
2. Sheer volume of the exchanges over Grokster and StreamCast made it impossible to police (and no one tried to do so).
3. Protection of copyrighted material required some additional effort because otherwise the technology opened up all copyrighted materials to vulnerability.
4. Grokster and StreamCast deliberately advertised their products for infringement use and made their money from ads placed strategically when their service was used.
5. They made money through their ads that appeared as the users downloaded.
6. Grokster and StreamCast were able to show that their technology did indeed have lawful uses (just as Sony was able to establish in its case). They were using the precedent of *Sony* as a way to avoid vicarious liability. “Other lawful means” translates to being able to show that the service provided some lawful tools, uses, etc. and that it was not just a service designed to avoid payment for copyrighted music.

3. There were several critical facts: the intent of the companies—they were advertising themselves as the replacement for Napster, they were making money, and the more users, the more money, and they made no effort to monitor use.

**CASE BRIEF 1.2**

*Viacom International, Inc. v. YouTube, LLC*

676 F.3d 19 (2nd Cir. 2012)

*FACTS:* YouTube was founded in February 2005 by three former employees of PayPal. When YouTube was launched in December 2005, a press release described it as a “consumer media company” that “allows people to watch, upload, and share personal video clips.” YouTube achieved rapid prominence and profitability, eclipsing competitors such as Google Video and Yahoo Video by wide margins. In November 2006, Google acquired YouTube for $1.65 billion. By March 2010, site traffic on YouTube had soared to more than 1 billion daily video views, with more than 24 hours of new video uploaded to the site every minute.

Viacom, other film companies, and copyright holders discovered that their films and other video materials were posted on YouTube and filed suit against YouTube and Google for copyright infringement. Google and YouTube maintained that those who posted the videos were responsible for infringement and that they only provided an internet site and service. Are YouTube and Google responsible for the copyright infringement of others?

*DECISIONS BELOW:* The District Court granted summary judgment to YouTube and Google, and Viacom appealed.

*ISSUES ON APPEAL:* Could YouTube and Google be held liable for copyright infringement or were they protected as unwitting service providers who happened to have copyrighted material posted on their site?

*DECISION:* The court reversed the summary judgment because there were significant issues of fact that indicated YouTube was not entitled to a safe harbor exemption from copyright liability because of certain things it was doing in managing its site. The court felt that there were indicators that YouTube was aware of infringement, including e-mails as well as a third-party deal to license the clips it had on its site to a mobile provider.

**Answers to Case Questions**

1. The Digital Millennium Copyright Act (DMCA) limits the liability of online service providers for copyright infringement. However, the service must meet certain requirements, including the adoption and reasonable implementation of a “repeat infringer” policy and “standard technical measures” that are “used by copyright owners to identify or protect copyrighted works.”

 In addition, the Online Copyright Infringement Liability Limitation Act (OCILLA) clarifies the liability faced by service providers who transmit potentially infringing material over their networks. There is a safe harbor under OCILLA if the provider had engaged in the adoption and reasonable implementation of a “repeat infringer” policy that “provides for the termination of subscribers and account holders of the service provider's system or network.” In addition, a provider must accommodate “standard technical measures” that are “used by copyright owners to identify or protect copyrighted works.”

 DMCA also requires service providers to “designate an agent to receive notifications of claimed infringement,” and specifies the components of a proper notification, commonly known as a “takedown notice,” to that agent. Actual knowledge of infringing material, awareness of facts or circumstances that make infringing activity apparent, or receipt of a takedown notice each trigger an obligation to expeditiously remove the infringing material.

 These statutory provisions set the parameters for the judicial opinion. The court has to apply and interpret the statutes in light of the *Grokster* case*.*

2. The exchange of e-mails that indicated the founding fellows were aware of copyrighted material on YouTube and chose to leave it up there until they got a notice did not work in their favor. Their attempted licensing of clips to third parties was problematic. In addition, it was not clear that they were monitoring enough.

3. Those candid exchanges can be used to show knowledge and intent and were a trigger for the case proceeding here.

***ANSWER TO CONSIDER (Cracked, p. 13)***

The students can answer this by reviewing the issues these facts have in common with the facts from the *Grokster* and *Viacom* cases. Have them answer the following questions: Does the service provider have an agent for notice? Does the service provider have notice of infringement? Does the service provider remove infringing materials? Once they have answered these questions, they will have their answer. [*Obodai v. Demand Media, Inc.*, 2012 WL 2189740 (S.D.N.Y.)]

***ANSWER TO ETHICAL ISSUES (YouTube, p. 14)***

The fellas got themselves an appellate case out of those e-mails. The legal standard is that once a service provider knows of infringing materials the obligation is to take it down from the site. Their self-negotiations were a form of rationalization to keep the materials up there until they heard from someone.

***FOR THE MANAGER’S DESK: GROKSTER FRIENDS AND FOES (p. 14)***

a. Sixty Intellectual Property and Technology Law Professors and the United States Public Policy Committee of the Association for Computing Machinery in Support of Respondents

b. American Library Association in Support of Respondents

c. The Consumer Electronics Association

d. Intel Corporation as Amicus Curiae Supporting Affirmance

e. Cellular Telecommunications & Internet Association, United States Telecom Association, U.S. Internet Industry Association, AT&T Corp., BellSouth Corporation, MCI, Inc., SAVVIS Communications Corporation, SBC Internet Services, Inc., Sun Microsystems, Inc., and Verizon Communications, Inc. in Support of Affirmance

f. American Civil Liberties Union in Favor of Respondents

g. Office of the Commissioner of Baseball, National Basketball Association, National Football League in Support of Petitioners

h. Don Henley, Glenn Frey, Joe Walsh & Timothy B. Schmit (the Eagles); Jimmy Buffett, Kenny "Babyface'' Edmonds; Mickey Hart and Bill Kreutzman (of the Grateful Dead); "Mya'' Harrison, Gavin Rossdale, Sheryl Crow; Kix Brooks, Petitioners

i. Brief of Amici Curiae Napster, LLC, Musicnet, Inc., Cinemanow, Inc., Sea Blue Media, LLC d/b/a Cdigix, Movielink, LLC, Tennessee Pacific Group, LLC d/b/a Pass Along Networks, Wurld Media, Inc., and Virtual Music Stores Ltd. in Support of Petitioners

***BUSINESS STRATEGY: THE DANGERS OF LAWSUITS AS A STRATEGY (p. 15)***

Discuss litigation used as a business strategy and its risks.

***BUSINESS PLANNING TIP (Technological changes, p. 15)***

Contracts should have provisions that anticipate technological changes that may allow differing distribution, format, etc., and clauses should cover such possibilities.

**1-5 The Theory of Law: Jurisprudence (See PowerPoint Slide 1-11)**

 1-5a The Theory of Law: Positive Law

 1-5b The Theory of Law: Natural Law

 There is law that is controlling above statutory law. For example, slavery may have been legal, but it violated natural law because of the violation of human rights.

 1-5c The Theory of Law: The Protection of Individuals and Relationships

 Justice Oliver Wendell Holmes – our relationships with others and what they can or cannot tell us to do

 1-5d The Theory of Law: The Social Contract

* Law is based on the common agreements we have about how society should operate
* Law serves to enforce the social contract

***ANSWER TO CONSIDER (Jurisprudence, p. 16)***

1. General Taguba and Thomas Taguba would follow natural law: torture is wrong even if commanding officers order it.

2. Under the theory of positivist law, the employee should just do what those in charge say she should do. Under natural law, no one needs to obey a law that is wrong. If a law is unjust (order is unjust), civil disobedience is proper. Natural law is superior – we cannot harm others. Under Pound’s view, those who exert force decide; so secretary must obey.

3. Under one view, if a law is unjust, it need not be obeyed. Positive law, on the other hand, dictates that we follow the law – we must obey the law of those who are in charge. Holmes says we obey tax laws because we have to associate with one another. On the other hand, ignoring tax laws could hurt a business. Natural law would be the classic summary of “Render unto Caesar that which is Caesar’s and unto God that which is God’s.”

4. Speeding is an example of the norm shifting. That is, there is a law but few people are following the law and the result is that the law becomes meaningless. Some philosophers fear that disregard of the law on an individual basis means that we introduce anarchy – the law has no effect. Others would follow the normative standard of doing what is acceptable to others.

5. They did not follow positive law, because their actions ran contrary to the law. They were not following natural law because natural law gives rights for ownership of property. They were perhaps normative standards followers – the law is what we say it is and it changes by disputes, technology, etc.

**1-6 Sources of Law (See Exhibit 1.2 in text for overview and PowerPoint Slide 1-12)**

 1-6a Constitutional Law (See PowerPoint Slide 1-13)

* At federal and state level
* Establishes government structure
* Establishes individual rights

 1-6b Statutory Law at the Federal Level (See PowerPoint Slide 1-14)

* Enactments of Congress – United States Code

Cite or citation = U.S.C. (e.g., 15 U.S.C. §77)

Examples: Sherman Act, National Labor Relations Act, Occupational Health and Safety Act, the USA Patriot Act, and all treaties

* Executive orders = presidential orders
* Administrative agency regulations – Code of Federal Regulations

 Cite or citation = C.F.R. (e.g., 12 C.F.R. §226)

 1-6c Statutory Law at the State Level (See PowerPoint Slide 1-15)

* Enactments of state legislatures – state codes

 Uniform laws are part of state codes

 Cite = Nevada Revised Statutes – N.R.S.

 Examples: Uniform Commercial Code, Uniform Partnership Act, Uniform Limited Partnership Act

* State administrative agency regulations

Cite: various

 1-6d Local Laws of Cities, Counties, and Townships

* Ordinances – zoning, traffic, curfew
* County or city

 1-6e Private Laws (See PowerPoint Slide 1-16)

* Contracts
* Leases
* Employer regulations

 1-6f Court Decisions

* Language in statute unclear
* Court provides interpretation or clarification of the law

**1-7 Introduction to International Law**

 1-7a Custom (Country-By-Country Basis) (See PowerPoint Slide 1-17)

 1-7b Treaties

* Bilateral – between two nations
* Multilateral – among three or more nations
* Geneva Convention – prisoners of war
* Vienna Convention – diplomatic relations
* Warsaw Convention – air travel

 1-7c Private Law in International Transactions (See PowerPoint Slide 1-18)

 1-7d International Organizations

 1-7e The Doctrines of International Law

* Expropriation
* Confiscation of nationalization
* Taking of private property by a government

***FOR THE MANAGER’S DESK: HOW INTERNATIONAL ICE SKATING SCANDALS ARE RESOLVED (p. 21)***

Discuss the resolution of the ice skating disputes and how the private resolution was handled.

 1-7f Trade Laws and Policies (See PowerPoint Slide 1-19)

* Tariffs
* Treaties, e.g., GATT, NAFTA

 1-7g Uniform International Laws

* Contracts for the International Sale of Goods (CISG)
* For uniformity in international contracts

 1-7h The European Union (EU) (See PowerPoint Slide 1-20)

* Group of European countries (other countries are affiliated)
* Aiming for barrier-free trade; uniform laws; ease in transaction negotiations and execution
* Uniformity in currency, job safety, immigration, customs, licensing, and taxation
* Euro introduced in January 1999

***BIOGRAPHY: THE HUMBLE FREQUENT-FLIER MILE—SO COMPLICATED! (p. 22)***

When are frequent flier miles income for purposes of paying taxes? The cases discussed illustrate the differences in terms of when the miles are taxable. The statutory interpretation does have a common thread – when the miles are a bonus or prize, then they are income – but when you earn them through a flier program, they are not income.

**ANSWERS TO CHAPTER QUESTIONS AND PROBLEMS**

1. Gunderson will be incorporated under state legislative law. He will have to make tax elections under federal law. Local zoning laws will affect issues such as where the corporation can operate, signs, etc. His employees will be affected by state compensation laws, federal labor laws, and federal pension plan regulations. In short, there really is not a set of laws that will *not* affect his business.

2. Jeffrey will be going through a criminal procedure; if a fan sues him, it will be a civil process.

3. The court held that the intent was to assign rights, and the assignment did not have technology limitations. Anticipate technology changes in negotiating contracts. The contract should specify form and require new royalty negotiations for new forms. [*Bourne v. Walt Disney Co.*, 68 F.3d 621 (2d Cir. 1995)]

4. a. Civil law – rights among and between individuals; remedies of damages and injunctions

 Criminal law – establishes societal standards of conduct; jail and fines as punishment

 b. Substantive law – establishes rights and duties

 Procedural law – establishes process for enforcement of laws and rights

 c. Common law – non-codified law; in court cases

 Statutory law – codified law

 d. Private law – contracts, leases, rules of workplace

 Public law – laws passed by some governmental agency

1. The judge in the case ordered the two men to sell the baseball and split the proceeds. The areas of law involved are private law (stadium rules), property law (probably state court decisions), and perhaps municipal laws. Some additional background:

 On October 7, 2001, Barry Bonds hit his 73rd and record-breaking home run at PacBell Park in San Francisco. The event was historical and takes its place among the following markers in baseball:

* 1927 – Babe Ruth hits 60 home runs
* 1961 – Roger Marris hits 61 home runs
* 1998 – Mark McGwire hit 70 home runs

 When the ball headed into a crowd, positioned in a standing-room-only arcade section of the stadium, Alex Popov had his glove, no, his arm up, and he was poised to catch the ball in a softball glove he had brought along to the game. Videotape shows that the ball did indeed make it into the tip of his glove’s webbing. But, at that moment, the crowd around him, forming a throng, caused him to lose his balance. The ball then dropped to the ground and there was a mad scramble among the throng to retrieve the ball. No witness and no videotape are clear on whether the ball was securely in the possession of Mr. Popov. Patrick Hayashi emerged from the stampede with the ball. The federal judge in the case describes the behavior of the mob as violent and illegal. Popov sued to get the ball back.

 At the trial, the tape of cameraman Josh Keppel was played and 17 witnesses testified. The witnesses all had different versions of what happened, different vantage points, and some had made prior inconsistent statements with their testimony at trial.

 Following a trial that concluded in November 2002, Judge Kevin McCarthy ordered the parties to make arrangements to sell the baseball by December 31, 2002 and split the proceeds. The proceeds are estimated to be about $1,000,000. No sale has been arranged and the parties and the court are still working to arrange for the sale.

 Judge McCarthy indicates that Popov must have had possession of the ball prior to the mob descending in order to have title and no testimony offered at the trial was clear on whether he had firm and actual possession.

 See the parties on video at: www.celebrityjustice.warnerbrothers.com.

6. It should also be clear to the students that, as the Swedish court concluded, this is a clear case of vicarious infringement. It was the U.S. composers and music companies that convinced the Swedish officials to pursue the case. The Swedish court found that the four had violated Swedish copyright law. They were each sentenced to one year in prison and ordered to pay 30 million kronor (about $3.8 million) in damages to various companies that had their materials infringed by Pirate Bay. The site continued to operate during the year-long proceedings. In addition, a recent survey of Swedish citizens revealed that 43 percent of them planned to download music from the internet without paying for it at some point during the year. One of the Swedish political parties has a platform for making peer-to-peer file sharing legal. The entertainment industry was represented in the trial and offered evidence that Pirate Bay was the number one source for illegally downloaded music. The founders and operators said they were just promoting free information, that they did not actually “host” any of the copyrighted materials, and they had quite a following during the trial. Pirate Bay t-shirts, sold over the site, did a brisk business and supporters of the site often showed up in busloads as a show of solidarity for the lads.

7. Is a horse and buggy a motor vehicle? This is an illustration of statutory interpretation role of the courts. What the court determines here in terms of the definition of a “vessel” and whether a horse and buggy qualifies, controls whether there will be any recovery for the injured family or whether the obligation will be discharged in bankruptcy.

 The court’s opinion in pertinent part appears below:

 The bankruptcy court did not analyze this question because it found that “Plaintiffs acknowledge that a horse and buggy is not a motor vehicle.” (Bankr.Ct. Order 4, DE 2-13.) While the appellants' brief before the bankruptcy court did not explicitly state that they were conceding that a horse and buggy is not a “motor vehicle,” their entire argument was directed at establishing that a horse and buggy qualifies as a “vessel.” A party may waive an argument either explicitly or implicitly if it is not raised at the proper time. *See In re Kontrick,* 295 F.3d 724, 735 (7th Cir.2002). However, where an appellant “raises a pure issue of law on which factual development in the bankruptcy court would cast no light, the waiver [can] be forgiven.” *Matter of Reese*, 91 F.3d 37, 39 (7th Cir.1996). The appellee does not argue that the appellant waived her argument that a horse and buggy is a motor vehicle, nor does he argue that he suffers any undue prejudice by having the Court consider the argument. The Court will therefore consider the appellants' argument that a horse and buggy is a “motor vehicle.”

The appellee provides two definitions for “motor vehicle.” Under Indiana law, a “motor vehicle” is “a vehicle that is self-propelled.” Ind.Code § 9-13-2-105. While an Indiana statute can shed some light on the ordinary meaning of a term, it does not say much about what the term means in a Congressional statute. For that, the appellee's second definition is much more helpful. Congress has conditioned federal funds to the states on the states' enactment and enforcement of repeat intoxicated driver laws. 23 U.S.C. § 164. The statute conditioning these funds defines “motor vehicle” as “a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail line or a commercial vehicle.” 23 U.S.C. § 164(a)(4). This statute is helpful in discerning the definition of “motor vehicle” in the Bankruptcy Code section excepting claims arising from the intoxicated operation of a motor vehicle because both statutes provide means of protecting people from impaired drivers.

The appellants again look to various dictionaries in support of their argument that the most accurate definition of “motor vehicle” is much broader than the appellee's. They argue that there is no question that a buggy is a vehicle, and after surveying various dictionaries, they contend that “motor” refers to “any use of energy to create motion, including through the use of muscular movement.” A horse uses energy to create motion, a buggy is a “vehicle,” so the appellants conclude that a horse and buggy is a “motor vehicle.” This analysis suffers the same defects as the appellants' attempt to characterize a horse and buggy as a “vessel.”

First, the appellants' definition is far broader than what the term “motor vehicle” is ordinarily understood to mean. Under the appellants' analysis, a person is a motor since he or she uses energy to create motion, just as a horse does, and a skateboard or bicycle would then constitute a “motor vehicle.” Yet no one would seriously argue that the everyday usage of the term “motor vehicle” includes skateboards and bicycles. The appellants' definition of “motor vehicle” also renders the terms “vessel” and “aircraft” superfluous, since without some sort of energy, those objects cannot move.

Just as with “vessel,” it is again helpful to look elsewhere in the United States Code to determine how best to define “motor vehicle” in the Bankruptcy Code section at issue. Congress's definition of “motor vehicle” as “a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways” reflects the plain meaning of the term. 23 U.S.C. § 164(a)(4). This definition is not entirely inconsistent with the definitions provided by the appellants' dictionaries, but it does not suffer the fatal flaw of being so broad as to be almost meaningless, which the appellants' definition does. A horse does not use mechanical power, and a horse and buggy is therefore not a “motor vehicle.”

C. Legislative History and Absurdity Doctrine

The appellants argue that since various dictionaries define “vessel” and “motor vehicle” in different ways, the statute is ambiguous and the Court must therefore look to legislative history to determine whether a horse and buggy qualifies as a “vessel” or a “motor vehicle.” But the fact that a term can be used in various ways does not mean it is ambiguous when the term's context illuminates which particular usage is appropriate. Given the context of the statute at issue, the terms “vessel” and “motor vehicle” are not ambiguous, at least as applied to a horse and buggy. The Court then need not, and should not, look to the legislative history to interpret otherwise unambiguous terms. This is particularly true given the many pitfalls entailed in a review of legislative history.

[T]he authoritative statement is the statutory text, not the legislative history or any other extrinsic material. Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms. Not all extrinsic materials are reliable sources of insight into legislative understandings, however, and legislative history in particular is vulnerable to two serious criticisms. First, legislative history is itself often murky, ambiguous, and contradictory. Judicial investigation of legislative history has a tendency to become, to borrow Judge Leventhal's memorable phrase, an exercise in “looking over a crowd and picking out your friends.” Second, judicial reliance on legislative materials like committee reports, which are not themselves subject to the requirements of Article I, may give unrepresentative committee members-or, worse yet, unelected staffers and lobbyists-both the power and the incentive to attempt strategic manipulations of legislative history to secure results they were unable to achieve through the statutory text.

Finally, the appellants' rely on the absurdity doctrine to argue that interpreting “vessel” and “motor vehicle” as not meaning “horse and buggy” leads to the absurd result that the appellee can escape their negligence claims. While there is an argument that such a result is unjust, the appellants fail to demonstrate how the result is *absurd.* Congress did not enact a statute that made all negligence claims that arise from intoxicated behavior non-dischargeable. They limited the nondischargable claims to those that arise from the intoxicated operation of a motor vehicle, vessel, or aircraft. Under the Court's reading of the statute, the appellants are left in the same position as all other creditors whose claims arise from the negligent behavior of intoxicated debtors but are dischargeable in bankruptcy.

If this result can be said to be absurd, it is an absurdity that only Congress can remedy. Perhaps Congress should never allow any negligence claims to be discharged (or at least those caused by intoxication), or perhaps Congress should make even more claims dischargeable in order to allow more people the fresh start afforded by bankruptcy protection. This is a policy debate that is most appropriately resolved by an elected legislature, not the courts. This Court is only empowered to decide whether a horse and buggy is a “vessel” or a “motor vehicle.” It is neither.

 Because the horse and buggy is not a vessel, the debt is dischargeable in bankruptcy. Discuss with the students whether the intent was to keep those off the road who were intoxicated, regardless of the type of vehicle they were in. The extent of the injuries indicates that a horse and buggy can cause just as much damage as an intoxicated driver of a regular vehicle. [*Young v. Schmucker*, 409 B.R. 477 (N.D. Ind. 2008)]

8. Laws involved with Paris: DWI – state criminal laws; Driver’s license – state laws, regulations of the Department of Motor Vehicles; Procedural laws for court process and commutation; U.S. Constitution for trial and process; California Constitution and statutes for whether governor can commute sentence; California laws would appear on the pyramid under state laws and state constitution and state regulations; Governor could commute sentence if authorized under California law.

 These are criminal laws. They could be misdemeanor or felony charges, depending upon the nature of California laws. The laws that contain the provisions on DUI and DWI are substantive laws. The laws that determine her sentencing, hearing, and other process rights are procedural laws. Civil laws would be involved only if she had injured someone or property of another whilst driving DUI or DWI. The laws could be local traffic laws (ordinances) or state statutes. They could also be county laws. The procedural laws that apply to the court and judge sentencing her could be local, county, or state courts. The laws would be enacted by the state legislature or the city council or county commissioners, depending on their level. These are public laws. Conceivably, a pardon is possible. Such would be an executive order at a state level.

9. a. Traffic law on speeding – substantive laws; governs what constitute traffic violation

 b. Small claims court rules – procedural laws; governs how the court proceeds

 c. Evidence – procedural law for trials

 d. Labor law – has both substance and procedure

 e. Securities – has both substance and procedure

10. The layers of law involved are:

 a. State laws

 b. State regulations

 c. Federal regulations

 d. Court system and procedural laws

 e. Food labeling laws which can be state laws, federal laws, and federal and state regulations

**ECONOMICS, ETHICS, AND THE LAW: THE COST OF CORPORATE WRONGDOING**

a. Violations of laws and regulations have an immediate impact on a company’s share price. In the case of product liability, the result can be bankruptcy.

b. The authors found that for five years after the legal or regulatory misstep there was a continuing downward impact on earnings, asset growth and returns.

c. The market is forgiving and share price does rebound after the initial impact, but other financial factors remain depressed. Companies have difficulty recovering.

d. The financial costs are that the market capitalization decreases, risk increases, and the cost of raising funds goes up – even with private lenders because the company is perceived as a higher risk. The stock price suffers because investors are wary. The company may be undervalued temporarily but it is difficult to overcome the market perception once there is trouble at the company. Other financial costs include the penalties and the litigation.

**INTERACTIVE/COOPERATIVE LEARNING EXERCISES**

1. Ask students to find a copy of a local ordinance that has affected them.

2. Have students bring in a copy of a lease, sales contract, or credit agreement and list the following: What laws are involved in the contract (list any statutes specifically mentioned)? How will disputes on the contract be resolved?

3. Ask students to analyze the following hypothetical situation in light of their studies of jurisprudence.

 Emma Frank is a cashier at Grocery Bin. Emma is on warning because she has made too many errors at her register. The Walters’ family has a large order Emma checks through for them. She fails to charge them for a large cut of meat. Mrs. Walters notices it and returns to Emma to pay for it. Emma explains, “Just take it. If I have to ring it through I’ll need my supervisor’s approval and I’ll be fired.”

 If you were Mrs. Walters, what would you do?

**SUPPLEMENTAL READINGS**

"A History of Online Gatekeeping," 19 HARV. J.L. & TECH. 253, 298 (2006).

Chesney, Robert M., "Beyond the Battlefield, Beyond Al Qaeda: The Destabilizing Legal Architecture of Counterterrorism," 2 MICHIGAN L. REV. 112 (2013).

Coats, William Sloan, Heather D. Rafter, Vickie L. Feeman and John G. Given, “Blows Against the Empire: Napster, Aimster, Grokster and the War Against P2P File Sharing,” 765 PLI/PAT 445 (September 2003).

Drumm, H. Michael, “Life After Napster: Will Its Successors Share Its Fate?”, 5 TEX. REV. ENT. & SPORTS L. 157 (Fall 2003).

Dworkin, Ronald, “Objectivity and Truth: You’d Better Believe It,” 87, 90 PHILOSOPHY AND PUBLIC AFFAIRS 25 (1996).

"Facing Ethical Issues With Law Students in an Adversary Context," 21 GA. ST. U. L. REV. 593, 626+ (2005).

Gewirtz, Paul, “On ‘I Know It When I See It’,” Supreme Court Justice Potter Stewart’s Famous Opinion Regarding Pornography, 105 YALE L.J. 1023 (1996).

Graves, Tom, “Picking Up the Pieces of Grokster: A New Approach to File Sharing,” 27 HASTINGS COMM. & ENT. L.J. 137 (Fall 2004).

Hund, John, “Institutional Jurisprudence,” 36 AM. J. OF JURISPRUDENCE 125 (1991).

Kozyris, P. John, “In the Cauldron of Jurisprudence: The View From Within the Stew,” 41 J. OF LEGAL EDUCATION 441 (1991).

LaPiana, William P., “Jurisprudence of History and Truth,” 23 RUTGERS L. REV. 519 (1992).

Lemley, Kevin Michael, “Protecting Consumers From Themselves: Alleviating the Market Inequalities Created By Online Copyright Infringement in the Entertainment Industry,” 13 ALB. L.J. SCI. & TECH. 613 (2003).

Nino, Carlos Santiago, “A Philosophical Reconstruction of Judicial Review,” 14 CARDOZO L. REV. 799 (1993).

Norman, Jennifer, “Staying Alive: Can the Recording Industry Survive Peer-To-Peer?,” 26 COLUM. J.L. & ARTS 371 (Summer 2003).

Pantazakos, Michael, “The Form of Ambiguity: Law, Literature, and the Meaning of Meaning,” 10 CARDOZO STUDIES IN LAW AND LITERATURE 199 (1998).

"Peer-To-Peer File Distribution: An Analysis of Design, Liability, Litigation, and Potential Solutions," 25 REV. LITIG. 181, 230 (2006).

"Perfect 10 v. Visa: The Future of Contributory Copyright Infringement," 61 OKLA. L. REV. 865, 890 (2008).

Posner, Richard, “Posner’s Pragmatist Jurisprudence,” 73 NEBRASKA L.REV. 545 (1994).

Raz, Joseph, “Law’s Autonomy and Public Practical Reasons: A Critical Comment,” 4 LEGAL THEORY 1 (Mar. 1998).

Rhonheimer, Martin, “The Political Ethos of Constitutional Democracy and the Place of Natural Law in Public Reason: Rawl’s ‘Political Liberalism’ Revisited,” 50 AMER. J. OF JURISPRUDENCE 1 (2005).

"Secondary Liability for Third Parties' Copyright Infringement Upheld By the Supreme Court: *MGM Studios, Inc. v. Grokster, Ltd.*," 32 RUTGERS COMPUTER & TECH. L.J. 62, 80 (2005).

"Sony, Tort Doctrines, and the Puzzle of Peer-To-Peer," 55 CASE W. RES. L. REV. 815, 865 (2005).

Soper, Philip, “Some Natural Confusions About Natural Law,” 90 MICH. L. REV. 2393 (1992).

"The Future of Copyright Infringement: *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 21 ST. JOHN'S J. LEGAL COMMENT. 271, 310 (2006).

“The Path of Law: Symposium on Holmes,” 78 BOSTON U. L. REV. 695 et. seq. (1998).

“What is at Stake in Jurisprudence?,” 28 OKLA. CITY U. L. REV. 173 (Spring 2003).

Winick, Bruce J., “Therapeutic Jurisprudence and Problem Solving Courts,” 30 FORDHAM URB. L.J. 1055 (March 2003).

Wiseman, Patrick, “Ethical Jurisprudence,” 40 LOYOLA L. REV. 281 (1994).

"Writing, Cognition, and the Nature of the Judicial Function," 96 GEO. L.J. 1283, 1345 (2008).