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Bring on the Tissues, Here Come the Issues: Issues of Legal Consequence, Issues of Fact, and Issues of Law

Nancy J. White*

ABSTRACT

Undergraduate students should know the difference between laws, facts, issues of law and issues of fact in order to understand how the legal system works and how it resolves disputes. Legal issues and factual issues, and the role they play are often confusing to a student but the amount of time that can be spent on this topic is limited. This paper includes the author's classroom exercises, developed over more than fifteen years of actual classroom use and feedback from students. The exercises are designed to streamline understanding of these concepts for undergraduate students. This paper introduces the concept of what the author calls "value/overall/legal consequences issue" to aid students in understanding the difference between factual and legal issues and the role they play in the court system. In addition, the concept of "social construct" is introduced because juries do not just decide the facts but also some social constructs such as unreasonable behavior.

KEY WORDS: legal issues, factual issues, teaching about issues, social constructs, value issues

I. SOCIAL INSTITUTIONS AND SOCIAL CONSTRUCTS

Students can learn a variety of things. They can learn about nature and the natural world by studying chemistry or botany. They can study literature and art. They can learn about societies and how they operate.

When students learn about societies and how they operate, they are learning about a particular society's "social institutions." Different definitions of the term "social institutions" exist. A social institution is an artificial creation of a human society designed, often over centuries, to achieve certain goals of the society or goals of those with power to control the society. Social institutions promote cooperation and increase benefits to members of a society. Examples of social institutions include governments, laws, rule of law, educational systems, organized religion, marriage, polygamy, monogamy, nuclear family, free market, democracy, slavery, authoritarianism, communism, and capitalism.¹

In the law class, students study one of the most structured social institutions: laws and the legal system. For many societies, laws are artificial creations of human governments to control people and achieve the goals established by the society or the goals of those with power in the society.

A. Social Constructs Defined

The term "social institution" is not quite accurate when referring to concepts such as "contracts" or "tort" and therefore the author uses the term "social construct." Every individual law is a social construct, which is something invented or created by society or those with power in a society, usually over long periods of time. Social constructs include other concepts such as gender, which is a concept developed by societies and culture. The broader term "social institution" is a term that is usually used to refer to complex institutions created by society such as "government" and "rule of law". A contract is not a social institution but is a social construct.

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¹ For more information on social institutions see: Virginia Haufler, Eric Uslaner, Karol Soltan, [Institutions and Social Order](#), University of Michigan Press, 1998 and W.G., Runciman, [The Origin of Human Social Institutions](#), British Academy, 2001.

The law of contracts would most likely be considered a social institution.. Examples of social constructs made by the law include the following: the use of a jury, contracts, civil rights, tort duties, monopolies, and consumer protection.

This concept is introduced in this paper and the classroom because many instructors want undergraduate students to have at least a basic understanding of juries and the role they play. Since juries decide some issues, but not others, students should have an understanding of the difference between “issue of law” and “issue of fact,” both of which are social constructs. Juries decide factual issues discussed below under “Issues of Fact” and “Role of the Jury.” In addition, a jury might decide the parameters of a disputed social construct. For example, a jury might decide whether certain behavior is “reasonable.” “Reasonable behavior” is a social construct.²

B. Reasonable Behavior as a Social Construct

Reasonable behavior as a social construct is discussed here as an example of one of the many social constructs juries decide. Determining the existence of a social construct is not the same as determining the existence of a fact because facts are not social constructs. Students are often taught that juries decide the facts and judges the law. However, in actual practice juries decide more than just the facts, they also decide the contours of social constructs. They make their decisions within the context of a social constructs to which they bring their experiences and interpretation.

Juries are often called upon to decide if certain behavior is reasonable or not.³ “Reasonable” has a thousand hues as does the color blue. This concept of “reasonableness” is often difficult for students to grasp but a rudimentary understanding can be obtained from explanations and examples. The jury must decide, given a certain situation, what a reasonable person would do. A jury might be asked to determine if someone has taken reasonable care or whether a reasonable doubt exists. Has someone reasonably relied on a statement? Is the accommodation for a disability reasonable? “Reasonable” is usually defined with other words that are just as difficult to understand: prudent, common custom, careful.

Attempts to define “reasonable” often use the term “ordinary prudence,” a term that is in and of itself capable of many meanings. Reasonable behavior is often defined as behavior of an ordinary, but prudent, person. This prudent person is, by definition, not just an ordinary person. Additional definitions might use the term “ideal person” or person who meets the ideal community standard. Intent and mental ability of the individual are not factors.⁴ In other words, what is reasonable is dependent on context.⁵

II. FACTS, ISSUES, LAWS, CONCLUSIONS

In order to understand how the U.S. legal system works and is used to solve legal problems, it is necessary for students to understand how certain words are used in the legal realm. Many students understand the terms “facts,” “issues,” “laws,” and “conclusions” as illustrated in Figure 1. Figure 1 represents the typical student understanding of the terms “facts, issues, laws, and conclusions” and that is that “facts, issues, laws, and conclusions” are just types of “facts”. This misconception leads to errors in understanding. However, in order to understand how the legal system operates, students need to understand the terms as illustrated in Figure 2.

² See Jason M. Solomon, *Juries, Social Norms, and Civil Justice*, 65 ALA. L. REV. 1125 (2014).

³ See *Estate of Gray v. Baldi*, 880 N.W.2d 451, 2016 Iowa Sup. LEXIS 57, 2016 WL 2609534 (Iowa 2016); *Huang v. The Bicycle Casino, Inc.*, 4 Cal. App. 5th 329, 208 Cal. Rptr. 3d 591, 2016 Cal. App. LEXIS 876 (Cal. App. 2d Dist. 2016); *Myers v. Bremen Casting, Inc.*, 61 N.E.3d 1205, 2016 Ind. App. LEXIS 356 (Ind. Ct. App. 2016).

⁴ 21-101 Personal Injury--Actions, Defenses, Damages § 101.01 (2017).

⁵ Consider, for example, reasonableness in the context of a hostile environment. In an article entitled “Reasonable Men,” the authors look at reasonableness in a hostile work environment. The author proposes a shift from the concept of looking at what a “reasonable man” would do in a particular situation to looking at a more universal standard that looks at whether the victim’s response is reasonable considering characteristics of the victim, the workplace, the harasser, the context, and the specific behavior. (See, Ann C. McGinley, *Reasonable Men?*, 45 CONN. L. REV. 1, 3 (2012).

Figure 2 represents the understanding students need to possess in order to analyze legal problems; that is they need to understand that facts, issues, laws, and conclusions are separate and distinct concepts without overlap.

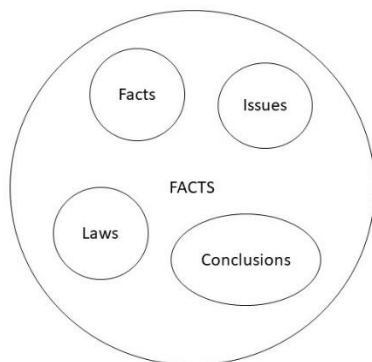


Figure10: The Students' Understanding. This figure illustrates the way in which many students understand the following terms: facts, issues, laws, and conclusions.

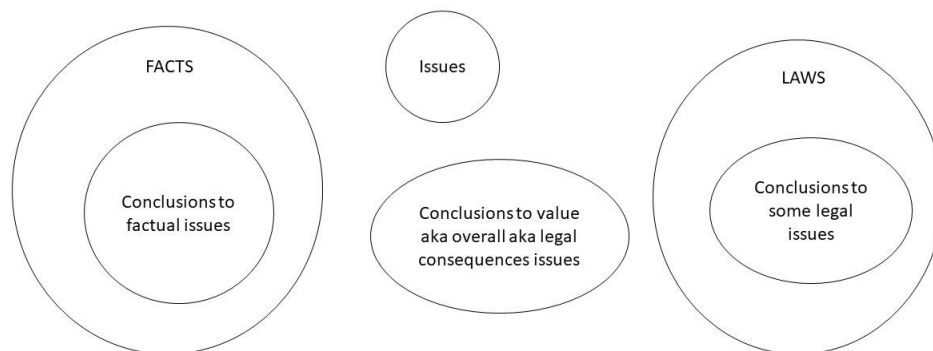


Figure 11: The Appropriate Understanding. This figure illustrates the way in which students need to understand the following terms: facts, issues, laws, and conclusions.

Students who understand that the terms, facts, issues, law, and conclusions each have a specific and important meaning when used in the law will better understand and be able to solve legal problems. This paper uses simplified definitions and exercises developed and tested by the author in actual classroom settings for over fifteen years. The exercises are designed to guide student thought processes to achieve an understanding of the concepts, not just a memorized definition.

The following concepts are discussed below in this paper and then followed with exercises designed to increase student understanding of the concepts in the limited time available in a typical instructional setting:

1. Facts;
2. Laws and *Stare Decisis*;
3. Issues:
 - a. Value issues also known as legal consequences issues,
 - b. Issues of fact, and
 - c. Issues of law;
4. Conclusions to issues

A. Facts

The word “fact” has several meanings. According to the Merriam-Webster dictionary any of the following definitions are acceptable:

1. the quality of being actual : actuality <a question of fact hinges on evidence>;
2. something that has actual existence <space exploration is now a fact> an actual occurrence <prove the fact of damage>;
3. a piece of information presented as having objective reality <These are the hard facts of the case.>.⁶

Students tend to use the first definition, whereas the legal system uses the last. This distinction must be pointed out to students and practiced so that students understand how facts, laws, and conclusions differ when used in legal reality. According to Merriam-Webster, laws are facts and conclusions are facts because they are “actual” or exist. In the legal realm, facts are unemotional, objective observations or descriptions of physical reality. In the legal arena, we are often interested in unemotional observations of how people have behaved. For example, a fact you might see in a law class is, “Lars and Hilda signed a contract” or “Lars said to Hilda, “I offer to pay you \$500 for your used car.”

OTHER EXAMPLES OF FACTS

1. John copied Ricardo’s paper during the test.
2. Mary struck Larry during the argument.
3. Lin orally agreed to buy Kim’s car for \$500.
4. The employer fired the employee because the employee came in late five days in a row.
5. Company A’s employees took the display racks of Company B and destroyed them.

Students often learn to recognize facts in a classroom setting because the facts are usually the first things students are given when asked to solve a problem. Facts are often labeled “facts” or “background.” With practice, students can learn to differentiate facts from other concepts such as values, conclusions, issues, and opinions. Exercises in the appendices provide opportunities for practice.

⁶ MERRIAM-WEBSTER DICTIONARY, *Facts*, <https://www.merriam-webster.com/dictionary/fact>

B. Laws and Stare Decisis

In order to solve legal problems, students must not only be able to recognize facts but also laws. Student often need practice distinguishing between the two. A student who is confused about the difference between laws and facts might ask, "Isn't it a fact that in the past the law of the State of Mississippi required individuals of African descent to sit in the back of the bus?" The answer to this question is "No, it is not a fact, it was a law that existed. In scientific reality, a fact may be something that exists, but in legal reality, things other than facts exist. Law, opinions, values, and standards all exist in legal reality, but they are not considered facts." A simple definition of law is helpful for students.

Laws or rules are the government standards of behavior set out by a constitution, statute, regulation, or case.⁷ Laws and rules may include the definition of any word used in a law or rule. The following is an example of a law, specifically, an Occupational Safety and Health Administration ("OSHA") regulation: "Each employer - (1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees...."⁸

Important to the understanding of laws, but distinguishable from it, is the concept of *stare decisis* and the use of precedent. Students need a basic understanding of the concept of *stare decisis*, also called "the use of precedent." *Stare decisis* is a complex concept but can be simply stated as follows: Some decisions of some courts in some situations are laws for some of the next cases arising on that same issue. *Stare decisis* places a value on legal continuity, but also limits the law's response to social change.⁹

C. Issues

The issue is the question that is being resolved in connection with the parties' disagreement. If the parties do not disagree about something, it is not, by definition, the issue. The instructor should point out this distinction to students, as they will often try to make an the issue out of something that is not actually the issue.

In teaching, the author has found that issues must be categorized into one of three groups for students to achieve a good understanding of the issue: 1) value/overall/legal consequences issues; 2) factual issues; and 3) legal issues. Recognizing these three categories helps students understand the U.S. court system and also improves their ability to resolve legal problems. Each of these three categories are explained more fully below. Please note that while the remainder of this paper will refer to category 1 (value/overall/legal consequences) as "value issues", instructors should use all three terms interchangeably in the classroom setting because this term helps students understand the concept better and not just memorize a term.

D. Conclusions

Even more common than a student who confuses laws and facts, is a student who confuses conclusions and facts. In legal reality, the only conclusions that are facts are decisions of juries or judges in a bench trial made on factual issues. Conclusions to value issues and legal issues are opinions, not facts.

In legal reality many, though not all, conclusions are opinions, and by definition, an opinion is not a fact. The conclusion to a value issue tells the student who wins in that scenario or who the student thinks wins and is an opinion, though now a law. The conclusion to the legal issue is a statement of how the law applies or what the law means and is an opinion. The conclusion to the factual issue is a fact.

⁷ Not all jurisdictions recognize case or judge-made law. See William Tetley, Q.C., *Mixed jurisdictions : common law vs civil law (codified and uncodified)*, available at <http://www.cisg.law.pace.edu/cisg/biblio/tetley.html>.

⁸ 29 U.S.C. § 654, 5(a)1

⁹ Derigan Silver and Dan V. Kozlowski, *Preserving the Law's Coherence: Citizens United v. FEC and STARE Decisis*, 21 Comm. L. & Pol'y 39 (Winter 2016).

III. VALUE ISSUES, FACTUAL ISSUES, LEGAL ISSUES

A. Value Issues (aka Overall Issues or Legal Consequences Issues)

Primarily, people involved in the legal system are asked to make value judgments about whether certain behavior is “legal” or “illegal” or who is legally responsible for certain behavior. Another way of looking at this is that people want to know the legal consequences of a certain fact or set of facts. People might be asked, “What is the legal consequence or legally who is responsible in this particular situation?” Another common way of looking at this is, “If this matter were to go to court, what decision would the court make?” These are all very general ways of wording what the author calls a “value issue.” Providing a distinct name for this type of issue helps in understanding as it distinguishes this type of issue from a factual or legal issue. Also, this designation by the author helps students realize that laws and the results of legal actions are all opinions based upon values and are not facts.

EXAMPLES OF VALUE ISSUES

1. Did “A” violate any law here?
2. Who is legally responsible here?
3. What are the legal consequences of this situation?
4. Is this matter were to be decided in a court of law, who would win?
5. Who wins the argument in this scenario?
6. Has a contract been formed between A and B?
7. Has C breached the contract?
8. Was the plaintiff wrongfully terminated?
9. What should legally be done in this situation?
10. Is Lina an independent contractor or an employee?
11. Is the car manufacturer strictly liable for the damage caused by its faulty ignition switch?

Notice that before the answer to any of these value issues can be determined, two things must be known: the facts (conclusions to any factual issues) and the applicable law (conclusion to the legal issue). These are both discussed in more detail below.

The conclusion to a value issue tells the student who wins the case. Another way of looking at this is that the value issue answers “What are the legal consequences of this situation?”

B. Factual Issues (aka Issues of Fact)

In order to answer a value issue, a student must answer two other issues: “What happened?” and “How does the law apply?” The first issue, “What happened?”, is called the factual issue or issue of fact. Factual issues, also known as issues of fact, ask what happened or what are the facts? In legal reality factual issues are more common and more difficult to handle than any other type of issue. Because of this, it is common in an educational setting for the instructor to provide the facts to the student. This usually gives the student a distorted picture of reality, but this cannot be avoided in the typical classroom setting. The exercises included in the Appendices here do cover this concept to a limited extent.

Juries are also sometimes asked to determine if certain social constructs exist. For example, a jury might be asked to decide if certain behavior is “reasonable”. As discussed, “reasonable behavior” is a social construct, that is, something invented by society. In the legal system these types of issues are labeled “factual issues” although a more accurate moniker might be “legal construct issues”. The distinction is not usually emphasized; both are issues decided by the jury and usually categorized as factual issues.

EXAMPLES OF FACTUAL ISSUES:

1. Did John cheat on the test?
2. Did Mary hit Larry?
3. Did Josephina agree to pay \$500 or \$600 for the car?
4. Did the company violate the wage/hour laws?
5. Did the company discriminate?
6. Why was Lin fired?
7. Did the employees of Company A take the display racks of Company B and destroy them?
8. Did defendant act reasonably?
9. Who let the dogs out?

Students often confuse the concepts of “factual issues,” “facts,” and “evidence.” When teaching how to recognize factual issues, the author emphasizes that a factual issue is a disagreement about what happened or what the facts are. In order for a jury to do its job of determining what the facts are, each party presents proof or evidence to the jury which supports their version of the facts. Proof or evidence consists of statements, records, pictures, documents, or anything that a party believes will help the jury determine the facts.¹⁰

C. Legal Issues (aka Issues of Law)

Once the student knows what happened (that is, knows the facts), the student can then determine what law applies to the given situation (that is, answer the issue of law or legal issue). Issues of law or legal issues query the applicable law or the meaning of the law. Examples of issues of law typical undergraduate students are asked include:

1. What does the law say about situations like this? (Please notice this is a very different question than: Did Person X violate the law in this situation? The first issue presented here is a legal issue and the second is a value issue.)
2. What does the law mean by “gift”?
3. Is an engagement ring considered a gift under the law?
4. What is the legal difference between an independent contractor and an employee?
5. What is meant by the term “strict liability”?
6. What is the law of strict liability?
7. When can an employer fire an employee?
8. What are the legal elements needed to win a case of negligence?
9. What is needed to form contract?
10. What is the liability of a corporation for the acts of the corporation’s employees?

The conclusion to the legal issue is always a statement of law. If the legal issue is, “What law applies here?” and the answer is, “The First Amendment to the U.S. Constitution,” the answer is a law.

D. Comparison of Conclusions to Value Issues, Factual Issues, and Legal Issues

The list below contains examples of each type of issue with its corresponding answer. Students’ attention must usually be drawn to the difference between answers to value issues and answers to legal issues. Many students think the answer to the value issue is a “law.”

- Value issue: Was the defendant <insert name here> negligent?

¹⁰ Limits exist on what parties may present to the jury. These can be found in the law of evidence. This topic is not usually studied in an introductory business law class.

Answer to above issue: No, the defendant <insert name here> was not negligent.

Students should notice that the answer to a value issue may contain the name of a party, but the answer to a legal issue never contains the name of a party.

- Factual issue: Was the defendant <insert name here> texting while driving or not?
Answer to factual issue: Defendant <insert name here> was not texting.

Students should notice how the answer chooses between two competing descriptions of what happened, that is, two competing descriptions of what the facts are.

- Legal issue: What law applies here or what does the law mean?
Answer to legal issue: A summary of the law applicable to the overall issue.

IV. CONCLUSION

Students in undergraduate law classes learn about the social institution known as “law” “government” particularly how the legal system handles disputes. In a dispute presented to the legal system issues are raised. Three types of issues exist: value issues (aka overall/legal consequences issues), legal issues (aka issues of law), and factual issues (aka issues of fact). In order to answer these issues students need to understand and recognize the difference between facts, laws, and conclusions. Although the concept of “factual issue” includes the determination of social constructs, such as “reasonable behavior,” this distinction is not usually emphasized for the students but does help the instructor in developing techniques that can be used by students to solve issues.

The value issue is the issue that asks, “Who wins?” or “Who do you, the student, think would win if this matter were brought to court?” This is a common issue to be resolved in the undergraduate law class. In order to answer this issue both the facts and the law must be determined.

The facts are determined by answering the factual issues, if any are raised in the scenario. Students are frequently given the facts in an educational setting. However, being able to recognize factual issues allows for a better understanding of the court process. Factual issues ask, “What happened?” In addition to answering the issue of “what happened?” factual issues also include issues asking whether a particular social construct, such as reasonable behavior, exists. This distinction is not usually emphasized in the undergraduate law class but an understanding of this may be helpful if the student recognizes the difference between a fact and a social construct.

The legal issue asks “What law applies here?” or “What does the law mean?” Undergraduate students are typically expected to be able to answer the legal issue “What law applies here?” Depending on the particular class they may be asked to answer the more difficult question of “What does the law mean?”

Exercises and test questions are included here. These will give students practice in resolving the issues that arise in legal problems.

V. EXERCISES AND CLASSROOM APPLICATION

The following exercises are designed to teach and practice quickly the concepts covered. The author does give students a reading covering these topics, a very short lecture to remind them of the concepts, and then the exercise. Feel free to contact the author at nancy.white@cmich.edu to receive a copy of the readings or any of these exercises in Word® format.

All in-class exercises have been developed by the author and have been designed to be used in a classroom setting. All in-class exercises have been used and modified over the past fifteen years by considering student feedback and testing results.

In addition to the in-class exercises, five simplified cases or arguments are used to test students on their understanding of the concepts of value, fact, and legal issues. All have been used in face to face and online classes since Fall 2014. All have been developed by the author.

These cases and arguments are given to the students in a testing situation. When given in a face to face test, it is recommended that the instructor gives students the simplified case beforehand.

Additional examples with keys and explanations are available on request from the author. These examples focus on topics including additional U.S. Constitutional law, unconscionable contracts, easements, property law, antitrust law, and torts, specifically trespass and nuisance examples.

In addition to testing the concepts covered in this paper, questions covering other topics such as federalism, FIRAC (facts, issues, rules, analysis, conclusions), and hierarchy of law are asked. Those questions have been removed from these examples but are available upon request.

APPENDIX A: IN-CLASS EXERCISES DESIGNED TO INCREASE UNDERSTANDING OF THE CONCEPTS

EXERCISE 1: PRACTICE RECOGNIZING FACTS AS COMPARED TO LAWS

Note to instructor: This exercise is done after a brief lecture distinguishing facts and laws using some examples. This is the first in a series of exercises. I have found that a brief lecture on a concept, followed by the exercise, helps students understand. I then follow this series of exercises with a combined exercise covering all of the topics. I also review the concepts throughout the semester on other in-class exercises and in weekly online tests.

Instructions to students: Determine whether each of the following is a fact(s) or a law/rule(s) and so indicate by circling either “fact” or “rule” next to the item. Each item is only one or the other and no item can be both.

Definitions you will need to complete this assignment:

A law is a government-enacted and enforced standard of behavior. Another way of saying this is that a law or rule is a guideline for how people should act and has been adopted by a government. Laws never contain specific names of parties involved in a dispute because, according to the rule of law, laws apply to everyone, not just some specific person or persons.

A fact is a piece of specific information about who, what, when, where, how, and why. Another way of looking at facts is as follows: descriptions of the state of physical reality and facts do not include such concepts as “opinions” or “laws.” Another way of saying this is that the facts are background information about the actions of specific people and entities involved in the problem. Facts might contain the names of the parties involved in a dispute, but laws never contain the specific names of the parties involved in a dispute.

- Fact / Law 1.** Harry Potter has the following assets: a bank vault filled with gold galleons, a magic wand, some personal effects, and a new Quidditch broom. **Fact**
- Fact / Law 2.** When someone dies, their debts must be paid and any remaining property is transferred to the heirs. **Law**
- Fact / Law 3.** Chloe published an editorial stating Lana was pregnant by Lionel Luther. This was a lie. **Fact**
- Fact / Law 4.** A party must honor its contract or respond in damages. **Law**
- Fact / Law 5.** An exculpatory clause is a clause that attempts to nullify important or fundamental legal rights and will not be enforced. **Law**
- Fact / Law 6.** The contract stated payment is due in sixty days. **Fact**
- Fact / Law 7.** Battery is the intentional, offensive touching, of another human, without his or her consent. **Law**
- Fact / Law 8.** Corporate specifications required the coffee to be sold at 187 degrees although most restaurants serve coffee at 155 degrees. **Fact**

- Fact / Law 9.** Health Code Section 456 requires coffee to be sold at 155 degrees. **Law**
Fact / Law 10. The owner of a sole proprietorship has unlimited personal liability for all of the debts of the business. **Law**

EXERCISE 2: ADDITIONAL PRACTICE RECOGNIZING FACTS AND LAWS

Note to instructor: This exercise is done after the concepts of value/overall/legal consequences, legal, and factual issues are introduced but are not yet fully comprehended by most students. This gives students exposure to value/overall/legal consequences issues before they are asked to word that type of issue themselves. This exercise only requires students to distinguish between facts and laws. I then follow this exercise with a review of the concepts of issues, telling them that we will get into the specifics of value, factual, and legal issues after the concept of issues is reviewed.

Instructions to students: You have been given the value/overall/legal consequences issue and the conclusion to that issue. Each of the numbered sentences after the value/overall/legal consequences issue and the conclusion to the value issue is either a fact or a law and none of the sentences can be both. Determine whether each sentence is a fact or a law by writing the word "fact" or "law" next to the sentence.

You should be able to recognize a statement as a law even if we have not studied that law in detail because a law is a general statement of the legal consequences of some situation or a definition of some word used in a law. Also, note that each of the statements of law used here is simplified and the law on each topic is more detailed than given here.

Assume the value/overall/legal consequences issue raised in a scenario is: Is he negligent? Assume the conclusion is "yes."

1. A party is negligent if they have acted unreasonably and caused injury. **Law**
2. It was raining. **Fact**
3. He drove while texting. **Fact**

Assume the value/overall/legal consequences issue raised is: Has a contract been formed? Assume the conclusion is "yes."

4. In order to form a contract, there must be an offer, an acceptance, consideration and, in some circumstances, a writing signed by the party to be charged. **Law**
5. Gilderoy said, "I will sell you my dragon for \$200." **Fact**
6. Consideration exists when each party gets something and each party gives up something. **Law**

Assume the value/overall/legal consequences issue raised is as follows: Does a contract exist between Sandy and Alexi? Assume the conclusion is "yes".

7. An agent is a person who is empowered to enter into contracts for another called the "principal." **Law**
8. Daria hired Alexi to be the receptionist for one month to replace someone on vacation at a cost of \$2,000. **Fact**
9. Sandy hired Daria as the office manager. According to the job description, one of the jobs of the office manager is to hire office personnel and custodians. **Fact**

Assume the value issue raised is as follows: Who owns the property now that Garcon has died? Note: "tenant" means "owner" in this situation. Assume the conclusion is as follows: Mandy and Tak.

10. Garcon and Mandy inherited a house from their father as tenants in common. **Fact**
11. Title to property held as tenants in common passes by the deceased tenant in common's will or by law (intestate succession) if there is no will. **Law**
12. Garcon died without a will. His only relative is his son, Tak. **Fact**

EXERCISE 3: PRACTICE RECOGNIZING ISSUES¹

Note to instructor: This exercise can be done quickly after a brief explanation of issues in general and what they are. This exercise does not practice wording value/overall/legal consequences, factual, or legal issues. That skill will be practiced later. This exercise practices recognizing what is and what is not an issue in a passage.

Instructions to students: Before we work further on recognizing and wording value/overall/legal consequences, legal, and factual issues, this exercise will just require you to recognize the issue in a passage. You do not need to categorize the issue, just recognize the issue. Read the passage below and choose the issue from the available choices. Only one correct answer exists for each passage. The other choices are questions related to the reading but are not an issue raised in the passage.

Summary

Students in undergraduate law classes learn about the social institution known as “law” “government” particularly how the legal system handles disputes. In a dispute presented to the legal system issues are raised. Three types of issues exist: value/overall/legal consequences issues, legal issues aka issue of law, and factual issues aka issues of fact. In order to answer these issues students need to understand and recognize the difference between facts, laws, and conclusions. Although the concept of “factual issue” includes the determination of social constructs, such as “reasonable behavior,” this distinction is not usually emphasized for the students but does help the instructor in developing techniques that can be used by students to solve issues.

The value/overall/legal consequences issue is the issue that asks, “Who wins?” or “Who do you, the student, think would win if this matter were brought to court?” This is a common issue to be resolved in the undergraduate law class. In order to answer this issue both the facts and the law must be determined.

The facts are determined by answering the factual issues, if any are raised in the scenario. Students are frequently given the facts in an educational setting. However, being able to recognize factual issues allows for a better understanding of the court process. Factual issues ask, “What happened?” In addition to answering the issue of “what happened?” factual issues also include issues asking if a particular social construct, such as reasonable behavior exists. This distinction is not usually emphasized in the undergraduate law class but an understanding of this may be helpful if the student recognizes the difference between a fact and a social construct.

The legal issue asks “What law applies here?” or “What does the law mean?” Undergraduate students are typically expected to be able to answer the legal issue “What law applies here?” Depending on the particular class they may be asked to answer the more difficult question of “What does the law mean?”

Exercises and test questions are included here. These will give students practice in resolving the issues that arise in legal problems.

You will need the following definition to complete this assignment: An issue is something about which the parties disagree or of which the author of a piece is trying to convince you. If the parties do not disagree about something, it is not an issue. If the author of a piece is not trying to convince you of something, then that “something” is not an issue. Issues do not just arise in legal situations, as illustrated by the first passage below.

1. Passage: Portion of the Gettysburg Address given by Abraham Lincoln on November 19, 1863 after the battle of Gettysburg.

“Four score and seven years ago our fathers brought forth, upon this continent, a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal.

Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived, and so dedicated, can long endure. We are met on a great battle field of that war. We come to dedicate a portion of it, as a final resting place for those who died here, that the nation might live...

¹ This exercise was tested in a classroom setting in February 2017. Forty-two students engaged in the exercises. When asked later to evaluate the effectiveness, forty-two out of forty-five students answered that the exercise helped them to understand the concept.

But, in a larger sense, we cannot dedicate we cannot consecrate we cannot hallow, this ground. The brave men, living and dead, who struggled here, have hallowed it, far above our poor power to add or detract.”²

- a. How many years ago was the “new nation” formed?
- b. Can we, the living, consecrate or hallow this ground?
- c. Were the people who were listening to the speech engaged in a civil war?
- d. Have the people listening to the speech come to dedicate a portion of the battlefield as a final resting place for those who died there?

Answer: B

2. Passage: After public notice is given and public hearings are held at the county level, the County of Isabella adopted an ordinance that requires dogs to be licensed and to be kept in an enclosed yard or other enclosed area. The ordinance allows the city Dog Catcher to pick up stray dogs and euthanize them before the end of the business day. Your dog gets out one day and you go to the city pound the next day, but find that the Dog Catcher has euthanized your dog. You believe this was wrong and that your U.S. Constitutional right to due process has been violated. You complain to the appropriate officials and they say, “The law is the law and we just followed it. You have no recourse.”
 - a. Did the city Dog Catcher euthanize your dog?
 - b. Did the County of Isabella follow the proper procedure to adopt the dog licensing ordinance?
 - c. Has your constitutional right to due process been violated?
 - d. Did the Dog Catcher follow the city ordinance?

Answer: C

3. Passage: Assume the evidence is as follows and the presentation of the case to the jury has ended. All is simplified and an actual trial would be much more complex and contain more issues, evidence, and complex jury instructions. However, for this exercise, the following information is sufficient.

Evidence: Angela testifies she was driving her car and it was raining. All of a sudden, Jared darted out in front of her, she could not stop, and she hit him. She said that there was a stop sign at the corner, but she could not stop because the pavement was wet. She saw Jared hit by the car, stopped, and called 911.

Jared testifies that he was walking across the street and it was raining, but that Angela was going “pretty fast” and did not even try to stop at the stop sign. Instead,, she just plowed through it and hit him.

Jury charge: LADIES and GENTLEMEN OF THE JURY: In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to decide what evidence is proper for your consideration. It is also my duty at the end of the trial to explain to you the rules of law that you must follow and apply in arriving at your verdict.

You, as jurors, are the judges of the facts. But in determining what actually happened in this case - that is, in reaching your decision as to the facts - it is your sworn duty to follow all the rules of law as I explain them to you. This case is submitted to you on questions about the facts, which you must decide from the direct or circumstantial evidence, or both.

- a. Was Angela negligent?
- b. Was it raining?
- c. Did Angela hit Jared with her car?
- d. Was Jared injured?

Answer: A

² The Gettysburg Address, *Abraham Lincoln Online*, <http://www.abrahamlincolnonline.org/lincoln/speeches/gettysburg.htm>.

EXERCISE 4: PRACTICE WORDING AND RECOGNIZING VALUE, LEGAL, AND FACTUAL ISSUES

Note to instructor: This exercise can be done after an explanation of value/overall/legal consequences issues, issues of law, and issues of fact.

Instructions to students: Answer the questions below or fill in the blanks as instructed.

In addition to the following concepts, you will need to know the definitions of fact, law, and issue that were already reviewed. Those definitions are not repeated here. The following definitions are included here to help you with this exercise.

- Value aka overall aka legal consequences issue. Legal problems usually start with a broad question that asks something like, “Who would win if this were to go to court?” or “What are the legal consequences of this situation?”. The value/overall/legal consequences issue can be worded in many different ways, but it is the question most often asked by people who want to know how the law will handle a situation. If you need to know both the law and the facts to answer the issue that you are given, then you are dealing with a value/overall/legal consequences issue and not legal or factual issue.
- Factual issue(s) aka issues of fact. Fact issues ask “What happened?” What really happened here, A says one thing and B says another thing, but what really happened? A factual issue arises only if the parties disagree about what happened. If the parties do not disagree about what happened, no factual issue exists. Factual issues are answered by getting evidence such as testimony or photos and help the jury answer “What happened here?” Writers do not always clearly say, “The parties disagree about X.” You might have to figure out exactly what facts are in disagreement.
- Legal issues(s) aka issues of law. The legal issue is basically the same for every problem/case/matter: What law applies or what does the law mean? Another way of looking at the legal issues is, “What does the law say about _____?” Fill in the blank with what you want to know, such as “negligence,” “contracts,” “international treaties,” or any other topic into which you are inquiring. Writers of legal arguments do not always word the legal issue this way, as they assume that you can recognize a legal issue.
 1. You own a restaurant and wonder if the minimum wage for restaurant employees is the same as the minimum wage for other employees. What legal issue is raised in this scenario? The legal issue has been started for you, just fill in the blank below.
 What does the law say about _____? **Minimum wage for restaurant employees.**
 2. In the above example, no factual issues exist. Why not? **No one is arguing or disputing any of the facts.**

The questions below are related to this scenario: You are moving and have a truck filled with your furniture, clothes, etc. You are driving down the street when some of the furniture falls off the back of the truck. The person in the car behind you, Petra, swerves to miss the furniture but smashes into it and is injured. Petra says you were driving at least twenty miles over the speed limit and that you did not have the legally required tie downs to secure your furniture in place. You say you were driving at the speed limit and that there is no requirement that you have tie downs to secure your furniture in the back of the truck. Petra is of the opinion that you owe her damages to repair her car.

3. Put one fact mentioned in the scenario below. Several are mentioned, you only need to put one here.
You are moving and have a truck filled with your furniture, clothes, etc. You are driving down the street when some of the furniture falls off the back of the truck. The person in the car behind you, Petra, swerves to miss the furniture but smashes into it and is injured.
4. True/false: The scenario does not tell us what law applies. **True**
5. What is the value/overall/legal consequences issue raised in the problem above scenario? Hint: Many acceptable answers exist.

Who wins? Do you owe Petra money? If this went to court, what would happen? Anything similar.

6. What is the factual issue raised in the problem above relating to the truck? Hint: There is one.

How fast were you driving? Were you driving over the speed limit? What happened?

7. What is the legal issue raised in the problem above relating to the truck? Hint: There is one.

What does the law say about tie downs? What law applies? Are you legally required to have tie downs?

EXERCISE 5: PRACTICE RECOGNIZING AND WORDING FACTS, LAWS, VALUE/OVERALL/LEGAL CONSEQUENCES ISSUES, LEGAL ISSUES, AND FACTUAL ISSUES USING A CASE

Note to instructor: Although this reading is short, I do assign it as homework to be read before class and I do incorporate questions on the reading into my online test that tests the reading assignments. This exercise brings together the concepts reviewed in the prior exercises to make sure students can differentiate the five different concepts below and word the different types of issues:

- Facts
- Laws
- Value/Overall/Legal Consequences issues
- Legal issues
- Factual issues

Instructions to students: Read the simplified case below, *In re Marriage of Graham*, 194 Colo. 429 (1978)³ and answer the questions below or insert the requested information in the space provided. This exercise reviews all of the following concepts previously reviewed:

- Facts
- Laws
- Value/Overall/Legal Consequences issues
- Legal issues
- Factual issues

In re Marriage of Graham, 194 Colo. 429, 574 P.2d 75, 1978 Colo. LEXIS 745

During the marriage the husband obtained a master's degree in business administration. The wife essentially supported the husband while he was getting the degree. Shortly after receiving his degree, the parties divorced.

In the divorce proceeding, the wife asked the court to award her a sum of money to compensate her for her share of the master's degree earned by her husband. The issue thus raised is the following: Is a master's degree a form of property that is to be valued and divided by the court in a divorce?

The Uniform Dissolution of Marriage Act, C.R.S. 14-10-113 (2017), which has been adopted by Colorado, requires division of marital property without regard to misconduct. One definition of property is "everything that has exchangeable value and makes up an estate". Is a master's degree something that has exchangeable value? Is it a piece of property?

It is true that the ex-wife supported the ex-husband during the time that he earned his degree. Does this change the degree into property that can be divided in a divorce? Even though the term "property" is broadly defined in the Uniform Marriage Act, there are some limits on what constitutes "property". An educational degree is not encompassed in the definition of property. It cannot be assigned, sold, transferred, conveyed, or pledged. It cannot be acquired by the mere expenditure of money as other forms of property can be; it must be earned through intellectual work. Therefore, the master's degree is not a form of property and the wife is not entitled to any compensation related to it.

³ The case has been shortened and modified from the original by the author for use in a classroom setting.

1. The case mentions several facts. Put one fact mentioned in the case in the space below:
During the marriage, the husband obtained a master's degree in business administration. The wife essentially supported the husband while he was getting the degree. Shortly after receiving his degree, the parties divorced.
2. Not all laws have names, but in this case the court uses a law that has a name. This law is used by the court to help it answer the value/overall/legal consequences issue. What is the name of the law used by the court to help it come to its answer to the value/overall/legal consequences issue?
The Uniform Dissolution of Marriage Act.
3. What is the value/overall/legal consequences issue presented and resolved in the case?
Several correct answers are possible. Here are some examples of acceptable answers: Who wins here? Does anyone win here? Is anyone entitled to anything? Does the ex-husband owe the ex-wife anything? Can the ex-wife collect a sum of money for putting her ex-husband through school? Anything similar.
4. What is the answer to the value/overall/legal consequences issue presented and resolved in the argument?
Several correct answers are possible depending on how the issue is worded, but will be something like: Ex-husband does not owe ex-wife anything.
5. What is the factual issue, if any, presented in the argument?
None, no disagreement on the facts. The lack of a factual issue is often hard for students to recognize. Many will give an alternative answer to the value issue such as the following: Does the ex-husband owe the ex-wife any money?
6. What is the legal issue presented in the argument?
Several correct answers are possible. The simplest is "What does the law say or mean?" More complete wordings are "What does the law say about a college degree as a piece of property that can be divided in a divorce?" What does the law say about dividing a college degree in a divorce? Is a degree a piece of property to be divided in a divorce? Also acceptable at this level of knowledge would be "Is a degree property?"
7. The court's answer to the legal issue is a new law that never existed in Colorado before this case was decided. This does not always happen, that is not every case makes new case law, however, this one does. If you can answer this question you will know the new case law made by this court. What is the answer to the legal issue "what law applies" as determined by the court in this case?
An educational degree is not a piece of property to be divided in divorce.
8. Go back to the question above that asks what the value/overall/legal consequences issue is. Put the answer to the value/overall/legal consequences issue here. Note how the answer is different than both the answer to the factual issue and the answer to the legal issue.
The answer will vary depending on how the student worded the value issue but should be something like: The husband wins or the ex-wife is not entitled to anything.

EXERCISE 6: PRACTICE RECOGNIZING AND WORDING FACTS, LAWS, VALUE/OVERALL/LEGAL CONSEQUENCES ISSUES, LEGAL ISSUES, AND FACTUAL ISSUES USING AN ARGUMENT

Note to instructor: Although this reading is short, I do assign it as homework to be read before class and I do incorporate questions on the reading into my online test that tests the reading assignments. This exercise brings together the concepts reviewed in the prior exercises to make sure students can differentiate the five different concepts below and word the different types of issues:

- Facts
- Laws
- Value/Overall/Legal Consequences issues

- Legal issues
- Factual issues

Instructions to students: Read the simplified argument below, “Hot Dog Argument,” and answer the questions below or insert the requested information in the space provided. This exercise reviews all of the following concepts:

- Facts
- Laws
- Value/Overall/Legal Consequences issues
- Legal issues
- Factual issues

1. What is the value issue the author is answering?

Is the statute a valid exercise of state government power?

2. The author wants you to accept a certain conclusion to the value issue. Put that conclusion in the space below.

No. Note: Students’ answers may vary depending on how they worded the issue.

3. Does this scenario raise any factual issues? Explain.

No factual issue is raised. Several explanations might be given by students such as: the parties agree on the facts they just do not agree on the validity of the hot dog law.

4. What is the legal issue that this, and every legal argument, has?

What law applies or what does the law mean?

5. The author of the selection answers the legal issue by choosing two laws that the author thinks apply to the scenario. What laws does the author think apply to the situation?

Caution: Do not include the actual hot dog law here because the author cannot use the hot dog law in support of the validity of the hot dog law. To do so would be to commit the logical fallacy of circular reasoning.

a. Put the names of the two laws below. You do not need to put the entire law.

Commerce Clause of the U.S. Constitution. I will also accept just “U.S. Constitution”. Students receive half credit if they answer “constitutional law,” as that is confusing because it is unclear to which constitution they are referring.

The case of Hughes v. Oklahoma

Hot Dog Argument⁴

The State of Michigan passed a statute that prevented the shipping or selling of hot dogs in Michigan unless those hot dogs contained ten percent fat or less. One hot dog manufacturing plant exists in Michigan and it produces hot dogs with 9.9% fat. A competing hot-dog manufacturing plant exists in Ohio and it produces hot dogs with 10.5% fat. The Michigan statute therefore prevents the Ohio manufacturer from selling hot dogs in Michigan. Michigan says it passed the law to help prevent obesity. Is the statute a valid exercise of state government power?

One of the jobs of the United States government according to the Commerce Clause of the U.S. Constitution (Art.1 Sec. 8), is to promote and protect interstate commerce (that is, trade between the states). The Commerce Clause has been interpreted by the courts to nullify state laws that discriminate, other than minor, incidental discrimination, against interstate commerce. State laws that discriminate against interstate commerce are invalid even if the state law serves a legitimate state interest. States need to search for alternative

⁴ Passage written by author but based on actual events.

ways to promote legitimate state interests other than discriminating against interstate commerce. [Hughes v. Oklahoma, 441 U.S. 322 (1979), nullifying state statute preventing sale of minnows out of state].

The Michigan statute discriminates against interstate commerce by preventing the sale and transportation of hot dogs across the Michigan-Ohio state line. This discrimination is not minor as it prevents consumers from buying a fairly similar product. While the State of Michigan claims to have done this to prevent obesity, this law also conveniently promotes the Michigan business at the expense of the Ohio business. While attempting to curtail obesity is an admirable cause, the State of Michigan must find a more acceptable means of doing so, one that does not discriminate against interstate commerce. In my opinion, the law passed by the State of Michigan violates the U.S. Commerce Clause and should be nullified by a court.

APPENDIX B: MULTIPLE CHOICE QUESTIONS TESTING CONCEPTS

EXERCISE 1: CONSTITUTIONAL LAW EXAMPLE: FREE SPEECH

Bad Frog Brewery, Inc. v. New York State Liquor Authority, 134 F.3d 87 (1998). (Shortened and simplified from original for classroom use).

Bad Frog Brewery, Inc., sells alcoholic beverages, specifically beer, with labels that display a frog making a gesture known as “giving the finger.” See below:

Bad Frog applied to the New York State Liquor Authority (NYSLA), an agency of the state with power over the sales of liquor in that state, for label approval. The agency has many regulations that must be complied with before companies may sell liquor in the state.

(1) The agency denied Bad Frog’s application to sell beer in New York with the above label, in part because children might see the labels in grocery and convenience stores.

Bad Frog filed this case requesting an injunction ordering NYSLA to allow it to sell beer using the above label in the State of New York arguing the NYSLA had violated its U.S. Constitutional right to free speech.

(2) Does Bad Frog have a First Amendment right to free speech that would protect the content of its label and require the agency to approve it? The First Amendment to the U.S. Constitution reads, “Congress shall make no law ... abridging the freedom of speech.” True, this case does not involve Congress but an agency of the State of New York. (3) However, the Fourteenth Amendment to the U.S. Constitution adopted after the U.S. Civil War requires states to give due process and equal protection rights to the citizens of their state. (4) The Fourteenth Amendment to the U.S. Constitution has been interpreted to mean that state governments must give people and business the right of free speech, among many other rights not relevant to this matter.

The agency’s ban on the use of the labels lacked a “reasonable fit” with the state’s interest in shielding minors from vulgarity, and the state agency did not adequately consider alternatives to the ban. (5) “In view of the wide currency of vulgar displays throughout contemporary society, including comic books targeted directly at children, barring such displays from labels for alcoholic beverages cannot realistically be expected to reduce children’s exposure to such displays to any significant degree.”

There are “numerous less intrusive alternatives” that the agency can use to protect children. The injunction is granted and Bad Frog, Inc. may use the label. The agency cannot prevent Bad Frog from selling alcohol in the state based on the label.

1. What is the value issue raised in the argument?
 - a. Was Bad Frog’s right to free speech violated by the government?
 - b. Was Bad Frog’s label offensive?
 - c. Would children see Bad Frog’s label?
 - d. Did the agency say Bad Frog could not use the label?
 - e. What law applies to this situation?

ANSWER: A

Explanation: You should be able to recognize that this is the value issue because in order to answer it you need to know two things: the facts and the law, both of which are given to you in the case.

“A” is the value issue.

“B” and “C” are issues, but the court did not address them because they were irrelevant given the law that applies and its answer to the value issue.

“D” is worded as a factual issue; however, since no one is arguing otherwise, it is not an issue. If the parties are not arguing it, it is not an issue.

“E” is the legal issue. Every legal argument has some variation of this same issue as the legal issue, “What law applies?”. It may be worded slightly differently, however, the legal issue always asks, “What law applies or what does the law mean?”. Usually, in an introductory class such as this, you are not asked “what does the law mean?” but only asked “what law applies to the given scenario?”.

2. What is the answer to value issue given in the argument?
- a. Yes, Bad Frog’s right to free speech was violated.
 - b. Bad Frog’s label was offensive.
 - c. Children might see the label in stores.
 - d. The state agency would not allow Bad Fong to use the label.
 - e. Fourteenth Amendment to the US Constitution.

ANSWER: A

Explanation:

“A” is the answer value issue.

“E” is the answer to the legal issue.

3. What is the legal issue raised in the argument?
- a. Was Bad Frog’s right to free speech violated by the government?
 - b. Was Bad Frog’s label offensive?
 - c. Would children see Bad Frog’s label?
 - d. Did the agency say Bad Frog could not use the label?
 - e. What law applies to this situation?

ANSWER: A

Explanation: You should be able to recognize that this is the value issue because in order to answer it you need to know two things: the facts and the law, both of which are given to you in the case.

“A” is the value issue.

“B” and “C” are issues but the court did not address them because they were irrelevant given the law that applies and its answer to the value issue.

“D” is worded as a factual issue however since no one is arguing otherwise, it is not an issue. If the parties are not arguing it, it is not an issue.

“E” is the legal issue. Every legal argument has some variation of this same issue as the legal issue: what law applies? It may be worded slightly differently, however, the legal issue always asks, “What law applies or what does the law mean?” Usually in an introductory class such as this you are not asked “what does the law mean?” but only asked “what law applies to the given scenario”?

4. What is the answer to the legal issue given in the argument?
- a. Yes, Bad Frog’s right to free speech was violated.
 - d. The state agency would not allow Bad Frog to use the label.

- b. Bad Frog's label was offensive.
- e. Fourteenth Amendment to the US Constitution.
- c. Children might see the label in stores.

ANSWER: E

Explanation:

"A" is the answer value issue.

"E" is the answer to the legal issue.

- 5. True or false: The court does not address any factual issues and decide them.
- a. True
- b. False

ANSWER: A

Explanation: The court does not discuss or solve any factual issues. For example, the court says, even if children see the labels, children are exposed to much worse.

- 6. The sentence labeled (1) and starting with "The agency denied..." is which of the following?
- a. Fact
- d. Analysis
- b. Issue
- e. Conclusion
- c. Law

ANSWER: A

Explanation: You should recognize that this is the "background" or set up of the scenario. This set up or what happened prior to the filing of the lawsuit is always considered the "facts."

- 7. The sentence labeled (2) and starting with "Does Bad Frog..." is which of the following?
- a. Fact
- d. Analysis
- b. Issue
- e. Conclusion
- c. Law

ANSWER: B

Explanation: This is posing a question and is the issue presented by the argument. True, the author does not specifically say, "And the agency denies this." The author assumes you have figured that out from reading the passage. True, it is not good to assume, but judges do assume some modicum of understanding when writing their arguments which is what makes reading actual cases so hard for beginners.

- 8. Sentence labeled (3) and starting with "Congress shall make no law" is which of the following?
- a. Fact
- d. Analysis
- b. Issue
- e. Conclusion
- c. Law

ANSWER: C

Explanation: This should be easily recognized as a law, specifically the First Amendment to the U.S. Constitution.

9. Sentence labeled (4) and starting with “The 14th Amendment...” is which of the following?
- a. Fact
 - b. Issue
 - c. Law
 - d. Analysis
 - e. Conclusion

ANSWER: C

Explanation: The 14th Amendment to the U.S. Constitution is a law.

10. The passage says the agency has many regulations concerning the sale of liquor in New York. The regulations are _____.
- a. Facts
 - b. Laws
 - c. Suggestions
 - d. Standards

ANSWER: B

Explanation: This question reviews whether or not you know regulations are laws.

11. True or false: The court does not address any factual issues and decide them.
- a. True
 - b. False

ANSWER: A

Explanation: The court does not discuss or solve any factual issues. The parties agreed on what was happening and therefore no factual issues existed.

EXERCISE 2: GOOD FAITH EXAMPLE

Meinhard v. Salmon, 249 N.Y. 458 (New York, 1929). (Shortened and simplified from original for classroom use).

“Walter Salmon negotiated a twenty-year lease for Hotel Bristol in New York City. To pay for the conversion of the building into shops and offices, Salmon entered into an agreement with Morton Meinhard to assume half of the cost. (1) They agreed to share the profits and losses from the venture. Before the end of the lease, the building’s owner Elbridge Gerry approached Salmon about a project to raze the converted structure, clear five adjacent lots, and construct a single building across the whole property. Salmon agreed and signed a new lease in the name of his own business. When Meinhard learned of the deal, he filed a suit in a New York state court against Salmon. From a judgment in Meinhard’s favor, Salmon appealed.

(2) “Many forms of conduct permissible in a workaday world for those acting at arm’s length are forbidden to those bound by fiduciary ties. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior.” A person who obtains an opportunity by virtue of that person’s position as a partner is bound by an obligation to his partners to communicate the opportunity to them.

In conclusion, then, Salmon has breached his fiduciary duty to his partner Meinhard by failing to inform Meinhard of the business opportunity and secretly taking advantage of it for himself alone. Meinhard is awarded damages “measured by the value of half of the entire lease.”

1. The sentence labeled (1) and starting with, “They agreed.” is which of the following?
- a. Fact
 - c. Law

b. Issue

d. Analysis

ANSWER: A

Explanation: The sentence is “facts” which might be referred to as “background.”

2. What is the value issue raised in the case?

- | | |
|---|---|
| a. Did Salmon negotiate a twenty-year lease for Hotel Bristol in New York City? | c. Did Salmon sign a new lease in the name of his own business? |
| b. Did Salmon breach a duty to his partner? | d. Salmon breached his fiduciary duty to his partner. |

ANSWER: B

Explanation:

“B” is the value issue and “D” is the answer to the value issue.

3. What is the conclusion to the value issue raised in the case?

- | | |
|---|---|
| a. Did Salmon negotiate a twenty-year lease for Hotel Bristol in New York City? | c. Did Salmon sign a new lease in the name of his own business? |
| b. Did Salmon breach a duty to his partner? | d. Salmon breached his fiduciary duty to his partner. |

ANSWER: D

Explanation: “B” is the value issue and “D” is the answer to the value issue.

4. What is the factual issue raised in the case?

- | | |
|---|----------------------|
| a. Did Salmon negotiate a twenty-year lease for Hotel Bristol in New York City. | d. What law applies? |
| b. Did Salmon breach a duty to his partner? | e. None. |
| c. Did Salmon sign a new lease in the name of his own business? | |

ANSWER: D

Explanation: “B” is the value issue, “D” is the legal issue, and no factual issues are raised in the scenario.

5. What is the legal issue raised in the case?

- | | |
|---|----------------------|
| a. Did Salmon negotiate a twenty-year lease for Hotel Bristol in New York City. | d. What law applies? |
| b. Did Salmon breach a duty to his partner? | e. None. |
| c. Did Salmon sign a new lease in the name of his own business? | |

ANSWER: D

Explanation: “B” is the value issue, “D” is the legal issue, and no factual issues are raised in the scenario.

6. Although not every case makes a piece of law, this one did when it answered the legal issue. Which choice below is the law made by this case in response to the legal issue?
- a. Salmon breached his fiduciary duty to Meinhard.
 - b. Salmon failed to inform Meinhard of the business opportunity and secretly took advantage of it for himself.
 - c. Not honesty alone, but the punctilio of an honor the most sensitive, is the standard of behavior between partners.
 - d. The parties entered into a partnership.

ANSWER: C

Explanation: "C" is the law. The law is worded a bit oddly to your eyes because this case is almost a hundred years old. This law was just being born at this time.

"A" is the conclusion of the case.

"B" and "D" are facts.

EXERCISE 3: LIABILITY OF OWNERS OF A CORPORATION FOR CORPORATE DEBT

Brennan's, Inc. v. Colbert, 85 So.3d 787 (Louisiana, 2012). (Shortened and simplified from original for classroom use.)

Brothers Owen, James, and Theodore Brennan ("the Brothers") were the shareholders of Brennan's, Inc., which operated Brennan's Restaurant in New Orleans. This was a "close corporation," that is one whose stock is all owned by a small group of people and not for sale on any stock exchange. The corporation did not hold regular shareholder meetings or formal corporate meetings with minutes.

At one point, the Brothers hired the law firm of Kenyon & Kenyon to represent Brennan's, Inc., in a suit against a competitor. (Note to students: The results of that lawsuit and any issues raised are irrelevant to the questions presented to you here. It is the relationship between the Brothers and the law firm that is at issue.)

(1) In connection with the prior litigation, all invoices from the law firm were sent to Brennan's, Inc., and the payments to the law firm came from the Brennan's, Inc., checking accounts. At one point, Brennan's, Inc. owed the Kenyon law firm over \$2.5 million in unpaid attorney fees. The Kenyon law firm sued the brothers individually for the money claiming that because they did not hold regular meetings, the court could "pierce the corporate veil." Are the Brothers individually liable for the fees?

(2) Corporate shareholders are not personally liable for the debts of a corporation, except in certain instances of fraud or other wrongdoing, unless they agree otherwise. (3) If there is fraud or wrongdoing, the law may pierce the corporate veil or protective veil and hold the shareholders personally liable. However, this occurs only in very rare situations.

Here, the Brothers did not agree to bind themselves personally for any debt incurred in connection with the services provided by the Kenyon firm to Brennan's, Inc. (4) Also, the Brothers did not perpetrate a fraud on the firm—the client was Brennan's, Inc., not the Brothers and the Kenyon law firm was aware of this. The Brothers are not personally liable for the debt, only the corporation.

1. Sentence #1 above and starting with "In the litigation." is which of the following?
- a. Fact
 - b. Issue
 - c. Law
 - d. Analysis
 - e. Conclusion

ANSWER: A

Explanation: Background or overview of what happened.

2. What is the value issue presented in the passage?
- a. Do the Brothers owe the law firm for the law firm's services?
 - b. Is there a corporation?
 - c. Has fraud been committed?
 - d. Does the law of piercing the corporate veil apply to this scenario?

ANSWER: A

Explanation:

"A" is the value issue.

"B" and "C" are worded as a fact issues, but since no one is arguing either of these, they are not issues. The issue is the topic about which the parties are arguing..

"D" is the legal issue.

3. What is the legal issue presented in the passage?
- a. Do the Brothers owe the law firm for the law firm's services?
 - b. Is there a corporation?
 - c. Has fraud been committed?
 - d. Does the law of piercing the corporate veil apply to this scenario?

ANSWER: D

Explanation: "A" is the value issue.

"B" and "C" are worded as a fact issues but since no one is arguing either of these, they are not issues. Issues are what the parties are arguing about.

"D" is the legal issue.

4. Sentence #2, starting with "Corporate shareholders." is which of the following?
- a. Fact
 - b. Issue
 - c. Law
 - d. Analysis
 - e. Conclusion

ANSWER: C

Explanation: This is one of the basic rules the court uses to solve the value issue.

5. Sentence #3, starting with "If there is fraud..." is which of the following?
- a. Fact
 - b. Issue
 - c. Law
 - d. Analysis
 - e. Conclusion

ANSWER: C

Explanation: This is also a rule. The basic rule is that “shareholders are not liable,” but one exception is the doctrine of “piercing the corporate veil.” Piercing the corporate veil is a means of holding shareholders liable in some rare circumstances.

6. The law firm is arguing that the corporate veil can be pierced based on what fact listed below?
- a. It is fair that the Brothers should pay the bill since the corporation has not done so.
 - b. It is reasonable that the Brothers should pay the bill since the corporation has not done so.
 - c. The Brothers committed fraud.
 - d. The corporation did not hold regular shareholder meetings or formal corporate meetings with minutes.

ANSWER: D

Explanation: Reading comprehension question. This information is in the first paragraph.

EXERCISE 4: AGENCY LAW EXAMPLE

Gorco Construction Company v. Ed Stein, 256 Minn. 476, 99 N.W.2d 69 (Minn., 1959). (Shortened and simplified from original for classroom use.)

The issue raised in this appeal is whether or not the trial court judge erred in instructing the jury that as a matter of law a wife is an agent of a husband.

Mr. Stein placed an order with Gorco Construction Company’s (Gorco Construction) sales representative for the construction of two garages at a total cost of \$ 38,000. The Gorco employee who accepted the order said, “We will review it and get back to you and I can’t authorize this contract at this moment.”

The contract contained a clause that said, in the event that Mr. Stein canceled the order, he would pay fifteen percent of the value of the order as “liquidated damages.” (Note: You can assume such a clause is legal and no issues here related to the validity of this clause.)

A few days later a Gorco agent spoke to Mrs. Stein an informed her Gorco Construction had accepted the order. She said, “Fine.”

However, unknown to either Gorco Construction or Mrs. Stein, Mr. Stein had entered into a contract with another company. When Mr. Stein called Gorco Construction to cancel his order, a Gorco representative said something to the effect, “We have a contract and you have to pay us the fifteen percent damages.” Gorco sued Mr. Stein for breach of contract. Mr. Stein said that he had no contract with Gorco because he had revoked the offer prior to acceptance. Under common law contract law an offer can be revoked at any time prior to acceptance.

The trial judge told the jury that, by law, a wife is the agent of the husband. Therefore, when Mrs. Stein said “Fine,” the contract was formed and the damage clause triggered.

However, we reverse the trial judge’s statement of the law. A wife is not, as a matter of law, the agent of her husband. The husband is not automatically the agent of the wife. No contract was formed between Mr. Stein and Gorco and he does not owe them any damages because he revoked his offer prior to acceptance.

1. The trial judge made a mistake about what the law says. Which statement below summarized the incorrect statement of law made by the trial judge?
- a. Gorco Construction cannot collect damages from Mr. Stein.
 - b. No contract exists between the plaintiff and the defendant.
 - c. A wife is not automatically the agent of the husband.
 - d. A wife is automatically the agent of the husband.

ANSWER: D

Explanation: Judges can mistakes about what the law says or means. Also, the law does change over time (although, we have not studied that process and that process is not involved here). Here, we have a simple

appeal from an error made by the trial judge. The trial judge said, “A wife is always the agent of the husband.” However, this is incorrect. An agent is someone given power by another to act for that another. For example, if A gives power to B to act for A, then B is the agent of A.

While it is true that the law says that directors and officers are automatically agents of the corporation, the law does not say that spouses are automatically agents of the other.

2. The Minnesota Supreme Court says that the law that applies to this scenario is “offers can be revoked at any time prior to acceptance.”
- a. True
 - b. False

ANSWER: A

Explanation: This is the correct statement of the law as clarified by the appellate court, in this case the Supreme Court of Minnesota.

3. The state supreme court says the law regarding agents is as follows: _____.
- a. Gorco Construction cannot collect damages from Mr. Stein.
 - b. No contract exists between the plaintiff and the defendant.
 - c. A wife is not automatically the agent of the husband.
 - d. A wife is automatically the agent of the husband.

ANSWER: C

Explanation: This is the specific piece of law the court made.

4. If the wife were an agent of the husband, then the contract was formed because _____.
- a. consideration existed.
 - b. a writing existed.
 - c. there was an acceptance.
 - d. there was an offer.

ANSWER: C

Explanation: Simplified rule for contract formation. A contract is formed when there has been an offer, acceptance of the offer, consideration, and a writing, if it is necessary. Other elements are needed to form a contract, also, but none are at issue in this case.

5. No one disagreed that the order placed by Stein was _____.
- a. an acceptance
 - b. An offer
 - c. Consideration
 - d. Contract

ANSWER: B

Explanation: It is just as important to recognize what is not an issue; otherwise, you will spend your time and effort on something about which everyone already agrees. No one argued that the order was not an offer; therefore, no issue exists regarding that. The issue is whether or not a spouse is automatically the agent of the other spouse.

6. Which of the following is the legal issue raised in the case?
- a. Is a wife automatically an agent of her husband?
 - b. Is an offer needed to form a contract?
 - c. Does a contract exist between Mr. Stein and Gorco?
 - d. Is consideration necessary to form a contract?

ANSWER: A

Explanation: The legal issue can always be answered by a piece of law. "A" is answered by the law that says, "A spouse is not automatically the agent of the other spouse."

"C" is a value issue.

"B" and "D" are legal issues but not the legal issues raised in the case.

7. What is the answer to the legal issue raised in the case?
- | | |
|---|--|
| a. A spouse is not automatically an agent of her husband. | c. No contract exists between Gorco and Mr. Stein. |
| b. An offer, acceptance, and consideration are needed to form a contract. | d. A contract exists between Gorco and Mr. Stein. |

ANSWER: A

Explanation: The legal issue can always be answered by a piece of law. "A" is answered by the law that says, "A spouse is not automatically the agent of the other spouse."

"C" is a value issue.

"B" and "D" are legal issues but not the legal issues raised in the case.

8. Which of the following is the value issue raised in the case?
- | | |
|---|---|
| a. Is a wife automatically an agent of her husband? | c. Does a contract exist between Mr. Stein and Gorco? |
| b. Is an offer needed to form a contract? | d. Is consideration necessary to form a contract? |

ANSWER: A

Explanation: The legal issue can always be answered by a piece of law. "A" is answered by the law that says, "A spouse is not automatically the agent of the other spouse."

"C" is a value issue.

"B" and "D" are legal issues but not the legal issues raised in the case.

9. What is the answer to the value issue raised in the case?
- | | |
|---|--|
| a. A spouse is not automatically an agent of her husband. | c. No contract exists between Gorco and Mr. Stein. |
| b. An offer, acceptance, and consideration are needed to form a contract. | d. A contract exists between Gorco and Mr. Stein. |

ANS: C

Explanation: The value issue is "Does a contract exist?" The court held no contract exists.

10. Could a wife be an agent for her husband?
- | | |
|---|---|
| a. No, the case tells us a wife cannot be an agent for a husband. | b. Yes, if the husband has given her power to enter into contracts for him. |
|---|---|

ANS: B

Explanation: If you got this wrong it might be because you did not read carefully but overgeneralized the issue. All the court said was that a spouse is not automatically the agent of the other spouse. The court did not say the spouse cannot be an agent of the other spouse.

EXERCISE 5: QUASI-CONTRACT EXAMPLE

Seawest Services Asso. V. Copenhaver, 2012 WL 255857 (Washington, 2012). (Shortened and simplified from original for classroom use).

Seawest Services Association operated a water distribution system that served a residential area. The Copenhavers owned a home within that area. They had purchased the home several years ago and just continued making the payments that came to their address in the name of the prior owners. (1) They never informed Seawest that the prior owners moved, nor did they enter into an express contract with Seawest. They did pay Seawest's charges for water and system upgrades. When a dispute arose between the parties, the Copenhavers refused to pay more. Seawest filed a suit against the Copenhavers in Washington state court. Do the Copenhavers owe Seawest any money for the water?

(2) A quasi-contract exists when a person knowingly receives a benefit from another party and it would be "inequitable for the [person] to retain the benefit without the payment of its value." (3) The Copenhavers enjoyed the benefits of Seawest's services and would be unjustly enriched if they were not to pay for them. They had bought the home, knowing that they could not receive water without paying Seawest. The Copenhavers owe Seawest for the water.

1. The sentence labeled (1) and starting with "They did not..." above is which of the following?
 - a. Fact
 - b. Issue
 - c. Law
 - d. Analysis
 - e. Conclusion

ANSWER: A

Explanation: This is background or factual information.

2. What is the value issue raised in the argument?
 - a. Did Seawest supply water to the Copenhavers?
 - b. What is a quasi-contract?
 - c. Was the home outside of the development?
 - d. Did the Copenhavers use the water?
 - e. Do the Copenhavers have a quasi-contract with Seawest?

ANSWER: E

Explanation: The value issue can be worded several ways and you should be able to recognize it because you need both the law and the facts to answer it.

"A," "C," and "D" are all factual issues at most. However, since no one raised these in the reading, they are not issues.

"B" is the legal issue. It asks, "What law applies?"

3. What is the answer to value issue raised in the argument?

- a. Seawest supplied water to the Copenhavers.
- b. A quasi-contract exists when a person knowingly receives a benefit from another party and it would be "inequitable for the [person] to retain the benefit without the payment of its value."
- c. The home was inside the development.
- d. The Copenhavers used the water and would be unjustly enriched by failing to pay.
- e. Yes.

ANSWER: E

Explanation:

"A" and "C" are facts.

"B" is the law.

"D" is the conclusion supported by analysis.

"E" is simply the conclusion or answer to the value issue.

4. What is the legal issue raised in the argument?
- a. Did Seawest supply water to the Copenhavers?
 - b. What is a quasi-contract?
 - c. Was the home outside of the development?
 - d. Did the Copenhavers use the water?
 - e. Do the Copenhavers have a quasi-contract with Seawest?

ANSWER: B

Explanation:

"A," "C," and "D" are all factual issues at most. However, since no one argued these did not happen, they are not issues.

"B" is the legal issue, that is, it asks, "What law applies?"

"E" is the value issue.

5. What is the answer to legal issue raised in the argument?
- a. Seawest supplied water to the Copenhavers.
 - b. A quasi-contract exists when a person knowingly receives a benefit from another party and it would be "inequitable for the [person] to retain the benefit without the payment of its value."
 - d. The Copenhavers enjoyed the water and it would be inequitable for them not to pay Seawest.
 - e. Yes.

c. The home was inside the development.

ANSWER: B

Explanation:

“A” and “C” are facts.

“B” is the law.

“D” is the conclusion supported by analysis.

“E” is simply the conclusion or answer to the value issue.

6. The sentence labeled (2) and starting with “A quasi-contract.” is which of the following?
- a. Fact
 - b. Issue
 - c. Law
 - d. Analysis
 - e. Conclusion

ANSWER: C

Explanation: This is a simplified overview of the law. Of course the law is much more complicated than this. If you were writing an argument more would probably be expected, but for test purposes this case is simplified.