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CONTENT & OPINIONS

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FROM THE EDITOR

Unprecedented Times: A History of Adapting to Educational Challenges

The new semester had barely begun as a highly virulent viral infection created havoc on college campuses everywhere, spurring mitigation efforts. Some institutions closed completely; others halved class sizes and quarantined symptomatic students. Public gatherings were prohibited and athletic competitions cancelled. Movie theaters, bowling alleys, and churches shuttered; restaurants limited indoor dining. Students were advised to avoid groups and refrain from class attendance if feeling ill. Masks and social distancing were ordered by health authorities, and travel restrictions between city centers established and enforced.

Although descriptions in the preceding paragraph aptly align with our experience of the continuing COVID-19 pandemic, the events are actually derived from 102-year-old historical accounts by college students, faculty, and administrators during the 1918 influenza pandemic. The similarities are concurrently remarkable and unremarkable as individuals globally sought to contend with—and adapt to—the unimaginable crisis of their respective time.

Historical similarities also suggest that the learning environment of both 1918 and 2020 was characterized by the ability to adjust, to reinvent, and to innovate. Smaller indoor class sizes, outdoor field trips and open-air classrooms, journaling, hybrid instruction (by phone in 1918 or by computer in 2020)—these are some of the learning-within-a-pandemic creations that are evident in both periods. Although higher education students, faculty and administrators of these 20th and 21st century crises are separated by a hundred years of change, examples of pandemic college learning shows that the mixing of innovative traditional and non-traditional learning tools and modes is virtually timeless.

Among the many lessons of the current crisis is knowledge that there is an element to learning that transcends method, approach, or venue, and the authors of this Volume 3 Issue 1 deftly capture this essence in their work. This issue of the *Journal of Business Law & Ethics Pedagogy* provides classroom ideas and resources for teaching that are innovative and simultaneously malleable to the multiple learning platforms many of us have recently adopted. Some of the exercises and concepts found in these articles are inspired by the current crisis; all will provide students with enhanced ability to make connections between their studies, business operations, and the world in which they live and work.

In *Business Continuity in Light of Coronavirus Disruption—A Group Exercise*, author Nanci Carr shows how crisis can create opportunity—even in the classroom—through a study of business disruption. This practical exercise focuses on allowing hospital-based employees to begin working remotely, and examines the requisite logistical and legal issues associated with such a transition. Covering a variety of topics, such as consent, liability, and HIPAA regulations, Professor Carr’s lesson helps students make a vivid direct correlation between the COVID-19 crisis and its impact on business operations.

Author Tonia Hap Murphy has developed a valuable compendium of resources and their application in her article *Law in the Time of Coronavirus: How and Why to Cover COVID-19 Disruptions in a Business Law or Legal Environment Course*. Including a virtual textbook range of business law topics, Professor Murphy presents engaging and immersive examples that capture the “silver lining” of our current crisis—understanding a connection between real world current challenges and the lessons we take with us from these issues to apply in the future.

In the essay *Getting Our Hands Dirty: Making the Problem of Dirty Hands Work for Us*, author Barry Sharpe suggests using the concept of dirty hands to introduce students to some of the more complex aspects of ethical thinking. Because the idea that an action may be both justified and wrong is difficult to reconcile, Professor Sharpe believes that the paradoxical nature of dirty hands is a useful framework to reconsider ethical theories and their often hasty, “cookie-cutter” application. Student encounters with messy moral landscapes helps to broaden their ethical toolbox for challenges and more thoughtful decision-making in both life and work.

Using the analogy of a flowing river, author Nancy White illustrates how cases and law move through the court system in *The River of Case Law and the Engagement Ring*. Including a short lecture (<4 mins.) and a well-organized exercise (with teaching notes), Professor White provides students with an opportunity to understand the complexities of how cases are decided and how precedents are created and applied. Focusing on the law of the “engagement ring” and other gifts given in contemplation of marriage, *The River of Case Law* is an engaging (pun intended) look at the consistency and structure of our legal system.

Authors Susan Willey and Cheryl Black present a practical, multifaceted project in their article *Speaking Their Language: Assigning Infographics and Videos as “Digital Deliverables” to Teach Legal Environment of Business Students About Social Media Policy*. In this highly engaging exercise, students are asked to analyze a corporate media policy, create an infographic and training film, and apply the policy to various workplace scenarios. Drawing on Generation Z’s affinity for social media, the importance of digital deliverables, and the need for projects that align with many learning platforms, Professors Willey and Black have created a versatile lesson that combines knowledge and technical skills in a unique and innovative way.

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Christine Ladwig
EDITOR-IN-CHIEF

The River of Case Law and the Engagement Ring

Nancy J. White*

ABSTRACT

This Article presents a short lecture, a reading, and an in-class exercise designed to efficiently teach students how case law is made in a typical court system.¹ The content is based on an analogy to a river. Cases go upstream in the river of case law, starting from the trial court, moving to the appeal court and finally to a supreme court. Law, as compared to cases, flows downriver in the river of case law. That is, law from an appeal court is put into the river of law but flows downriver (is precedent for) only to the courts below that appellate court. Law from a supreme court is put into the river at the headwater and flows down into all of the courts in the system and is therefore precedent for all of the courts in the system.

KEY WORDS: BUSINESS LAW PEDAGOGY, CASE LAW, COMMON LAW, GIFTS, COURT SYSTEMS, PERSONAL PROPERTY

I. Introduction

Every undergraduate business law and legal environment of business text contains a section outlining how the judicial branch operates.² These sections explain how case law develops, but the process is so different from what students have studied regarding how statutory law is made, confusion often results. This Article presents a short lecture, a reading, and an in-class exercise designed to efficiently teach students how case law is made in a typical court system. The content is based on an analogy to a river that is the “River of Case Law.” Cases go upstream in the river, starting from the trial court, moving to the appeal court and finally to a supreme court. Law, as compared to cases, flows downriver, that is law from an appeal court is put into the river of law but flows downriver only to the courts below that appeal court. Law from a supreme court is put into the river at the headwater and flows down into all of the courts in the system.

The short lecture³ (3 min: 58 sec) on how the River of Case Law operates is available at <https://youtu.be/yKnWqiAmSDQ>. The learning objectives are outlined in Part II of the Article. Part III of this Article contains the instructions to the instructor using this exercise. Part IV contains a short reading that can be given to students as homework. Part V is the handout and key for the in-class exercise. Part VI contains a quiz based on the reading in Part IV and the in-class exercise in Part V. This activity assumes students are somewhat familiar with state law issues and the concept of federalism; that is, each state and the federal government has its own court system.

The in-class exercise (Part V) is based on students following a set of imaginary cases answering the legal issue of “who owns an engagement ring if the engagement is broken off and the parties never marry?” The exercise can be used in any state with the possible exception of Montana. Most states, but not Montana, have resolved this issue by establishing case law holding something to the effect of: *if the engagement is broken off,*

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¹ Permission granted to educators to use, copy, and modify as desired, no attribution necessary; however, no commercial use may be made.

² HENRY R. CHEESEMAN, BUSINESS LAW at 1-90 (10th ed. Pearson.2018); ROGER E. MEINERS, AL H. RINGLEB, FRANCES L. EDWARDS, THE LEGAL ENVIRONMENT OF BUSINESS at 25-79 (12th ed. Cengage Learning 2014).

³ All pictures and video clips in the online lecture, “River of Law” are open source from pixabay.com.

the ring is returned to the giver and belongs to the giver. You may wish to research your state's law to verify this. A good source for specific state-level law is: *Rights in respect of engagement and courtship presents when marriage does not ensue*, in the American Law Reports.⁴ The current theory, developed from cases such as those in this example, is called the conditional gift theory. Under this theory, title to the engagement ring does not pass to the receiver until after the marriage.⁵

I have utilized various versions of this exercise in face-to-face classroom settings for over thirty years. Student opinions regarding the exercise are very positive.⁶ This version is intentionally simplified so students can complete the exercise in one 75-minute class period.⁷

II. Learning Objectives

This version of the exercise has the following learning objectives:

1. Diagram a simplified state court system including each of the following elements: trial courts, appellate courts, supreme court.
2. Explain how case law comes into being (River of Law concept).
3. Explain how courts interpret statutes through case law.
4. Recognize the elements of a court decision including relevant facts, laws, issues of law, and conclusions to issues of law.
5. Word and answer legal issues.
6. Use case law (precedent) to reach a conclusion in a later case.

III. River of Case Law In-class Exercise Instructions to Instructors

How to use this exercise in a classroom setting:

1. Assign the River of Case Law reading (Part IV below) to the students as homework. Feel free to use the short video lecture in class or as an additional homework assignment. The video is available here: <https://youtu.be/yKnWqiAmSDQ>.
2. Remove everything labeled "Instructor key" and everything labeled "Instructor hint" from the in-class exercise handout (Part V below) and the quiz (Part VI below).
3. Leave space in the in-class handout and the quiz (Parts V and VI below) after the questions for student answers. The author always formats the handout so each case begins on a new page.

⁴ Elaine Marie Tomko, Annotation, *Rights in Respect of Engagement and Courtship Presents when Marriage Does Not Ensue*, 44 A.L.R.5th 1, (2020).

⁵ *Id.* at 2.

⁶ I have modified this exercise over time based on student input. The exercise was first utilized in a class specializing in construction law for construction management majors and involved the evolution of a law relating to a statute of repose. That version did not work well in an undergraduate business law class for students earning a business administration degree. The engagement ring case is interesting to undergraduate students in the 18-22 age range, they engage in the exercise willingly, and see it as a fun exercise that actually illustrates how case law is made, rather than just explains it.

⁷ More complex and involved versions take a minimum of two class periods. These longer versions can involve more cases, more questions relating to the cases and review other concepts that may have been covered prior to this exercise. For example, these questions could be added to the exercise to review the topics of discovery and remedies. For example:

1. Define the following term: discovery. Key: Discovery: The stage of the litigation process where the parties attempt to discover all of the evidence available.
2. Reeves wants to ask Mandy if she still has the ring or if she has otherwise disposed of it. Assuming Mandy has refused to answer any questions on this topic, how can Reeves get Mandy to answer his questions? Key: Interrogatories or deposition. Written questions from one party to another.
3. In this class we have reviewed three remedies so far. The first remedy we covered is compensatory damages aka monetary damages aka money damages. What are the other two remedies we have studied? Define each. Key: Specific performance (a court order to perform a contract) and injunction (a court order to do some act other than perform a contract).
4. Reeves has asked the court to order Mandy to return the ring to him. He is asking for what remedy? Key: Injunction

4. Students must have some understanding of federalism and recognize that some issues, such as the ones presented here, are state law issues, not federal law issues. This concept, as well as the ones mentioned below, should be given to the students before the exercise.
5. Students must have some understanding of the difference between statutory law and case law.
6. Unless you are from Montana, you may wish to substitute the name of your state for “Michigan” in the exercise to make it more relevant. As far as the author knows, every state except Montana has decided the issue presented in this exercise the same as here. You may wish to research your particular state’s law. The names of the county courts used in the exercise come from different states, that is not particular to any one state. Only Isabella County trial court exists in Michigan. Brazos County is in Texas and Orange County is in California, Florida, and Texas.
7. Copy the River of Law Handout (Part V) and give it to the students. Copy the quiz (Part VI) separately and give the quiz to the students after they have read Case #4. You will want the quiz on a separate sheet so you do not collect the entire exercise, only the quiz (Part VI) for entering the grade. Notice that the quiz (Part VI) has a space for the student’s name and the number of points.
8. Review the instructions at the beginning of the handout (Part V) with the students.
9. Divide the students into groups.
10. Tell the group to look only at Case #1 and answer the questions about Case #1 only. Explain the laws given at the beginning of Case #1 and go over the questions, but not the answers, relating only to Case #1. Give the students about 5 minutes to read the case and answer the questions.
11. Review the answers to the questions related to Case #1 with the students. Tell the students to change or add information to their handout that is inconsistent with the answers you give to them. Put the students back into groups.
12. Repeat with Case #2 and #3, that is, after you have reviewed the correct answers with the students, have the students break up into groups and answer the next set of questions.
13. Case #4 is slightly different. The case is at the end of the handout (Part V) but the *questions* are presented as a separate in-class quiz (Part VI). To make grading for the instructor easier, students can be instructed to self-grade this quiz in-class using green or other unusual colored pens which can be provided by the instructor. That is, have the students complete the quiz in their own pen or pencil using any color except green, for example. Then, the instructor hands out green pens, goes over the correct answers with the students, tells the students to make corrections using the green pens and put the number of points in the space on the quiz. This method is also beneficial to student learning because it gives the students immediate feedback. Spot checking the quizzes before entering the scores in the gradebook is advisable.
14. This exercise can be used to review other concepts covered in the class by adding review questions to the worksheet. For example, questions on federalism, the court systems, or the discovery process can be included.

IV. River of Case Law Reading

This reading is designed to help you understand how case law comes into existence. Case law comes into being through disputes filed in a court system. To understand how this process works the “river of case law” analogy described below shows you how case law comes into being. Look below at Figure 1: River of Case Law. Notice the river. Trial courts are at the end (bottom of the figure) of the river and this is where cases start. Cases then move upriver to the appeal court if one of the parties chooses to appeal. Appeal courts are required to review the trial court decision (appeal of right). After the appeal court makes its decision the case can move to a supreme court however supreme courts choose which cases to hear, parties have no right that a supreme court hear their case. If the supreme court decides not to hear the case, the decision of the appeal court is final.

You may be familiar with how statutory law, that is law made by legislative bodies such as your state legislature or U.S. Congress, comes into being; that is, how a bill becomes a law. You may be familiar with the Schoolhouse Rock song, “I’m Just a Bill”⁸ but that process is very different from how case law comes into being.

⁸ Dave Frishberg, *Schoolhouse Rock I’m Just a Bill*, YOUTUBE (1976), <https://www.youtube.com/watch?v=Otbml6WlQP0>.

Case law comes from, well, cases! A case starts in a trial court and can be appealed upriver to an appeal court. It is at this step, the appeal court, that some case law can be put into the river of case law. Not all appeal court cases make case law – the appeal court may decide the case on existing law only. However, if no existing law can be found, the appeal court can make the law necessary to decide the case. The same is true for a supreme court that is a supreme court can decide a case on existing law but usually a supreme court only takes a case if no existing law can be found to resolve the legal issue presented and law must be made in order to resolve the case.

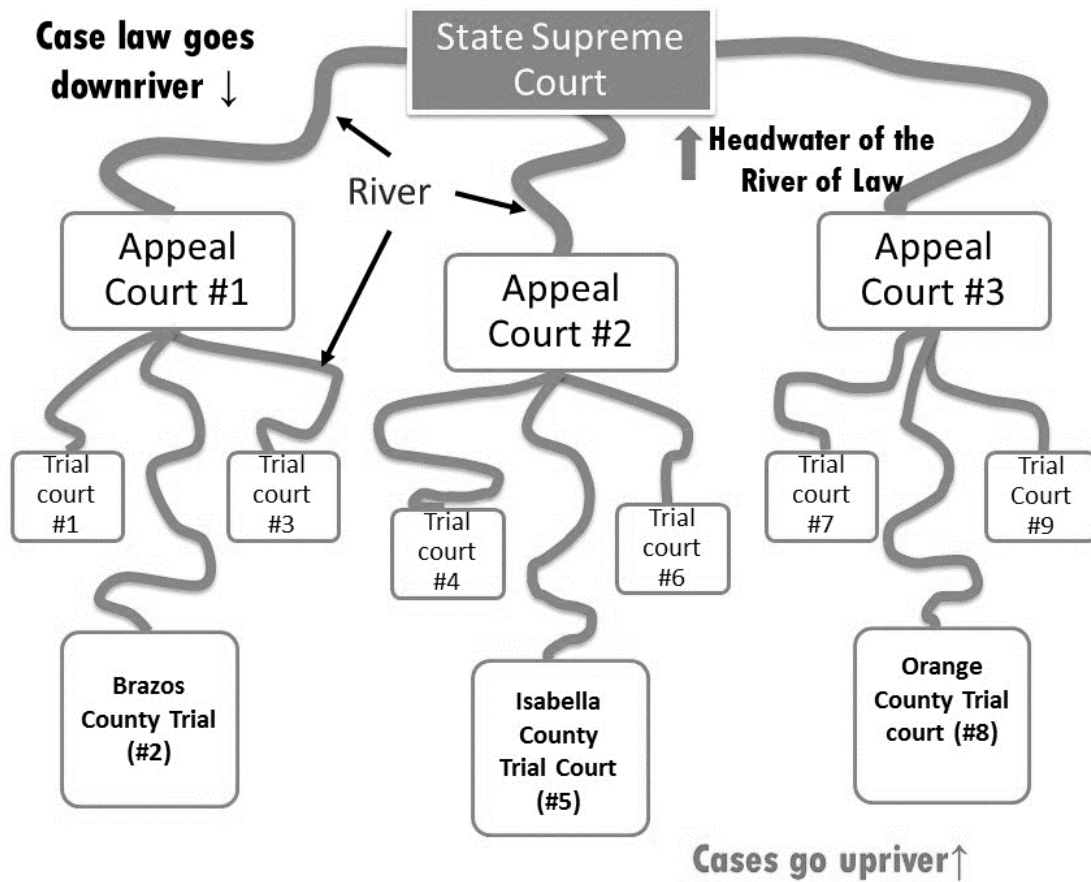


Figure 1: River of Case Law

For example, assume the following sequence of events:

- Party A is fired because he gains a considerable amount of weight as a flight steward. Party A files a case in Trial Court #1 asking the trial court to resolve this legal issue, “Does the law allow someone to be fired for being overweight?”.
- Assume Trial Court #1 says, ‘Yes, the law says someone can be fired for being overweight under the employment at will doctrine that says, anyone can be fired for any reason or no reason.’⁹ Party A may or may not take the case to appeal.
- Assume Party A appeals Trial Court #1’s decision to Appeal Court #1 and Appeal Court #1 upholds Trial Court #1’s ruling stating the law is: The law allows someone to be fired for being overweight.

⁹ This is a simplified overview of the law.

- Assume Party A appeals to the State Supreme Court but the State Supreme Court refuses to take the case. This is common because State Supreme Courts choose which cases to take and usually do so only after several cases have been heard at lower levels.
- Several years later Party B files a case in Trial court #6 asking the same legal issue: Can someone be fired for being overweight? Assume Trial Court #6 says no, the law does not allow someone to be fired for being overweight. Notice that this decision is the opposite of the decision made by Appeal Court #1.
- Assume the losing party in the above case (the employer) appeals this case to Appeal Court #2 and that court upholds Trial Court #6's ruling and says the law is: the law does not allow someone to be fired for being overweight.
- Now, the state supreme court is likely to take a case involving this issue because of the conflicting law made by Appeal Court #1 (someone can be fired for being overweight) and Appeal Court #2 (someone cannot be fired for being overweight). Assume the state supreme court takes the case and rules that the state constitution does not allow employers to fire someone for being overweight. This law made by the state supreme court flows downriver from the state supreme court to all of the courts below it and is now the law of the state.

In order to complete the River of Law In-Class exercise you are expected to already understand the concept of federalism as it exists in the United States; that is, the United States is a federation made up of semi-independent states, tribes, and other territories. Each of these semi-independent entities has its own court system and some laws that apply only within the area controlled by that entity. For example, laws made by Michigan are only applicable in Michigan. Laws made by California are only applicable in California. Laws made by the Saginaw Chippewa Tribe are only applicable on their reservation. Laws made by Puerto Rico are only applicable in Puerto Rico. Federal laws apply to all members of the federation called the United States. However, the US Constitution limits the ability of the federal government to make laws. The example used in this exercise is an example of state law only, no federal laws apply.

In addition, you must know what a law is. A law is a standard of behavior established by a government or the definition of any word used in a standard of behavior established by a government. Laws apply to everyone and are enforced by governments. If a person breaks a law, they are subject to criminal and/or civil penalties – that is, they can be taken to court.

You must also know the difference between case law and statutory law. Two important differences exist between case law and statutory law. The first difference is who makes that law. Statutory law is made by legislative bodies such as your state legislature or U.S. Congress. Case law is made by judges. Another difference is who is controlled by the law. A statute controls everyone as of the moment it is made; the legislative body may establish an effective date. Case law, until it is made by a supreme court, is only binding on some in the state, not everyone. The River of Case Law exercise clarifies how case law is made and who it controls. Another big difference between statutory law and case law is that case law is sometimes made to clarify statutory and constitutional law. The River of Case Law exercise does not involve any constitutional law issues and you can tell because no constitutions are used to support the conclusions.

You must also know what a legal issue is. A legal issue is one asking something like, “What does the law say about _____?” or “What is the law on this topic?” If the issue or question is something like, “Who wins?” or “What happened here?” it is not a legal issue. A “Who wins?” issue can be called an overall issue and a “What happened here?” issue is a factual issue.¹⁰ For this exercise you only need to understand that you are dealing with a legal issue; that is, what does the law say about the topic presented?

V. River of Case Law In-Class Exercise Handout

Instructor Hint: This is the first handout to be given to the students in class. Students should have been assigned the reading, “River of Case Law” (“IV” above) before completing this exercise.

¹⁰ An in-depth understanding of the distinction between overall, factual, and legal issues is not needed for this exercise.

Instructions to Students: You will review a series of cases interpreting a particular state statute and the state common law. Look only at Case #1 and the questions related to Case #1 at this time. I will divide the class into groups. Each group is an appellate court panel deciding the law that applies to the case. Appellate courts usually have 3-5 judge-panels deciding a case.

Read the laws given to you and the case, then answer the questions. This version of the exercise has the following learning objectives:

1. Diagram a simplified state court system including each of the following elements: trial courts, appellate courts, supreme court.
2. Explain how case law comes into being (River of Law concept).
3. Explain how courts interpret statutes through case law.
4. Recognize the elements of a court decision including relevant facts, laws, issues of law and conclusions to issues of law.
5. Word and answer legal issues.
6. Use case law (precedent) to reach a conclusion in a later case.

River of Case Law: Case #1

Instructions to Students: Read the laws below, read Case #1, answer the questions about Case #1, and then stop.

LAW (or RULE): (1) "Engagement rings and other gifts given in contemplation of marriage or engagement are not consideration in support of a contract to marry. No cause of action for breach of a contract to marry is recognized in this state." MICHIGAN STATUTE #16.009.¹¹ (*Instructor: Point out to the students that this statute does not answer the legal issue presented. In other words, the statute does not cover the issue presented in the case so the court must clarify or determine the law.*) (2) Title to a gift, that is ownership of a gift, transfers to the receiver of the gift immediately upon transfer of the gift from the giver to the receiver. *Smyth v. Jonnes*, 123 Michigan 456 (1880).¹² (Very simplified statement of the common law of gifts). (*Instructor: Point out to the students that this is a piece of old, established common law in the state and it was made by judges.*)

Case #1: Reeves, a resident of California, meets Mandy, a resident of Michigan, county of Orange, while both are on vacation in the Bahamas. He buys her a \$15,000 diamond engagement ring there and gives it to her. However, after they return to the U.S., Mandy decides she does not want to leave her family, her job, her friends, and move to California. She breaks off the engagement. Reeves asks Mandy for the ring back, but she refuses, saying the ring was a gift and since no cause of action for breach of contract to marry exists, she can keep the ring. Reeves files a lawsuit against Mandy asking for return of the ring in the Brazos County trial court.

1. In this case, who broke off the engagement, the giver of the ring or the receiver of the ring?

Instructor Key: Receiver.

2. What is the *legal* issue raised in this scenario?

Note that if your issue contains the words "Reeves" or "Mandy" it is not the legal issue raised in the scenario. Do not include the word "gift" because it is difficult, though not impossible, to word the legal issue using that word.

The legal issue always asks something like, "What does the law say about _____ (fill in the blank)?" For example, "What does the law say about wearing headscarves at work?" The answer to a legal issue is a law or part of a law. For example, the answer to the legal issue, "What does the law say about wearing headscarves at work?" is "The law says that employers must make a reasonable accommodation for people who want to wear headscarves at work." Note that this answer is only part of the law regarding this issue.

¹¹ This statute number is imaginary and used for the purpose of simplifying this exercise.

¹² This is an imaginary case for the purposes of simplifying this exercise.

The reason I do not want you to use the word “gift” is because if you word the legal issue something like, “What does the law say about gifts?” it is wrong because it is much too general. I want you to be more specific so that when you finish this exercise you know the law covering the situation.

Instructor Key: NOT ACCEPTABLE: ‘Any issue that includes the name of any of the parties or asks about the particular ring involved here.’ ACCEPTABLE: ‘What does the law say about who gets an engagement ring when the engagement is broken off?’ ALTERNATIVE: ‘What happens to an engagement ring when the engagement is broken off?’ Anything similar is fine.

3. Who will first decide the answer to this legal issue in this case?

Instructor Key: Brazos County Trial court judge or anything similar.

4. Who will review whether or not that first person’s answer to the legal issue was right?

Instructor Key: Appeal court or Appeal Court #1.

5. Reeves wants the answer to the legal issue to be what? Complete the sentence below but if your answer is anything like, “Reeves wants the law to be that Mandy must return the ring to Reeves,” your answer is wrong. This answer is not a law but is the decision of the court about who wins or loses. Remember a law is always a general statement and applies to everyone, not just Reeves and Mandy. Reeves wants the law to be _____.

Instructor Key: Anything similar to ‘Engagements rings are returned to the giver if the engagement is broken.’

6. Mandy wants the answer to the legal issue to be what? Complete the sentence below but if your answer is anything like, “Mandy wants the law to be that Mandy keeps the ring,” your answer is wrong. This answer is not a law but is the decision of the court about who wins or loses. Remember a law is always a general statement that applies to everyone, not just Reeves and Mandy. Mandy wants the law to be _____.

Instructor Key: Anything similar to ‘Engagement rings are not returned to the giver if the engagement is broken. The more correct legal answer is: Title to engagement rings transfer to the receiver immediately and does not change if the engagement is broken.’

Students Stop Here



Instructor Hint: Stop here and review the answers in the key with the students. Then review the laws below and break the students back into their groups to answer the questions for Case 2.

River of Case Law: Case #2

Instructions to Students: Read the laws below, answer the questions following these laws, read Case #2, answer the questions about Case #2, and then stop.

LAW (or RULE): (1) “Engagement rings and other gifts given in contemplation of marriage or engagement are not consideration in support of a contract to marry. No cause of action for breach of a contract to marry is recognized in this state.” MICHIGAN STATUTE #16.009. (2) Title to a gift, that is ownership of a gift, transfers to the receiver of the gift immediately upon transfer of the gift from the giver to the receiver. *Smyth v. Jonnes*, 123 Michigan 456 (1880). (Very simplified statement of the common law of gifts). (3) “If the woman breaks off the engagement, she must return the ring. Engagement rings are a different type of gift and not covered by Michigan Statute #16.009. The ring belongs to Reeves. Trial court’s decision upheld.” *Reeves v. Mandy, Appeal Court #1*(1980).

Instructor Hint: Draw the students’ attention to this before breaking them into groups then have them answer the questions below, read Case #2 and then answer the questions after Case #2, then stop.

1. The above quote from the *Reeves* case tells you two things: who won and the law. Who won the case?

Instructor Key: Reeves.

2. In the *Reeves* case, who is entitled to the ring, the giver of the ring or the receiver of the ring?

Instructor Key: Giver.

Notice that the *Reeves* case was decided by Appeal Court #1 and now we have a piece of law relating to the legal issue raised. The *Reeves* case says the law regarding engagement rings when the engagement is broken is what? *Hint*: If your answer here contains the words “Reeves’ or “Mandy” it is wrong because I am *not* asking for the decision of the court about who wins or loses, that was asked above. I am asking for the law made by Appeal Court #1.

Instructor Key: If the woman breaks off the engagement, she must return the ring. The answer could also include: Engagement rings are a different type of gift and not covered by Michigan Statute #16.009.

3. The *Reeves* case is binding on what courts in the river of case law? Look at the diagram at the beginning of this exercise.

Instructor Key: Trial courts below Appeal Court #1 or trial courts # 1, 2, 3. If students include Appeal Court #1, I accept it; however, a court can change its own precedent, just not precedent set by a higher court.

4. Assume Mandy, in the *Reeves* case, wanted to appeal the decision of Appeal Court #1 (given above) further. Where would she file her appeal?

Instructor Key: State Supreme Court.

5. Assume Mandy appealed her case up to the Michigan Supreme Court, and they upheld the appeal court’s decision. Could Mandy appeal further to the U.S. Supreme Court?

Instructor Key: No.

6. Why or why not?

Instructor Key: Because this is a matter of state law, no federal laws have been raised.

Case #2: Deamon and Angel, both residents of the state of Michigan, county of **Isabella**, became engaged. At the time of the proposal, Deamon presented Angel with a two-carat diamond in an 18-karat gold setting valued at approximately \$24,000. They began making wedding plans but, shortly thereafter, Deamon met Lolita and broke off the engagement with Angel. Deamon asked Angel to return the ring, but she refused. Deamon sued Angel in the Isabella County court for return of the ring. She says she does not have to return the ring since it was a gift and since no cause of action for breach of contract to marry exists, she can keep the ring.

1. In the *Deamon* case, who broke off the engagement, Deamon (the man) or Angel (the woman)?

Instructor Key: Deamon, the man.

2. In the *Deamon* case, who broke off the engagement, the giver of the ring or the receiver of the ring?

Instructor Key: The giver.

3. In the *Deamon* case, what is the *legal issue*?

Instructor Key: Anything similar to: Who is entitled to an engagement ring when the engagement is broken? If you approach this entire problem from the “gift” angle then the legal issue is: Is an engagement ring to be treated the same as other gifts regarding the immediate transfer of title to the receiver?”

Students Stop Here



Instructor Hint: Stop here and review the answers with the students. Then review the laws below and break the students back into their groups to answer the questions.

River of Case Law: Case #3

Instructions to Students: Read the laws below, answer the questions following these laws, read Case #3, answer the questions about Case #3, and then stop.

LAW (or RULE): (1) “Engagement rings and other gifts given in contemplation of marriage or engagement are not consideration in support of a contract to marry. No cause of action for breach of a contract to marry is recognized in this state.” MICHIGAN STATUTE #16.009. (2) Title to a gift, that is ownership of a gift, transfers to the receiver of the gift immediately upon transfer of the gift from the giver to the receiver. *Smyth v. Jonnes*, 123 Michigan 456 (1880). (Very simplified statement of the common law of gifts). (3) “If the woman breaks off the engagement, she must return the ring. Engagement rings are a different type of gift and not covered by

Michigan Statute #345. Ring belongs to Reeves. Trial court's decision upheld." *Reeves v. Mandy*, Appeal Court #1 (1980). (4) "An engagement ring can be recovered by the donor (usually the man is the donor), if the agreement to marry is dissolved by mutual consent or the woman unjustifiably breaks off the engagement but cannot be recovered by him if he unjustifiably breaks the agreement it evidences. Angel keeps the engagement ring." *Deamon v. Angel*, Appeal Court #2 (1990).

Instructor Hint: Draw the students' attention to this before breaking them into groups then have them answer the questions below, read Case #3 and then answer the questions after Case #3, then stop.

1. In the *Deamon* case, who won the case, Deamon or Angel?

Instructor Key: Anything similar to: Angel wins. Angel keeps the ring. Deamon loses. Deamon is not entitled to the ring.

2. In the *Deamon* case, who won the case, the giver of the ring or the receiver of the ring?

Instructor Key: The receiver.

3. In the *Deamon* case, the appeal court did its job and answered the legal issue. What is the answer to the legal issue given by Appeal Court #2? Hint: If your answer here is the same as the answer above or contains the names "Angel" or "Deamon" or the word "gift" in the law, it is wrong.

Instructor Key: If you just cut and paste the answer is: An engagement ring can be recovered by the donor (usually the man is the donor), if the agreement to marry is dissolved by mutual consent or the woman unjustifiably breaks off the engagement but cannot be recovered by him if he unjustifiably breaks the agreement it evidences. You can also simplify the law and just say: The engagement ring goes back to the giver if the engagement is broken by mutual consent or the woman is at fault or unjustifiably breaks off the engagement.

4. The *Deamon* case is binding on what courts in the river of case law? Look at the diagram at the beginning of this exercise.

Instructor Key: Trial courts below Appeal Court #2 or trial courts # 4,5,6. If you also included Appeal Court#2, I will accept it however a court can change its own precedent, just not precedent set by a higher court.

5. True or false: Both the *Reeves* case and the *Deamon* case look at fault, that is who unjustifiably broke off the engagement.

Instructor Key: True.

Case #3: Dens and Clo, both residents of the state of Michigan, Orange County, became engaged. At the time of the proposal, Dens presented Clo with a 1.6-carat diamond in a platinum setting valued at approximately \$19,000. They began making wedding plans and searching for a home. Dens told Clo to ask her parents for \$100,000 for a down payment on their new home because they had the money. Clo asked, but her parents said they should buy their own home and would only give them \$2,000 to help with the down payment. After several arguments, Dens broke off the engagement. Dens asked Clo for the ring, but she refused. Dens sued Clo in the Orange County court for return of the ring. The trial court said Clo could keep the ring because Dens was at fault for breaking off the engagement. Dens appealed.

1. In Case #3, who is the giver of the ring and who is the receiver?

Instructor Key: Dens is the giver and Clo is the receiver.

2. In Case #3, who broke off the engagement, the giver of the ring or the receiver of the ring?

Instructor Key: The giver, Dens.

3. In Case #3, who is at fault for breaking off the engagement, the giver of the ring or the receiver of the ring?

Instructor Key: The giver of the ring, Dens.

4. REVIEW CONCEPT: You should have realized by now that all of the cases in this River of Case Law exercise raise the same legal issue and that we are looking at how this law developed over time via all of these cases. What is that legal issue raised in this case and also Case #1 and Case #2? Do not include the word "gift" in your answers, not because it is not correct but because it is very difficult to word the issue correctly from that standpoint.

Instructor Key: What does the law say happens to an engagement ring when the engagement is broken?

5. Is this a federal or state law issue and how do you know?

Instructor Key: State because only state laws are used.

Students Stop Here



Instructor Hint: Stop here and review the answers with the students. Then review the laws below and break the students back into their groups to answer the questions. DRAW THEIR ATTENTION TO THE FACT THAT THE FINAL QUESTIONS ARE A QUIZ THAT WILL BE GRADED AND TURNED IN.

River of Case Law: Case #4

Instructions to Students: Read the laws below, answer the questions following these laws, read Case #4. You will then take a graded quiz covering these concepts.

LAW (or RULE): (1) "Engagement rings and other gifts given in contemplation of marriage or engagement are not consideration in support of a contract to marry. No cause of action for breach of a contract to marry is recognized in this state." MICHIGAN STATUTE #16.009. (2) Title to a gift, that is ownership of a gift, transfers to the receiver of the gift immediately upon transfer of the gift from the giver to the receiver. *Smyth v. Jonnes*, 123 Michigan 456 (1880). (Very simplified statement of the common law of gifts). (3) "If the woman breaks off the engagement, she must return the ring. Engagement rings are a different type of gift and not covered by Michigan Statute #345. Ring belongs to Reeves. Trial court's decision upheld." *Reeves v. Mandy*, Appeal Court #1 (1980). (4) "An engagement ring can be recovered by the donor (usually the man is the donor), if the agreement to marry is dissolved by mutual consent or the woman unjustifiably breaks off the engagement but cannot be recovered by him if he unjustifiably breaks the agreement it evidences. Angel keeps the engagement ring." *Deamon v. Angel*, Appeal Court #2 (1990). (4) (a) "Upon termination of an engagement, gifts in contemplation of marriage, such as engagement rings, are to be returned to the donor/giver. (b) The law does not look at the fault of either party. (c) Since the major purpose of the engagement period is to allow a couple time to test the permanency of their feelings, it would seem highly ironic to penalize the donor/giver for taking steps to prevent a possibly unhappy marriage. Trial court's decision overturned." *Dens v. Clo*, Appeal Court #3 (2000).

1. Who won the case at the trial court level in *Dens* and who won at the appeal court level? Indicate whether this was the giver or the receiver of the ring.

Instructor Key: Trial court level: Clo the receiver. Appeal: Dens the giver.

2. The law made by the *Dens* court is very different than the law made by the other two courts. What is the difference?

Instructor Key: Dens says it does not matter who is at fault for breaking the engagement.

3. The *Dens* case is binding on what courts in the river of law? Look at the diagram at the beginning of this exercise.

Instructor Key: Trial courts below Appeal Court #3 or trial courts # 7, 8, and 9. If a student includes Appeal Court #3, I accept it; however, a court can change its own precedent, just not precedent set by a higher court.

4. What is likely to happen next in the development of this law about engagement rings?

Instructor Key: State Supreme Court will take a case. I will also accept this, but 50 state courts systems have decided this issue and not one single state legislature has: The state legislature will make a statute.

5. None of these cases has asked the following issue because the court cannot resolve this issue because it is clear what the law says: Do the parties have a contract because of the engagement ring? What is preventing everyone from claiming this matter involves a contract?

Instructor Key: The Michigan statute #16.009. ACCEPTABLE: The state statute. Anything similar.

Case #4: Diamond (female) and Ditz (male) both residents of the state of Michigan, County of Orange, became engaged and at the time of the proposal, Ditz presented Diamond with a 4-carat diamond in an 18-karat gold setting valued at approximately \$24,000. They began making wedding plans but shortly thereafter Ditz decided to go to Hollywood, Ca and become an actor. While Diamond was taking a shower Ditz took the ring, which was

sitting in a ring holder on the sink and left Diamond a note saying, "It's all over between us. It was fun but I want to be a big movie star!" He then returned the ring to the jewelry store for cash and went to Hollywood. After a few months Ditz gave up his dream of being a movie star and moved back to Michigan. Diamond sued him in the Orange County, Michigan trial court for the value of the ring. The trial court ordered Ditz (the giver of the ring) to pay Diamond (the receiver of the ring) \$24,000, the value of the ring. Appeal Court #3 upheld the trial court's decision. Ditz further appealed to the Michigan Supreme Court and the **Michigan Supreme Court's decision is below.**

THE LAW IN THE STATE OF MICHIGAN REGARDING ENGAGEMENT RINGS NOW CONSISTS OF THE FOLLOWING. NOTICE THAT SOME LAWS ARE NO LONGER VALID:

LAW (or RULE): (1) "Engagement rings and other gifts given in contemplation of marriage or engagement are not consideration in support of a contract to marry. No cause of action for breach of a contract to marry is recognized in this state." MICHIGAN STATUTE §16.009. (2) Title to a gift, that is ownership of a gift, transfers to the receiver of the gift immediately upon transfer of the gift from the giver to the receiver. *Smyth v. Jonnes*, 123 Michigan 456 (1880). (Very simplified statement of the common law of gifts). (3) "Upon termination of an engagement, gifts in contemplation of marriage, such as engagement rings, are to be returned to the donor/giver (a) The law does not look at the fault of either party. (b) Since the major purpose of the engagement period is to allow a couple time to test the permanency of their feelings, it would seem highly ironic to penalize the donor/giver for taking steps to prevent a possibly unhappy marriage. (c) Trial court's decision upheld." *Dens v. Clo*, Appeal Court #3 (2000). (4) "We agree with the reasoning in *Dens v. Clo* from Appeal Court #3 and reject the reasoning of other cases on this issue. Upon termination of an engagement, gifts in contemplation of marriage, such as engagement rings, are to be returned to the donor/giver (a) Engagement rings are not like other gifts and title to the engagement ring does not pass to the receiver until the parties marry. However, if the parties do not marry, but the engagement is broken, the law does not look at the fault of either party for breaking the engagement and the ring goes back to the giver. (b) Since the major purpose of the engagement period is to allow a couple time to test the permanency of their feelings, it would seem highly ironic to penalize the donor/giver for taking steps to prevent a possibly unhappy marriage. (c) Trial court and appeal court's decisions overturned." *Ditz v. Diamond*, Michigan Supreme Court (2010).

VI. River of Case Law Quiz

River of Case Law: Case #4 QUIZ

Instructor Hint: *Bring a batch of inexpensive green or other unusual color pens to class. The students take the quiz using their own pen or pencil but tell them not to use a green pen or pencil. After the allotted time tell them to put their pen or pencil away, pick up a green pen and use the green pen to correct the quiz and make any corrections to their answers they want. I always return this quiz to the students after entering the grade so they can use it to study and encourage them to put the correct answer on their quiz. I have found I have to actually tell them to do this, or many will not.*

LAST NAME, FIRST INITIAL IN LARGE PRINT: _____

Number correct, **including extra credit.** Each question or subpart of a question is 1 point unless specifically labeled otherwise. 2 points off if I find one marked right that is actually wrong: _____

Instructions to Students: Answer the questions below using your own pen or pencil; however, do not use a green pen or pencil. After the allotted time you will put your own pen or pencil away and I will give you a green pen. Use the green pen to correct this quiz and make notes on it as we grade this in-class. If you are not sure you have the correct answer, ask or mark it incorrect. If your answer is incorrect but you have marked it correct, two points will be deducted for that answer. Put the number of points earned, including extra credit, in the space above.

1. In Case #4, must Ditz (the giver of the ring) pay Diamond (the receiver of the ring) the \$24,000? *Grammar sidebar:* Notice this question properly used parentheses. Many students incorrectly use parenthesis when they should be using commas. Parentheses are used when the phrase in the parentheses (the man who took the ring) further explains or clarifies the word/phrase prior to the parenthesis example (Ditz).

Instructor Key: No.

2. What is the *legal* issue raised in all of these cases? *Hint:* Each of these cases raises the same legal issue.

Instructor Key: What does the law say about who is entitled to an engagement ring if the engagement is broken? Anything similar is fine.

3. What is the answer given by the Michigan State Supreme Court to the legal issue raised in all of these cases? If your answer anything other than the question asked, it is wrong, that is your answer must be a law.

Instructor Key: 'An engagement ring goes back to the giver when the engagement is broken off for any reason.' Anything similar is acceptable.

4. What is the law made by the Michigan State Supreme Court about engagement rings when the engagement is broken? *Hint.* If your answer to this question is **NOT** the same as the answer to the question above, one or both of them are wrong. In other words, these two questions ask exactly the same thing.

Instructor Key: An engagement ring goes back to the giver when the engagement is broken off for any reason. Anything similar is acceptable.

5. From the above list of laws, you should be able to see that some laws/cases no longer exist or are no longer valid. Which "law(s)" or "rule(s)" or "case(s)" are no longer valid? You need only put the name of the law or case, not the entire law or case.

Instructor Key: Reeves case and the Deamon case.

6. Michigan Statute #16.009 in the above list of laws, is binding on what courts in the river of case law?

Instructor Key: All of them.

7. The Ditz case is binding on what courts in the river of case law? Look at the diagram.

Instructor Key: All of them.

8. EXTRA CREDIT. The Reeves and Deamon cases are said to have been _____ by the Michigan Supreme Court's decision. I will not accept the word "invalid" or any derivation of that word because I just told you the cases were no longer valid and using the question to answer the question is circular reasoning, which is a fallacy of logical thinking.

Instructor key: Overturned or overruled, either is fine.

9. True or false: The Ditz case could be appealed to the US Supreme Court and the US Supreme Court could overturn the Michigan State Supreme Court.

Instructor Key: False.

10. Explain your answer above.

Instructor Key: This is a matter of state law only.

11. EXTRA CREDIT. True or false: This line of cases raises a constitutional law issue.

Instructor Key: False.

12. Suppose a member of the Michigan state legislature does not like the decision of the Michigan State Supreme Court in the *Ditz* case. This member of the state legislature introduces a bill to add the following to section MICHIGAN STATUTE #16.009: (a) "Title to an engagement ring passes to the receiver of the ring immediately upon receipt of the ring by the receiver and if the engagement is broken off, the receiver is entitled to keep the ring." Can the legislature pass this law even though it conflicts with the decision in the *Ditz* case?

Instructor Key: Yes.

13. EXTRA CREDIT. Related to prior question: Why or why not in support of your answer?

Instructor Key: NOT ACCEPTABLE: The legislature has the power to make laws. (This answer suffers from the fallacy of circular reasoning). ACCEPTABLE: 'The Michigan state legislature can pass any law it wants that does not violate a constitution, state or federal, and this is not a constitutional law issue.' ACCEPTABLE: 'Statutes are above case law in the hierarchy of law.'

14. Assume that Montana has a similar series of cases involving engagement rings in its court system. Must it follow the Michigan cases?

Instructor Key: No. Montana is one of two states (I forget the other) that holds that receiver of the ring keeps it even if the engagement is broken off because title transferred immediately upon the giving of the ring.

VII. Conclusion

The in-class exercise and quiz covered here has been used, in modified form, in various law classes for over thirty years. Students generally react well to it and find it a fun and interesting exercise to explain otherwise difficult concepts. The concepts covered include understanding court systems, case law, the use of precedent, and the elements of a case including facts, laws, issues of law and conclusions to issues of laws. The exercise and quiz can be modified to include review questions from concepts previously covered in the class. In addition to the in-class exercise, a quiz is included. This quiz can be graded by the students in-class after the exercise—no need for the instructor to grade each quiz.