Chapter 4
Common Law, Statutory Law, and Administrative Law

According to your textbook, two hundred years ago, almost all of the (U.S.) law was:

a. Statutory law
b. Common law
c. Administrative law

According to your textbook, today, most new law is:

a. Statutory law
b. Common law
c. Administrative law
Part 1: Common Law

What is a bystander?
A witness who observes an event but takes no part in it, and has breached no duty of care owed to the event's victim arising from their existing relationship.

What was the “simple rule” this country inherited from England regarding a bystander’s obligations?
The Bystander Rule

“A bystander has no legal duty to assist someone in peril unless they created the danger.”

What were the facts that led to the case of Union Pacific Railway Co. v. Cappier? (see bottom of page 77)

Did the court apply the bystander rule in the case of Union Pacific Railway Co. v. Cappier, or carve out an exception to that rule?
What were the facts that led to the case of Carey v. Davis (1921)?
(see page 79)

Did the court apply the bystander rule in the case of Carey v. Davis (1921), or carve out an exception to that rule?

**Carey v. Davis (1921)**

- The general rule is that the master is under no legal duty to care for a sick or injured servant for whose illness or injury he is not at fault.
- (However,) where a servant suffers serious injury (on the job site, through no fault of the employer,) or is stricken in such a manner that a reasonable person can clearly see that if they don’t get help very soon they are likely to sustain further serious injury; then the employer, if present and aware of the employee’s predicament, must render reasonable aid to the employee.
Carey v. Davis (1921)

So the new rule is:
A bystander is liable in Iowa:
✓ If that bystander is an employer, AND 
✓ If the victim is their employee, AND 
✓ If the employee is suddenly injured or “stricken” (passes out,) AND 
✓ If it is emergency, AND 
✓ If the employer is present and aware of the situation, AND 
✓ If the employer renders no aid, or less than reasonable aid.

What were the facts that led to the case of Osterlind v. Hill (1928)?
(see page 78)

Did the court apply the bystander rule in the case of Osterlind v. Hill (1928), or carve out an exception to that rule?
What were the facts that led to the case of Soldano v. O’Daniels (1983)?
(see page 79)

Did the court apply the bystander rule in the case of Soldano v. O’Daniels (1983), or carve out an exception to that rule?

**Soldano v. O’Daniels (1983)**

So the new rule is:

A bystander is liable in California:

- **If** that bystander is an owner or employee at a business that is open to the public, AND
- **If** the victim is a person whom a third party claims is in mortal danger, AND
- **If** the third party asks the bystander to either call the police or allow the third party to use the phone located in a public portion of the bystander’s business, AND
- **If** the bystander refuses both requests and injury to the victim occurs.
What were the facts that led to the case of Parra v. Tarasco?
(see page 79)

Did the court apply the bystander rule in the case of Parra v. Tarasco, or carve out an exception to that rule?

What were the facts that led to the case of Tarasoff v. Regents of the University of California?
(see pages 78-79)
Did the California Supreme Court apply the bystander rule in the case of Tarasoff v. Regents of the University of California, or carve out an exception to that rule?


✓ When a therapist determines, or pursuant to the standards of his profession should determine, that his patient presents a serious danger of violence to another, he incurs an obligation to use reasonable care to protect the intended victim against such danger.

✓ Under California (statutory) law, they cannot be found liable for failing to confine Poddar, but under the common law of negligence, we find them negligent in not having warned either Tatiana or her parents about Poddar’s threats.

So the new rule is:

A bystander is liable in California:

✓ If that bystander is therapist, AND

✓ If the victim is a person whose identity they know or can deduce with reasonable effort, AND

✓ If the patient’s statements enable the therapist to foresee a likelihood of violence, AND

✓ If the therapist makes no efforts or less than reasonable efforts to protect the victim from such violence, AND

✓ If such violence actually occurs.
The Common Law Evolves
the Way an Amoeba Moves

http://www.youtube.com/watch?v=oRAbnzKfWpc

The Common Law Evolves
Slowly, on Multiple Fronts

- A bunch of courts will apply the rule.
- One court will perceive a difference in facts and will carve out an exception to the common law rule.
- Most courts will continue to apply the old rule.
- Other courts will carve out other exceptions.
- From time to time, a court will strengthen or extend one of its earlier exceptions.
- One hundred years later, the law in that area has a different shape within that state.

Part 2:
Statutory Law
- When the system works correctly, what is the one part of the law over which we the people have control?
- What is the complete, official title of our national legislature?
- How many “houses” is Congress organized into, and what are they called?
- Which of Congress’s houses can originate a proposed statute?

The U.S. Congress

- A proposed statute is called a bill.
- Once both houses of Congress pass a bill, they send it to the president for signature.
- The president may veto it.

Title VII of the Civil Rights Act

- The Civil Rights Act of 1964 sought to guarantee equal rights to black Americans.
- It is divided into “Titles.”
- Title VII seeks to guarantee equal access to jobs (employment.)
Title VII, Section 703(a) of the Civil Rights Act

Sec. 703(a). It shall be an unlawful employment practice for an employer—
(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or
(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.

Title VII of the Civil Rights Act

✓ Mr. Smith of Virginia proposed a one word amendment to section 703(a).
✓ Two groups of Congresspersons supported Mr. Smith’s amendment: those who thought women deserved protection against job discrimination, and those who thought they didn’t, but hoped that if this word was added to the bill, the bill wouldn’t pass!

Sec. 703(a) of Title VII of the Civil Rights Act of 1964 as passed to the Senate

✓ Sec. 703(a). It shall be an unlawful employment practice for an employer—
✓ (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or
✓ (2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.
Senator Tower’s Amendment
Sec. 703(h). Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer…to give and to act upon the results of any professionally developed ability test provided that such test…is not designed, intended or used to discriminate because of race, color, religion, sex, or national origin.

Statutory Interpretation
A court's power to determine the meaning of new legislation so that they can apply the substantive legal rules it creates to the specific fact pattern before them.

Statutory Interpretation
1. The Plain Meaning Approach
2. Legislative History and Intent
3. General Public Policy
Duke Power Company required that, to be eligible for a supervisor’s position, each applicant must:
1. Have a high school diploma
2. Pass a standardized written test

Discriminatory?

Issue: Does Title VII of the 1964 Civil Rights Act require that employment tests be job-related?
Answer: Yes. And not only that!
Any employment test that excludes blacks (or any minority) at a higher rate than whites must test for skills that are a “business necessity” in that position!

Wards Cove Packing Co. v. Atonio
U.S. Supreme Court, 1989
The employer must demonstrate that the disproportionate exclusion of a minority “serves, in a significant way, the legitimate employment goals of the employer…There is no requirement that the challenged practice be ‘essential’ or ‘indispensable’ to the employer’s business.”
Congress Steps In

- October 1990: Both houses of Congress pass a bill reinstating the “business necessity” requirement of Griggs.
- President George H.W. Bush vetoed the bill.
- Congress tried to override it, but failed by one vote.

Congress Tries Again

January 1991

Once an employee proves that a particular employment practice causes a discriminatory impact, the employer must “demonstrate that the challenged practice is job related for the position in question and consistent with business necessity.”

Part 3:
Administrative Law
Administrative Law
(That portion of the law that) concerns all agencies, boards, commissions, and other entities created by the federal or state legislature and charged with investigating, regulating, and adjudicating a particular industry or issue.

Administrative Law
✓ Mainly refers to the regulations written and published by administrative agencies, but
✓ Also includes the laws Congress passes to create administrative agencies, called “enabling legislation.”

The First U.S. Administrative Agency
✓ The Interstate Commerce Commission was the first administrative agency.
✓ It’s job was to set the maximum rates railroads could charge.
✓ The California Department of Fish and Game’s job is to set the maximum take, per hunter or fisherman per day, for each species of fish or other animal - and each location - in California.
The 3 Powers of Administrative Agencies

- Rulemaking
- Investigation
- Adjudication

Rulemaking

There are two types of rules:

- Legislative rules create new substantive or procedural law.
- Interpretive rules merely put people on notice how the agency intends to interpret specific words and phrases in a specific statute.

Rulemaking

There are three types of rulemaking:

- Informal rulemaking requires a notice and comment period, but no hearing.
- Formal rulemaking requires a notice and comment period, a hearing, and a written response to each objection raised the hearing.
- Hybrid rulemaking is somewhere in between.
Agency Investigation Tools

- Investigation personnel
- Surprise inspections
- Subpoenas

Subpoenas

Subpoena: An order to appear at a particular time and place to provide evidence.

Subpoena duces tecum: An order to appear at a particular time and place to provide evidence, and to bring with you specific named or described documents.

Adjudication

- Most adjudications begin with a hearing before an Administrative Law Judge (ALJ).
- The losing party has a right to appeal to an appellate board within the agency.
- A party unhappy with that decision may appeal to a trial court of general jurisdiction.
Standard on Review

Like appeals courts, trial courts generally defer to the agency’s findings on the facts provided there is substantial evidence to support that finding.

More surprisingly, trial courts also generally defer to the agency’s findings on the law, provided that the agency’s interpretation of the law is reasonable.

Citizen Power over Administrative Agencies

The Freedom of Information Act:
- Information about how the agency operates.
- Information the agency has about us.

The Privacy Act: Prohibits federal agencies from giving information about a person to other organizations or agencies without written consent.
What are the three kinds of power administrative agencies use to do the work assigned to them?

1. Rulemaking
2. Investigation
3. Adjudication

What are the two types of rules administrative agencies promulgate?

1. Legislative rules
2. Interpretive rules

What are the two basic methods of rulemaking?

1. Formal rulemaking
2. Informal rulemaking
What is a subpoena?

An order to appear at a particular time and place to provide evidence.

What is a subpoena duces tecum?

An order to appear at a particular time and place to provide evidence, and bring specified documents.