

Module 1 Introduction to Legal English: Concepts & Terms

INTRODUCTION: Law

Definition of Law

1. a rule that is supported by the power of government and that controls that behavior of members of society;
2. the whole set of such rules;
3. a statement expressing what has always been seen to happen in certain conditions;
4. respect and obedience for the law in society
5. a field of academic discipline.

Discuss the use of the word *law* in the following examples:

- a. If you break the *law*, you must expect to be punished.
- b. Boyle's *law* is a scientific principle.
- c. With the president's signature, the bill becomes a *law*.
- d. She is a student of *Law*. (or) She is a *law* student.
- e. The ultimate goal of the justice system is to establish *law* and order.
- f. You'll find the definition of "asylum seekers" in the *Law* of Citizenship.
- g. He took the *law* into his own hands.

Sources of Law

Law has its origins in the early developments of civilized society, and through time there have been major influences on the laws that we follow today.

Match these sources of law with the descriptions below. Pay close attention to the *italicized* words and how they are used. If you do not know the meaning of the italicized words, look up the words in a dictionary and study them.

Common Law

Roman Law

Napoleonic Code

The 10 Commandments

_____, which *evolved* in the 8th century BC, was still largely a blend of custom and interpretation by *magistrates* of the *will* of the gods.

_____ evolved from the *tribal* and local laws in England. It began with common customs, but over time it involved the courts in law-making that was responsive to changes in society. In this way, the Anglo-Norman rulers created a system of *centralized* courts that *operated* under a single set of laws that replaced the rules *laid down* by earlier societies.

_____ formed the basis of all Israelite *legislation*. They can also be found in the laws of other ancient peoples.

_____ refers to the entire body of French law, contained in five *codes* dealing with *civil*, *commercial*, and *criminal* law.

*What form of law does Montenegro have?

VOCABULARY: Concepts

Prejudice vs. Discrimination

Prejudice: 1. An adverse judgment or opinion formed beforehand or without knowledge or examination of the facts; b. a preconceived preference or idea. 2. The act or state of holding unreasonable preconceived judgments or convictions. 3. Irrational suspicion or hatred of a particular group, race, or religion.

Discrimination: 1. the act of discriminating (to distinguish by discerning or exposing differences). 2. the quality or power of finely distinguishing. 3. a: the act, practice, or an instance of discriminating categorically rather than individually b: prejudiced or prejudicial outlook, action, or treatment as in racial discrimination.

Discussion:

1. What's the critical difference between prejudice and discrimination?
2. Do you believe all human beings are prejudiced?
3. Do Serbians/Montenegrins have prejudices towards a certain group of people or idea?
4. What are you prejudiced about? Do you also discriminate? Answer honestly.

Some –isms to be aware of!

Give the definition for the following terms.

1. *Ableism (You may not find this entry in your dictionary. Make a guess!)
2. Ageism
3. Classism
4. Heterosexism/Homophobia
5. Anti-Semitism
6. Racism
7. Sexism

These are related vocabulary you should know. One form of the word is given. Fill in the blanks with the missing forms. The first word is done for you.

NOUN	VERB	ADJECTIVE
discrimination	to discriminate	discriminating, discriminatory
ethics		XXX

	to value	
Morality		
	to stereotype	
		Categorical

Discussion: Extreme Situation

Scenario: You are in a deserted island. There is a motor boat of your property and you are the only one who can drive it. So it's up to you to decide which people you are going to take with you in the boat. There is space for only you and three more people. Using the words above, discuss with your group who should be chosen. Here they are:

- | | | |
|------------------|-------------------|--------------------|
| 1. a criminal | 2. a homosexual | 3. a prostitute |
| 4. a drug addict | 5. an abortionist | 6. a dying old man |

READING: Moral responsibility vs. Legal Responsibility

Bluebird Bar Case

Around 5 p.m. one evening, a man and his wife entered the Bluebird Bar. The man, Jack, ordered a whiskey for himself and a cola for his wife, Gail. Jack continued to order the same drinks about every half hour.

At 11 pm., the bar owner refused to serve Jack any more drinks because Jack was extremely intoxicated and bothersome to other customers. Gail was used to Jack's behavior and didn't ask her husband to stop drinking.

"Are you driving home or should I call a taxi?" the bar owner asked Gail. Jack shouted, "Get out of my face!" I'm driving home and neither of you can stop me!" Jack then shoved the owner aside and walked out the door. The owner just shrugged his shoulders and walked off. Gail went to the pay phone in the corner to call her sister for a ride.

As Jack left the bar, a man walking by the bar shouted to him, "Hey buddy, call a taxi!" When Jack drove off, the man simply shook his head and walked down the street.

Meanwhile, Jane and Carl were having a lover's quarrel in the next corner of the bar. The quarrel soon escalated into a major fight and Carl struck Jane saying, "Don't ever tell me not to touch you again. I'll show you who's boss here!" At the point, Jane, crying hysterically and paying no attention at all to the traffic, ran into the street directly in front of Jack's car. Jack was not able to stop in time, and Jane was killed instantly.

Discussion Questions:

1. In your personal opinion, who is at fault here (or most at fault)?
2. According to the law, who is at fault? The law says the following:

Every person who is injured in person or property by any intoxicated person has a right of action for all damages actually sustained, severally or jointly, against any licensee or permittee who sold and served any beer, wine, or intoxicating liquor to the intoxicated person when the licensee or permittee knew or should have known the person was intoxicated. (Iowa Code § 123.92 Civil liability for sale and service of beer, wine, or intoxicating liquor).

3. Who should bear the moral responsibility?
4. How is moral and legal responsibility different? Which do you prefer?

VOCABULARY: Basic Terms

The following terms introduce you to the law and basic legal terminology. Find the definition for each term.

authority	lawyers	govern	judge	rule
lawyers	legal action	legal system	tribunal	
legislation	the judiciary	court	law enforcement agency	

1. _____: a body that is appointed to make a judgment or inquiry.
2. _____: a country's body of judges.
3. _____: an act or acts passed by a law-making body.
4. _____: behavior recognized by a community as binding or enforceable by authority.
5. _____: legal proceedings.
6. _____: an official body that has authority to try criminals, resolve disputes, or make other legal decision.
7. _____: an organization responsible for enforcing the law, especially the police.
8. _____: a senior official in a court of law.
9. _____: the body or system of rules recognized by a community that is enforceable by established process.
10. _____: the control resulting from following a community's system of rules.
11. _____: members of the legal profession.
12. _____: to rule a society and control the behavior of its members.
13. _____: term which refers to all professionals working in the legal profession; it does not refer to a specific job.

LISTENING

Listen to the conversation twice. The first time you should just listen. The second time you should attempt to answer the following questions as the conversation is read to you.

1. Is this a classroom presentation?
2. Who tells everyone to sit down?
3. Is this the first time this group has met?
4. Why doesn't the moderator introduce the speaker?
5. What does Professor Arm teach? Where?

6. What is Mr. Simone's problem?
7. How does he correct the problem?
8. Why is Mr. Simone talking about the origins of American law?
9. Is Mr. Simone an attorney?
10. What kind of American judges is Mr. Trommel writing about?
11. How is Mr. Trommel financing his work on his dissertation?

TRANSLATION (*Try at your leisure. This is for your own practice!)

1. U nekim zemljama starija lica slabijeg imovnog stanja mogu da traže kao svoje pravo dodatak za grijanje.
2. Kada će novo pravilo početi da se primjenjuje?
3. Protestanti tvrde da im je uskraćeno pravo na slobodno izražavanje.
4. Građani mogu da ostvaruju svoje pravo na slobodno udruživanje na svim nivoima, bilo da je to u školi, na radnom mjestu, ili u široj zajednici.
5. Prekršili su poslovnik suda time što su izvodili dokaze bez ovjere sudskog vještaka.

READING: Law & Justice

Vocabulary: You will need to the following words for the reading. Match the following:

- | | |
|------------|---------------------|
| 1. forbid | a. modify and amend |
| 2. govern | b. ensure |
| 3. provide | c. observe, respect |
| 4. punish | d. deny |
| 5. obey | e. sentence |
| 6. deprive | f. regulate |
| 7. review | g. prohibit, ban |

Comprehension & Discussion Questions: Based on the reading, answer the following questions.

1. What is the purpose of rules, whatever their kind?
2. What role do the courts play in a society?
3. What is meant by "ignorance of laws can deprive people of their rights"?
4. Can you think of some examples where natural environment affects the rules of society? Can you think of a human society or development that has not invented rules?
5. Do you think it's possible to rely strictly on justice in deciding what's right and wrong?
6. Have advancements in science and technology affected laws? Provide examples.

Law and Justice

Human beings have always lived together under rules of one kind or another. These rules are likely to be influenced by nature or the natural environment of the society in which people live, and the simple natural instinct everyone has for survival. They may be influenced by religious or secular beliefs, and they will cater for the ideas of right and wrong that have been developed over time to suit the society we live in. All the rules which are designed to improve our lives and protect us from harm are called laws.

There are rules that are basic, commonsense rules of everyday life (for example, we must not kill or rob), that forbid things which everyone thinks are plainly or morally wrong. There are rules which govern important things and relations in our particular community, about which we have learned from experience (for example, the driver and the passenger in a car must wear seat belts, which provide protection from injury). There are rules which have gradually developed over a period of many years, and have grown out of custom which has settled as the accepted way of behaviour.

Justice, on the other hand, is a difficult concept, chiefly because everybody has a different subjective idea what it is, and it depends on these moral principles known as ethics, which differ from person to person.

One simple idea of justice is the upholding of rights, and the punishment of wrongs, by the law. This is what we mean by fairness, and dealing with legal issues and problems according to the rules that are exactly the same for everyone. We have a strong idea of the «rules of natural justice»: the basic requirements of a fair, open hearing, impartial court (whether judge or jury), giving each side an equal chance to state its case and to call evidence in support of it, and listening to the arguments of each side before coming to a reasoned decision. This is what we call the fair manner of «doing justice according to law».

Any society has a duty to its citizens to do the best to provide them with laws which, if obeyed, will provide them with a reasonably safe and trouble-free environment, and with a framework in which to live their lives. Society must therefore provide courts that are able to deal with those who break the law, and give individual citizens a peaceful means of settling their differences and disputes. The only way of trying to put things right is for the courts first to decide by fair procedures what has happened and then, if the law has been broken, to deal fairly with those responsibilities for breaking the law and those who have suffered because of it.

The law marks out the limits of our power of individuals to control their affairs. In our modern society, ignorance of law deprives people of their legal rights. Therefore, knowledge of law is the way in which we can safeguard ourselves, our families and our possessions, by assuring ourselves of the rights and remedies which the legal system provides.

However, any system operated by human beings, with all our failings and despite all the safeguards, is fallible. To ensure that the legal system works properly and fairly, it is also important to understand that our laws and legal system are forever in need of review and reform, to adapt them to the changing needs of society.

Adapted and abridged from "First Steps in the Law" by G. Rivlin, *Reader's Digest: Family Guide to Australian Law*, 2002.

rule

harm
commonsense rule
forbid
govern

provide protection
injury
custom

ethics
uphold rights
punish

hearing

state one's case
evidence
argument
decision

obey

break the law
settle a dispute
court

suffer

deprive

safeguard

remedy

review

Module 2 Introduction to Civil Law

Civil Law aims to regulate relations between individuals or between individuals and organizations. There are many branches of civil law.

Match the subject areas in the box with the branches of law below. Think of examples of real life cases that would fall under each branch of civil law.

agriculture	civil rights	divorce	environmental law
foreign relations law	joint venture	landlord-tenant	pensions
product liability	property tax	unfair competition	

Areas	Branches	Example
	Accident and Injury compensation and prevention	
	Constitutional Law, Individual Rights	
	Employment Law	
	Enterprise Law	
	Family Law	
	Intellectual Property	
	International, Transnational, Comparative Law	
	Law relating to Commercial Transactions	
	Law relating to Particular Activities/Business Sectors	
	Property, Natural Resources, the Environment	
	Taxation	

LISTENING 1: Phone Conversation

Words to keep in mind: venue, to file a claim, jurisdiction, discovery, dismissal, case

Answer the following questions after you've listened to the conversation twice.

1) Who are the two people talking? What is the nature of their relationship?

- 2) What is the purpose of the man's call?
- 3) What does the man mean by "speak English"?
- 4) What is "demurrer"?
- 5) Why does the woman think she can get the case dismissed? Choose a, b, or c.
 - a) discovery material; b) lack of jurisdiction; c) change of venue
- 6) What is the woman's fax number?

Law of Property, Natural Resources, the Environment

The main objective of this area of law is to ensure that the environment is protected against both public and private actions that fail to take account of costs or harm inflicted on the ecosystem.

The major concerns are listed in two columns. Match a word on the left with one on the right to form 13 phrases related to the law of property.

atomic	waters
clean	water
clean	species
endangered	sources
energy	resources
natural	pollution
navigable	pollution
noise	forests
ocean	energy
oil	dumping
pesticide	disposal
tropical	control
waste	air

Questions:

1. Which legislation prevents the destruction of large areas of trees in the equatorial areas?
 2. Which legislation protects the quality of the water that we drink?
 3. Which legislation controls the application of chemicals in farming?
 4. Which legislation prevents the disposal of rubbish at sea?
 5. Which legislation protects our ears?
 6. Which legislation protects those animals which are in danger of extinction?
- * What are some critical environmental issues in Montenegro? In Podgorica?
 * Do you think a dam should be built in Tara River in Durmitor National Park?
 * What is the Kyoto Protocol? Is Serbia & Montenegro one of the signatory countries?

Intellectual Property

Intellectual property law is designed to promote the worldwide protection of both industrial property (inventions, trademarks, and designs) and copyright materials (literary, musical, photographic, and other artistic works).

You should have a basic understanding of the following terms which in one way or another deal with intellectual property. Be ready to discuss the meaning and the differences among them.

Trademarks

Patents

Copyright (fair use)

READING: Read the following passage and answer questions that follow. Pay close attention to the words in bold. Look up the meaning and study them if they are new terms.

Napster logo
Napster is an online music service that was originally a file sharing service created by Shawn Fanning. Napster made a major impact on the Internet scene during the year 2000. Its technology allowed music fans to easily share MP3 format song files with each other, thus leading to massive **copyright violations**.

The original Napster was first released in the fall of 1999 by college-dropout Shawn Fanning, who wanted an easier method of finding music. With the files obtained through Napster, **consumers** could make their own compilation CD-Rs/albums for free and essentially not pay one cent of **royalties** to the artist/composer or the **estate** of the artist/composer.

This raised the ire of several major recording companies, who almost immediately- in December 1999 - **filed a class action suit** against Napster. This gave Napster a great deal of publicity, and millions of users flocked to the service. In 2000 Madonna got into the mix when one of her singles leaked out on to the web prior to its commercial release causing widespread media coverage. Napster use peaked with 13.6 million users in February 2001.

Supporters of Napster were puzzled at the time regarding the **lawsuit**. To them, it seemed that file sharing was a feature of the internet, and not Napster per se, Napster acting as essentially a search engine. Many argued any attempt to shut down Napster would simply lead to people using a different medium to exchange files over the internet (as has arguably happened with peer-to-peer software like Audiogalaxy, Morpheus, Gnutella, and KaZaA).

In July 2001, a judge issued an **injunction** ordering Napster's servers shut down to prevent further copyright violations. On June 3 Napster filed for Chapter 11 protection under United States bankruptcy laws.

On June 25, 2003, in a **landmark decision** that forever changed the face of online music services and **music piracy** itself, the RIAA turned the tables not on the peer-to-peer services but on the computer users themselves and announced it would file **civil lawsuits** against them for engaging in illegal file sharing, and they made good on their word beginning in September of the same year.

From Wikipedia, the free encyclopedia (2004)

Comprehension Questions:

- 1) What was Napster accused of doing wrong?
- 2) Who filed suit against Napster? What was this suit called?
- 3) Why was the ruling made in 2003 so controversial?
- 4) What is your personal opinion on this type of music sharing?
- 5) Why is music piracy such a big industry in Montenegro? Do you think it's an acceptable form of business or should it be more strictly prohibited?
- 6) Who or what do copyright laws protect?

Case Study:

Mehdi is an electrical engineer who has been working at home for years on a new type of an electronic circuit. He begins to produce and sell these circuits and makes an enormous profit. Amir, another engineer, had previously patented a product that was substantially similar to Mehdi's circuit. Mehdi is a very honest man and had no idea that he was not the original creator of the circuit. What is to be done? Who is at fault?

Defamation

Defamation law addresses interference with the possession of good name and reputation. The mode of defamation can be oral (slander) or written (libel).

Family Law

Family Law is the body of law which regulates family relationships, including marriage, divorce, the treatment of children, and money issues.

Below are the main areas that Family Law covers. Match the areas with the correct text. Pay close attention to the words in bold. Look up the meaning and study them if they are new terms.

will	child custody	marriage	children's rights	divorce
adoption	estate planning	trust	insurance	beneficiary
trustee				

1. _____: The process by which a legal parent-child relationship is created between individuals not biologically parent and child.
2. _____: The parents of a child born within a marriage are **joint guardians** of that child and the rights of both parents are equal.
3. _____: Children are generally given the basic rights of the constitution.
4. _____: As a result of this both **parties' status** becomes single again.
5. _____: The process by which an individual or family arranges the transfer of assets in anticipation of death. The document that drawn up as a result is called _____.
6. Generally, a _____ is a right in property (real or personal) which is held in a **fiduciary** relationship by one party for the benefit of another. The _____ is the one who holds title to the property, and the _____ is the person who receives the benefits of the trust.
7. _____: While types vary widely, there primary goal is to **allocate** the risks of a loss from the individual to a great number of people.
8. _____: A contract based upon a voluntary private agreement by a man and a woman to become husband and wife.

***Writing Assignment (3 points)

Write a one-page paper on an aspect of family law in Montenegro. Introduce your instructor to the legal process in which family law is practiced. Remember, just pick ONE area.

of _____ e.g., how adoption procedure is handled; how wills are drawn up; or simply the topic of _____ children's right.

Accident and Injury: Compensation and Prevention

Accident can happen in a variety of situations. Where there is a duty of care, then the injured party has grounds for a claim. Modern insurance practice makes it easier to satisfy the injured without financially crushing the injurer.

The following are concepts and areas of law which deal with Accident and Injury Law.

Damages

Insurance

Product Liability

Torts and Personal injury

Worker's Compensation

Damages, in a legal sense, are the sum of money the law imposes for a **breach** of some duty or violation of some rights. Generally, there are two types of damages: **compensatory** and **punitive**. The former are intended to compensate the injured party for his loss or injury; the latter are awarded to punish wrongdoer.

Insurance is a contract binding a company to financially protect an insured party against loss. In the absence of insurance, three possible individuals **bear the burden** of an economic loss: the individual suffering the loss; the individual causing the loss via **negligence** or unlawful conduct; or a particular party who has been allocated the burden by the legislature, such as employers under Worker's Compensation statutes.

Product liability refers to the **liability** of any or all parties along the chain of manufacturer of component parts (at the top of the chain), an assembling manufacturer, the wholesaler, and the retail store owner (at the bottom of the chain). Products containing **inherent defects** that cause harm to a consumer of the product, or someone to whom the product was loaned or given, are the subjects of product liability suits.

e.g., baby carriage with a missing screw

Torts are civil wrongs that are recognized by law as grounds for a lawsuit. These wrongs result in an injury or harm which **constitutes the basis** for a claim by the injured party. The injured person may sue for an **injunction** to prevent the continuation of the tortious conduct or for monetary damages. Among the types of damages the injured party may recover are: loss of earning capacity, pain and suffering, and reasonable medical expenses. They include both present and future expected losses.

e.g., family members of 9/11 victims

Worker's Compensation laws are designed to ensure that employees who are injured or disabled on the job are provided with fixed monetary awards, eliminating the need for **litigation**. These laws also provide benefits for **dependants** of those workers who are killed because of work-related accidents or illnesses. Some laws also protect employers and fellow workers by limiting the amount an injured employee can recover from an employer and by eliminating the liability of co-workers in most accidents.

e.g., slipping on a wet floor of one's office building

Questions:

1. What are the two types of damages? What is the difference between them?
2. Where there is no insurance, who may have to bear the loss?
3. What are the parties along the chain of manufacture?
4. What are some ways in which the injured party in a tort case can be awarded?
5. Who can benefit from Worker's Compensation laws?

Case Studies:

A man is driving down a crowded city street at the speed limit. When the man sees a pedestrian running to cross the street in close range, he immediately applies the brakes. But the car lurches onto the sidewalk due to a steering wheel defect. As a result, the driver strikes and injures two pedestrians. The victims are seeking a civil suit. What do you expect will happen?

A research scientist developed an injectible vaccine for AIDS. Unfortunately, one in a million doses causes instant death. In the United States that would mean that 260 people would be killed by this vaccine. The children of a woman killed instantly wonder what actions they might take. What legal advice would you offer?

Extended wear contact lenses are very comfortable and can be worn during sleep. However, wearers of these lenses are often told by their optometrists that these lenses increase their risks of developing serious medical conditions of the eye. Ana loses the sight one eye as a result of wearing extended wear lenses. Can she take legal actions?

Case Studies:

Sue is hired as a waitress at Alamo Restaurant. Two weeks later, a fellow employee reports to the manager that he had seen Sue stealing money from the cash register. The next day, the manager, saying that he needs to talk to her, takes her to his office. There a police officer is waiting for her. She is questioned and agrees to a lie detector test. She passes the test. Could she sue for false imprisonment in the manger's office?

Jennifer and George are classmates in college. Although they are just friends, Jennifer becomes obsessed with George and is determined to marry him. She begins to slip into his yard every night and watches him sleeping through an open window. She never hurts or disturbs anything in the yard; she merely watches him. Does George have a basis for suing Jennifer? What kind of legal advice would you offer George? Jennifer?

Months later, Jennifer discovers that George is to marry Mary, a mutual classmate. Next day, Jennifer hurls terrible insults at Mary, calling her vile names and yelling at her hysterically. Mary is so distressed that she experiences severe panic attacks, develops hives, and loses her beautiful blonde hair. Does Mary have a basis for suing Jennifer? What kind of legal advice would you offer Mary? Jennifer?

LISTENING 2: Negligence

- 1) What is Jane's complaint against Patrick?
- 2) How does Patrick respond to Jane? What is Patrick's rationale for refusing to take Jane's complaint seriously?
- 3) Why does Jane think her complaint against Patrick is valid (i.e., can be taken to court)?
- 4) What does Patrick mean by "you're taking those law classes too seriously"?
- 5) In your opinion, has negligence been committed?

LISTENING 3: Trespass

- 1) What's Mary and Barb complaining about?
- 2) What is Mary's specific complaint? What is Barb's specific complaint?
- 3) What options do they have?

They can s ___ _ the company or write a pe ___ _ _ _ _ .

- 4) What is Mary thinking of doing?
- 5) In your opinion, has trespass taken place?

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Instructor: Nina Chang

Module 3 Introduction to Criminal Law

Crime

A crime is any act or omission (of an act) that **violates** the law and is punishable by the state. Crimes are considered injurious to society or the community. They include both **felonies** (more serious offences like murder or rape) and **misdemeanors** (like petty theft or speeding). A criminal is someone who commits a crime.

Types of Crime

Below are 14 crimes. Match the crime to its definition and then classify each crime as violent (V) or non-violent (NV).

Assault	Drug dealing	Money laundering	Battery	Homicide
Manslaughter	Fraud	Armed robbery	Murder	Sexual
assault	Burglary	Parking violation	Speeding	

V or NV	Name of Crime	Definition of Crime
		A generic term for the killing of another person
		Any instance in which one party deceives or takes unfair advantage of another
		Attempt to use illegal force on another person
		Attempt to use illegal force on another person in the absence of consent to sexual relations
		Attempt to transform illegally acquired money into apparently legitimate money
		Driving a vehicle in excess of the permitted limit
		Leaving one's vehicle in an area or for a duration in contravention of the law
		Possession of and/or trading in illegal substance
		Taking the property of another without right or permission
		The actual use of illegal force on another person
		The crime of breaking into a private home with the intention of committing a felony
		The unlawful killing of a person with intent

		The unlawful killing of a person without malicious intent and therefore without premeditation
		The unlawful taking of another's property using a dangerous weapon

The Law of Homicide

First Degree Murder: This involves homicide (killing of a person) and malice aforethought. Additionally, the murder is regarded especially **heinous** and involves **deliberation** and **premeditations** (after reflection).

Second Degree Murder: This involves homicide (killing of a person) and malice aforethought. Malice aforethought = one of four levels of intent

1. Intent to kill
2. Intent to inflict great bodily injury
3. Intent to commit a felony (generally a serious crime punishable by death or imprisonment)
4. Awareness of a high risk of death or serious bodily injury

Involuntary Manslaughter: A homicide is involuntary manslaughter when the killer acts recklessly and that reckless behavior causes a homicide.

What is reckless?

A person acts recklessly with respect to a result of his conduct when he consciously **disregards** a risk that his conduct will cause. It involves a gross **deviation** from the standard of conduct that a **reasonable** and **prudent** person would observe.

Scenarios:

Ana is alone at home when she hears footsteps approaching her room. She knows her husband is out of town on a business trip and there's no one else who has a key to the house. She removes a handgun which she keeps in the drawer and prepares to shoot. As soon as the door opens, she shoots and the intruder is instantly killed. Should Ana be charged with murder? If so, what is her crime?

Milo learns that his sister has been raped by his best friend. Enraged with anger, Milo goes to his friend's house to **confront** him. The friend denies it at first but eventually admits to it. The friend **chuckles** and tells Milo it's not a big deal. At that moment, Milo grabs a golf club nearby and **strikes** the friend repeatedly. The friend goes into a coma and dies two days later. Should Milo be charged with murder? If so, what is his crime?

Maria has an **abusive** husband. She has been verbally and physically abused for over 10 years and can take it no longer. She **plots** to poison him and for the next two weeks, she puts in rat poison in his food. The husband is eventually brought into the hospital and dies of **excessive** rat poisoning. Should Maria be charged with murder? If so, what is her crime?

Sentencing

In countries following the Anglo-American legal tradition, sentencing is a function that is distinguished from that of determining guilt or innocence and is normally the responsibility of the judge rather than of the jury. Systems of law traditionally give the judge a wide **discretion** in determining both the kind of **penalty** to be imposed (imprisonment, fine, probation) and its extent. As modern sentencing systems provide an increasingly wide range of forms of sentence, the choice of sentence becomes a more complex task.

Below is a range of sentences that may be imposed. Match each sentence to its definition.

Bond	capital punishment	jail	parole
imprisonment			
probation	concurrent sentence	Community service	good behavior
prison			

1. _____ : When two or more terms of imprisonment are served together.
2. _____ : A place for long-term incarceration for a crime.
3. _____ : A place of confinement for time periods longer than those usual for a police station lock-up and shorter than those usual for a prison.
4. _____ : Unpaid work undertaken pursuant to a court order upon conviction for an offence in lieu of a sentence of imprisonment.
5. _____ : A release from prison, before a sentence is finished, that depends on the person keeping clean and doing what he or she is supposed to do while out. If the person fails to meet the condition, the rest of the sentence must be served.
6. _____ : Conduct required for criminals to get out of jail early or other privileges while in prison.
7. _____ : A document that promises to pay money if a particular future event happens, or a sum of money that is put up and will be lost if that event happens.
8. _____ : The sentencing of a criminal to a period of time during which they will be deprived of their freedom.
9. _____ : A kind of punishment given out as part of a sentence, which means that instead of jailing a person convicted of a crime, a judge will order that the person reports to an officer regularly and according to a set schedule.
10. _____ : The most severe of all sentences- that of death. Known as the death penalty.

Key Players

A number of agencies, organizations, and individuals are involved in the administration of the criminal law. The most important are: 1) the police, 2) the prosecutor, 3) the defense lawyer/counsel, 4) the judge, 5) the jury, and 6) the suspect

Draw lines to combine the two halves of the sentences to describe the functions of each.

Who	What
The police interrogate	Arrests, searches, and seizes.
The police carry out	on the sentence to be imposed.
The prosecutor conducts	over the court.
The suspect has the right	suspects and witnesses.
The suspect is innocent	the case in court on behalf of the police.
The defense counsel assists	the suspect from violation of his rights.
The defense counsel protects	the suspect in gathering exonerating evidence.
The judge presides	To remain silent.
The judge decides	until proved guilty.

The jury decides	whether the accused is guilty or not.
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Reading: The Legal Process

A trial may be defined broadly and comprehensively as a judicial examination of the issues between the parties. Although some variations may exist, trials are usually held before a judge sitting alone, a referee, or a judge and jury. The counsels for the prosecution and for the defense make opening statements to the jury, outlining what each sees as the nature of the case and what each hopes to prove as the trial proceeds. Next, the counsel for the prosecution presents his case by calling witnesses, questioning them, and permitting them to be cross-examined by the counsel for the defense. The counsel for each side then makes a closing argument to the jury, summarizing the evidence in a light most favorable to their respective clients. The function of the jury is to determine the facts of the case, whereas the function of the judge is to determine the applicable law and to oversee the parties' presentation of the facts to the court. After the judge has instructed the jury on the applicable law, the jury will retire to deliberate in private until it reaches a just verdict, which will then be announced in open court. The verdict of a jury terminates the trial. In a case tried before a judge sitting alone, the decision of the judge constitutes a termination of the trial.

True or False: Answer the questions based on the reading.

1. Criminal trials are always held in front of a jury. _____
2. A judge may sit alone to hear a legal case. _____
3. At the beginning of the trial both counsels outline their case. _____
4. The counsel for the defense may cross-examine prosecution witnesses. _____
5. The function of the jury is to decide the applicable law. _____
6. The judge may intervene if the counsels fail to observe the court procedures. _____
7. The judge advises the jury on the law relevant to the case. _____

* Legal procedures and the roles of the judge vary in different jurisdictions. In an adversarial system, the parties are cross-examined in order to find out the truth; the judge is an impartial referee. In an inquisitorial system, the judge plays a more proactive role, asking questions in order to find out the truth.

Important Terms & Concepts

Appeal: An appeal is the transfer of a case from a lower to a higher court for a new **hearing** in order to **reverse** the decision made by the lower court. Procedure consists of the rules and practices by which the higher courts review trial court judgments.

Duress: Being threatened or forced by another person to commit a crime. Person under duress must believe that death or great danger is **imminent**.

Necessity: If an act is committed that is illegal because it is necessary to **prevent** a greater harm.

Entrapment: This involves public officers **inducing** someone to commit a crime that the person would not normally commit.

Self-defense: A person may use whatever reasonable force is necessary to protect him or herself.

Insanity: A defendant may be found not guilty if at the time of the crime, he or she was **insane**. The mental illness has to do with not knowing the nature of the act or having no sense of right or wrong.

Scenarios:

An undercover police officer convinces a reformed drug dealer to return to drug dealing by offering the former drug dealer a large sum of money for drugs.

An inmate just released from the psychiatric hospital where she was under treatment for schizophrenia commits a bank robbery after voices tell her that it's necessary for her to rob the bank because the people working there are evil and need to be punished. At the time she commits the bank robbery, she knows that it's illegal.

A minor begins to work for a prostitution ring after being told that if she does not, she will be severely beaten and that if she tells anyone about the conversation, she will be killed.

Reading: The Cultural Defense

The conformation of criminal law to societal values is one reason why criminal law differs from state to state and country to country. Cultures have different concepts of what is right and wrong as a reflection of their moral values.

Courts in the United States have begun to take notice of the idea of differing moral values between cultures. In general, an immigrant or a visitor to the U.S is required to conform to the laws of the United States. However, in some instances, prosecutors either reduce the charge that is brought against a defendant or ask for lighter sentences after conviction in response to the recognition of the different cultural values.

For example, in the *Columbia Law Review*, Coleman reports on a murder case involving a Chinese immigrant. In 1989, Dong Lu Chen, after **bludgeoning** his wife to death with a hammer after learning she had been unfaithful, was convicted of second-degree manslaughter instead of first-degree murder. Moreover, he was sentenced to only five years **probation** after the judge accepted a **cultural defense**. An expert on Chinese culture testified that it is appropriate in China for a husband to publicly announce that he intends to kill an unfaithful wife, and the community then acts to stop him. Unfortunately, in this case, the community, not understanding the nature of the threat, did not act and the wife was killed.

Scenario:

A monk from Shangra La (an imaginary country) immolates (to set on fire) himself with the assistance of two friends in Hartford, Connecticut, in protest of current policies of Shangra La. His two friends videotape the incident, which they then provide to a news agency. After giving the videotape to the news agency, they report the incident to the city police. The two friends were aware of the penalty for **assisted suicide** in Connecticut. They have no **prior records** but the state attorney decides to **prosecute** the two friends.

Oral Examination (15 points)

For your oral examination, you will be required to give a presentation in class. In a group of 4-5, discuss the case you are assigned. Think like lawyers and analyze both sides of the case. Who are the plaintiffs and defendants? What are their arguments? Identify the major points of the case showing how **both sides** would be presented in a real trial. Your presentation can be a simulation or a simple presentation. Be as creative and entertaining as you'd like but be sure your presentation is **clear, analytical, and professional**. Each of you should equally share your speaking time. There's a **10-minute time limit** for the entire group!

Scoring Rubric: Overall Presentation (5); Analysis (5); Preparation (3); Vocabulary (2)

1. Joe works as a cleaner for Ajax Technologies. One of his jobs is to clean the bathrooms in the Ajax offices that Ajax rents. Last week, he was cleaning the bathrooms and discovered that the hot water was not working in the building. So, he filled a plastic bottle with water and put it on the radiator in the men's room. He went to another part of the office and forgot about the bottle. Later that afternoon, the bottle melted and caught fire. The fire spread to a nearby

office where a doctor was working. The smoke killed the doctor and one of her patients. There were no smoke detectors in the Ajax offices or in the doctor's office.

2. David Roth, 45, was hunting in the woods with a friend. He fired at what he says he thought was a deer but instead killed Marjorie Weston, who was standing in her backyard. Ms. Weston was wearing white mittens (some deer have white tails). Mr. Roth was hunting in a lawful area but had no maps and was unfamiliar with the area. He says that he shot at a deer and did not know that there was a house in the area. Roth is a father, husband, and hard worker with no previous legal or criminal problems.

3. Jelena is filing for divorce against her husband Marko. In the period of 7 years that they have been married, he has been a verbally abusive husband and father. The children, ages 4 and 6, are afraid of their father. He is, however, the sole wage earner in the family. Jelena is seeking full custody of the children and alimony. Marko is also seeking child custody and refuses to pay alimony.

4. Nikolay returns home from work and finds his wife in bed with his best friend. In the heat of the moment, Nikolay grabs a lamp on the bed stand and smashes his friend's head. The friend is killed from trauma to the head. Determine what kind of crime this is (1st degree or 2nd degree murder) and propose a possible sentence for the crime if he were to be convicted.

5. A farmer picks up a mentally ill hitchhiker and takes him to his farm, which is 70 km from the nearest town. The hitchhiker is told he has to work at the farm until he is able to pay the farmer back for the ride. Because the hitchhiker is mentally ill, he doesn't understand that he can simply refuse and walk away from the farm and find another ride to town. The hitchhiker finally returns to his home 3 months later. His family is enraged.

6. Marija buys a loaf of bread that turns out to be moldy. She slices off the moldy part of the bread and eats the remaining part. The next day she is taken to the hospital for serious food poisoning and is hospitalized for 4 days. Marija is seeking compensatory damages for the hospital fees and lost days at work.

7. Simba International buys public land near a residential area and builds a tire factory which has been unleashing smelly gaseous fumes. The company insists that despite the unpleasant smell, the fumes are not harmful to one's health. Residents in the area are not convinced and are very concerned about their health. They are seeking to close down the factory.

8. Extended wear contact lenses are very comfortable and can be worn during sleep. However, wearers of these lenses are often told by their optometrists that these lenses increase their risks of developing serious medical conditions of the eye. Ana loses the sight of one eye as a result of wearing extended wear lenses. In Ana's case, the optometrist did not directly warn her about the danger of wearing contact lenses to sleep. Note, there is a written warning printed in every package of the contact lenses.

English for Special Purposes, Law
Faculty of Law, II (Fall 2004)
Instructor: Nina Chang

Module 4

Introduction to International Law

International Law

International Law (or Public International Law) consists of rules and principles which govern the relations and dealings of nations with each other. It concerns itself only with questions of

rights between several nations or nations and the citizens of other nations. In contrast, Private International Law deals with controversies between private persons, natural or judicial, arising out of situations having significant relationship to more than one nation. In recent years the line between public and private international law has become increasingly uncertain, because issues of private international law may also involve issues of public international law, and vice versa.

Look at the following legal areas and classify them into Public International Law or Private International Law.

adoption	arms control	asylum	contractual relations
divorce	environmental issues	human rights	immigration
crime	maritime law	human trafficking	international
pornography	piracy	war crimes	cyber
			copyright

Public International Law	Private International Law

Immigration** is the movement of people to a new country; **emigration** is the movement of people from a country. So you ***“immigrate to Germany” or ***“emigrate from Montenegro.”***

Discussion Questions:

1. In your opinion, which of the legal areas (discussed above) are the most serious of crimes?
2. What are some of the serious legal issues here in Serbia & Montenegro? How are they being addressed?
3. How is the arms control issue a Public International Law matter? Do you agree with this distinction in the case of Serbia & Montenegro?

The United Nations (UN)

The UN, an intergovernmental organization established in 1945 as the successor to the League of Nations, is concerned with the maintenance of international peace and security. Its headquarters are in New York City. On December 10, 1948, the Declaration of Human Rights was issued, defining the civil, political, economic, social and cultural rights of human beings.

Below are extracts from the first 10 articles (there are 30 in all). Complete the text by choosing the correct word from the box.

charge	detention	discrimination	exile	free
freedoms	law	liberty	punishment	race
remedy	rights	slavery	tribunal	

Article 1: All human beings are born _____ and equal in dignity and rights.

Article 2: Everyone is entitled to all the rights and _____ set forth in this Declaration, without distinction of any kind, such as _____, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 3: Everyone has the right to life, _____ and security of person.

Article 4: No one shall be held in _____ or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or _____.

Article 6: Everyone has the right to recognition everywhere as a person before the _____.

Article 7: All are equal before the law and are entitled without any _____ to equal protection of the law.

Article 8: Everyone has the right to an effective _____ by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9: No one shall be subjected to arbitrary arrest, _____ or _____.

Article 10: Everyone is entitled in full equality to fair and public hearing by an independent and impartial _____, in the determination of his _____ and obligations and of any criminal _____ against him.

The International Court of Justice

The International Court of Justice is the principle (the most important) judicial body of the United Nations. Its seat is in The Hague (Netherlands). It began work in 1946, when it replaced the Permanent Court of International Justice which had functioned in The Hague since 1922. Below is some information about the court and its activities. To the best of your knowledge, fill in the blanks with the correct words.

States	comply	appeal	governments	judges
public	nationality	disputes	treaties	decision/judgment
terms	accepts			

1. The role of the Court is to settle _____ submitted by States in accordance with international law.

2. The Court decides in accordance with international _____ and conventions, international custom, the general principles of law, previous judicial decisions, and the teaching of the most highly qualified publicists.

3. The Members of the Court do not represent their _____ but are independent magistrates/judges.
4. The Court can only settle a dispute if the States concerned _____ the Court's jurisdiction*.
5. The Court is composed of 15 _____ elected to nine-year _____ of office by the UN General Assembly and Security Council.
6. After the oral proceedings, the Court deliberates* in camera and then delivers its _____ at a _____ sitting.
7. If one of the States involved fails to _____ with the Court's decision, the other party may have recourse* to the UN Security Council.
8. The Court may not include more than one judge of any _____.
9. The judgment is final and without _____.

***jurisdiction**: the right to interpret and apply the law; authority
 ***deliberate**: to carefully consider/think and discuss
 ***recourse**: turning to someone for help/aid or security

The International Criminal Court

Rome Statute of the International Criminal Court

"In the prospect of an international criminal court lies the promise of universal justice. That is the simple and soaring hope of this vision. We are close to its realization. We will do our part to see it through till the end. We ask you . . . to do yours in our struggle to ensure that no ruler, no State, no junta and no army anywhere can abuse human rights with impunity. Only then will the innocents of distant wars and conflicts know that they, too, may sleep under the cover of justice; that they too, have rights. And that those who violate those rights will be punished." (Kofi Annan, UN Secretary-General)

The following are the objectives of the International Criminal Court.

1. To achieve justice for all
2. To end impunity* for abuse of human rights
3. To help end conflicts
4. To remedy the deficiencies of ad hoc* tribunals
5. To take over when national criminal justice institutions are unwilling or unable to act
6. To deter future war criminals

Which objective suggests the following? Place the matching number in the space provided.

- a. Those who commit murder are often not punished. _____
- b. The International Criminal Court aims to discourage war criminals through the possibility of trial. _____
- c. Courts set up specifically to try war criminals do not deliver justice. _____
- d. Not everyone received a fair trial. _____
- e. Local courts may not always be able to deliver justice. _____
- f. The International Criminal Court will try to stop wars. _____

***take over**: to obtain or get control of something, or gain control of something from somebody else.
 ***ad hoc**: for only specific cases or situations
 ***impunity**: to be free from punishment

Discussion Question:

1. What is your opinion of the role of the UN in the international scene? What were some of the UN's successful and/or unsuccessful missions?
2. What role has the UN played in Serbia & Montenegro in the past? What role does it play now? What is your opinion of the UN involvement in SAM?
3. What is your opinion of the International Criminal Court and the case against former President Milosovic?

Information about your Final Colloquium

The final colloquium will be held on _____ January 2005.

*It will most likely be the last week of January (25-27??).

- The final exam is worth 40 points. Remember, you need 51 points to pass the course.
- The final exam will cover Modules 1, 2, 3, and 4. There will be more questions from Module 3 and 4.
- The final exam will consist of the following:

Section 1: Listening (5)

- 2 conversations, 10 multiple choice & fill in the blank questions

Section 2: Vocabulary (15)

- Approximately 40 questions (refer to your first colloquium for the format of the questions)

Section 3: Reading Comprehension (13)

- Approximately 20 questions
- Review your readings from Modules 1-4.
- Focus on the following readings:
 - “The Legal Process” (Module 3)
 - “The Cultural Defense” (Module 3)
 - “The 10 Declaration Human Rights Articles” (Module 4)
- I will not be providing the text for questions on the readings from the modules.
- There will be one (or two) new reading on the exam with comprehension questions.

Section 4: Writing (7)

You will need to write an essay on **one** of the topics given on the exam. The questions will

deal with issues discussed in class. I will be grading you on **how clearly you express your**

ideas and the proper use of **legal terms**. About 75-100 words.