

**AN INTRODUCTION TO AMERICAN LAW:
AN OUTLINE OF A COURSE DELIVERED
AT THE TRADE UNION COLLEGE UNDER
THE AUSPICES OF THE BOSTON CENTRAL
LABOR UNION, SPRING TERM, 1919**

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AN INTRODUCTION
TO
AMERICAN LAW

*An Outline of a Course Delivered at the Trade
Union College under the Auspices of the
Boston Central Labor Union
Spring Term, 1919*

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Quits

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AN INTRODUCTION TO AMERICAN LAW

I

FUNDAMENTAL CONCEPTIONS

The Legal Order is an adjustment of human actions and relations in order to conserve the goods of existence, prevent friction in human use and enjoyment of these goods and eliminate waste of them.

It seeks to do this by securing as many interests as it may with the least sacrifice of other interests.

Scheme of the interests to be secured by law:

I. INDIVIDUAL INTERESTS.

1. Personality.

- (a) *The physical person — the physical existence.*
- (b) *Honor and reputation — the social existence.*
- (c) *Belief and opinion — the spiritual existence.*

2. Domestic Relations.

- (a) *Parental.*
- (b) *Marital.*

3. Substance — the economic existence.

- (a) *Property.*
- (b) *Freedom of industry and contract.*
- (c) *Promised advantages.*
- (d) *Advantageous relations with others.*
 - i Contractual
 - ii Business
 - iii Official
 - iv Social
 - v Domestic
- (e) *Free association with others.*

II. PUBLIC INTERESTS.

1. Interests of the State as a juristic person.
 - (a) *Personality (existence and integrity).*
 - (b) *Substance.*
2. Interests of the State as guardian of social interests.

III. SOCIAL INTERESTS.

1. General security.
 - (a) *Safety.*
 - (b) *Health.*
 - (c) *Peace and order.*
 - (d) *Security of acquisitions.*
 - (e) *Security of transactions.*
2. Security of social institutions.
 - (a) *Domestic.*
 - (b) *Religious.*
 - (c) *Political.*
3. General morals.
4. Conservation of social resources.
 - (a) *Use and conservation of natural resources.*
 - (b) *Protection and education of dependents and defectives.*
5. General progress.
 - (a) *Economic progress.*
 - i Stimulation of invention
 - ii Free use of property
 - iii Freedom of trade
 - iv Freedom of industry
 - (b) *Political progress.*
 - i Free criticism
 - ii Free political opinion
 - (c) *Cultural progress.*
 - i Free science
 - ii Encouragement of arts and letters
 - iii Encouragement of learning
6. The individual life.

In order to secure as many of these interests as may be, with as little sacrifice of other interests as may be, we seek to balance or compromise conflicting interests. For this purpose the law selects and recognizes certain interests within certain limits which it endeavors to fix as accurately as possible. The interests so recognized and delimited are secured by means of

Legal rights, Powers, Privileges — conferred on individuals.

Duties (absolute, relative), Liabilities—imposed on individuals.

A legal right is a capacity of influencing the action of others through the force of politically organized society. Corresponding to every legal right there is a legal duty. The person in whom the capacity of influencing others for the security of some interest is given, or in whom it is recognized, has a right; the person or persons upon whom that influence may be exerted, have legal duties.

A power is a capacity, conferred or recognized by law, of creating, divesting or altering rights and so creating or altering duties.

A privilege is an exemption from legal accountability for what, but for the privilege, would be a breach of duty. *by special occasion.*

A legal duty exists where one is bound to do or not to do something, because of some interest, individual, public or social, which the law undertakes to secure through the force of the state invoked in judicial proceedings. Legal duties are either absolute or relative. Absolute duties are imposed for the maintenance of social interests without regard to any corresponding individual (private) right. Relative duties are imposed in order to secure individual interests and in each case correspond to an individual (private) legal right. Absolute duties are enforced by the criminal law.

In order to secure individual interests the law may require people generally to conform to certain standards of conduct at their peril. If no interest of others is infringed by their departure from these standards nothing happens. If their departure from these standards results in injury, they must repair the injury by payment of damages. In such cases there is a liability—a condition where one incurs a risk of having to make reparation if he departs from a legal standard of conduct.

In addition to legal rights, we speak of natural rights and of political rights. By natural rights we mean, sometimes interest

which we feel ought to be secured by politically organized society, sometimes capacities of influencing the conduct of others through the force of politically organized society which we feel ought to exist in an ideal state. By political rights we mean powers or capacities of taking an active part in the government which the state recognizes in or concedes to certain classes of citizens. Ancient law did not distinguish legal rights from political rights. It allowed the former only to those who had the latter. In modern states we may say:

Natural rights belong to or reside in human beings.

Legal (or civil) rights belong to or reside in persons, who are either natural (human beings) or juristic (e.g., municipalities, corporations).

Political rights belong to citizens or to those upon whom the state has conferred a partial citizenship, but not necessarily to all of them. Thus women and children are citizens, but the former may or may not have certain political rights.

As the three categories are not necessarily identical, it follows that possession of one form of rights does not imply possession of the others. In modern times the law aims to accord legal (civil) rights to all natural persons to the extent of their moral or natural rights. The tendency is also to extend political rights as widely as possible. Ancient law limited and confused them. It conceded no legal rights to the foreigner. If the state gave him partial political rights, that fact gave him partial legal rights also. Today all human beings are legal persons, that is, have legal rights. Formerly this was not so.

Having conferred or recognized legal rights, powers and privileges, the law next has to provide means of making them effective. The means employed for this purpose are three:

1. Punishment.
2. Redress.
 - (a) Specific.
 - (b) Substitutional.
3. Prevention.

In administering these means, courts are governed by three sorts of legal precepts:

1. Rules, e.g., the rules as to what is a negotiable instrument, how it may be transferred and the effect of different modes of transfer; the rules as to when and what covenants will "run with the land;" the rules as to capacity for legal transactions.

2. Principles, that is authoritative premises for judicial and juristic deduction, to which we turn to supply new rules, to interpret old ones, to measure the scope and application of rules and standards, and to reconcile them when they conflict.

3. Standards, legally defined measures of conduct applied by or under the direction of the courts. E.g., the standard of due care or of the diligence of a reasonable man under the circumstances; the standard of reasonable service in the law of public utilities.

Bibliography. The zealous student who wishes to pursue the subject further should know of the following books:

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II

HISTORY OF THE COMMON LAW

There are two chief legal traditions or systems of law, the Roman or Civil Law, and the English or Common Law. The Roman