

Blue Book

NAME _____

SUBJECT Introduction to Law

INSTRUCTOR Belle

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1 of 2

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(1) Explain diff betw Golden Rule & Purposive Approach

There are several differences between the "Golden Rule" and the purposive approach. The Golden Rule first looks at the plain meaning of a statute and if it would result in an absurd or inconsistent outcome it is ~~not~~ then used as an alternative to the plain

meaning. If ~~not~~ the court is convinced that the ~~legislature did not intend the absurd result~~ legislature could not have intended the absurd result

they will then look ~~to~~ to give the ^{statute} ~~word~~ an alternate ~~definition~~ interpretation, that while not the plain

meaning, could still conceivably be covered by the

original wording. The new interpretation will result

in a decision that avoids the absurdity or contradiction.

The Golden Rule stays internal to the words of the

statute for its interpretation. The purposive approach

very
short
the
double
spacing.

by contrast will look outside of the wording
in order to find the statutes true intent, ~~#~~ beyond the letter of the
law as the Golden rule does.

It will bring in extrinsic aids in order to determine
wrong or mischief
what the statute was meant to address. # In doing

this it considers legislative history and the customs

of the times when the law was written. The court then

applies the intent and spirit of the law in order to

avoid the absurd or contradictory result of the plain

meaning.

2 Explain Stare Decisis

~~St~~

~~The doctrine of stare decisis~~

Stare decisis translated means "to stand by things already decided". The doctrine of Stare Decisis states that previous judicial decisions should be used followed

in later cases, by lower courts in the same jurisdiction, when the facts of the case ~~and the~~ are similar in nature.

These judicial precedents are binding on lower courts

with a jurisdiction and are persuasive authority

to parallel ~~lower~~ courts. Trial courts are bound to

follow precedents that come from the appellate courts

and the court of final resort in its jurisdiction. At

the state level, the court of final resort (the CA

Supreme Court in California) creates binding precedent

on the ~~own~~ California courts of appeals and California trial courts. At the Federal level, the U.S. Supreme Court is the court of final resort and its decisions are binding for Federal Law on the Federal courts of Appeal and the ^{Federal} Circuit courts.

Its precedents are also binding on the State courts in areas of Federal Law.

A court however is never bound by its own precedent or decisions. ~~As long as~~ It can overrule previous judgments as long as in doing so it is not in conflict with a precedent from a higher court which has jurisdiction over it. The doctrine of stare decisis is therefore not absolute, and

precedents can be overruled, but it is ^{assumed} accepted

that overruling precedent should be the exception
not the norm.

Stare decisis is important because it
gives society a medium of stability when planning
their personal and business affairs. It creates the
basis for lawyers to give advice to clients. It
also leads to the efficient handling of cases by
speeding up the cases that have issues already previously
addressed. This saves time and reduces costs. Finally,
it is supported the the human notion that people be
treated similarly in similar situations.

#3 Define Ratio Decidendi

8 The ratio Decidendi, or "reason for the decision" of a court's decision attempts to determine the key principles ~~of~~ and facts that were necessary to come to the holding that they did. Only ~~these~~ these principles and facts are considered to be binding authority on future cases. Any other statements made by the court in its decision are considered dicta and are persuasive only. In applying the ratio decidendi reasonably, a court must be careful not to define "necessary" too narrowly. ~~The~~ It should be able to cover all cases that cannot reasonably be differentiated from the facts and issues in the case.

preceding case. However, often Judges may ~~miss~~ not be on point exactly. ~~Their~~ If their decision was too broad, ~~the future court~~ a future judge can whittle down the criteria to only what was needed to support the previous decision. This has the effect of making it easier to differentiate future cases. If on the other hand the previous decision was too narrow, the current judge can expand it so as to include situations that cannot be reasonably distinguished from that case, but ~~are not~~ were not expressly covered.

4 Explain Separation of Powers

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Separation of Powers is ~~at the~~ a principle that is embedded in the foundation of the Constitution of the United States. Our government is divided into

three separate and distinct branches; the Legislative;

the Executive; and the Judicial. Each branch

has specific duties ⁺ ~~and~~ responsibilities ~~and areas~~ ^{and that}

are not to be encroached upon by the other branches.

They are also all meant to have equal power, no one

branch has more power or authority than any other. This

creates checks and balances which keep the

branches in check. This protects the people from

tyranny. The jurisdictions of the three branches

#4 Continued.

are defined in the constitution. The legislative branch makes and creates laws in written form. ~~The executive~~

~~branch ~~executes~~ administers the law and exercises~~

~~governmental power~~ Those laws are general in

nature and forward looking. They deal with classes of

people and situations rather than specific situations.

The executive branch administers the law and

exercises governmental power in concrete situations

to accomplish a specific public purpose. The Judicial

branch interprets and applies the laws in order to

settle disputes.

There

~~There~~ are however exceptions to the separation of the

powers. Some of these are created by the Constitution while others are the result of government customs and practice (Customary law). A few examples of this are:

- 1) The President can veto legislation. This is the executive branch acting with legislative power.
- 2) The Legislature handles the impeachment of public officials. This is the Legislative branch acting with ~~Judicial~~ Judicial power.
- 3) The Judicial Branch creates case law that is binding. This is the Judicial Branch acting with Legislative power.
- 4) ~~The~~ Congress can pass private laws. This is the Legislative branch acting with Executive powers.

#5 3 types of cases covered by Dialectical Reasoning

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There are 3 types of cases where a judge will

have to use dialectical reasoning. First, where

no statute or precedent exists that covers the situation

at hand. (A case of first impression). This acts to fill

a gap in the existing law. Second, is where the statute

or precedent is deemed inappropriate or out of date by

the judge. This can happen when societal ~~is~~ customs and

norms change, or where a new situation arises and

the result ~~not~~ would lead to an injustice using the

old precedent. Third, is where there are 2 or more

competing rules or precedents and the judge is forced

to make a true decision between them in order to

decide the case. ~~All these require the judge to~~

~~to~~