Instructor Resources Sample

This is a sample of the instructor materials for *The Law of Healthcare Administration*, 9th edition, by J. Stuart Showalter.

The complete instructor materials include the following:
- PowerPoint presentations
- An extensive Instructor’s Manual, featuring chapter overviews, teaching tips, and answers to discussion questions
- A test bank

This sample includes the PowerPoint presentation and Instructor’s Manual section for chapter 1, “A Brief History of Law and Medicine.”

If you adopt this text, you will be given access to the complete materials. To obtain access, e-mail your request to hapbooks@ache.org and include the following information in your message:

- Book title
- Your name and institution name
- Title of the course for which the book was adopted and the season the course is taught
- Course level (graduate, undergraduate, or continuing education) and expected enrollment
- The use of the text (primary, supplemental, or recommended reading)
- A contact name and phone number/e-mail address we can use to verify your employment as an instructor

You will receive an e-mail containing access information after we have verified your instructor status. Thank you for your interest in this text and the accompanying instructor resources.

Digital and Alternative Formats

Individual chapters of this book are available for instructors to create customized textbooks or course packs at XanEdu/AcademicPub. For more information about pricing and availability, please visit one of these preferred partners or contact Health Administration Press at hapbooks@ache.org.
Chapter 1

A Brief History of Law and Medicine
The Cash Register Story

A businessman had just turned off the lights in the store when a man appeared and demanded money. The owner opened a cash register. The contents of the cash register were scooped up, and the man sped away. A member of the police force was notified promptly.
Part One: The History of Law
Introduction to Law

• Sources of law
  • Constitution
  • Statutes
  • Administrative law (regulations)
  • Judicial decisions (“common law”)

• The federal system
• The 3 branches of government
• Separation of powers
Checks and Balances

1. Impeach/convict
2. Appoint
3. Veto
4. Override or not confirm

Legis. — Exec. — Judicial

1. Impeach/convict
2. Appoint
3. Veto
4. Override or not confirm

5. Statute/rule is unconstitutional
6. Amend law
7. Amend regulation
Structure of the Court System
Legal Citation System

• Hill v. Ohio County, 468 S.W.2d 306 (Ky. 1971)
• 42 U.S.C. §1320c
• 45 C.F.R. §164.522
Part Two: The History of Medicine
Pharaohs and Babylonians

Code of Hammurabi
Greeks and Romans

Hippocrates and Galen
The “Four Humors”

Blood: sanguine, hopeful, amorous
Yellow bile: choleric, bad tempered
Black bile: melancholic, irritable
Phlegm: phlegmatic, calm, rational

This theory prevailed for centuries.
The Death of Washington, 1799

Bleeding and purging probably aggravated his condition: an upper respiratory infection and swelling of the larynx.
The Best Nineteenth-Century Medicine
The Civil War

Anesthesia was more prevalent than we commonly believe.

Infection and disease were more deadly than wounds.
Civil War to World War II

- F. Nightingale
- L. Pasteur
- Diphtheria antitoxin, rabies and flu vaccines
- Penicillin
- The iron lung
WWII to the Present

• Open-heart surgery
• Polio vaccine
• Organ transplants
• Kidney dialysis
• HIV/AIDS treatment
• Deciphering the genome
The Law of Healthcare Administration, Ninth Edition
Instructor’s Manual
J. Stuart Showalter

Chapter 1:
The History of Law and Medicine

I feel it is important for the student to understand the basics of the U.S. legal system and a little history of medicine—ergo, parts one and two of this chapter.

Part One: The History of Law

I. Overview

When I was in high school, a course on basic American government was known as “civics”—the branch of political science that deals with public affairs and the rights and duties of citizens. We all hated it. And we hated it, for the most part, because our teachers hated it too. They were history or physical education teachers who would have preferred to be teaching history or phys ed, and it showed. Your challenge is to take this Cinderella of a subject and make her charming.

Much of your course will revolve around the legal cases discussed in the book. As mentioned in the Introduction, by “cases” I mean real-life situations that evolve (or devolve, more precisely) into litigation and that result in the judicial pronouncements we call “opinions.” To discuss the cases and opinions presented in the text, the student must understand where each case stands in the hierarchy of the legal system, how it got to the court that considered it, and the implications of the ultimate decision. Students must be able to discuss how the principles involved in each case relate not only to the particular facts at the time of the decision but also to healthcare in our society today.

Encourage students to consider the cases by using the following framework:

1. **Procedure.** Who are the parties? Who brought the action? In what court did the case originate? Who won at the trial-court level? What is the appellate history of the case?

2. **Facts.** What are the relevant facts as recited by this court? Are there any facts that you would like to know but that are not revealed in the opinion?

3. **Issues.** What are the precise issues being litigated, as stated by the court? Do you agree with the way the court has framed those issues?

4. **Holding.** What is the court’s precise holding (decision)? What is its rationale for that decision? Do you agree with that rationale?

5. **Implications.** What does the case mean for healthcare today? What were its implications when the decision was announced? How should healthcare administrators prepare to deal with these implications? What would be different today if the case had been decided differently?
This analytical framework is set out on a separate page of this Manual as Figure 1. You may wish to have it photocopied and distributed as a handout. This can be used for every case. Ask students to discuss each of those five points. In particular, ensure that students are aware of all the salient facts that affect a court’s decision. I suggest students practice writing the precise legal issue—one that could be turned into a positive statement of the law. For example, in *Simkins* it can be argued that the issue is not what the court states in the first paragraph (“state action”) but whether it is permissible to discriminate on the basis of race.

This is not the only framework by which to analyze cases, of course, and you are encouraged to determine the method that works best for you and your students. Whatever technique is used, the point is that a structured analysis will result in the best learning.

II. Main Topics

- Students should be aware of how history, sociology, politics, economics, ethics, and other fields can affect law.
- The roots of our legal tradition can be traced not just to the American war for independence but as far back as the Norman conquest of England in 1066.
- The purpose of the Anglo-American legal system is to provide an alternative to self-help and personal conflict as a way of resolving disputes.
- Law is far from an exact science, but its uncertainty and flexibility give it strength and appeal.
- Basic legal concepts covered include the sources of law, checks and balances, stare decisis, legal procedure, and the “reporter” system for judicial decisions.

III. Lecture Notes

PowerPoint (PPT) slides for each chapter are available in the book’s Instructor Resources. They are not reproduced here in total, but they are referred to. You are encouraged to download the slides from the website. These lecture notes follow the text and the PPT slides, and additional comments can be found in the “Notes” view of the PPTs.

The slides and notes begin with an icebreaker to use in the first moments of the first class. I find that it is not only fun but also effective in getting across a point: You have to think in this class!

The icebreaker story is shown on this slide:

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Cash Register Story

A businessman had just turned off the lights in the store when a man appeared and demanded money. The owner opened a cash register. The contents of the cash register were scooped up, and the man sped away. A member of the police force was notified promptly.

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Following the story is a series of statements that students must analyze using their critical thinking skills. Students must decide whether each statement is “true” or “false” or whether there’s not enough information to decide. You can copy and paste the questions to use as a handout, or just ask the questions aloud in class. The statements are:

1. A man appeared after the owner had turned off the store lights.
2. The robber was a man.
3. The man did not demand money.
4. The man who opened the cash register was the owner.
5. The store owner scooped up the contents of the cash register and the man ran away.
7. After the man who demanded the money scooped up the contents of the cash register, he ran away.
8. Although the cash register contained money, the story does not state how much.
9. The robber demanded money of the owner.
10. The story concerns a series of events in which only three persons are referred to: the owner of the store, a man who demanded money, and a member of the police force.
11. The following events in the story are true: Someone demanded money, a cash register was opened, its contents were scooped up, and a man dashed out of the store.

My suggested answers are:

1. Not enough info. We don’t know whether the “businessman” was the owner.
2. Not enough info. We don’t know that this was a robbery.
3. False.
4. Not enough info. The “owner” could have been a woman.
5. Not enough info. We don’t know who scooped up the contents or that the man ran away; he could have “sped away” in his car, on a motorcycle, etc.
6. True.
7. Not enough info. See rationale for #5.
8. Not enough info. We don’t know that the cash register contained money. It might have had checks, credit card receipts, or even jelly beans.
9. Not enough info. Again, we don’t know that this was a robbery or to whom the demand was made.
10. Not enough info. The businessman and the owner might be two different people.
11. Not enough info. We don’t know that the man “dashed out of the store,” only that he “sped away.”

The moral of this exercise, of course, is: Don’t assume!

Introduction to Law, Checks and Balances, Structure of the Court System

Explain the sources of law and that the Constitution trumps all the other three. Statutes must be consistent with the Constitution, and administrative regulations must be consistent with both the Constitution and the statutes that they implement.
Referring to exhibits, explain the federal system of government, the three branches of government, the separation of powers, and how each branch of government has powers that check and balance the other two. Beforehand, you might want to engage in a little Socratic exercise asking what powers each branch has over the others. Ask students to discuss the question in groups of two or three without referring to the book. Ask them to draw their own diagram without referring to the text. See how many of the checks and balances they identify correctly.

Explain how trial courts lead to appellate courts and the supreme court. This is similar in both the state and federal systems, although the highest court of a state may not be called the “Supreme Court.” To wit:

- In New York, DC, and Maryland, the highest court is called the “Court of Appeals.”
- In Massachusetts, it is the “Supreme Judicial Court.”
- In New York the trial court is called the “Supreme Court” (ask students to find out why that is).

Explain the legal citation system, the role of precedent (stare decisis), and how a higher court’s precedent in the same state is binding on the courts below it. Precedents from other states are not binding but can be referred to for guidance on an issue that the instant jurisdiction has not addressed.

**Legal Procedure**

Many students (and some instructors) find this section beginning on p. 15 to be “TMI.” It’s up to you how much detail you want to go into here. My inclination is to refer to the information and some of the definitions and remind students to return to this material later in the course when relevant concepts arise in other contexts.

**IV. Talking Points, Questions and Answers**

Throughout the book students will see and take for granted the expression “the United States,” as in the quote from the Judiciary Act on p. 12. We usually refer to the United States in the singular, but you could point out that originally and for much of our history people said “these United States.” They basically felt that each of the original colonies was a separate country.

**Pages 12-13—Erie R. R. Co. v. Tompkins**

1. Why is the law of Pennsylvania important for a case tried in New York?

   - Pennsylvania is the place where the injury occurred. As a result of this case, federal courts must apply the law of the state where the injury occurred.
2. What is the significance of the concepts of duty and trespass?
   - To win his case, the plaintiff has to prove that the defendant owed him a duty.
     Under Pennsylvania law at the time, a landowner owed no duty to an undiscovered trespasser, thus the plaintiff lost.

3. In the Judiciary Act, quoted in the opinion, there is reference to “the laws of the several States.” What does this mean? Why does careful interpretation of this statute become important for this opinion?
   - The law, written in 1789, could have been drafted better (as most laws could be). It should have said, “the law of the several States.” This would have conveyed that the meaning of all the law, whether statutory or judicial, must be applied.

4. What is the purpose of “diversity jurisdiction” in the federal courts?
   - To avoid the perceived danger of a local jury being prejudiced against an out-of-state plaintiff. This was much more important in 1798, when rivalries and jealousies among states were greater than they are now. (See the earlier comment about “these United States.”)
   - Query how much effect diversity jurisdiction really has in this regard, given that juries and judges come from the local population.

5. How does this case deepen your understanding of the role of the federal courts and their relationship to state courts and other branches of government?
   - Explain that there are two overlapping systems of government, each of which has responsibility for certain things.

Page 19—Discussion Questions for Part I

1. This should be self-evident.

2. The Constitution, statutes, administrative regulations, and judicial decisions

3. Legislative, executive, and judicial branches. They are set forth in Articles I, II, and III, respectively, of the U.S. Constitution. The roles should be apparent, but ask students to explain.

4. The Constitution (as interpreted by the courts, and ultimately the Supreme Court) has priority over all. Regulations must be consistent with enabling legislation, which itself must be consistent with the Constitution.

5. Citations are explained in Exhibit 1.5 (page 18).

6. Due process means basic fairness; stare decisis is the fundamental principle establishing the precedential nature of judicial decisions.

7. The court structure is depicted in Exhibit 1.3 and the U.S. Ct. App. map is Exhibit 1.4

Page 20—Planned Parenthood of S.E. Pa. v. Casey

1. What is the significance of the first sentence in the excerpt?
   - Suggested answer: Stare decisis is vital, and the Supreme Court will not cavalierly overrule prior constitutional precedents. It has done so on only a handful of
occasions. Instead, it will usually “distinguish” (differentiate) the current case from the prior one despite an apparent similarity. In this way, the earlier holding remains valid but is limited and is held not to apply to the immediate ruling.

2. In your opinion, is this defense of the principle of stare decisis persuasive?
   - A rhetorical question to prompt class discussion.

3. If you were attempting to get this case overruled, what arguments might you make to counter this position?
   - Times change, and just as Roe v. Wade overturned many years of precedent, so too could it be reconsidered. Despite the first sentence of the excerpt, there is much doubt surrounding this issue, and it will not go away. Fifty years after Roe and more thirty years after Casey, the jurisprudence is still in doubt.

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1. **Procedure.** Who are the parties? Who brought the action? In what court did the case originate? Who won at the trial-court level? What is the appellate history of the case?

2. **Facts.** What are the relevant facts as recited by this court? Are there any facts that you would like to know but that are not revealed in the opinion?

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Part Two: The History of Medicine

The slides in this chapter merely illustrate some of the historical content in the text. Use them—or not—as you wish. I find the history to be fascinating, especially when pointing out that what we call “modern medicine” is really a construct of the middle to late twentieth century onward. The student will benefit from this broader perspective when anticipating the pace of change we can expect in the coming decades.

The chapter contrasts the long history of law, which extends back thousands of years, with the relatively recent development of modern medicine. From the time of Aristotle until roughly the time of the U.S. Civil War, medical knowledge consisted of little more than the theory of the four humors (“humorism”). Essentially, this theory held that the human body was filled with four basic substances, the four “humors,” which are in balance when a person is healthy. According to the theory, all diseases and disabilities resulted from an excess or deficit of one of these four humors. These deficits could be caused, for example, by vapors that were inhaled or absorbed by the body. Only in the early and mid-20th century did what we call “modern medicine” begin to appear. (See Appendix 1.1 for milestones and a timeline of the history of medicine.)

Various slides help show the contrast between the state of legal affairs and that of medical knowledge. George Washington was essentially bled to death by his physicians. A hundred years later—in the late 19th century—the best medical practice (outside of surgery and setting broken bones) still consisted of only a few home remedies applied by a “simple country doctor” who made house calls (see Exhibit 1.7).

The text and the PowerPoint slides trace the birth of health policy from Theodore Roosevelt in 1912, through enactment of Medicare and Medicaid, and on to the Affordable Care Act (ACA). Students are encouraged to track future developments.

I provide only rhetorical questions for this portion of the chapter, and instructors are of course at liberty to go into as much or as little depth as they wish. I do recommend, however, that the class at least engage in a general discussion of their reactions to the comparison of the two professions. For example, it has always struck me as poignant that at a time when lawyers were writing the Constitution, physicians were basically limited to setting bones, bleeding people, and using purgatives and poultices.

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