

To Sue or Not To Sue: Do You Have a Case?

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No one can be a truly competent lawyer unless he is a cultivated man. The best way to come to the study of law is to come as a well-read person.

-US Supreme Court Justice Felix Frankfurter
(1882 -1995), *The Quotable Lawyer*

INTRODUCTION

People in general say “I’m gonna sue!” without thinking. I have learned in this seminar that there are many aspects that must be examined before an individual embarks on the path of litigation. Such action requires a calm consideration of the financial damages and the existence of a “preponderance of the evidence” in one’s favor (Crump and Berman 100). The cases that I have read about in the newspapers and the stories on the news now make more sense to me. In addition to attending the seminar classes, I was able to research my topic in books and on the Internet, which really opened my eyes. As a first time juror last year, I was asked by one of the lawyers during juror selection why we had gathered in the courtroom; in retrospect, my answer was quite naïve. I said, “To seek justice.” The seminar leader, my assignments, and my research have taught me that the law is a mechanism and when you go to court, you are in a court of law and not a court of justice (Feinman 87).

Law, says the judge as he looks down his nose,
Speaking clearly and most severely,
Law is as I’ve told you before,
Law is as you know I suppose
Law is but let me explain it once more,
Law is The Law. (W. H. Auden, “Law Like Love”)

In American society students need to know how to observe the law and defend their rights. “Once someone knows you know your legal rights, he or she is usually quick to try to work something out” (Alderman xvi). However, in order to defend their rights, students, especially ESL students, must hone their listening, speaking, reading, and writing skills. This unit will have a cross-curricular focus that will develop these language skills while learning about the American civil court system as well as some differences between law in the US and Latin America, the components of a suit, legal vocabulary, consumer rights, and careers in law.

Considering the litigious society in which we live, students need to know what is involved in a civil suit: what makes a valid case, how it is initiated, and the process once a case is in the legal system because “more lawsuits are filed per capita in the United

States than in any other country on earth” (Zitrin 124). This unit will not include criminal law because an informal survey of my class revealed more of an interest in civil rather than criminal law.

My Background

Before coming to teach in the Houston Independent School District four years ago, I lived and taught in Brazil for 20 years and in Nigeria for five years. These experiences have given me an appreciation of other languages and cultures as well as an understanding of the difficulties in adapting to a new country. An important part of every culture is its legal system. For example, what constitutes a promise? A positive response of “sí” in Spanish or “sim” in Portuguese does not mean the person giving this answer will fulfill the request because Latin cultures view a straight “no” or “não” answer as abrupt and rude. I also learned while living in Brazil that an agreement prefixed with “Si Deus quiser” (If God is willing) provides wiggle room when the person does not appear at the time and date mutually agreed upon.

“Language matters more than most observers realize in shaping the contours of law,” according to George P. Fletcher in *Basic Concepts of Legal Thought* (5). He continued to explain that ideas are colored by their linguistic environment (6). The weapons of a lawyer are words, and “Talk is cheap...until lawyers get involved” (Lyons 329). The legal mind analyzes information differently from that of a layperson and gives prime importance to use of semantics (Zitrin 157).

American society is steeped in colloquial phrases that make reference to the law as pointed out by Jay M. He gives examples such as “See you in court” and “Don’t make a federal case of it” (87) that are frequently repeated, but these expressions are new to ESL students. In order to adapt to the American culture, English Language Learners have to develop fluency in the English language and acquire a basic knowledge of civil law.

My Classes

My 9th, 10th, and 11th grade ESL students have noticed the value that I give to paperwork and documentation regarding their classroom performance and conduct. They now ask to view their Misconduct Reports before they are sent to an administrator. When students complain that this is their first infraction, I can produce documents from my file proving the contrary. Using the exact wording from the *Code of Student Conduct*, which categorizes the different levels of misconduct, has also had an impact because they now question why I refer to “disrupting the educational process” instead of just writing that the student is making noise. They have noticed that the former produces an immediate response in the form of a parent conference. Likewise, the Progress Reports sent home every four weeks with personal commentary in Spanish have produced interesting feedback from my classes. As one student stated, “It’s not the 68 that got my parents mad, it was the writing at the bottom.” Slowly they are learning the importance of the

written word and are becoming cautious about what they write because they know that it will be binding. In the future, failing to proofread their writing can have serious consequences since “Sloppy writing requires special attention, and usually gets in it, in court” (Mellinkoff 16).

Students are definitely interested in law, and the advanced students have spontaneously asked to read pamphlets that I have brought to class about law. Students are curious about the workings of the courts. Their lack of knowledge lowers their self-esteem and makes them vulnerable to deception by those who know more than they do. For example, there are some public notaries who take advantage of Hispanic people by purporting to perform the functions of the *notario*. Frequently the *notario* in Latin America is a lawyer, and he or she draws up legal documents and certifies the authenticity of documents and signatures (Dominguez Martinez 3).

Some students have been to court, but they are unable to understand the English legalese mixed with Latin and French terms. Dramatic series and movies tend to emphasize criminal law. When I posed the question to my classes, “Would you rather study about criminal or civil law?” They asked for an explanation and chose the civil because they hope to never be involved in a criminal case. “Judge Judy,” “Judge Mathis,” “The People’s Court,” etc. are more useful to understand the workings of a civil court, but it is difficult for them to understand the dialogues due to the fast-paced English, use of slang, and informal English. A curriculum dealing with civil law will introduce students to the common law tradition in the USA so that they can function better in American society. It will also encourage them to be better citizens/residents and cultivate interest in a legal career.

My experience in living abroad and studying other languages and cultures has sensitized me to the needs of my immigrant and migrant students. I teach at an urban school where most of the students are at-risk and over half are Hispanic (mostly from Mexico and a few from Central America); they are either recent arrivals or first generation Americans whose parents do not speak English fluently. Many times children, even small children, serve as translators for the adults in the family.

First and foremost, I want my students to acquire the listening, speaking, reading, and writing skills in English necessary to meet their course requirements and pass the TAKS (Texas Assessment of Knowledge and Skills) in order to graduate from high school and pursue advanced education. However, I also strive to prepare them to function responsibly in American society and help their families. In the school setting, students have to understand the importance of written documents such as the *Code of Student Conduct*, the Misconduct Form, contracts between teachers and students, etc.; in the market place, they need to be able to read warranties and contracts.

WHAT STUDENTS WILL LEARN ABOUT THE LAW AND ITS RELEVANCE

Practical Applications

According to Richard M. Alderman (“The People’s Lawyer”) during a TV interview, the three prime areas where most people require knowledge of the law are: when renting property, when purchasing a car, and when handling debts. My students will most probably rent an apartment or house and purchase a car during their life times. Unfortunately, some will also make poor decisions and be faced with debt. My curriculum unit will develop English language skills, basic legal knowledge, and research skills to avoid or resolve future problems in these areas. In the event that problems arise, they will have their documentation in order and be prepared to protect their consumer rights or defend themselves against false accusations. The home/school connection will be reinforced as this practical information will be transmitted to their families and community. Usually they are the first members of their families to attend high school and become fluent in English so they have the responsibility to translate and interpret for their parents as they sign contracts and assume legal obligations.

Upon entering the workforce and in particular upon entering college, young people are inundated with offers for credit cards. The enticements of buying now and paying later by making just minimum payments have left many with astronomical debts and poor credit. Advertisements of no interest for one, two, or more years are deceptive; students need to be able to read and understand the small print as well as the minuscule *caveat* at the bottom of the TV screen or on contracts and agreements.

Students will develop a basic knowledge of the court system and legal vocabulary that will bolster their self-esteem and confidence. A fictitious lawsuit will be studied as well as case scenarios for the bar exam. Then questions will be posed to acquaint them with the law including their rights and responsibilities as citizens and residents.

In studying this unit, my students will become more aware of the civil justice system. They will learn about the court system while improving their English language skills. In addition, exposure to the careers in law will open new horizons and motivate students to seek further education after graduating from high school.

As Lewis Lapham stated, “To learn to read is to learn to think, possibly to discover the strength and freedom of one’s own mind. This is not a discovery that the consumer society wishes too many of its customers to make” (Crier 55).

Academic Skills

This unit will be taught as part of my English SOL (English for Speakers of Other Languages) curriculum. It will incorporate primarily the TEKS (Texas Essential Knowledge and Skills) for English and touch on the TEKS for Social Studies. The following skills will be addressed:

- Students will learn to listen, speak, read, and write correctly in English as they study and research legal topics.
- Students will be able to formulate questions and answers in Standard English observing acceptable mechanics. This will be done as they develop questions and answers for witnesses.
- Students will use higher level thinking skills to draw conclusions and make analogies.
- Students will be able to summarize information succinctly including all pertinent information.
- Students will employ evidence extracted from text and dialogue to support positions taken.
- Students will do research using printed and electronic sources to perform a Web Quest.
- Students will use technology to produce a legal brochure with MS Publisher.
- Students will understand the origin of common law.
- Student will understand the basic structure of the American court system.

TEACHING STRATEGIES

Activities and Their Sequence

ESL students will participate in this unit according to their English language proficiency (beginning, intermediate, and advanced). The teacher will model the appropriate intonation and pronunciation. Visual cues will be used when possible. All lessons will include listening, speaking, reading and writing components.

To develop a foundation, all students will develop legal vocabulary lists noting the part of speech, origin, pronunciation, and definition of words highlighting their special meaning regarding law. In the interest of bilingualism, students will also write the Spanish translation for these words. Beginners will contribute vocabulary to the Word Wall. Intermediate and advanced students will formulate questions based on their reading in handouts, newspapers and on the Internet. Depending on the questions, they will be grouped and discussed in one class or they will be answered one by one as part of the class warm-up.

Students will participate in a Web Quest to develop their legal knowledge and enhance their learning utilizing technology. They will work in pairs so that the more advanced students can peer tutor the beginners and those classmates with instructional modifications. The Web Quest appears in Lesson Plan 1.

Students will study a test question for the Bar Exam by looking up words, reading the test question, discussing the possible answers, and examining the correct answer. See Lesson Plan 2.

These activities should pique their interest to read the fictitious case of *Dominguez v. Scott's Food Stores* that follows a civil suit in detail. The initial approach will be to study

the suit contained in *The Story of a Civil Suit: Dominguez v. Scott's Food Stores*, the textbook used in this seminar. In this case, Ms. Miranda Dominguez sues Scott's Food Stores, Inc. for damages when she fell and broke her arm while pulling out a shopping cart. The reconstruction of a true case includes pertinent documents, method of jury selection, deposition questioning, cross-examination, etc. My ESL students can identify with the situation and characters present in this case. First, vocabulary such as jurisdiction, venue, sufficiency, specificity, motion, etc. will be introduced. This lesson will illustrate the various uses of words depending upon context. A "motion" in a courtroom is different from "in motion" in sports. Latin terms will also be explained as they appear in the text, and a connection will be made with Latin prefixes, suffixes, and roots. Students will create a timeline based on their reading using Timeliner Software. They will appreciate the importance of documentation, accuracy, and timeliness by following this case. Students will act out the dialogues contained in this case using simple props to practice their English and, in turn, understand the questioning process in court. See Lesson Plan 3.

Supplemental Activities

After introducing the topic and vocabulary, students will watch video clips of "The Legal Journal," a question-and-answer segment featured weekly on a local news show. Video clips of small claims court will be used in the same manner but utilizing closed caption to facilitate comprehension. Before the judge rules, the tape will be stopped, and the students will reach their own decisions and explain why. If the court's verdict differs from that chosen by the class, we will listen to the case again and discuss the decision based on the preponderance of evidence.

Legal emergency questions and legal forms will be explored using a software program. Working in pairs, students will locate forms and complete them for the appropriate situations.

Students will watch segments of TV series and movies that portray proper courtroom decorum. The functions of other support staff in the courtroom will be explored.

I received a complimentary copy of *Know Your Rights* during the People's Law School Day at the University of Houston, and I plan to read letters sent in and answered in this book. After we have practiced awhile, students will give their own opinions before I read the advice of the author who specializes in answering everyday legal questions for Texans.

To maximize students' abilities and address Individual Education Plans provided by the Special Education Department, students will have the option of creating a courtroom diorama or a poster.

Classes will participate in videotaped scenes based on cases of their own creation. The beginners will write simple dialogue for Discovery (the part of a case when the lawyers question witnesses under oath prior to the trial) while intermediate/advanced

students will develop more involved dialogues requiring complex sentence structure. The alternating block schedule provides that four classes meet on alternating days for 90-minute periods Monday through Thursday. On Friday all eight classes meet for 40-minute periods. I foresee that this unit will be taught for one month. The 90-minute classes begin with a short warm-up exercise. Other components will be grammar, reading comprehension, question formulation, and paraphrasing.

To conclude, a lesson on careers in law will delve into the educational requirements, special skills, and remuneration for judges, lawyers, bailiffs, court reporters, court translators, paralegals, legal secretaries, legal librarians, and court reporters. Students will participate by doing research in the library and on the Internet. At the end of the unit, a lawyer will give a presentation and preside over a Q&A session. If possible, a field trip will be made to a courthouse.

Materials

Three classroom computer stations will be used and also the ZapMe Lab for Internet research. The following software will also be employed: MS Publisher, TimeLiner, 501 Legal Forms and Form Letter Software, and Kurzweil Audio Optical Software. The teacher will utilize transparencies, handouts, and reproductions of printed matter with the permission of the copyright holder. The class will participate in a legal trivia game using the Classroom Performance System.

LEGAL OVERVIEW

The American legal system is founded on the common law tradition, while that of Latin America is based on civil law tradition. The exception is the state of Louisiana where the legal system is based on the Napoleonic Code. The roles and range of authority of the judge, lawyer, and notary differ in both cultures as well.

Civil law is built on “constitutions, statutes created by the legislatures, rules, and regulations created by government agencies, treaties signed by the president, and ordinances created by local governments” (Larsen and Bourdeau 3). No common or civil law can violate the constitution, which is the highest law. Therefore, a law passed by state legislatures must agree with federal law or it is unenforceable (Larsen and Bourdeau 3).

Civil law is also the legal area that does not include criminal law. Civil litigation involves car accidents, contractual disagreements, employee/employer disputes, slander, negligence, environment issues, divorces, and many other matters.

Civil Law Tradition

The civil law system has its roots in *corpus juris civilis*, the compilation of Roman codes in the 6th century. Even after the fall of the Roman Empire, it continued to be studied since various publications insured its survival (“Corpus Juris Civilis”). It formed the basis of the legal system throughout “Continental Europe, Quebec, Louisiana, the former

Soviet bloc, and most of the rest of the world”(Holmes, Jr.) England did not carry on the civil law tradition because “it was a backwater of the Empire, one of the last colonies occupied and one of the first abandoned” (Leshner).

In the 12th century on the Continent, there was a move away from using churchmen as clerical workers for legal proceedings because there were not enough to fill the need. The younger sons of nobles who had no land inheritance began to study legal matters in order to gain employment in the government. Some of these clerical positions gradually evolved into the roles of judge as well as tax collectors and whatever function the king deemed necessary. “Standardized fill-in the-blank legal forms were developed.” and “Legal procedures were organized and regularized.” (Leshner).

Later civil law was taught in universities that emphasized philosophy, theory, and logic (Friedman 165). In Latin America today, law is an undergraduate degree. To be a judge, a lawyer has to pass a standardized exam upon which the successful candidate is assigned a post in the countryside. By gaining seniority, the individual will earn more desirable posts in big cities. The prestige attached to lawyers and judges in our society does not exist in the civil law system of Latin America due to this formation and their more limited earning power. They are respected bureaucrats who apply existing codes. It just doesn't have the same impact saying you are a lawyer in Latin America as it does in the United States.

The position of public notary descended from the Roman public scribes who were trained and authorized by the Pope to exert their function. Then as now the public notary had the authority to write up legal documents and mark them with personal seals. This avoided the falsification of documents that was a continual problem in England (Leshner). Many times the public notary in Latin America is also a lawyer. It is quite common in Latin American to make photocopies of your documents and have them certified as genuine by a notary who maintains a large staff to copy, verify, and stamp the documents before he signs them.

Common Law Tradition

Common law tradition had its origin in “unwritten local customs that varied from community to community and were enforced in often arbitrary fashion” in 11th century England. In the 12th century, common law was institutionalized into a unified system of law making it applicable throughout the country, eliminating local peculiarities, and re-establishing the jury system (Holmes, Jr.).

Two exceptions are the ecclesiastical courts (the church courts) and the admiralty courts in England where Roman law, as it was known, took the place of common law.

Common law is thought of as “judge-made law” as opposed to that established through constitutions, statutes, treaties, and ordinances”(Larsen and Bourdeau 2-3).

“English legal scholars were of course aware of and affected by continental scholarship” especially in the areas of legal theory and terminology (Leshner). Although England and its former colonies followed the common law system, many Latin and French words still entered into legal vocabulary. To sue a person in Medieval England, a written document called a “writ” had to be prepared by the clerk and this document was known by the first word of text. *Praecipe* means “command,” and from a document requiring a party to appear in court; however, it “is now something the clerk’s office gives us to issue to itself ordering itself to issue subpoenas, dismiss cases, etc” thereby justifying “another fee to be charged” (Leshner).

In an interesting exercise on his website, Leshner gives an example of a *Praecipe* written in Latin and its translation into English, which explains why legal language seems so foreign and stilted. He also points out that the practice of generating forms and fees goes way back as well as the tactic of delaying a trial due to technicalities.

Civil Law System versus Common Law System

To clarify the differences between these two systems, there are four important traits of the civil law system as listed on the Freedomlaw website. The civil system has a more dogmatic and moralistic approach to legal principles; uses extensive and integrated codifications; does not recognize *stare decisis* (precedent); and has a different trial procedure that does not allow a jury trial for civil cases.

THE UNITED STATES LEGAL SYSTEM

The legal system of the United States was therefore a mix of “English law, Roman law (Justinian Code), French law (the Napoleonic Code), Native American law, the Bible, local custom, and common sense” (Larsen and Bourdeau 2). In a nutshell, “the laws that govern our lives come from six basic sources: the US Constitution, the Bill of Rights, statute law, administrative law, common law, and case law” (Ventura 10).

Some examples of statute law are “credit rights, rules of the road, [and] rights and responsibilities of married couples and parents” (Ventura 11). Administrative law encompasses “rules and regulations created and enforced by regulatory agencies” and some examples are the IRS, Federal Trade Commission, Environmental Protection Agency, and INS (Ventura 11).

As judges began to follow the rulings of other judges in similar cases, the concept of precedent was established and rules of law grew. This is also known as case law. “This following of precedent evolved into a doctrine called *stare decisis* which in Latin means “to stand by that which was decided” (Larsen and Bourdeau 2). This doctrine was seen as a way to give the law stability while still allowing for flexibility because precedents could be overturned if justified (3).

Civil law, however, that is based on either the federal or state constitutions or statutory law “generally has more clout than common law,” but common law is still necessary to interpret the former. In other words, “common law is supposed to be applied . . . where there is no statutory law on the subject or where there is statutory law but it needs to be explained” (Larsen and Bourdeau 8-9). Since most legislation needs to be explained, common law is ubiquitous (9).

This had a direct influence upon the educational formation of lawyers during the early history of the United States. According to Friedman, the making of a lawyer in the common law tradition has been different from that in the civil law tradition. “Lawyers in the United States were not primarily scholars or intellectuals; they were ambitious, pushy young men; they were nimble, supple problem-solvers; they knew how to make themselves useful, how to squeeze themselves into every crack and cranny of the market for information. This is true both then and now” (165).

In our system, the appointment of judges involves politics and party affiliations. Their salaries reflect their standing in our society.

LEGAL THINKING

Lawyers have a reputation in our society as being well educated with a razor sharp intellect, and a gift for rhetoric. “Delivering an opening statement is an art . . .” (Crawford 189). This art is developed in modern day law schools by designing courses around the “Five R’s” which are “research, reasoning, [w]riting, reading, and rhetoric” (Shaffer). To prove a case, lawyers must base their defense on a previous case or create an analogy (Shaffer). These abilities would be valuable in any profession and well worth developing in our students.

The fact versus opinion and main idea lessons that we teach, dovetail with the legal view of relevant vs. irrelevant and fact vs. allegation. The courtroom is a mental wrestling match as both sides try to include evidence favorable to their side and exclude that which is detrimental. Both sides try to pose leading questions and use the strategy called Loop Back Questioning. “Lawyers like to get into a rhythm of asking questions, trying to get the witness on cross-examination into the habit of answering as expected” (Lisnek 234-235). “Looping is using the answer in the next question” (Rawdon) as in the following example.

“What direction were you driving?”

“West.”

“As you were driving west, did you see the red car?”

“Yes.”

“What direction was the red car going?”

In his article, Richard Rawdon, Jr. advises lawyers to listen because if they don't listen, they cannot formulate "looping" questions or evaluate "the jurors' reception of evidence [so] we [the lawyers] can alter our proof if necessary." His exhortation to "probe, question, and listen" in order to "expand your base of knowledge" is valuable advice for all educators and students.

Evidently, this judge had followed the advice to be a good listener. Judge Debora Servitto wrote this rap as a footnote in her 13-page opinion in a lawsuit filed by DeAngelo Bailey against the rapper Eminem for slander.

Mr. Bailey complains that his rap is trash
So he's seeking compensation in the form of cash.
Bailey thinks he's entitled to some monetary gain
Because Eminem used his name in vain.
The lyrics are stories no one would take as fact
They're an exaggeration of a childish act.
It is therefore this court's ultimate position
That Eminem is entitled to summary disposition. (Crittenden 13)

In plain language, the case against Eminem was dismissed because the court did not find his lyrics to be slanderous.

THE JURY

The American constitution guarantees a jury trial for criminal cases and in most states it is also guaranteed for civil cases as well. Our juries can now be composed of 12, 9, or 6 jurors instead of the traditional 12. Verdicts need not always be unanimous.

As anyone who watches TV knows, choosing a jury is big business as companies specialize in profiling future jurors during jury selection. The lawyers themselves tailor their opening statements to develop themes that appeal to "a combination of the facts they have to work with, community attitudes, juror profiles, and so forth" (Lisnek 188).

As we encourage our students to create a personal voice in their writing, the lawyer does the same to portray his client, either plaintiff or defendant as "a real human being, not just a name, or worst just a corporate entity with no face at all" (Lisnek 189).

As I mentioned in the beginning, I was called for jury duty and went through the selection process. I was chosen from the pool of jurors to participate in a civil trial. Now I am not sure if it was an honor because the lawyers thought that I was intelligent, or that it was the opposite because the lawyers saw me as naïve and easily swayed by emotion.

REFLECTIONS

And what is truth? Is truth unchanging laws? We both have truths; are mine the same as yours?"

-Pontius Pilate, speaking to Jesus at his trial in
Andrew Lloyd Weber's *Jesus Christ Superstar*

Participating in this seminar has been a singular experience. I expected to learn about the law, but as a bonus, through the class discussions and interaction with our seminar leader I was also able to see how lawyers think. When we teachers got in the feely touchy mode, we were brought back to logic and the facts. Sometimes the legalistic approach seemed hard hearted, but our society is run according to the rules of law and we all need to arm ourselves with this knowledge and that includes our students.

[Law] like love we don't know where or why,
Like love we can't compel or fly,
Like love we often weep,
Like love we seldom keep. (W. H. Auden, "Law Like Love")

LESSON PLANS

Lesson Plan 1 (Beginning, Intermediate, & Advanced) **Web Quest – My New Car**

Timeframe

One to two 90-minute classes

Objectives

To develop listening, speaking, reading, and writing skills and a knowledge of technology by performing a Web Quest dealing with consumer law.

Best Practices

Making real world connections.

Previous Knowledge

Microsoft Word and the Internet

Materials

- Individual computer stations with Internet access and printer for individual or pair work or a laptop with Internet access, data projector, and printer for the class to work as a team.
- Word List in Appendix A
- Handouts of the Web Quest in Appendix A

Warm-up

If computer stations are available in the classroom or lab, the individual students or pairs will be given the following words to look up using electronic dictionaries. In the absence of multiple computer stations, the teacher will give individual students the opportunity to look up words online using a laptop and data projector so all the students can participate and learn.

A vocabulary list will be compiled using Word and printed. Students will become familiar with the use of online dictionaries. The teacher will review and discuss the pronunciation and meaning of these words to be used in this Web Quest. The audio button can also be used to hear the pronunciation at some websites.

The focus of this lesson is the Lemon Law. This law has variations depending upon the state in which you live. In this unit, we are concentrating on Texas law, but other state laws can be found on the Internet. To introduce the topic, the teacher will ask the students what their favorite car is and why. The teacher will bring in brochures from car dealerships with pictures and descriptions. Beginning students will be encouraged to participate by describing their dream car, which requires basic vocabulary. This will lead into the issue of consumer problems with new car purchases. The teacher can tell about his/her own experience or that of a friend. Then the students will be asked, “Has anyone that you know had problems with their new car and how did that person resolve the problem?”

The teacher will explain that, “like many other states, Texas has a Lemon Law statute designed to protect consumers from purchasing ‘lemons’. The Lemon Law applies to new vehicles that develop problems covered by a written factory warranty” (*Consumer Law Handbook 2004 17*).

The students will create a case scenario for a new car that has a serious mechanical problem. They will do research on the Internet to answer the Web Quest questions (Appendix) and learn how to apply the Lemon Law to their fictitious motor vehicle

The teacher will distribute copies of the Web Quest and explain that a Web Quest is an inquiry-oriented Internet research activity that includes the use of research skills, technology skills, English language skills, and higher level thinking skills.

They will find answers to the questions and also locate a Repair Log. Then they will make their own log using Microsoft Word or similar software. They will fill in the log with maintenance and repair data for their fictitious motor vehicle.

In addition to improving the skills of the students, it will produce a product that can help them and their families make informed decisions as consumers and reinforce the importance of documentation.

Lesson Plan 2 (Beginning, Intermediate & Advanced)

An Introduction to Legal Vocabulary and Case Scenario

Timeframe

One to two 90-minute sessions

Objectives

Develop dictionary skills: enlarge vocabulary; improve listening, speaking, reading, and writing skills in English; and stimulate higher level thinking skills.

Best Practices

Making real world connections.

Materials

- Overhead transparency with word lists, handouts of case scenario and question, collegiate and bilingual dictionaries
- Word List in Appendix B

Warm-up

Working in small groups to promote peer tutoring, students will look up and write down the meanings of the vocabulary words, including pronunciation, part of speech, and etymology. Where both noun and verb forms exist, the desired part of speech is indicated. Students will also write the Spanish translations to ensure complete understanding.

After looking up the words, students will be called on to read the words based on the phonetic pronunciation copied from the dictionary. In previous classes, an explanation of the phonic key and stress was presented. The class will discuss words and compose oral sentences.

Using sentence strips, students will write original sentences. Students will read their sentences aloud and receive feedback from the class and teacher. Then they will be posted on the Word Wall.

The class will read the following case. First, the teacher will model the proper pronunciation and intonation. Individuals will be called on to read, and teacher will ask appropriate questions for intermediate and advanced levels at the end.

Darcy Darrow was a first-year law student at the Lake Tahoe School of Law in Nevada. In preparing for her law school examinations, Darcy invited a few classmates to her apartment for a study group. Darcy, who had a fetish for arachnids kept a pet tarantula caged in her apartment. When Darcy purchased the tarantula, she had the poisonous venom removed so that it would be harmless.

During the study group session, Darcy brought out the cage with the tarantula to show her friends. When she was placing the cage down on the kitchen counter, Darcy carelessly left the cage door slightly open. Moments later the tarantula crawled out of the cage and crept toward Mia Mare, who was deathly afraid of spiders, saw the tarantula and tried to run away. As she did so, Mia tripped over a chair and fell down, fracturing her wrist. (PMBR Multistate Specialist)

Intermediate Level Examples

Where did the students meet? Whose apartment was it? What was Darcy studying? What kind of pet did Darcy have? What was Mia deathly afraid of?”

Advanced Level Examples

Why did Darcy have the poisonous venom removed? How did the tarantula get out of its cage? Why is Mia suing Darcy? How did Mia fracture her wrist?”

5. If Mia brings suit against Darcy to recover damages for her injury, judgment [would favor] whom?
- (A) Mia, because Darcy was negligent in leaving the cage door open.
 - (B) Mia, because Darcy is strictly liable.
 - (C) Darcy, because the spider did not directly cause Mia’s injury.
 - (D) Darcy, because a spider is not a wild animal.

Answer: (B) This same issue dealing with wild animals was tested on the July, 2003 MBE exam. Whenever confronted with a Torts question involving animals, it is necessary to first determine whether the animal is domesticated or wild. A possessor of a wild animal is subject to **strict liability** for the harm that results even though the possessor has exercised the utmost care to confine the animal. According to the Second Restatement of Torts, Section 506, the word “animal” is used in a broad sense to include “not only animals but also birds, fish, reptiles, and insects.” Therefore, choice (D) is incorrect. With respect to choice (C), it is not necessary that the injury **directly result** from the animal’s dangerous propensities. Liability also extends to situations where the plaintiff becomes frightened and injures herself in an effort to escape. (PMBR Multistate Specialist)

Topics for Class Discussion

Before the class discusses the explanatory answer to question 5, the teacher will explain the source of this information. The class will learn what the Bar Exam is and how a person can become a lawyer in the States (years of schooling, national exams required, GPA required, costs of education, earning power, etc.). The teacher will ask students how a person can become a lawyer in their country. The teacher should have information in case students do not know.

Homework Assignment

Students will search newspapers, magazines, or websites for articles about similar situations such as a person's dog, tiger, snake, etc. attacking a neighbor or stranger. They can also ask their parents, friends, etc. if they have heard of such cases. The class will discuss how the owner was held responsible, if known, or students can give their own opinions of what consequences the owner should face.

Assessment

Classroom participation and writing

Instructional Modification for Special Education Students

Peer tutoring

Suggestions

The Houston Chronicle, *The National Jurist*, and other sources will provide appropriate articles. State Bar Association sites also provide handouts and quizzes.

Lesson Plan 3 (Intermediate/Advanced)

Introduction to Legal Vocabulary and Fictitious Civil Lawsuit

Timeframe

Two to three 90-minute sessions

Objectives

Develop dictionary skills, enlarge vocabulary, and improve writing skills.

Materials

- Large poster board
- Sentence strips
- Colored markers
- Word list in Appendix C

Warm-up

Working in small groups to promote peer tutoring, students will look up and write down the meanings of the legal terms (See Appendix C), as well as their pronunciation, part of speech, and etymology. Where both noun and verb forms exist, the desired part of speech is indicated. An equivalent Spanish translation will be developed for each word.

Teacher will read the words aloud for the students and explain that word meanings can differ depending upon the context. The literal and figurative uses of words will be illustrated as well as the labels such as formal, informal, obsolete, archaic, and fields of knowledge that appear in italics in dictionaries. Students are to look up these words and write down a general definition and a specific definition referring to law. At this time, it will also be pointed out that some of these words can be both nouns and verbs.

Students will receive a handout with the following excerpt from Crump and Berman's *The Story of a Civil Suit: Dominguez V. Scott's Food Store*:

On May 7, 1996, Ms. Miranda Dominguez went to Scott's Food Store No. 14 on Quitman Street in the City of London, State of West York, to do some shopping. Her husband, who had just returned from work, drove her to the store in their car but did not go into the store with his wife. After entering the store, Ms. Dominguez went to the area where shopping carts were kept, nested one inside the other. She pulled the first cart in one of the rows the result was that several carts came out together. Ms. Dominguez lost her balance and fell, placing her right hand behind her as she did so.

The fall caused her a compound fracture of the arm above the wrists. Her medical hospital bills ultimately totaled \$1,172.55. The doctor treating her estimated that she had a permanent partial disability of 10 to 15 per cent in the wrist. (1)

The class will act out this scene with the help of the teacher. Students will speculate what action Ms. Dominguez will take. Teacher will stimulate discussion by asking if Ms. Dominguez was negligent, or not, what if the floor had been wet, if so was there a plastic sign advising the shoppers to be careful, and what difference that would make.

The issue of immunity from suit for certain entities will be mentioned. For example, if your car is damaged by a hole in the road, you cannot sue the city if it has legal immunity. The use of expert witnesses and its effect on a suit (influencing the decision and raising the cost of litigation) are also pertinent issues for discussion. Do corporations and the rich have an advantage over individuals with limited resources?

The teacher can also lead a discussion on the advantages and disadvantages of a jury versus a trial by judge. Considerations such as cost, time, and use of emotion to sway the decision should be examined.

In this case Scott's Food Stores was found to be negligent because the carts were bent and defective and that this negligence caused the accident. However, Mrs. Dominguez was found to have not exercised proper caution when pulling out the cart. She was awarded \$6,500 plus her legal fees in 2000 (100-101).

APPENDIX A

Web Quest for Lesson Plan 1

Word List

file (v)
complaint
attorney
disclosure
repossess
approval
repairs
lawyer
consumer
lemon (not the fruit)

For this Web Quest you will be searching for answers about the Lemon Law. Be sure to write your answers in complete sentences. The following websites will help you in your search:

- <<http://www.legal-term.com>>.
- <<http://www.hba.org>>.
- <<http://www.LawforKids.org>>.

1. What is the Lemon Law?
2. Does Texas have a Lemon Law?
3. What types of problems are covered by the Lemon Law?
4. Does the Lemon Law apply to the purchase of used vehicles?
5. What does the “As Is” disclosure for a used car mean to a car buyer?
6. What is a demonstrator vehicle?
7. Within what time frame must the first sign of a problem appear in a new car to enact the Lemon Law?
8. How many attempts must have been undertaken to fix the motor vehicle?
9. What information must a Lemon Law complaint contain?
10. Do you need a lawyer to submit a Lemon Law complaint?

APPENDIX B

Word List for Lesson Plan 2

Word List

Intermediate Level

fetish
arachnid
cage (v & n)
purchase
harmless
fracture (v)
place (v)
carelessly
slightly
crawl
deathly
trip (v)
wrist

Advanced Level

damages
recover
strictly
liable
confront
possessor
subject
strict
liability
tort
injury
propensity
sue

APPENDIX C

Legal Word List for Lesson Plan 3

adjuster	prayer
motion	plaintiff
defendant	ruling
complaint	pleading
reasonableness	sufficiency
empower	specificity
triable	discovery
summons	cut-off date
docket	allegation
venue	move
demiss	ruling
strike	disposition
ruling	retainer

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