Legal Reasoning

Supplement

to

The Pocket Guide to Critical Thinking

and to

Critical Thinking

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Definitions

Vagueness and the law

In 1998 the only restriction on speed limits on highways in Montana was the following.

> Section 61-8-303(1), MCA
> A person operating or driving a vehicle of any character on a public highway of this state shall drive the vehicle in a careful and prudent manner and at a rate of speed no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account the amount and character of traffic, condition of brakes, weight of vehicle, grade and width of highway, condition of surface, and freedom of obstruction to the view ahead. The person operating or driving the vehicle shall drive the vehicle so as not to unduly or unreasonably endanger the life, limb, property, or other rights of a person entitled to the use of the street or highway.

The following comes from the decision in case No. 97-486 in the Supreme Court of the State of Montana, 1998 MT 321, State of Montana vs. Rudy Stanko:

> The basis for the ticket was the fact that Stanko had been operating his vehicle at a speed of 85 miles per hour at a location where Officer Breidenbach concluded it was unsafe to do so.
>
> The officer testified that the road at that location was narrow, had no shoulders, and was broken up by an occasional frost heave. He also testified that the portion of the road over which he clocked Stanko included curves and hills which obscured vision of the roadway ahead. However, he acknowledged that at a distance of from 249 to 374 feet behind Stanko, he had never lost sight of Stanko's vehicle. The roadway itself was bare and dry, there were no adverse weather conditions, and the incident occurred during daylight hours. Officer Breidenbach apparently did not inspect the brakes on Stanko's vehicle or make any observation regarding its weight. The only inspection he conducted was of the tires, which appeared to be brand new. He also observed that it was a 1996 Camaro, which was a sports car, and that it had a suspension system designed so that the vehicle could be operated at high speeds. He also testified that while he and Stanko were on Highway 24 there were no other vehicles that he observed, that during the time that he clocked Stanko on Highway 200 they approached no other vehicles going in their direction, and that he observed a couple of vehicles approach them in the opposite direction during that eight-mile stretch of highway.
>
> Although Officer Breidenbach expressed the opinion that 85 miles per hour was unreasonable at that location, he gave no opinion what would have been a reasonable speed, nor did he identify anything about Stanko's operation of his vehicle, other than the speed at which he was traveling, which he considered to be unsafe. . . .
>
> Since there is no evidence in this case that Stanko lost control of his vehicle, or that he endangered any other person or any other person's property, it is clear that he was arrested, charged, and prosecuted for operating his vehicle at a speed that Officer Breidenbach considered unreasonable. The question is whether a statute which regulates speed in the terms set forth above gave Stanko reasonable notice of the speed at which his conduct would violate the law. . . .
>
> In Montana, we have established the following test for whether a statute is void on its face for vagueness:
>
> > *A statute is void on its face if it fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden.* . . .

> It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. . . .
>
> For example, while it was the opinion of Officer Breidenbach that 85 miles per hour was an unreasonable speed at the time and place where Stanko was arrested, he offered no opinion regarding what a reasonable speed at that time and place would have been. Neither was the Attorney General, the chief law enforcement officer for the State, able to specify a speed that would have been reasonable for Stanko at the time and place where he was arrested. . . .
>
> It is evident from the testimony in this case and the arguments to the Court that the average motorist in Montana would have no idea of the speed at which he or she could operate his or her motor vehicle on this State's highways without violating Montana's "basic rule" based simply on the speed at which he or she is traveling. Furthermore, the basic rule not only permits, but requires the kind of arbitrary and discriminatory enforcement that the due process clause in general, and the void-for-vagueness doctrine in particular, are designed to prevent. . . .
>
> We conclude that that part of § 61-8-303(1), MCA, which makes it a criminal offense to operate a motor vehicle "at a rate of speed . . . greater than is reasonable and proper under the conditions existing at the point of operation" is void for vagueness on its face.

The entire court record, with a dissenting opinion, is at <http://www.mtnbizlaw.com/mtsup98/1998MT321.html >. A similar speeding conviction at 102 mph was later overturned on the same basis in State of Montana v. John Joseph Leuchtman II, 1998 MT 325N, No. 97-134, which can be found at <http://www.mtbizlaw.com/mtsup98/1998MT325N.htm>.

Exercises

1. According to the Supreme Court of Montana, why are vague laws bad?

2. Choose one of the ten articles of the Bill of Rights that uses vague words and explain why the vague language is not bad.

3. City officials in Murfreesboro, Tenn.—about 30 miles south of Nashville—say one smelly employee is responsible for a new policy that requires all city employees to smell nice at work.

   "No employee shall have an odor generally offensive to others when reporting to work. An offensive odor may result from lack of good hygiene, from an excessive application of a fragrant aftershave or cologne or from other cause."

   The definition of body odor was left intentionally vague.

   "We'll know it when we smell it," said City Councilman Toby Gilley

   Parade Magazine, Dec. 28, 2003, says from the *Knoxville* (Tenn.) *News-Sentinel*

   Explain why you believe the new law is or is not too vague.

4. Felonies are crimes punishable by one year or more of imprisonment or death.

> Misdemeanors are crimes punishable by one year or less of imprisonment and by community punishments such as probation, fines, and community service.
>
> *Criminal Justice*, G. F. Cole and C. E. Smith, p. 4

a. Give the definitions of “felony” and “misdemeanor” in your state.
b. Find the definitions of “burglary” and “robbery” in your state.
c. Define what you think “victimless crime” should mean.

5. Give the definition in your state of “insane” that allows a defendant not to be guilty due to insanity and comment on whether it is too vague.

Arguments

2 OJ Verdicts?

The standard in a criminal case is that the government has to prove the defendant guilty "beyond a reasonable doubt." For a civil case brought by one person against another, however, the standard is much lower. To collect damages you only have to prove with "a preponderance of evidence" that the other side did you harm. That's why there's no contradiction in finding O. J. Simpson innocent of murder, but liable for the death of his ex-wife.

In a civil case one person or company attempts to collect damages from another. According to the instructions the judge gives in California:

> The plaintiff has the burden of proving by a preponderance of the evidence all of the facts necessary to establish . . .

"Preponderance of evidence" means:

> Such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.

For a criminal case, the government must prove the issue of guilt beyond a reasonable doubt. In the California Code, "reasonable doubt" is defined:

> It is not mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case, which, after the entire comparison and consideration of the evidence, leave the minds of jurors in that condition that they can not say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

A Different Notion of Justice

Sixteen suspected al-Qaida fighters who fled Afghanistan have been handed over by Iran to Saudi Arabia, which is interrogating them, the Saudi foreign minister said.

"The innocent will be let go and the guilty ones will be incarcerated and go to trial," Prince Saud al-Faisl said.

The Associated Press, October 12, 2002

Exercises on arguments and the law

1. Do these definitions give objective criteria for the jury? Explain.

2. How would you rewrite these two definitions to put them on the scale from weak to strong?

3. In some trials of cases concerning mortgages, separate property in a marriage, naturalization questions, and others, a different standard of proof is required:

> The plaintiff has the burden of proving by clear and convincing evidence.

"Clear and convincing evidence" is understood in California as:

> Clear, explicit and unequivocal; so as to leave no substantial doubt; sufficiently strong to command the unhesitating assent of every reasonable mind.

How does this compare to the standards for criminal and civil cases?

Repairing Arguments

> A judge dismissed a claim that Canadian Defense Minister Art Eggleton, Citibank and several drug-store chains were part of a conspiracy to kill a complainant because he is a Martian. Turning the tables on Rene Joly, 34, the judge dismissed the case on the grounds that Joly claimed not to be human and therefore had no status before the courts.
>
> *USA Today*, May 20, 1999

Implied Contracts

In law, there is a theory of implied contracts. Lee sees a car on the street with a sign that says, "For Sale: $1200—new tires, great stereo." He likes it, meets the guy who's selling it, tries it out, then gives the guy $100 and says he'll give him the rest next week. Lee then has a contract to buy the car, even if it's not written down and nothing was said about exactly when he'd pay him. Since nothing else was said, it is implicit that the price is $1200.

> An implied contract is one, the existence and terms of which are manifested by conduct.
>
> California Civil Code 1621

Exercises for arguments and the law

For each of the following answer these questions:

Argument? (yes or no)

Conclusion (if unstated, add it):

Premises:

Additional premises needed to make it valid or strong (if none, say so):

Classify: valid strong ———— weak

Good argument? (Choose one and give an explanation.)

- It's good (passes the three tests).
- It's valid or strong, but you don't know if the premises are true, so you can't say if it's good or bad.
- It's bad because it's unrepairable (state which of the reasons apply).

1. Crime has many kinds of costs. First, there are the economic costs—lost property, lower productivity, and the cost of medical care. Second, there are psychological and emotional costs—pain, trauma, and lost quality of life. Third, there are the costs of operating the criminal justice system.

   A recent study estimates the total annual cost of tangible losses from crime (medical expenses, damaged or lost property, work time) at $105 billion. The intangible costs (pain, trauma, lost quality of life) to victims are estimated at $450 billion. Operating the criminal justice system costs taxpayers more than $70 billion a year. These figures do not include the costs of occupational and organized crime to consumers. In addition, there are the costs to citizens who install locks and alarms or employ guards and security patrols (National Institute of Justice, 1996, *Victim Costs and Consequences*).

   G. F. Cole and C. E. Smith, *Criminal Justice*, p. 15

2. Doing justice is the basis for the rules, procedures, and institutions of the criminal justice system. Without the principle of justice, there would be little difference between criminal justice in the United States and in authoritarian countries. Fairness is essential. We want to have fair laws. We want to investigate, judge, and punish fairly. Doing justice also requires upholding the rights of individuals and punishing those who violate the law. Thus, the goal of doing justice embodies three principles: (1) offenders will be held fully accountable for their actions, (2) the rights of persons who have contact with the system will be protected, and (3) like offenses will be treated alike and officials will take into account relevant differences among offenders and offenses.

   G. F. Cole and C. E. Smith, *Criminal Justice*, p. 26

3. Eileen A. Firkus, widow of Alexander T. Firkus, Relator v. James J. Murphy, Respondent, and State Treasurer, Custodian of the Special Compensation Fund, Respondent, No. 45950. Supreme Court of Minnesota, Nov. 5, 1976:

   Murphy, an independent timber logger who was engaged in a rush logging project, became stalled in the woods on March 23, 1972, when his automobile malfunctioned. He walked several miles from the woods to a forest ranger station where his wife and decedent Firkus found him. Firkus gave him a ride home. Early the next morning, Firkus, Murphy's brother-in-law, drove Murphy back into the woods and remained with Murphy there. Firkus had been unemployed since October, 1971, recovering from a back injury that disabled his right hand.

   When they arrived in the woods, Murphy proceeded to drive his tractor and skidded the logs out of the woods. Firkus marked these logs according to size, which Murphy would otherwise have done himself for later inspection and inventory. Murphy climbed off the tractor at one point, whereupon Firkus climbed onto it. Murphy told him to get off the tractor, remonstrating that Firkus did not know how to handle it and would be unable to do so with his injured hand. Firkus did not climb down from the tractor, saying that he drove the same kind of tractor on his farm.

   Murphy, thinking his brother-in-law was so strongminded and stubborn that it would be fruitless to argue with him, thereupon undertook to explain to Firkus how to operate the winch. Murphy, however, hooked and unhooked the logs being skidded from the woods, a part of the task he had otherwise done himself as part of the tractor operation. On the second haul Murphy told Firkus he was driving with too much cable out; and on the third or fourth haul the tractor overturned and Firkus was fatally injured.

   The issue was whether Firkus was performing a service for hire or whether, as the commission found, he was a volunteer. This is a question of fact. Our function on review is to determine whether the [Workers' Compensation Board] commission's findings are reasonably supported by the evidence. [citation]

   The evidence upon which claimant relied is: That Firkus performed some work; that some weeks prior to the fatal accident Murphy advised Firkus that when he was able to work Murphy would hire him; that Murphy had attempted to hire someone to help him skid logs on this project but had been unsuccessful; and that Firkus had told a deputy sheriff that he was "going into the woods" with Murphy, an expression commonly used to refer to logging work. Claimant additionally argued that she was entitled to a presumption that one injured while in another's service is an employee.

   There was, however, no direct evidence that Murphy intended to employ Firkus on that day or that he had requested more than a ride back into the woods. While Murphy may have obtained some benefit from Firkus' log marking, there is no clear evidence that Firkus expected payment

for his effort. Murphy testified that he did not intend Firkus to be his employee and that he did not intend to compensate him for his activity. The commission, of course, could credit that testimony. It is clear that Murphy did not request Firkus to mount the tractor but that Firkus did so on his own initiative. The fact that Murphy did not force Firkus off the tractor is not determinative; the fact that Murphy asked Firkus to get off the tractor after he had mounted it supports Murphy's testimony that he did not intend to compensate Firkus for his activities. . . .

Whether or not we might have decided the case differently were we in the position of the commission, the dispositive issue is whether the evidence reasonably supports the commission's factual finding that decedent was a volunteer and had no implied contract of employment. We hold that the commission's finding is not without requisite evidentiary support. Affirmed.

Scott, Justice (dissenting)

The record seems convincing that the decedent was an employee. Where the conclusions of the commission are manifestly contrary to the evidence they cannot stand. [citation]

Murphy attempted to hire Firkus to assist him in December or January. Before the incident involved here, Firkus had told the local deputy sheriff that he "was going into the woods" with Murphy—a phrase commonly understood as meaning that he was going logging. Murphy did not merely borrow Firkus' car. Firkus got up before 6 a.m. and drove him 30 miles to the worksite for this rush job. While Murphy worked, Firkus began to mark log sizes on the timber—an activity which benefited Murphy. Although Murphy protested when Firkus climbed on the tractor because Murphy feared the latter would be unable to operate it with his injured hand, Murphy acquiesced and assisted Firkus by explaining to him how to operate the winch. Firkus' service in operating the tractor enabled a division of labor whereby Murphy was able to hitch and unhitch logs on the ground while Firkus remained on the tractor. In marking the logs and operating the tractor, Firkus was providing aid which Murphy previously had offered to pay another party to provide. According to a statement given by one witness, Murphy's first explanation to the witness after the accident was, "a tractor tipped on my helper." As the dissenting member of the three-man Workers' Compensation Board stated:

> "I do not believe the alleged employer's testimony in this matter. I do not believe that it was the intention of Mr. Firkus and Mr. Murphy that Mr. Firkus do the work in the woods until at least noon under the circumstances of this case without an agreed amount of payment. If Mr. Firkus had been merely interested in getting the car of Mr. Murphy in operation, he would have done that and would not have intended to spend the other hours in the woods."

It is unlikely that a man who had been unemployed for several months would get up before 6 a.m., drive 30 miles into the woods and remain at a worksite assisting another on a rush work project, and not expect compensation. Murphy's assistance to Firkus in using the winch and the resulting division of labor support a contrary finding. I would reverse.

a. What did the court mean when it said that the issue was a "matter of fact"?

b. State clearly the premises that the court used in concluding that Firkus was not an employee. (You may circle them and list the numbers.)

c. State clearly the premises that Justice Scott used in concluding that Firkus was an employee. (You may circle them and list the numbers.)

d. Did the court or Justice Scott have the better argument? Why?

Evaluating Premises

Accused's Past Bad Acts

Dick: Did you hear that Bob stood up Laura on Friday night so he could go out with Beth?

Tom: That's just like him.

This is the kind of rumor that's so hard to combat. Of course it must be true, because that's just the sort of thing he's been known to do in the past. But reputation is not evidence. People change, and other people make up stories. South Dakota recognizes this by allowing reputation to matter for some issues in court, but not for establishing that someone actually committed a crime.

§ 19-12-5. (Rule 404 (b)) Evidence of other acts generally inadmissible—Exceptions.

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

A clear example and discussion of when to admit evidence of past bad acts can be found in State of Minnesota v. David Forsman, No. 46927, Dec. 12, 1977 (260 North Western Reporter, 2d series, p. 160).

Exercise

1. State the exceptions that are allowed in your state for admitting evidence of prior bad acts in criminal proceedings. Do you agree that information about past bad acts is germane, or could it be prejudicial? Explain.

Deceptive Advertising

(News Release from the Federal Trade Commission, May 27, 1999.
http://www.ftc.gov/opa/1999/9905/doans.htm)

Doan's Pills Must Run Corrective Advertising:
FTC: Ads Claiming Doan's Is Superior In Treating Back Pain Were Unsubstantiated

The Federal Trade Commission has ordered the makers of Doan's Pills to run ads to correct misbeliefs resulting from their unsubstantiated claim that Doan's Pills are superior to other over-the-counter analgesics for treating back pain. The Order, contained in a Commission opinion announced today, would require advertising and packaging to carry the message, "Although Doan's is an effective pain reliever, there is no evidence that Doan's is more effective than other pain relievers for back pain." The order also would prohibit Novartis Corporation and Novartis Consumer Health, Inc., the marketers of Doan's, from representing that the product is more effective than other over-the-counter products unless they possess and rely upon competent and reliable scientific evidence—including at least two clinical studies—to substantiate their claims. In addition, the order would require Novartis to have scientific substantiation for any claims made regarding the efficacy, safety, benefits or performance of any over-the counter analgesic they market. Doan's has been marketed and sold for over 90 years and always has been advertised as a backache product.

Novartis, headquartered in Summit, New Jersey, is a subsidiary of Novartis AG, a Swiss pharmaceutical company.

In June 1996, the FTC charged the marketers of Doan's Pills with making deceptive back-pain relief claims in violation of federal law and announced it would seek an order prohibiting the claims in an administrative trial. The FTC charged that, contrary to the advertising claims for Doan's, there was no evidence that Novartis' pills are better than competing over-the-counter analgesics in relieving back pain. The complaint cited ads that displayed packages of Doan's and other pain relievers that contained statements such as:

> "Doan's is made for back pain relief with an ingredient [other] pain relievers don't have. Doan's makes back pain go away . . . The Back Specialist."
>
> "If nothing seems to help, try Doan's. It relieves back pain no matter where it hurts. Doan's has an ingredient these pain relievers don't have."
>
> and "Back pain is different. Why use these pain relievers? Doan's is just for back pain."

Through these and similar statements, the FTC alleged, Novartis claimed that Doan's analgesic products were more effective than other analgesics, including Advil, Aleve, Bayer, Motrin, and Tylenol, for relieving back pain. The agency charged that the claims were unsubstantiated. . . .

"The record establishes that consumers held misbeliefs about Doan's superior efficacy, that such beliefs were created by or substantially reinforced by the challenged advertising campaign, and that those beliefs are likely to linger into the future. Therefore, we find that the elements for corrective advertising are satisfied, and that corrective advertising is appropriate and necessary," the majority wrote.

The Order requires ads and packaging for Doan's pills to include, clearly and conspicuously, the message, "Although Doan's is an effective pain reliever, there is no evidence that Doan's is more effective than other pain relievers for back pain." The statement will be carried on all packaging and advertising for one year, except radio and television ads of 15 seconds or less, and until Novartis has expended on Doan's advertising an amount equal to the average spent annually during the eight-year campaign—$8 million.

Responding to arguments by attorneys for Novartis that corrective advertising would be punitive, Anthony wrote, ". . . it is not punitive to require respondent to tell the truth."

Exercises

1. Did Novartis say explicitly that Doan's is more effective than other pain relievers for back pain?

2. a. Construct an argument using the claims that are made for Doan's that Doan's is more effective than other pain relievers.

   b. Is this argument sufficiently obvious that you could assume most consumers would derive the same conclusion? Explain.

3. Did the Federal Trade Commission say that Novartis lied about the efficacy of Doan's?

Standards for Judging the Truth of a Witness' Statement

Montana Statute 26-1-302. Witness presumed to speak the truth—how presumption rebutted.

A witness is presumed to speak the truth. The jury or the court in the absence of a jury is the exclusive judge of his credibility. This presumption may be controverted and overcome by any matter that has a tendency to disprove the truthfulness of a witness' testimony; such matters include but are not limited to:

(1) the demeanor or manner of the witness while testifying;

(2) the character of the witness' testimony;

(3) bias of the witness for or against any party involved in the case;

(4) interest of the witness in the outcome of the litigation or other motive to testify falsely;

(5) the witness' character for truth, honesty, or integrity;

(6) the extent of the witness' capacity and opportunity to perceive or capacity to recollect or to communicate any matter about which he testifies;

(7) inconsistent statements of the witness;

(8) an admission of untruthfulness by the witness;

(9) other evidence contradicting the witness' testimony.

Montana Statute 26-1-303. Instructions to jury on how to evaluate evidence. The jury is to be instructed by the court on all proper occasions that:

(1) their power of judging the effect of evidence is not arbitrary but to be exercised with legal discretion and in subordination to the rules of evidence;

(2) they are not bound to decide in conformity with the declarations of any number of witnesses which do not produce conviction in their minds, against a less number or against a presumption or other evidence satisfying their minds;

(3) a witness false in one part of his testimony is to be distrusted in others;

(4) the testimony of a person legally accountable for the acts of the accused ought to be viewed with distrust;

(5) if weaker and less satisfactory evidence is offered and it appears that it is within the power of the party to offer stronger and more satisfactory evidence, the evidence offered should be viewed with distrust.

Exercises

1. Compare each of (1)–(9) in 26–1–302 to the criteria given in the text for accepting or rejecting an unsupported claim. If one is sufficiently different from those in the text, give an example that fits that criterion but not the ones in the text.

2. Compare each of (1)–(5) in 26–1–303 to the criteria given in the text for accepting or rejecting an unsupported claim. If one is sufficiently different from those in the text, give an example that fits that criterion but not the ones in the text.

3. Explain why in a court of law you are sworn to "tell the truth, the whole truth, and nothing but the truth," rather than just sworn to tell the truth.

4. You're on a jury where two ballistics experts disagree on whether the bullet that killed the victim came from the defendant's gun.
   a. How would you decide which to believe?
   b. What consequences would there be for suspending judgment?

Expert Witnesses

Here is how Colorado courts determine who is an expert witness in medical malpractice actions or proceedings:

> Colorado Statute 12-64-401:
>
> *Qualifications as expert witness in medical malpractice actions or proceedings.*
>
> No person shall be qualified to testify as an expert witness concerning issues of negligence in any medical malpractice action or proceeding against a physician unless he not only is a licensed physician but can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the action or proceeding against the physician defendant, he was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the claim on the date of the incident. The court shall not permit an expert in one medical subspecialty to testify against a physician in another medical subspecialty unless, in addition to such a showing of substantial familiarity, there is a showing that the standards of care and practice in the two fields are similar. The limitations in this section shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

Exercises

1. Set out criteria that you think should be used in determining who can be called as an expert witness in actions or proceedings concerning the functioning of automobiles or trucks.

2. a. Why is there not a separate statute governing who can be called as an expert witness for each other subject of an action or proceeding?

   b. Give what you consider general criteria for who can be called as an expert witness.

   c. Compare your answer to (b) to the statute governing expert witnesses in your state.

Counterarguments

Exercises

1. Evaluate the following argument. Indicate what argument is being refuted, and how each part of it is challenged. Say whether the refutation is good or not.

   The State's primary claim is that death is a necessary punishment because it prevents the commission of capital crimes more effectively than any less severe punishment. The first part of this claim is that the infliction of death is necessary to stop the individuals executed from committing further crimes. The sufficient answer to this is that if a criminal convicted of a capital crime poses a danger to society, effective administration of the State's pardon and parole laws can delay or deny his release from prison, and techniques of isolation can eliminate or minimize the danger while he remains confined. The more significant argument is that the threat of death prevents the commission of capital crimes because it deters potential criminals who would not be deterred by the threat of imprisonment. The argument is not based upon evidence that the threat of death is a superior deterrent. Indeed, as my Brother [Justice] Marshall establishes, the available evidence uniformly indicates, although it does not conclusively prove, that the threat of death has no greater deterrent effect than the threat of imprisonment.

   From Justice Brennan's opinion in *Furman v. Georgia,* 408 U.S. (1972)

2. Analyze the argument against the death penalty given in Thucydides' *The Peloponnesian War,* Book 3, 43–46.

3. A Law Governing Household Chores?

   The [German] Greens party, Chancellor Gerhard Schroeder's coalition partners, wants by law to require men to do 50% of housework. The Greens have wanted to reform the law to make it clear that men have a duty to cook and clean at home and not leave all the chores to their long-suffering wives, the daily *Bild* said. "If both partners are working, the 50-50 principle also has to hold true over the housework," party spokeswoman Irmingard Schewe-Gerik said. *Bild* cited statistics that women work 16 hours more per week than men because they have to cook, clean and take out the garbage.

   USA Today, May 20, 1999

   Argue either for or against the passage of such a law in your state.
   Be especially careful to make clear what the issue is.

Fallacies

Relevance in the Law

MONTANA
Rules of Evidence
Rule 401. Definition of relevant evidence.
Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Relevant evidence may include evidence bearing upon the credibility of a witness or hearsay declarant.

Exercise

1. Compare this definition of "relevance" to the definition given in the text. Can you find any case where the one definition applies, but the other doesn't?

Complex Arguments

Exercises

Jury Instructions: Overturning a Conviction

Willie Pitka, Jr. v. State of Alaska, No. A-6901, Court of Appeals of Alaska, Feb. 4, 2000

Willie Pitka, Jr. was convicted, following a jury trial, of burglary in the first-degree and sexual assault in the first-degree for entering the residence of T.N. with the intent to commit sexual assault and then sexually assaulting her. Pitka argues that Superior Court Judge Richard D. Savell erred in failing to instruct the jury on an element of sexual assault in the first-degree: proof that Pitka recklessly disregarded T.N.'s lack of consent. We conclude that Judge Savell erred in failing to instruct on this element of sexual assault in the first-degree.

T.N. lived with her daughter Edna in a house in Upper Kalskag. At trial, Edna testified that she left the house on the evening of March 7, 1997. She stated that her mother was drunk. Edna's brother, Mike Pitka, was present at the residence and Edna assumed that he would stay overnight with her mother.

T.N. testified that on the evening of March 7 she went to bed at 11:00 p.m. She woke up and discovered Willie Pitka, Jr. on top of her. According to T.N., Pitka managed to remove her clothing while lying on top of her. She stated that Pitka put his penis inside of her and she was unable to push him away. Afterwards, she said that Pitka fell asleep next to her.

When Edna returned the next morning between 8:00 and 8:30 a.m., her brother Mike Pitka was in the house making coffee. Edna went to her mother's room and saw Pitka lying next to her mother, fully clothed, except for shoes and socks. Edna went into the kitchen to talk to Mike Pitka, who had no idea that Willie Pitka, Jr. was there. Apparently Mike Pitka had not stayed at T.N.'s residence the previous evening. Edna went back to the room and woke Willie Pitka, Jr. up and told him to leave. She then left the house to call state troopers and the health aid to report that her mother had been raped. When Edna returned from making these calls, Mike Pitka and Willie Pitka, Jr. were at the kitchen table drinking. Edna again told Willie Pitka, Jr. to leave. Following an investigation, Willie Pitka, Jr. was charged with burglary in the first-degree and sexual assault in the first-degree based upon this incident.

Prior to trial, the state made an offer of proof that it had available three women who would testify that Pitka had engaged in nonconsensual sexual misconduct with them. The state asserted that the testimony of these witnesses would be admissible under A.R.E. 4040(b)(3), which provides that in a prosecution for the crime of sexual assault, evidence of similar sexual assaults "is admissible if the defendant relies on a defense of consent." Judge Savell stated that if Pitka presented evidence of consent or argued that T.N. consented to the sexual activity, these incidents would be admissible under A.R.E. 4040(b)(3). Pitka did not testify and apparently decided not to produce any evidence of lack of [sic] consent to avoid having these witnesses testify.

At the close of the evidence, the court and counsel discussed jury instructions. Pitka argued for an instruction which required the jury to find that he "recklessly disregarded T.N.'s lack of consent" in order to convict him of sexual assault in the first-degree. The elements of sexual assault in the first-degree were set out in Pitka's proposed jury instruction as follows:

> First, that the event in question occurred at or near Upper Kalskag, in the Fourth Judicial District, State of Alaska, and on or about March 8, 1997;
>
> Second, that Willie Pitka, Jr., knowing engaged in sexual penetration with T.N.,

> Third, that the penetration occurred without the consent of T.N.; and
> *Fourth, that the defendant recklessly disregarded T.N.'s lack of consent.*

Relying on Alaska Criminal Pattern Jury Instruction 41.410(a)(1), Judge Savell refused to give this instruction. In Pattern Jury Instruction 41.410(a)(1), the element that the defendant recklessly disregarded the victim's lack of consent is in brackets. According to the use notes accompanying the pattern instruction, "[t]he bracketed fourth element in this instruction must be included if the defense [of] consent is at issue." Judge Savell concluded that since Pitka had not presented any evidence of consent in order to avoid having the state present prior sexual assaults, consent was not an issue in the case and therefore he would not instruct the jury that it had to find that the defendant recklessly disregarded T.N.'s lack of consent. Judge Savell stated that, if Pitka argued that T.N. consented, he would stop the argument and allow the state to call its witnesses. Pitka responded that he would be arguing that all of the elements of the offense were not proven. Judge Savell conceded that Pitka could argue that the jury could disbelieve T.N., but reiterated that if Pitka argued that T.N. consented, he would allow the state to present its witnesses. Judge Savell gave the following instruction on the elements of sexual assault in the first degree.

> First, that the event in question occurred at or near Upper Kalskag, in the Fourth Judicial District, State of Alaska, and on or about March 8, 1997;
> Second, that Willie Pitka, Jr., knowing engaged in sexual penetration with T.N.,
> Third, that the penetration occurred without the consent of T.N.

We conclude that Judge Savell erred in giving this instruction. AS11.41.410(a) defines the crime of sexual assault in the first-degree as engaging "in sexual penetration with another person without consent of that person." In *Reynolds v. State,* the defendant argued that the sexual assault statute was unconstitutionally vague because a person could be convicted of violating the statute without being aware that he was acting without the consent of the other person. We concluded, however, that under the rule of construction AS11.81.610(b)(2), the sexual assault statute had to be construed to require proof that the defendant recklessly disregarded his victim's lack of consent:

> In order to prove a violation of AS11.41.410(a)(1), the state must prove that the defendant knowingly engaged in sexual intercourse and recklessly disregarded his victim's lack of consent. Construed in this way, the statute does not punish harmless conduct and is neither vague nor overbroad.

In *Russell v. State.* we again recognized that the reckless disregard of the victim's lack of consent was an element of the offense:

> In general, a charge of first-degree sexual assault requires proof of two main elements: first, that the act of sexual penetration occurred without the victim's consent, and second, that the defendant acted recklessly with regard to the victim's lack of consent.

Those decisions make it clear that the instruction which Judge Savell gave the jury omitted an element of the offense of sexual assault in the first degree: that the defendant recklessly disregarded T.N.'s lack of consent to sexual intercourse.

The trial court is under a duty to instruct the jury on the essential elements of an offense. Further, it is constitutional error not to instruct on an essential element of a crime "because it lets [the jury] convict without finding the defendant guilty of that element." As the U.S. Supreme Court has stated, both the Fifth and Sixth Amendments to the United States Constitution require that criminal convictions "rest upon a jury determination that the defendant is guilty of every element of the crime with which he is charged, beyond a reasonable doubt." Under the court's instructions, the jury was not required to find an element of an offense for which Pitka was

charged: that Pitka had recklessly disregarded T.N.'s lack of consent. Since the jury did not find this element of sexual assault in the first degree, we must reverse Pitka's conviction for this offense.

Pitka was convicted of burglary on the theory that he entered T.N.'s residence with the intent to commit the crime of sexual assault. Pitka has not argued that the defect in the sexual assault conviction affected his conviction for burglary and we find no prejudice. We accordingly affirm Pitka's conviction for burglary in the first-degree.

1. State the argument given by Judge Savell that he should instruct the jury that:
   To convict Pitka of sexual assault in the first-degree the state must prove that Pitka acted with reckless disregard of the victim's lack of consent.

2. Show that Judge Savell's argument rests on one of the ways of arguing backwards with conditionals. [Hint: Note that Pattern Jury Instruction 41.410(a)(1) uses "If " not "Only if."] Restate the mistake in terms of confusing necessary and sufficient conditions.

3. What is wrong with the court's claim: "Pitka responded that he would be arguing that all of the elements of the offense were not proven."

4. State the premises in outline form by which the court refuted Judge Savell's reasoning. Clearly mark any subargument.

Analogies

> In the United States . . . there is a well-known saying . . . that the law is what the judges say it is. This is, properly understood, a realistic statement of fact. The judge has to decide how to characterize a legal problem presented to him, which principles of law to apply to the problem, and how to apply them in order to arrive at a result. Whether the principles he chooses are embodied in legislation or in prior decisions, they achieve substantive meaning only in the context of a specific problem, and the meaning attributed to them in that context is necessarily the meaning supplied by the judge.
>
> John H. Merryman, *The Civil Law Tradition*, 2nd ed.

Civil law vs criminal law

> In criminal cases if the defendant is found guilty, the judge imposes the penalty. So in civil cases if the defendant is found liable—which is analogous to guilty—the judge should decide the damages. But he doesn't; the jury does.

What's wrong with this analogy?

In a criminal case the penalty is a judgment given for society against the defendant. It is not a matter of deciding whether certain claims are true. But in a civil case the "actual" damages are not a penalty at all, but simply paying back what was lost or damaged. The jury, as for any question about the facts of the case, has to decide how much that is.

The correct analogy is between the penalty in a criminal case and the *punitive damages* in a civil case. The punitive damages are a penalty imposed for society in order to dissuade similar harm, and that is not a matter of fact. Nonetheless, punitive damages, too, are determined by the jury in the United States, though they are often reduced on appeal.

Further Reading

A clear example of a court overturning many years of precedent is the Montana Supreme Court decision in 2000 MT 334 (No. 98-441), where the liability of animal owners under Montana's "open range" law was completely reversed.

You can find this at <http://www.mtbizlaw.com/mtsup2000/2000MT334.htm>.

Exercises

Counting Ballots Fairly

The counting of ballots in the election for President of the United States in 2000 was contested in Florida. Manual recounts were going ahead in some counties when one court gave an injunction stopping the recount. That was appealed to the Supreme Court of Florida. The following is from the unrevised transcript of the oral arguments before the Court on Dec. 7, 2000 in Gore vs Harris (see the Broadcast Archives at <http://wfsu.org/gavel2gavel>).

(A chad is the part of a paper ballot that is meant to be punched out when voting for a candidate. A dimpled chad is a chad that has not been detached from the ballot but has a mark that shows the instrument for pushing the chad through was pressed against it.)

Justice Shaw: Well, for example, if, right now in Palm Beach County, chads that are not detached at all but, I guess, are these dimpled chads are being counted, but in Broward County they are not counted. Does that say that one vote is being counted in one county and not in the other? If that is an argument, then what do you say to Governor Bush's argument and the Secretary of State's argument that, for those counties that did not have manual recounts but also have punch cards— because I guess not all counties have the punch cards—that if those votes did not get manually recounted, that that is unfairly giving certain counties a greater voice in this election than other counties?

Mr. Boies: Well, the first thing, your honor, is that any candidate could have requested a manual recount, in any county, so that the manual recount provision is something that, by statute, is given to the candidates. And wherever there has been a manual recount requested, the counties have gone forward and, indeed, some of the results that have already been certified have been results that included manual recounts.

1. State as an analogy the argument that Justice Shaw attributes to Governor Bush and the Secretary of State of Florida.

2. How does Mr. Boies refute that analogy? What difference is essential, and how would that show that the general principle needed for that analogy is false?

Cause and Effect

Further Reading

Galileo's Revenge: Junk Science in the Courtroom by Peter Huber gives the history of how bad science has come to replace good cause and effect reasoning in courtrooms across the United States.

Exercises

1. *Murder and the Right to Die*

The following two articles appeared on the editorial page of *USA Today*, May 24, 1999. The first is by the editorial board of that paper. Compare them and write the best argument you can for whether the mother should (a) be charged with murder, and/or (b) be convicted of murder. Note particularly any use of analogies by either of these authors or in your own argument.

Florida murder charge could violate right-to-die principle

The hard facts out of Florida are these: On March 8, Shirley Egan, 68, shot her daughter, Georgette Smith, 42, after learning the daughter was thinking about putting her in a nursing home. Among other things, the mother stands accused of attempted murder.

So far, so fair. The daughter didn't die. But the bullet left her hopelessly paralyzed. "All I can do is wink my eyes, wiggle my nose, wiggle my tongue. I can't move any other part of my body," she said in court papers. "I can't live like this." And so 72 days after being shot, she was disconnected from life support, at her own request and with a judge's consent. She died in less than an hour.

Again: So far, so fair. The daughter chose to end her life with dignity rather than live it in a way she believed was hopeless and intolerable. A judge agreed she could make that choice, and an essential right was exercised. Yet as a result, prosecutors are contemplating whether to charge the mother with murder. Although still distant, the answer to that rare question bears upon the practice and obligations contained in living wills and the right to die.

The argument for charging the mother is this: She fired the bullet that paralyzed her daughter. The paralysis then caused the daughter's death when she was disconnected from her respirator. That, say some analysts, is a case for murder.

It's also a case for Rube Goldberg. Criminal law requires that no matter how far removed a result is from its cause, the linkage be direct. In this case, the linkage between gunshot and death was broken by the daughter's intervening decision, endorsed by a judge. You may argue that the judge was too quick; that people with such grave injuries need more time to adjust. But that's beside the point. It is not murder when a person makes a deliberate choice to end his or her own life.

To that end, all 50 states recognize living wills, which provide for the termination of life-support systems under certain conditions. Those provisions and a broader right-to-die law enacted in Oregon (and being debated elsewhere), do not assign responsibility further than to the person making the choice.

That's exactly the right principle. Yet if prosecutors bring murder charges in this case, they turn that principle on its head. Such a theory of murder is like arguing that the person who exercises the wishes of another person's living will might be responsible if the patient could have been kept alive. It stands in contrast to the decisions made by

millions of conscientious Americans to authorize doctors and relatives to provide them with a dignified death.

Prosecutors have no obligation to promote social policy, but they have enormous discretion. And in this case, it's worth exercising. Even attempted murder could get the mother a life sentence. So why tamper with the right-to-die principle? The daughter died of her own volition, a choice that deserves the respect of both law and its defenders.

Mother deserves murder charge

A woman shoots her daughter, leaving the daughter paralyzed from the neck down and permanently dependent on a ventilator for breathing. Two months later, the daughter has the ventilator turned off, and she dies. Is the mother guilty of murder? Very clearly, yes.

The law holds people responsible for the consequences of their actions. If you try to kill someone, and your action leads to the person's death, it is murder, even if the death occurs in an unintended way.

Assume the mother had shot her daughter and left the daughter for dead alongside a road. If the daughter survived the bullet wound but was killed when run over by a passing car, the mother would be guilty of murder. She tried to kill her daughter, and she put her daughter in the car's path.

Defendants are only responsible for the consequences of their actions that are reasonably foreseeable, but it is reasonably foreseeable that someone will refuse a ventilator after suffering a devastating and permanent injury. Every day, patients throughout the country die when life-sustaining treatment is withdrawn.

Defendants are sometimes absolved of responsibility if the victim voluntarily takes action that brings on death. However, that principle applies only if the victim acts foolishly. If a man throws his wife out on a cold night, and she fails to take refuge in a readily accessible shelter, he is not liable for murder if she freezes to death. By contrast, it is understandable when a seriously and irreversibly injured victim refuses life-sustaining treatment.

Principles from right-to-die law also support a murder charge. When a ventilator is turned off and the patient dies, the question of whether the doctor has committed murder arises. The law is clear that turning off a ventilator is not murder because the patient dies from the underlying illness or injury. The illness or injury caused the patient's death, not the withdrawal of the ventilator.

There may be reasons not to prosecute the mother for murder. Perhaps she was mentally incompetent. It would be wrong, however, to excuse her action because the daughter asked to have the ventilator removed.

David Orentlicher, Professor and Co-Director
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2. *Cause and Negligence in a Grain Elevator*

Helmuth Krehnke v. Farmers Union Co-Operative Association
No. 41246, Supreme Court of Nebraska, December 21, 1977.

[Note: A grain elevator is a large, usually circular building many stories high in which grain is stored. Grain is placed in it by using a conveyor belt to lift it to the top where it falls into the silo.]

In separate petitions filed in the District Court for Colfax County, plaintiffs Helmuth Krehnke and his wife Leola, alleged that Helmuth had suffered personal injuries and other damages proximately caused by the negligent failure of defendant Farmers Union Co-Operative Association to properly inspect and maintain an electric manlift in its grain elevator. . . . We shall hereinafter refer to Helmuth, one of the appellants herein, as plaintiff, and to Farmers Union Co-Operative Association, appellee, as defendant. Plaintiff specifically alleged that defendant's failure to properly inspect and maintain the lifting mechanism and safety brake of the manlift caused it to plummet to the bottom of its shaft when plaintiff was riding therein. Plaintiff prayed for special and general damages. Defendant admitted that plaintiff had been injured in an accident in its manlift, but denied plaintiff's allegations of negligence, and alleged that his injuries were proximately caused or contributed to by the negligence of the plaintiff in a degree more than slight. Specifically, defendant alleged that plaintiff failed to inquire about or determine the lifting capacity of the manlift before operating it; and that plaintiff operated the manlift when he knew or should have known that it was loaded beyond its lifting capacity. . . .

The facts relevant to this appeal are as follows. The manlift in question was installed in defendant's elevator approximately 20 years ago and, as its name implies, was primarily designed to carry workmen to the top of the grain elevator so that they could direct grain into the appropriate part of the elevator. The car of the manlift consisted of a wire cage on three sides, the fourth side remaining open. The interior floor space of the cage was 2 feet square. It was an electric manlift, and the lifting mechanism was located at the top of the shaft. A counterweight was attached to the end of the cable which was used to raise and lower the manlift. The capacity of the manlift was estimated by plaintiff's expert witness to be about 300 pounds, but he also stated that it would take 171 pounds more than the weight of the plaintiff (235 pounds) and the weight of the cage itself (270 pounds) to cause the counterweight to slide, that is to say, to cause the manlift to be overloaded to the extent that it would fall. The manlift had an automatic safety brake, which was activated by a rope and governor. If the manlift would begin to fall too rapidly, a clamp on the rope would cause "dogs" extending from the cage to catch or imbed themselves on wooden rails which were located on both sides of the manlift shaft.

Plaintiff was an employee of a construction company which was engaged to install certain equipment on the top of defendant's grain elevator. Plaintiff was an experienced workman in this field, and was familiar with grain elevators and their operation. He was also familiar with the operation of manlifts such as the one in this case. In carrying out the job at defendant's elevator, plaintiff regularly used the manlift to transport himself to the top of the grain elevator, although he apparently did not use the manlift to transport equipment and materials. Plaintiff acknowledged that the manlift worked properly prior to the accident.

On October 7, 1971, the installation on the elevator having been completed, plaintiff and a coworker were removing equipment from the top of the elevator. Plaintiff admittedly was using the manlift to take some equipment to the ground, and testified that he placed one oxygen bottle and one acetylene bottle in the manlift, sent the manlift to the ground floor, and "yelled down" for someone to remove the two bottles. Plaintiff stated that the manlift returned to the top, the bottles were gone, and that he then entered the cage with a portable welder and a small box of tools. As he started to descend, plaintiff heard a loud pop, a screech, and then the manlift plummeted to the bottom of its shaft.

Ivan Backes, an owner of the company which employed the plaintiff, stated that

just prior to the accident he had attempted to use the manlift to go to the top of the grain elevator, but that it had stopped after rising about 10 feet. Backes descended to the ground floor, and went outside to call to the plaintiff. Backes stated that he could not remember seeing oxygen or acetylene bottles on the manlift when he attempted to use it, or after the accident occurred. He also did not remember seeing anyone remove such bottles from the manlift.

Roger Morris, the manager of the defendant elevator company, stated that he saw Backes get on the manlift shortly before the accident, and that the oxygen and acetylene bottles were on the manlift at that time. When the manlift stopped after rising several feet with Backes and the bottles in it, Morris told Backes that there was too much weight on the manlift. Backes then returned to the ground, and Backes and Morris went outside to call to the plaintiff. Plantiff's coworker replied that plaintiff was already on his way down. When Morris and Backes went back inside the grain elevator, the manlift cage was no longer on the ground floor, and the accident occurred shortly thereafter. Morris could not remember seeing the oxygen and acetylene bottles on the ground floor, and said no one removed them from the manlift.

An expert witness testifying for the plaintiff expressed the opinion that the accident was caused by a bearing block shifting, which in turn caused gears controlling the manlift cable to become disengaged. He stated that a bolt, the purpose of which was to hold the block in place, was missing, and that two set screws designed to secure the bearing in place were not fulfilling that function. The expert also stated that the safety brake was not in proper condition, although his testimony was somewhat inconclusive on this point.

The defendant, on the other hand, presented evidence that the manlift had been periodically checked before the accident, that it had worked properly up to the time of the accident, and that it was designed only to lift people, not freight. Defendant's expert witness . . . expressed the opinion that the accident was caused by the overloading of the manlift. There is testimony in the record that any damage or irregularity found in the mechanism after the accident could have been caused by the counterweight rising and striking that mechanism as the manlift plunged to the ground due to overloading. Evidence was also introduced from which it could be inferred that the safety brake failed due to overloading, and not due to a defect in the brake itself.

Testimony of the witnesses indicated that the portable welder which was on the manlift at the time of the accident weighed 80 pounds, and was 12 inches wide, 16 inches long, and 22 inches high. The tools weighed about 5 pounds and were in a box the size of a shoe box. The oxygen and acetylene bottles were approximately 8 to 10 inches in diameter, and weighed 125 and 90 pounds respectively. However, as indicated above, there was a dispute as to whether the bottles were on the manlift at the time of the accident. If the bottles were on the manlift at that time, it would have been overloaded by approximately 135 pounds.

It was admitted at trial that there was no capacity plate in the manlift, and that the plaintiff had not been advised of the capacity of the manlift. Plaintiff acknowledged that he had not inquired about the capacity of the manlift, and that he had not looked for a capacity plate in the manlift before using it. . . .

The evidence was sufficient to permit the jury to conclude that at the time of the accident the plaintiff was descending in the manlift with a portable welder, a box of tools, and oxygen and acetylene bottles. Even the testimony of plaintiff's witnesses indicated that if all these items were on the manlift, it was overloaded by at least 135 pounds.

> Although plaintiff argues that all these items, in addition to himself, would not have fit into the manlift cage at the same time, still it appears it was not a physical impossibility. . . .
>
> Under the particular circumstances of this case, the jury could have properly concluded from the evidence presented that the loading of a small manlift with heavy equipment in addition to the weight of the plaintiff himself constituted a failure to exercise ordinary care and prudence to avoid an open and obvious danger. A person in plaintiff's particular situation is not, contrary to his contention, free to load a small manlift with heavy items and his own weight simply because no capacity plate is in the manlift. In using an elevator a person is required to exercise reasonable care for his own protection.
>
> [The jury decided in favor of the defendant, and the court affirmed that decision.]

For the following exercises, refer to claims in the reading by circling and numbering them.

1. In terms of cause and effect, what is the effect that is the subject of this court case? Be sure to describe it with a claim.

2. What does the defendant say is the cause of that effect?

3. a. The plaintiff puts forward a claim that, if true, would show that what the defendant claims is the cause could not be true. What is it?

   b. What evidence is given to show that claim is false?

   c. Which do you believe? Why?

4. a. What does the plaintiff claim is the cause?

   b. What claims does the defendant use to try to refute that?

   c. Which do you believe? Why?

5. a. The plaintiff points to there being no capacity plate in the manlift as not being a normal condition. Why does he point that out as important?

   b. That is refuted in two ways, one by the plaintiff's own testimony and one by an observation by the court. What are those?

Writing Exercise

> Several dozen animal rights activists demonstrated in Seoul to protest a move to legalize the sale of dog meat in the country. Lawmaker Kim Hong plans to introduce legislation supporting the sale of dog meat, long considered a delicacy by some South Koreans. He argues that legalizing the sale of dog meat will ensure a humane way of butchering the dogs and hygienic conditions for distributing the meat.
>
> *USA Today, May 25, 1999*

Write the best argument you can either for or against Kim Hong's proposed law. Be sure to include the other side of the argument.