

**The Pragmatic Law: Law as a Relationship
Through Experience**

By Barry Adamson II

HN 399

Barry Adamson II

Dr. Stein

HN 399

December 12, 2001

Law and What It is Made Of

In today's society there exists a definite distinction between what law is and what it is perceived to be. For many people law is simply a set of rules that are made by a government and upheld by a court. However, when people discuss law in this manner they are only scratching the surface. Certainly, the sets of rules are important. They provide the structure and the foundation to a system that might otherwise exist in chaos. But as Karl Llewellyn points out, rules are only the shell of law; mere words that mean nothing without substance, or meaning (Llewellyn 12). What's more, is that rules are not absolute as so many people think. Rules can change over time; words can be erased or added, therefore, changing the rule. So, then, what else can be said about law if more exists than just rules? Fortunately, as I have discovered, a lot can be said about law when a person looks at law beyond the structure that man has created for it. In fact, when looking into the matter, a reader can find a whole slew of answers. So what is the crux of law, if it is not just rules and regulations? Law is about relationships and how law deals with those relationships.

In today's world, law is a concept that is inescapable. It is a very tangled web that binds everyone and everything together, and though it is only looked upon as rules, law is much more like the social order of a relationship—one that is continuously developing. For example, when two people or entities, such as corporations, become involved in a relationship several situations are established. The first is the event that brought them together in the first place, which is an experience that forms the basis of the relationship. The second is how the two people react to the experience, which solidifies the relationship. And the third is how the two act out the relationship, which defines the relationship as either friendly or hostile. All these situations make up what is called the social order of the relationship. In it we can find the reasons for a relationship to exist, whether business, friend, or adversary, and how law is attached to this social order.

Law is attached to the social order by one very specific cause: experience. Experience can be defined as an event or series of events in which a person participates. The book, The Life and Mind of John Dewey, explains that for experience to have any cognitive value, it must play a role with inquiry (Dykhhuizen 136). In law this statement is very key in understanding how relationships are formed. No matter what situation a person becomes involved in, a relationship is always established. People form friendships, marriages, and business partnerships that hold some sort of cognitive value. Cognitive value is defined as what makes a

relationship important, and the role of inquiry justifies the reasons for the relationship to exist.

In business relationships this view can be upheld, because partnerships are formed on the basis of cognitive value and inquiry. No corporation ever forms a partnership unless there is something to be gained (cognitive value). The partnership can be based on certain mechanical parts that are needed for a product of one company, but manufactured by another. In this, the two companies come together for negotiations and this experience forms a relationship governed by law, which observes the inquiry of the cognitive value.

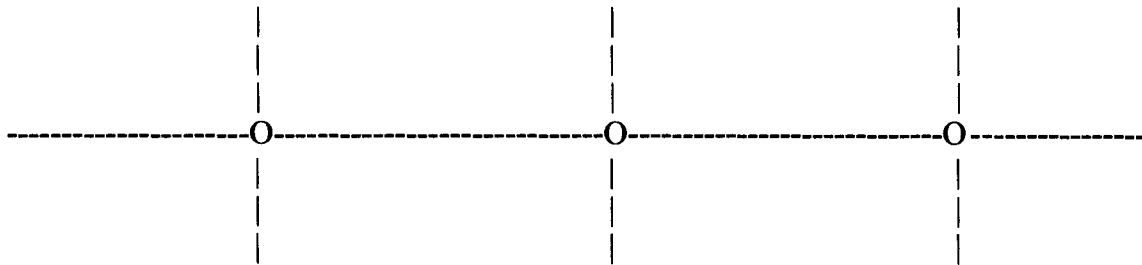
Law's responsibility in a relationship is to ask the questions: who, what, when, where, and why, should a problem arise. Law controls the relationship in this manner, because if a dispute within the relationship arises, then the solution to it can be found in the questions asked. I believe Karl Llewellyn states it best when he says, "[Law] is about the fact that ...society is honeycombed with disputes...actual and potential; disputes to be settled and disputes to be prevented (Llewellyn 12). Actual disputes can be defined as the problem within a relationship that arises immediately. Potential disputes can be defined as the problem that can arise at anytime after the relationship is established. Both disputes possess equal importance in the realm of law because each affects a relationship in the same way: they create problems that must be solved.

As stated in the example above, two companies, each sharing a cognitive value, try to form a partnership by negotiating. One company, whom we shall call Company A, needs a mechanical part for their product, but does not have the resources to manufacture it, themselves. Company B, however, does manufacture the mechanical piece for Company A's product. Company A then approaches Company B for the product, but Company B does not feel that Company A's request is legitimate. It may be that Company B feels that Company A is going to cheat it out of money. Maybe Company A has not asked Company B for a proper price. Or maybe Company B is trying to get Company A to present a higher price for a lower valued product. Either way it does not matter. There could be a number of issues that could cause the dispute. But by Company B refusing Company A, Company B has created an actual dispute. Law must then, as Karl Llewellyn expresses, "put the dispute to rest...so a solution may be achieved...bearable to the parties" (Llewellyn 12). A way in which the solution can be achieved is through a contract. A contract, which is an agreement by two entities such as businesses, establishes a solution to an immediate, actual dispute. It is the rule of law that is created by law's function in relationships. By entering into a contract, Company A can get what it wants and Company B can also get what it wants. Therefore a solution is found.

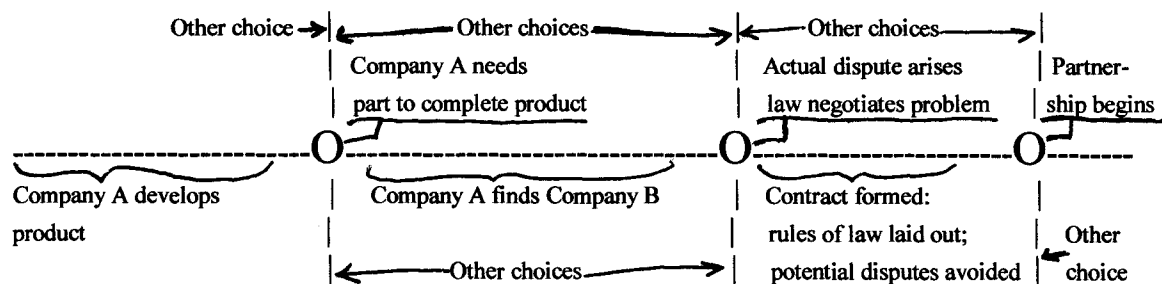
Also, in this example, the contract does one other thing: prevents future disputes. A contract is also designed to prevent probable disputes between

Companies A and B by enumerating what Company A and B can and cannot do. If a situation is to arise that causes the two companies to argue about the partnership, the contract is there to quell the problems. For example, if Company A chooses to terminate the contract with Company B sometime in the future, then the law sets up what is called a termination clause. In a termination clause the law establishes, through the rule of law, what damages occur from termination and then outlines what is proper to compensate for the damages. A contract is, essentially, a tool that establishes the validity of a relationship between two entities.

Another way to show how law works is through the diagram provided by the book, Pragmatism: The Classic Writings on page 248. It is essentially a map of experience, and can help show how law is a part of relationships:



Pragmatism: The Classic Writings states that what the diagram shows is how an experience can trigger divergent paths (Thayer 248). The circles in the diagram represent the different experiences that a person can possess (Thayer 248). The lines that extend from the circles represent the eventual choices made by the person, which also lead to new experiences that a person must choose from (Thayer 248). In this discussion of law it is wise to consider the diagram in a linear fashion because that is how experiences, especially in law, occur. One experience always follows another one through the decisions that a person makes within a relationship. Also, the decisions made within the experience affect the experiences that come after. In the case of the two companies, A and B, the situations that arise between the two can be easily mapped out as shown below:



This diagram, then, shows how the law can work in a particular situation involving two companies. But of course this is only one example. We should always remember that a contract is not everything the law has to offer when dealing with relationships, and the disputes that arise from experience. In fact, there are numerous experiences that form different types of relationships, and there are numerous ways in which law is involved in the social order of these relationships. Karl Llewellyn adds that relationships even exist when the officials of law are involved, such as in criminal cases of law, and rules of law are set in place so that the relationships can function without disputes (Llewellyn 28). However, noting the differences in relationships when dealing with law does not prevent any relationship from being able to be diagramed as shown above. Any relationship can fit within the diagram, and every relationship, therefore, is bound in some way to law.

Therefore, when a person looks into law, he or she should now recognize the fact that law is more than rules and regulations. He or she should see that the rules and regulations, though important, are only byproducts of what law really involves: relationships. Not one rule of law that is written exists purely for the sake of existing. Each has a meaning, and that meaning is defined by the experience that causes what is called disputes. Disputes form the basis of law's function in a relationship. Disputes are what allow law to investigate the social order within the relationship, whether

vs. the
are at the
level of the law -
that which brings
law into being &
makes it function

actual or potential. And disputes are what allow law to form a solution, which is also known as the rule of law.

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