

Montclair State University
Essentials of Jurisprudence
(Juri 300-01)

Working Definitions

Jurisprudence: ... *n.* (17c) **1.** Originally (in the 18th century), the study of the first principles of the natural law, the civil law, or the law of nations. **2.** More modernly, the study of the general or fundamental elements of a particular legal system, as opposed to its practical and concrete details. **3.** The study of legal systems in general. **4.** Judicial precedents considered collectively. **5.** In German literature, the whole of legal knowledge. **6.** A system, body, or division of law. **7.** Case law.

“Jurisprudence addresses the questions about law that an intelligent layperson of speculative bent — not a lawyer — might think particularly interesting. What is law? ... Where does law come from? ... Is law an autonomous discipline? ... What is the purpose of law? ... Is law a science, a humanity, or neither? ... A practicing lawyer or a judge is apt to think questions of this sort at best irrelevant to what he does, at worst naive, impractical, even childlike (how high is up?).”

Richard A. Posner, *The Problems of Jurisprudence* 1 (1990).

“Jurisprudence,” *Black’s Law Dictionary*, Bryan A. Garner, Editor in Chief. (10th ed. 2014).

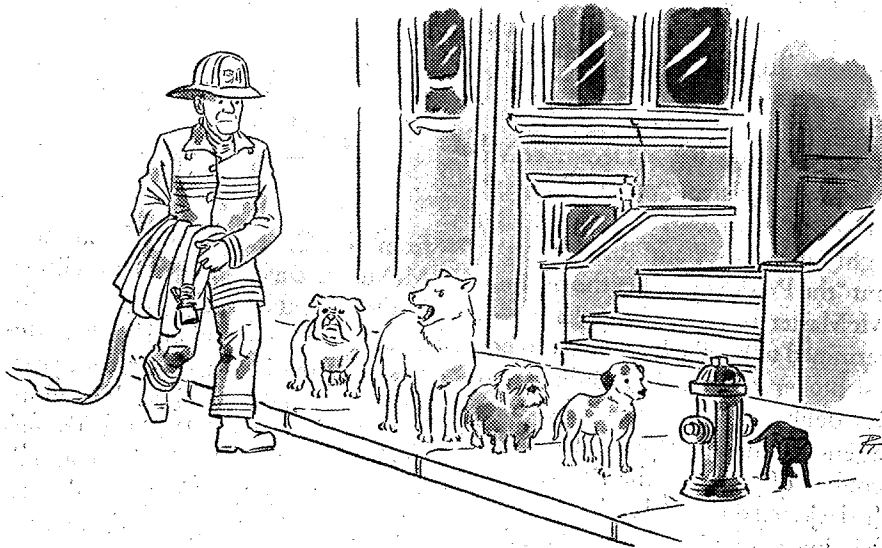
Discussion Questions: Richard A. Posner is a long time U.S. Court of Appeals Judge who has published many books and articles, including the book quoted above on jurisprudence. List Judge Posner’s questions in the order in which they are of interest to you. What is your reaction to Judge Posner’s statement of what a practicing lawyer or judge might think of the study of jurisprudence? What do you think of the questions that Wacks lists in the first paragraph of page 1?

Law: The rules and standards describing the rights and duties of persons in society, which are created and enforced by those governing the society.

Discussion Questions: What are the differences between rules and standards? What are rights and duties? Who or what are included among persons? Who are the law makers in society? Should “law” be limited to the rules and standards created and enforced by government? What do you think of Posner’s comment, on page 5 in Wacks, on the futility of our effort to define law?

Customary Law: Some would argue that this definition of law is too narrow. They refer to this as “positive law,” which is to be contrasted with customary law. Customary law “is not the product of official enactment, but owes its force to the fact that it has found direct expression in the conduct of [persons] toward one another.” Lon L. Fuller, “Human Interaction and the Law,” in *The Principles of Social Order: Selected Essays of Lon L. Fuller* (Durham, NC: Duke University Press, 1981), 211, 212.

Comparing Law and Customary Law: Review the following cartoon:



"Hey, hey! There's a line here!"

Discussion Questions: Is the fireman violating the law? (If you wish, you may think of him cutting into a line of people waiting at Starbucks or Duncan Donuts.) Is he violating anything? If so what is he violating? What could be the consequences of the fireman's conduct? Do or should the consequences matter?