

Speakers Guide

For the Members of the

Iowa State Bar Association

(This was written as a guide to encourage younger lawyers to take advantage of public speaking opportunities as a public service. It is included here as an example of the contributions that this firm has made to the Iowa Bar Association and the practice of law. It is also a good overview of several areas of legal concern for the public.)

Prepared by the

Law Practice Management Committee

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PREFACE

This lawyer's speaking guide is intended to be a ready reference in the presentation of speeches to be provided the public, including high school groups, adult groups, and civic organizations.

The guide is not designed or intended to be an exhaustive treatment of the several general topics outlined, and it is suggested that the material and scope of the topics be analyzed and supplemented by the lawyer during his or her preparation.

The guide is intended to serve as a time saving tool for the Iowa lawyer when called upon to speak, by suggesting meaningful topics about which the public frequently has shown interest.

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TIPS FOR SPEAKERS

If you are called upon to provide a speech, there are several things you can do to make your presentation more effective:

1. Identify yourself. Let the audience know who you are and whether you are from their own community or the general area. Let them know that you are a member of The Iowa State Bar Association and are there as a representative of Iowa lawyers.

2. Note the nature of the audience. Tailor your material to the group with whom you are speaking. Do not use legal terms that are over their heads. Above all, do not talk down to them. Present your material in a friendly, straightforward fashion and try to make it interesting. Make your presentation understandable. Use personal examples whenever possible.

3. Allot your time. Determine in advance the amount of time you will have. Adjust the presentation accordingly to leave time for questions and discussion. Audience participation through questions should be encouraged; it is very often the most interesting part of the program from the standpoint of the audience. Treat every question seriously.

4. Utilize visual aids. Visual aids are effective in helping to maintain your audience's attention. Handing out an outline or preparing a PowerPoint presentation are both excellent supplements to an oral presentation. Visual aids are especially desirable when talking before a select group where the topic is somewhat specialized.

5. Outline as a guide. Do not stick to this outline word-for-word. This is only a guide to provide you ideas for covering the subject. You should supplement your presentation with first-hand knowledge and experience.

6. Adequately prepared. Most people are reasonably well educated today, and have many ready sources of general information. With access to the Internet, many consider themselves knowledgeable. They can be expected to come up with good questions, including questions about recent or current high-profile cases. Make sure what you say is accurate. Do not hesitate to admit if you do not know and then offer access to you so that those interested may communicate further with you on the subject matter of your presentation. This reflects genuineness and caring to your audience. Changes frequently occur in the law. If in doubt, check!

7. Impression. Remember you represent the entire legal profession. You may be the only lawyer many in your audience will ever really know during their lifetime. The impression you make on the audience is the impression many will have of the legal profession as a whole; therefore, take this opportunity to make a good impression.

THE IMPORTANCE OF LAW

- I. Why do we need laws? To make our society function. The “wild west” of our earlier history is an example of the problems of a society where guns were required for everyone involved to protect themselves from others. Law is the lubricant that makes it possible for the many moving parts in our society to operate effectively.
 - A. If each of us were a self-contained unit, having nothing to do with others, we could do as we pleased. But life’s cycle of events doesn’t work that way. For example:
 1. A man and woman get married. There are laws telling them how to protect their relationship and what their duties toward each other will be thereafter. (example: duty of support).
 2. A family moves into a neighborhood of many other families. There are laws affecting their relationship with their neighbors (example: trespass).
 3. A person decides to go into business. We need laws relating to that person’s conduct with others who will rely upon them. (example: obligations of contracts).
 4. A person drives a car. We need laws both aiding and restraining the use of the car (examples: most highways are public, and there are laws requiring driving on the right side of the road and protecting against speeding).
 - B. A discussion question concerning the law and why we have laws.
 1. A group of spelunkers (cave-explorers) in the Commonwealth of Newgarth, are trapped in a cave by a landslide. As they approach the point of starvation, they make radio contact with the rescue team. Engineers on the team estimate that the rescue will take another 10 days. The men describe their physical condition to physicians at the rescue camp and ask whether they can survive another 10 days without food. The physicians think this very unlikely. Then the spelunkers ask whether they could survive another 10 days if they killed and ate a member of their party. The physicians reluctantly answer that they would. Finally, the men ask whether they ought to hold a lottery to determine whom to kill and eat. No one at the rescue camp is willing to answer this question. The men turn off their radio, and some time later hold a lottery, kill the loser, and eat him. When they are rescued, they are

prosecuted for murder, which in Newgarth carries a mandatory death penalty.”

- a. Decide the case morally, not legally. Ignore the law. Did these men do anything wrong?
- b. Are they guilty? Should they be executed?
- c. Once you decide the morality of the case, how can we make the law reflect this morality better? How should we change the law to *make clear* that this sort of act is (or is not) murder? Decide the case under the law of the Commonwealth of Newgarth as written.
- d. Assume that you are a Newgarth Supreme Court Justice who has taken an oath to uphold and apply the laws of the Commonwealth of Newgarth. If you feel a tension between your personal morality and the laws of Newgarth, then don't put the law aside in order to give effect to your moral convictions *unless you think a good judge would do so*. If you think your oath of office permits this indulgence of your personal morality, then show that it does.

II. Law assures freedom by imposing restraint.

- A. Law places a “monopoly of force” in the right hands.
 1. In primitive society “might made right” or “survival of the fittest” (compare present relations among various countries or repressive forces in the world).
 2. Law takes “might” (i.e., the force or power in the society), and regulates how it will be applied (examples: criminal punishment, execution of a judgment), and punishes those who misapply it. (war crimes, or organized crimes).
 3. Discuss the way law controls force in a democracy and remains responsive to the public by providing safeguards. (examples: elected officials, free press).
 4. The law has a permanence of its own. It is slow to respond to popular whims and thus protects individuals from overreaction to events.

- B. The monopoly of force is applied to restrict what people can do individually. We all know of things that are “against the law”. Consider what would happen if they were not illegal.
- C. At the same time, law frees us. For example, normally a driver can safely and freely drive through an intersection on a green light, because a red light should restrain those driving on the intersecting street. (driving on the right side of the road).
- D. The law also frees people to do what they think is right (example: the right to take an unpopular political stand), because it restrains an official or a mob from stopping them without proper court proceedings (“due process of law”).
- E. The law establishes government, but also limits government's unreasonable infringements on individual rights (example: civil rights).

III. Forms of Law.

- A. Constitutions—state and federal—the basic fundamental laws.
- B. Common law, built from decisions by judges in court cases. The largest body of law is case law. (Speaker: explain power of precedent, etc.) [William the Conqueror caused the common law by establishing judges whose decisions would create precedence for ever after. Eventually people specialized in knowing these decisions and representing the public before these judges (Barristers). As they became busy, they hired specialists to screen and organize their clients (solicitors). They started giving other forms of advice (examples: deeds, wills, etc.). In the United States, we collectively call these specialists lawyers.]
- C. Legislative acts, called “statutes,” federal, state and local (examples: ordinance forbidding dogs to run at large, state and federal income tax laws). [As common law failed to be flexible to change, Parliament (Congress, — House and Senate or legislatures) was created to change common law. When statutes are enacted, they prevail. The courts create case law by interpreting statutes.]
- D. Administrative law – rules and orders of administrative departments, authorized by legislation (example: Iowa Dept. of Transportation (DOT) - motor vehicle regulations or the Dept. of Revenue).

IV. Role of a lawyer.

- A. A lawyer advises those who need to know how the law affects them.

1. A lawyer studies and researches the law, and understands how the law is applied to the public.
 2. A lawyer interprets the law (it isn't always crystal clear).
 3. A lawyer evaluates the problems of the client who needs advice, and understands how the law applies to their situation.
 4. A lawyer gives advice. This may be about resolving concerns within the law, protecting the client from wrongful application of the law, negotiating between opposing positions, or providing experience or good common sense to improve the clients position.
 5. Good lawyers keep current on changes in the law (CLEs, legal news sources, law reviews, etc.).
- B. A lawyer actively participates in law making.
1. Lawyers are frequently more active in politics than other members of our society.
 2. Lawyers contribute to the growth of our common law as counsel and as judge.
- C. Lawyers represent clients in controversies.
1. Lawyers investigate.
 2. Lawyers negotiate.
 3. Lawyers litigate (explain...by advocating for his or her client's rights in court).
- V. Our "adversary system" as a means of solving disputes (explain).
- A. Not all countries have our system, but we think it's the best way to arrive at the truth: Two sides, each represented by an expert (lawyer), each presenting their case in the best light possible, with an independent judge or jury to decide the case on the facts. The judge then applies the laws to the circumstances.
 - B. The system will not work unless the lawyer for each side does their best.

- C. Lawyers believe that the side that's apparently wrong, the unpopular person or cause, has a right to present their case and have it heard, for they may be right. In our system every criminal is considered innocent until they are proven guilty. In some countries you have to prove you are innocent. There is a big difference in the conviction of innocent people in those systems compared to our system.
- D. People ask the lawyer, "How can you take the side of a man you think is wrong?" The lawyer answers, "I believe in our system. I believe that each person is entitled to have their case impartially heard and decided. I believe each person is entitled to have their case presented as strongly as possible. If a person asks me to help them, I tell them, that's my job." (Discuss further, and note exceptions and problems.)

VI. The lawyer organizes to make the legal profession more effective.

- A. Comment on bar associations and integrated bar.
- B. Comment on Iowa Rules of Professional Responsibility (esp. fees, confidentiality, ethics).

VII. Conclusion.

So the law and the effective use of lawyers do impose restraints on us. That is a good thing. They slow our urge to crush the unpopular. They are the shield of persons in trouble, yet they provide the majority freedom. Where would our society be without them? Still wearing guns!

THE COURT SYSTEM

I. Court Structure in General.

A. Source of Power.

1. Federal – Article III of the Constitution of the United States provides for a Federal judicial system. Article III provides only for a Supreme Court but empowers the Congress of the United States to establish such inferior courts as it deems necessary (as it has done).
2. State – The constitutions of the several States make various provisions for a judicial system, however, development of a state judicial system is largely a matter for the state legislative bodies. For example, Article V of the Constitution of the State of Iowa provides for one Supreme Court, District Courts and such other courts as the General Assembly deems necessary.

B. Scope of Jurisdiction.

1. Some courts have the authority and power to hear and decide cases of all types (example: Iowa District Courts).
2. Other courts have authority to hear and decide only specific types of cases (example: U. S. Bankruptcy Courts).

C. Judicial Function.

1. Original Jurisdiction – Some courts are authorized and designed to conduct the initial hearing of a case and render the first decision.
2. Appellate Jurisdiction – Some courts are designed primarily to review decisions of inferior courts, although some appellate courts also have a very limited area of original jurisdiction. For example, the United States Supreme Court has original jurisdiction in all cases affecting the U.S. Constitution and cases in which the U.S. is a party (Article III Section 2 of the Constitution of the United States).
3. Mixed – Some courts exercise both appellate and original jurisdiction (example: District Courts in Iowa.)
4. Special – Some courts are designed to handle a special type of case (examples: United States Customs Courts and Courts of Customs and Patent Appeals).

II. Jurisdiction of Courts.

A. Definitions.

1. The jurisdiction of a court is in a broad sense its power to hear and determine controversies, and in a more restricted sense its power to render judgment in a particular case.
2. Jurisdiction is the authority to apply the law to the acts of persons.

B. Source of Jurisdiction – The courts have only such jurisdiction as is granted them by the Constitution and statutes of the United States and the several states. The courts have no authority to hear a case or to make a determination in a case unless it has constitutional or legislative authority to act.

C. Subjects of Jurisdiction.

1. Persons – The court can acquire jurisdiction over individuals and make binding determination on their affairs.
2. Subjects:
 - a. The subject of the controversy must be within the power of the courts.
 - b. Courts can acquire jurisdiction over a thing even though it cannot acquire jurisdiction over a person. Give example.
3. Places – In general, the jurisdiction of all courts is limited to the physical boundaries of the political body creating the court. As to specific type of actions, the legislative bodies have specified where actions must be brought.

D. Kinds of Jurisdictions.

1. Exclusive – One type of court has sole jurisdiction over a particular subject or person. For example, the district courts in Iowa have exclusive jurisdiction over probate and divorce matters.
2. Concurrent – Two or more types of courts have jurisdiction to hear a particular case and to make a binding judgment in such a case. For example, the United States District Court in Iowa and the Iowa District Court both may hear certain cases involving automobile accidents.

E. Acquisition of Jurisdiction.

The courts may have power to hear a certain case but the parties involved in the case or the thing involved in the case must first be brought before the court.

1. Involuntary – Usually an individual through his attorney brings the other party before the court by means of a formal notice. The party served with the notice must appear in court or file formal court documents. If the party served with notice fails to so appear, the court has the power to rule on the case in their absence. The notice in certain cases may be published in a newspaper.
2. Voluntary – In lieu of serving notices as explained above, the other party may voluntarily accept the notice and appear before the court.

F. Determination of Jurisdiction.

The court in every case must first decide whether it has jurisdiction to hear the case. If the court does not have jurisdiction the case will be dismissed.

III. The Powers of Courts.

- A. To determine facts – This is one of the functions of courts, although in many instances it is actually exercised by a jury.
- B. To determine the law – This power rests exclusively with the court.
- C. To make decisions – This power may be exercised in at least two ways:
 1. By rendering judgments in controversies.
 2. By issuing decrees and orders upon the motion of attorneys and parties or upon the motion of the court itself. These may amount to a final decision of the case, or may just relate to matters leading up to the eventual decision.
- D. To enforce its actions – This may be done by:
 1. Execution – an order to the sheriff to seize and sell property to satisfy a debt.
 2. Imprisonment for contempt of an order of the court.

- E. Incidental powers.
 - 1. To punish for contempt.
 - 2. To control and discipline its officers.
 - 3. To issue process and writs, such as habeas corpus.
 - 4. To redress its own wrongs.
 - 5. To secure attendance of witnesses.
 - 6. To investigate obstructions of justice.
 - 7. To admit to bail.
 - 8. To give certain officials authority to take evidence.
 - 9. To appoint certain court officers.
 - 10. To appoint counsel in certain cases.

IV. Choice of Judges.

- A. Appointment – Judges in some jurisdictions are appointed. In most jurisdictions all vacancies occurring in judicial offices are filled by appointment by the chief executive, such as the Governor in Iowa.
- B. Election – Many states elect all of their judges.
- C. Explain how the judges in Iowa are chosen and how the federal judges are selected.

V. Courts in Iowa.

- A. Federal.
 - 1. United States District Court – Federal court of first instance. The state of Iowa is divided into two districts, the Northern District and the Southern District. Each district is then divided into divisions, and court is held at the various divisions as the need arises.
 - 2. Other – Some Federal Courts sit in the various states from time to time as the need arises but do not maintain a permanent court in

the state. For example, United States Tax Court sits in Des Moines from time to time.

B. State Courts.

1. Senate – The Governor, Judges of the Supreme and District Courts, and other state officers are subject to impeachment for any misdemeanor or malfeasance in office. The Senate of Iowa sits as a court in the trial of cases of impeachment (Article III Sections 19 and 20 of the Constitution of the State of Iowa).
2. Supreme Court – The Supreme Court has general appellate jurisdiction. It also exercises supervisory jurisdiction over inferior state courts. There are seven Supreme Court Justices and the court sits only in Des Moines, Iowa.
3. Court of Appeals – The Court of Appeals also has general appellate jurisdiction. There are nine Appellate Court judges and the court sits in Des Moines, Iowa.
4. District Courts – The district courts in Iowa are commonly referred to as courts of general jurisdiction because they are authorized to hear all types of cases. The State of Iowa is divided into eight judicial districts. Each County has a county seat where district court is held.
5. Municipal Courts – Some cities may have their own municipal court that has jurisdiction over violations of that city’s municipal code (examples: parking and traffic violations).

C. Small Claims Court.

1. In General – In Iowa, if you are claiming damages not exceeding \$5,000 in your lawsuit, you can file in small claims court. It is a specialized court set up to hear only small claims cases. Generally, these cases are less formal because parties are allowed, if not encouraged, to represent themselves. This is to keep the costs of the case low.
2. Filing – At most courthouses in Iowa, you can obtain a petition to fill out. You need certain information regarding the parties, your claim and the basis for your damages. Once you file the petition at the courthouse, the court will send (serve) the suit on the other party. If they do not respond by a set time, you automatically win the case. If they do respond by filing an answer, the court will set a date for a hearing.

3. Hearing – The hearing is fairly informal and most technical legal rules concerning evidence and trial procedures are disregarded. Essentially, the judge will give each party an opportunity to present arguments, exhibits and examine witness, if the party desires. The judge then rules on the case.
- D. Quasi–Judicial Bodies – Briefly discuss the importance of Federal and State administrative agencies, and the vast amount of litigation handled by such bodies (example: explain the function of the Iowa Department of Transportation).

THE ANATOMY OF A LAWSUIT

I. Introduction—Trial by jury.

The Jones family is traveling in their automobile on Highway X. Suddenly, a car driven by George Smith traveling in the opposite direction crosses the center line of the highway and crashes into the Jones' car. John Jones is seriously and permanently injured in the accident. He seeks an attorney to help him recover damages (money) from Smith. The lawyer attempts to get Smith to pay voluntarily through settlement negotiations. When this fails, Jones' lawyer starts a lawsuit. A suit in court is the means to legally compel Smith to make amends for his negligent act. Civil lawsuits are formal, often cumbersome, affairs which seldom are the dramatic, fast moving scenes that are portrayed on contemporary television shows. A civil suit for damages is usually heard and decided by a jury. (The function of judge and jury will be discussed later.) We will now discuss what actually happens to a case from the moment the plaintiff and his lawyer decide to sue. Think about it mainly from the standpoint of what the lawyer does. (Speaker: explain what a plaintiff is.)

II. Preparation.

A. Investigation--importance of the facts.

1. Interview client.
2. Interview witnesses.
3. Examine papers, scene or other evidence--evaluate.

B. Papers to prepare.

1. Summons or original notice (a paper warning a person to respond on a certain day and answer to charges).
2. Complaint (the formal allegations against the party).
3. Answer (a counterstatement of facts, made by defendant in reply to charges of complaint).
4. Notice of trial.
5. Papers impleading others (explain).

- C. Pre-trial conference.
 - 1. Sometimes required by law.
 - 2. Stipulations and time saving agreements. (Admissions of fact, documents--reference points from which to commence testimony.)
 - 3. Settlement negotiations.
 - 4. Limitation of expert witnesses.
 - 5. Set time for trial agreeable to all.
- D. Trial brief.
 - 1. Informs court of your intentions.
 - a. Anticipating questions of admissibility of testimony and documents.
 - b. Order of proof and what you will expect from testimony.
 - c. Legal argument.
 - d. Instructions for jury.
 - e. Requested special verdict.
- E. Just before trial.
 - 1. Subpoena of witnesses and preparation of their testimony.
 - 2. Photos of scene (arrange for view of scene).
 - 3. Surveyor draws map with exact dimensions and angles.
 - 4. Preparation for voir dire (explain).

III. The day in court.

- A. Jury selection--right to trial by jury.
 - 1. Selection procedure--lottery within panel--number of jurors.
 - 2. Exemptions.
 - 3. Examination of jury panel.

4. Challenges--for cause and preemptory.
 5. Swearing jury.
- B. Opening statements--what you intend to prove.
1. Resume of conceded facts.
 2. Stating facts you intend to prove.
 3. Damages.
- C. Order of proof--from previous preparation.
1. First witnesses.
 2. Adverse witnesses.
 3. Experts.
 4. Demonstration evidence.
- D. Examination of witnesses.
1. Direct examination.
 2. Cross examination.
 3. Rebuttals.
- E. Evidence
1. History of rules of fair play.
 2. Hearsay evidence.
 3. Exclusion and admission of testimony.
- F. Making and preserving of the record. (All proceedings recorded by a court reporter.)
1. Reasons (appellate record, etc.)
 2. Makes lawsuit seem slow and cumbersome.
 - a. Preserves rights of everyone.

- b. System is not perfect, but is the best we can do.
- G. The court and the jury--powers of each.
 - 1. Facts and law. (All questions of fact to be decided by jury unless judge decides that only one conclusion could reasonably be reached--court rules on the law--damages for jury).
 - 2. Motions during trial--exclusion of jury from courtroom.
- H. Arguments to jury.
 - 1. Function.
 - 2. Scope.
 - 3. Importance.
 - 4. Right to open and close.
- I. Instructions to the jury by the court.
 - 1. Suggestions for instructions by both counsel.
 - 2. Use of instructions by court.
 - 3. Denial of instructions by court.
- J. Verdicts.
 - 1. Special verdict. (Explain type of special verdict questions.)
 - 2. General verdict.
 - 3. Drafting of questions to be asked--suggestions by both counsel.
 - 4. Record carefully preserved of suggestions or lack thereof.
 - 5. Deliberation of jury, return, polling of jury, compromise verdict.
- K. Conduct of lawyer and parties during trial--lawyer is an officer of court.
 - 1. Ethics and etiquette--court has power to rule on and prevent mistrials.
 - 2. Misquotation of facts and law.

3. Statements to the press, radio and television.
4. Attorney's relation with jury.
5. Avoids emotional involvement.
6. Compensation--witness fees, expert fees, attorney fees.
7. Misconduct of judge or jury.

L. Motions after trial.

1. Power of court to change or disregard jury verdict--reasons and rationale.
2. Motions--briefs in support of.
3. Grounds for motions:
 - a. Abuse of discretion.
 - b. Failure to instruct.
 - c. Failure to ask proper questions.
 - d. Excessive or inadequate damages.
 - e. Newly discovered evidence.
 - f. Error by court.

IV. Appeals.

- A. In Iowa, to the Supreme Court, may be decided by the Supreme Court or Iowa Court of Appeals.
- B. Grounds for appeal.
- C. Preparation (very generally).
- D. Argument, briefs, procedures.
- E. Composition of appellate courts.
- F. Decision, and possible results.

FAMILY RELATIONS

Marriage, Dissolution, and Adoption

I. Marriage

- A. What is marriage? Among other things it is a civil contract between both parties and the State. The husband and wife are both parties to the contract, but so is the State. The husband and wife, acting alone, cannot change the contract. The State must agree.
- B. Why get married?
1. To provide evidence of mutual commitment that limits interference from others.
 2. Provide a family for raising children.
 3. Companionship
 4. Health benefits/insurance
 5. To make medical decisions for your spouse in the event they cannot make their own decisions.
 6. Property rights
 7. Social security benefits
 8. Right to sue for wrongful death
- C. Who can marry?
1. Gender. In Iowa only a marriage between a male and female is valid.
 2. Age
 - a. If both parties are 18 years old or older, no consent is necessary and they are free to marry.
 - b. If either or both parties are 16 or 17 years old, consent must be obtained from the underage party's parent or guardian.

D. How to get married.

1. The traditional means is to file an application to marry with the Clerk of the District Court of the county where the marriage is to take place. The marriage application must contain at least one affidavit (a signed writing) of some competent and disinterested person stating such facts as to age and qualification of the parties as the Clerk may deem necessary to determine the competency of the parties to contract a marriage. Pay the required fee to the Clerk.
2. Within 60 days, the clerk will issue a marriage license which is invalid until three days have passed.
3. A minister, priest, judge, mayor, or justice of the peace must perform the ceremony.

E. Common law marriage (not recognized in all states, but is in Iowa)

1. Requirements:
 - a. Publicly hold selves out as husband and wife
 - b. Live together in a relationship
 - c. Parties have present intent to be married to each other
2. If court finds common law marriage, all the rights and duties of marriage attach. [In a New York case of a second marriage, the children of the first marriage challenged the widows right to inherit from the father claiming that they were not legally married because the priest that married them was not validly licensed to perform marriages in New York. Her defense was that she had no knowledge about the priest. However, what she did know is that they went to California for their honeymoon and one night driving through the State of Iowa they registered in a motel as Mr. and Mrs. Under Iowa law that moment legally married them. (consider asking for a show of hands of how many may, legally, be married and might not have known it?)]
3. There is a New York case where the children of a prior marriage sued a widow claiming that she could not inherit from their father because the priest that married them was not licensed to marry people by the State of New York, so therefore they were not legally married. The widow responded acknowledging that she knew nothing about the priest, but that she did know that she and their

father went on their honeymoon by driving to California. During that trip they stayed one night in a motel in the State of Iowa and registered as man and wife. If they were not legally married before, at least that moment legally married them. She prevailed. [In lecturing to High School classes cite that case and then ask for a show of hands of how many are now legally married and did not know it? The class will laugh, even if the teacher does not.]

II. What are the rights between husband and wife?

A. Prenuptial agreements:

1. What are they? An agreement made before marriage usually to resolve issues of support and property division if the marriage ends in divorce or by the death of a spouse. - *Black's Law Dictionary (8th ed. 2004)*.
2. Who should have one?
 - a. Commonly used by persons with substantial assets that they want to protect.
 - b. Also common in subsequent marriages to protect children of a previous marriage.
3. Do Iowa courts always enforce them?
 - a. Iowa courts favor prenuptial agreements because they reduce the amount of litigation and turmoil surrounding dissolution.
 - b. To be enforceable, a prenuptial agreement needs to have certain elements:
 - i. must be entered into voluntarily;
 - ii. must not be unconscionable; and
 - iii. must be full and frank disclosure of the requesting party's assets.
4. They allow the parties to establish property rights as they wish them instead of the law imposing rights upon them.

III. Ending the marriage

A. Legal Separation

1. Best with a contract providing for continued obligations.
2. Otherwise, as a court may direct.
3. Sometimes obtained for religious or moral reasons.

B. Annulment

1. What is the difference between an annulment and divorce?
Annulment requires grounds – divorce does not. The law treats the relationship as if the parties were never married. The grounds for an annulment are:
 - a. Either party was impotent at the time of marriage.
 - b. If the marriage is prohibited by law (example: parties are related).
 - c. If either party was already currently married and the other party was unaware of the marriage.
 - d. If either party lacked the capacity to consent to marriage (example: mentally ill).
2. However, as opposed to never having married, if the court grants an annulment, it has the discretion to also award compensation to an innocent party just like in divorce.

C. Dissolution (Divorce)

Either party may file a petition for dissolution. It is not necessary to show fault.

1. Conciliation. If either party requests conciliation (counseling), they court must order the parties to attend conciliation sessions for a period of sixty days .

2. Mediation. Similar to court, but very informal. Both parties attend with their lawyers, if any, and a neutral mediator is present. Both sides communicate in an informal manner to try and resolve any issues regarding support, child custody, etc. Anything left unresolved will have to be settled in a court hearing. Mediation is generally required unless the court waives it for good cause (protective order in place). Anything agreed to in mediation is not binding – either party can later change their minds as to something agreed upon in mediation.
3. Waiting period. A court will not issue a decree of divorce until 90 days have elapsed from the day the original notice is served, except in certain situations.

IV. Distribution of property:

A. Marital property

1. Without a prenuptial agreement, any property acquired during the marriage—**regardless of whose name the property is titled in or who purchased the property**—is considered marital property and will be divided equitably.
2. Factors the court considers in determining how to distribute marital property include:
 - a. Finances – income, separate property, earning capacity, debts;
 - b. Contribution of the parties;
 - c. Length of the marriage;
 - d. Need for marital home by custodial parent;
 - e. Need to keep specific assets separate;
 - f. Age and health of the parties;
 - g. Liquidity of property (need cash to live on);
 - h. Alimony award, if any;
 - i. Tax consequences;

- j. Any other relevant factors. As a general rule, fault will not be considered as a relevant factor unless the fault can be tied to the assets in some way (e.g., drug addiction).

B. Separate Property (Non-marital)

Includes property that each party had before the marriage and property expressly given to only one party during the marriage, such as an inheritance. Separate property is normally not divided; it is retained by the party that currently owns it.

C. Debts

Debt is divided just like property – equitably. Caution: even if a debt is awarded to one party, the creditor can collect from the other party. For example, if the court orders the husband to pay the MasterCard debt, and he claims bankruptcy or fails to timely pay it for some reason, MasterCard still can collect from the wife.

V. Alimony – Alimony is money that one party is required to pay the other party because of some inequity in assets or earning capacity. Not every state recognizes alimony, but Iowa does. Alimony award can be permanent or temporary. Even if temporary, once awarded it can be extended by a subsequent court. Factors the court will consider in awarding alimony include:

- A. Need of party; ability of other party to pay
- B. Length of marriage
- C. Age, physical and emotional health of the parties
- D. Standard of living attained during marriage; and the likelihood that each party can maintain a reasonably comparable standard of living
- E. Earning capacities, educational levels, vocational skills, and employability of the parties
- F. Length of absence from the job market (requesting party)
- G. Parental responsibilities for the children
- H. History of financial contributions to the marriage

VI. Children.

A. Child Support

1. How much? The Iowa Supreme Court has established guidelines to determine the amount of monthly support to be paid. The guidelines are based on each party's income. The court can vary from the guidelines and the amount of support can later be changed (e.g., if the paying parent gets a raise). The guidelines are available online at the Iowa courts website.
2. How long? Child support is generally paid until the child reaches the age of majority (18), or 24 if the child is still in school full-time. Support will end if child gets married.

B. Child Custody. This often is the most difficult problem in divorce action.

1. Physical custody v. Legal custody. *Physical custody* is granted to the parent that will actually maintain physical responsibility for the child (i.e., the child will live with that parent). This is commonly granted to the parent best suited to take care of the child, with the other parent getting visitation rights and the obligation of paying support. However, a court can grant joint physical custody where the child will spend an equal amount of time with each parent. Legal custody is granted to the parent that will have a say in important decisions regarding the child; such as major medical decisions, school decisions, etc. Courts most often grant joint legal custody – but in extreme cases, the court may take legal custody away from a parent – such as when the parent is abusive toward the child.
2. When making custody determinations, the welfare of the child is the controlling consideration as far as the court is concerned. Referred to commonly as the “best interests of the child.”
3. To determine what the child's best interests are, courts will look at several factors:
 - a. Age & health of the parents and child.
 - b. General family environment: finances, other people in family home, community.
 - c. Relationship between parent and child.

- d. Child's wishes, particularly after age 14.
 - e. History of domestic violence, criminal behavior, etc, if any.
4. Visitation. Usually the noncustodial parent will be awarded reasonable visitation unless circumstances are such that it would not be in the child's best interest.

VII. Adoption.

- A. First step in most cases is termination of parental rights.
- B. Who may adopt?
 - 1. A husband and wife jointly.
 - 2. A stepfather or stepmother.
 - 3. An unmarried adult.
 - 4. Other natural parent, if parental rights have not been terminated.
- C. In order for a court to grant an adoption, certain people must consent to the adoption, including:
 - 1. Guardian of the person to be adopted.
 - 2. The spouse of an adopting stepparent.
 - 3. The person to be adopted (if 14 or older).

If any of the above refuse or cannot be located, the court can then make a determination as to whether it is in the adopted person's best interest to be adopted and can grant the adoption without the needed consents.

- D. An investigation is required, either by the State Department of Social Welfare or by a qualified person or agency named by the court. The investigation will cover:
 - 1. The environment of the person to be adopted.
 - 2. The home of the adopting parents.
 - 3. The criminal or abuse history of the person adopting, if any.

4. The maturity, financial status, health and relationships of the adopting person as it relates to their ability to care for the adopted person.

H. Effect of adoption.

1. Relation to adoptive parent becomes that of natural parent and child with all of the same rights, duties and legal consequences.
2. Records are secret.

CRIME AND JUVENILE DELINQUENCY

I. Introduction—Criminal Law.

Have you ever stopped to think what “government by law” means? Why do we need it? Where does law come from? Government without law may result in dictatorship, with each ruler deciding what shall be lawful. The same rules may not apply to everyone. With each change of ruler there may be a change of law. This could result in the government having no stability and the people having no permanent standards to guide them.

(Example--In a football game the players must know the rules and abide by them or be penalized for violations. So in everyday life, laws make it possible for us to live together in harmony. If each person had to fight to protect his life, rights and property, this would be a jungle. Laws give us the protection we need.

In this country we say we have government by law instead of government by men. Suppose in a football game the referee made up the rules as the game went along, judging each play by his own whim. It wouldn't be much of a game.)

- A. Legislatures. Laws are enacted by our legislatures. They reflect the beliefs of most of the people as to what is right and necessary for the orderly conduct of our society.
 - 1. “Bad” Laws. If we feel that a particular law is unwise or unjust, we should work to have it changed or repealed. Certainly we should not ignore it, or break it.
 - 2. “Compliance”. The rights and safety of all of us depend upon response to and compliance with the law.
 - 3. “Rules” -- laws are the rules by which the game of life in a society is played. We should all understand how the law of the State of Iowa affects our daily lives.

II. Definitions. There are two kinds of law – civil and criminal.

- A. Civil law – regulates private rights. In civil cases two or more persons oppose each other, and the government (represented by a judge) acts as referee.
- B. Criminal law – regulates public conduct and the duties we owe society as a whole.

1. In criminal cases the defendant (person accused of a crime) is opposed by a prosecutor (county attorney), and the defendant is represented by a private lawyer.
 2. If the defendant can not afford to hire an attorney, the court will appoint one and the state will pay the fees.
- C. Crime. A crime is defined as conduct which is prohibited by state law and punishable by fine or imprisonment or both.
1. Felonies. In Iowa felonies are crimes punishable by confinement in a state prison.
 2. Misdemeanors. Misdemeanors are crimes less serious than felonies; imprisonment is usually limited to a maximum of one year in a penal institution other than a state prison. Aggravated misdemeanors can result in two years imprisonment. Misdemeanors cover all crimes that are not felonies.
 3. Municipal offenses and violations (such as overtime parking) are not classified as crimes and do not result in a criminal record.
- D. Sentence.
1. A sentence is the judge's statement of the punishment to be given a person found guilty of a crime. Among the forms of sentences are:
 - a. Imprisonment.
 - b. Fine.
 - c. Removal from public office.
 2. Probation. Sometimes the judge decides that the sentence should be "suspended" or "withheld." In such cases the convicted person is placed on probation. Probation is a procedure under which the convicted person is placed under the supervision of a probation officer, and must comply with regulations imposed by the court as to his conduct, residence, and employment.
 3. Parole. Sometimes convicted persons who have been sent to prison are released before they have served their full sentence and are placed on parole. They may be on parole until the end of their sentence. While on parole they are under the supervision similar to that of probation.

III. Is it a crime?

Inexperienced and thoughtless young people occasionally become involved in serious situations because they have recklessly ignored the rights of others. Often what they consider a prank or a “good gag” is actually a crime which can have serious consequences.

A. Examples. Here are some examples of actions that started out as youthful escapades, but really were crimes.

1. Taking another’s property.

Mike and Sally were taking a ride in Mike’s car one evening. As they were turning a corner the hubcap from the front left wheel fell off into the road. The car following could not avoid running over the hubcap and it was destroyed. As they continued their ride, Mike saw a car exactly like his parked in an alley. “Look, Sally,” said Mike, “that car in the alley has hubcaps identical to the one I lost. Let’s get one.”

Mike proceeded to get the hubcap while Sally remained in the car. A few minutes later, Mike came running toward the car with a hubcap in his hand, pursued by a man. “Get behind the wheel and get out of here,” Mike yelled. Sally drove off with Mike beside her. A few moments later they were apprehended by the police. Mike and Sally had committed a crime.

a. The law.

Intentionally taking anyone else’s property of any value without the owner’s consent is a theft. Sally also is guilty of the theft even though she did not actually take the hubcap, because under Iowa law a person may be charged as a principal if that person intentionally aids and abets the commission of a crime. Sally did this by driving the car, with Mike in it, away from the scene of the crime.

b. Punishment for theft.

Value of Property Taken	Theft Degree	Crime Classification	Penalty
\$0 - \$200	Fifth	Simple Misdemeanor	Fine of at least \$50, but no more than \$500 and/or imprisonment up to 30 days
\$201 - \$500	Fourth	Serious Misdemeanor	Fine of at least \$250 but not more than \$1,500 and/or imprisonment up to one year
\$501 - \$1,000 or 2nd theft conviction	Third	Aggravated Misdemeanor	Fine of at least \$500 but no more than \$5,000 and imprisonment up to two years
\$1,001 - \$10,000 or car worth up to \$10,000	Second	Class D Felony	Fine of at least \$750 but no more than \$7,500 and imprisonment up to five years
\$10,001 an up, or theft from the person of another or theft from building left unoccupied because of disaster or riot	First	Class C Felony	Fine of at least \$1,000 but no more than \$10,000 and imprisonment up to ten years

2. Breaking into another person's home.

Jack and Dick had a long—standing feud with Harry. When Harry and his family left town for a vacation, Jack and Dick decided to break into Harry's home and tear up his stamp collection which was worth over one thousand dollars. About eleven o'clock one night they managed to force open the latch on the cellar door and entered the house. Before they reached Harry's room they heard noises in front of the house which frightened them. In running away, Jack dropped his wallet, so they were identified. Nothing in the house was stolen or damaged, no one was hurt. Still, Jack and Dick had committed a burglary.

a. The law.

Whoever intentionally enters a house, building or structure without the owner's consent and with intent to steal or commit some other crime commits a burglary.

b. Punishment for burglary

Burglary is a class D felony and the person may be imprisoned for not more than five years. If Jack and Dick had entered Harry's home armed with a weapon, or if they had committed a physical assault on a person in the home, the offense would have been more serious and they could have been imprisoned for twenty-five years.

3. Disorderly Conduct.

After the big football game, a group of boys from the winning school engaged in a noisy celebration. The celebration took place in front of the schoolhouse; all of the boys were being boisterous, unreasonably loud, and profane. On a dare, one of them turned in a fire alarm. A passing patrol car picked up the boys. All the boys in the group were guilty of disorderly conduct.

Larry and Joe, returning from school one afternoon, boarded a crowded bus. They ran up and down the aisle, snatching papers and magazines out of the hands of the other passengers. They meant it all in fun, but actually they were guilty of disorderly conduct.

a. The Law.

A person is guilty of disorderly conduct when they do any of the following:

- i. Engages in fighting or violent behavior in any public place or in or near any lawful assembly of persons, provided, that participants in athletic contests may engage in such conduct which is reasonably related to that sport.
- ii. Makes loud and raucous noise in the vicinity of any residence or public building which causes unreasonable distress to the occupants thereof.

- iii. Directs abusive epithets or makes any threatening gesture which the person knows or reasonably should know is likely to provoke a violent reaction by another.
- iv. Without lawful authority or color of authority, the person disturbs any lawful assembly or meeting of persons by conduct intended to disrupt the meeting or assembly.
- v. By words or action, initiates or circulates a report or warning of fire, epidemic, or other catastrophe, knowing such report to be false or such warning to be baseless.
- vi. Knowingly and publicly uses the flag of the United States in such a manner as to show disrespect for the flag as a symbol of the United States, with the intent or reasonable expectation that such use will provoke or encourage another to commit a public offense.
- vii. Without authority or justification, the person obstructs any street, sidewalk, highway, or other public way, with the intent to prevent or hinder its lawful use by others.

b. Punishment for disorderly conduct.

Disorderly conduct is a simple misdemeanor punishable by a fine of up to five hundred dollars, and/or imprisonment of up to 30 days.

IV. Consequences of a criminal record.

- A. Generally, once a person has been convicted of a crime, they have a criminal record. A single act of recklessness, irresponsibility, or violence can affect their whole life.
 - 1. Sometimes the punishment ordered by the court, such as imprisonment or fine, is not the most serious consequence of the criminal conviction. For instance:
 - a. A person who has been convicted of a felony loses their civil rights until they have served out their term of imprisonment, or otherwise satisfied their sentence.

- b. They cannot vote until their rights are restored.
- c. A person convicted of a crime may not be allowed to practice law.
- d. Many businesses require employees in positions of trust to be bonded and insurance companies usually refuse to bond anyone who has been convicted of a crime.
- e. As a rule, the armed services will not grant a commission to anyone who has been convicted of a crime.

V. Youthful offenders.

A. Juvenile Court.

- 1. Because the stigma of a criminal record can possibly mar a person's entire life, the law and the courts try, where possible, to give special help to young people who have become involved in criminal situations. In Iowa, juveniles, those under 18, usually appear in juvenile court. The more serious offenders, however, may be handled by district court.
- 2. Publicity. Most juvenile court hearings are open to the press. The hearings may be closed to the press, however, if, in the opinion of the court, the best interests of the child and the public are served by a private hearing. Still, most juvenile court records are open to the press.

B. Delinquent.

- 1. If the child is found guilty of the act charged, he is adjudged to be a juvenile delinquent; he is not held guilty of a crime as an adult might, if found guilty of the same conduct.

Iowa statutes provide that a child may be adjudged delinquent if he or he or she violates any state law or local ordinance which would constitute a public offense if committed by an adult.

C. Juvenile judges.

- 1. The regular district court judges also act as juvenile judges. They work closely with probation officials who are people well trained in child guidance.

- a. The judges are given a wide choice in disposing of juvenile cases that come before them. In cases involving minor infractions, they may counsel with the child and parents and dismiss the matter. Or they may return the child to the home with reasonable rules of conduct for both the child and parent.
- b. If the case is of a more serious nature, the judge may transfer the child to a foster home, to a relative, or to a welfare agency, the county or state department of social welfare, the state board of control for placement at a state training school, or place the child under the supervision of the probation officer.
- c. In addition, the judge may make any other provision for special treatment or care. No fines or costs may be imposed against a juvenile, though they can be ordered to pay for property they may have damaged.
- d. Traffic offenses. No special laws are applicable to traffic offenses committed by a juvenile as the juvenile court does not apply to the laws governing motor vehicles.

D. Conduct.

- 1. There are many laws to which you are so accustomed that you are unaware of their existence; yet they govern your daily actions.
 - a. You go to school because the law requires it.
 - b. The law determines the age at which you may drive a car, buy liquor and marry without parental consent.
- 2. Community relations.
 - a. Laws like these, which we all accept without question, make it possible for us to live together as a community, safely, easily and pleasantly.
 - b. Usually, it is easy to obey the law. The consequences of law-breaking are so serious that it makes far better sense for everyone to follow the rules our society has set up for “the game of life”.

HIGH SCHOOL STUDENTS

AUTOMOBILES – AND THE LAW

I. Introduction.

“Automobile law” may be the most important area of the law for high school students. Questions most often asked are: What does it take to get a driver’s license? What are the rules of the road? What if I get a ticket? What if I have an accident? Indeed, auto accident lawsuits dominate the work of many of our courts. Because the auto has become so important in our lives, everyone should have some background of motor vehicle laws.

II. Driver’s Education.

- A. Must be 14 years old
- B. Must have an instruction permit
- C. Usually offered in high school

III. Types of licenses. Iowa uses a Graduated Driver’s License system:

- A. Instruction Permit
 - 1. Must be at least 14
 - 2. Need written approval from parent
 - 3. Must pass knowledge test and vision screening
 - 4. All driving must be supervised by:
 - a. parent, or
 - b. family member over age 21, or
 - c. other driver over age 25 with written permission from parent
 - 5. Number of passengers limited to number of seatbelts in car
 - 6. Must complete driver’s education course
 - 7. Must log 20 hours of supervised driving with at least 2 hours between sunset and sunrise

8. Must drive accident and conviction free for six months immediately prior to applying for intermediate license.

B. Intermediate License

1. Must be at least 16 and meet all requirements for an instruction permit (above).
2. Need written approval from parent
3. Can drive without supervision from 5 a.m. to 12:30 a.m.
4. Driving between 12:30 a.m. and 5 a.m. must be supervised by:
 - a. parent, or
 - b. family member over age 21, or
 - c. designated adult over 25, or
 - d. with a waiver, may drive to and from work and extracurricular school activities
 - e. must log 10 hours of supervised driving with at least 2 hours between sunset and sunrise
 - f. Must drive accident and conviction free for 12 months immediately before applying for a full license.

C. Full License

1. Must be 17 years old and meet all the requirements for an intermediate license.
2. Must have written approval from parent
3. Gives full driving privileges.

IV. Remedial Driver Improvement.

If you have either an instruction permit or an intermediate license, and you get one conviction or are in one accident, you will be referred to the Remedial Driver Improvement Program. Both you and your parent must attend an interview with a DOT official and the official can impose other driving restrictions or suspend your license if he or she feels it is necessary. Further, your 6 month (instruction)

or 12 month (intermediate) trial period starts over (so you will be delayed in advancing to the next license).

V. “Rules of the Road”.

The rules come from two sources, statutes passed by the Iowa legislature and general rules worked out by the courts.

A. Statutes.

1. Violating them may be a crime or a violation of an ordinance (explain difference).
2. Violating them likely will be negligent conduct (explain briefly) which can make you, and the owner of the automobile you are driving, liable if you have an accident.
3. For actual rules, refer to driver education courses. But, especially remember the rules about:
 - a. Speed.
 - b. Right-of-way.
 - c. Turns and turn signals.
 - d. Equipment in good shape.
4. In Iowa, the owner of an automobile driven by another with his or her consent is also liable for the negligence of the driver.

B. Court-made rules -- might be called “common-law obligations of the driver”.

1. Violation normally not a crime or ordinance violation.
2. Violation is negligence and can make you liable if you have an accident.
3. What are major obligations?
 - a. Proper lookout -- remember, “He who looks and fails to see what’s in plain sight is as guilty as if he didn’t look at all.”
 - b. Management and control.

- c. Reasonable speed under the circumstances.

VI. Passengers Duties.

- A. Obvious duty not to interfere when another is driving—that could make you also liable if somebody else gets hurt.
- B. Contributory negligence (explain)
 - 1. Your carelessness can help contribute to your injuries.
 - 2. Your negligence can prevent you from getting compensated if you are a passenger and are hurt in an accident.

VII. What if I get a ticket?

- A. Possible crime or ordinance violation.
- B. Have opportunity to show up in court to contest the ticket if you do not feel that you are guilty.
- C. Effects on instruction permit or intermediate license (see above)
- D. Possible effect on related lawsuit for damages, if there was an accident.
- E. Proper attitude toward traffic officers.
 - 1. Officers are only doing their duty by enforcing the law.
 - 2. In a real sense, officers can be thought of as teachers of good driving habits.
 - 3. Officers do not have the power to decide if you're guilty of a driving violation — a court does that.
 - 4. Nor do officers have the power to decide if you're liable to someone else involved in the accident — a court does that also.
 - 5. Don't argue with the officer, or confront the officer — make your case in court.

VIII. What if I have an accident?

A. Role of automobile insurance.

1. Coverage.
 - a. Liability insurance — note, that it means only that the company takes over your liability, whatever it is, in the following cases, not that the company necessarily pays.
 - i. Personal injury.
 - ii. Property damage.
 - b. Collision and comprehensive coverage explained.
 - c. Medical payments coverage.
 - d. Uninsured motorist coverage.
2. Liability limits explained.
3. The interest of the insurance company in your accident—need for timely notification.
4. Financial responsibility laws and the role of insurance—note that it is especially hard to get insurance, which you must have to drive, once you have lost your license (High-risk insurance, SR-22).
5. Auto insurance rates and the teen-age driver.
6. Should I have insurance? How do I go about getting it? (Speaker: explain different terms, including personal property damage, bodily injury, comprehensive, etc).

B. After the accident — but before a lawsuit:

1. What should I do or say?
2. The investigation process.
3. The lawyer's role.
4. "Settlement" -- what is it? Do I decide about it, or does the insurance company?

- C. The auto accident lawsuit.
 - 1. Who sues whom? Plaintiff and defendant explained.
 - 2. Questions to be decided.
 - a. Negligence (explain).
 - b. Damages and the effect of negligence and contributory negligence (discuss).
 - 3. Who decides? Functions of judge and jury explained briefly.
 - 4. Trial procedure explained briefly.
 - 5. Possible results.

CONSTITUTIONAL LAW

I. Introduction.

The United States is founded upon the principle that the law prevails and that each person, and that every entity within our borders, including the President, is subject to it. The Rule of Law prevails over the Rule of Man that existed when kings made the rules. The Constitution is the foundation document of our system of law. It is the basis for the government agreed upon by the original thirteen states, when nine of the original thirteen states ratified the Constitution. It established our system for the creation of laws and established our government and our individual freedoms, including our unique freedom from government.

Every United States citizen is given certain fundamental rights that the government cannot take away. Most of these rights originate in the Bill of Rights, which are amendments to the U.S. Constitution. Many of these rights are very familiar to most of us, such as freedom of speech, but it may be unclear exactly what right the freedom of speech gives us. That is why over the course of many years, cases have arisen and come before the courts—to define what rights those amendments give us. Even today, those rights have not been firmly set and the courts are continuously called upon to define them.

Amendments to the Constitution may be proposed by a vote of two-thirds of both houses of Congress or upon application by two-thirds of the state legislatures. An amendment then requires ratification by three-fourths of the state legislatures, or, if proposed by congress, three-fourths of state conventions instead of state legislatures. The Constitution has only been amended 27 times in its over 200 years history.

II. Specific Rights.

1. Freedom of speech – This right is found in the First Amendment. Generally, it says the government cannot prohibit citizens from speaking their minds, writing what they want, or assembling together to protest. This area of law has been extensively litigated in courts and there are a number of rules in this area. There are too many to discuss here, but you should know that the government can restrict or even prohibit speech in certain situations (examples: regulation of radio and cable television, or someone inciting a riot, etc.).
2. Freedom to be free from unreasonable searches and seizures – this right is found in the Fourth Amendment and applies when the government (police) searches someone or their property. Generally, the police are required to get a search warrant before conducting a search, but the courts have enumerated several exceptions to the warrant requirement (examples: search incident to arrest, or emergency circumstances). The

exceptions are far too numerous and complicated to discuss here, but suffice it to say that the government is not allowed to search people or their property whenever and however they want.

3. Self-Incrimination – The Fifth Amendment provides that we are to be free from compulsory self-incrimination. When a person is charged with a crime, they cannot be required to answer questions about it (although, to clear themselves from the crime, it's a good idea). The defendant in a criminal trial cannot be compelled to take the witness stand and answer questions.
4. Due Process – Found in the Fifth Amendment, this right basically means that the government cannot take away your property, or liberty without first going through a legal process – such as a trial.
5. Condemnation – The Fifth Amendment also provides that the government cannot take private property without paying for it. On one hand, this may appear to be protecting citizens, at the same time it gives the government an incredible power—it can take your property (examples: your house, your business, etc.) if it decides it is needed for a public purpose (such as building a new highway) and all it must do is pay you a reasonable sum.
6. Trial rights – The Sixth Amendment provides certain protections for those on trial for crimes. People have the right to an attorney, a jury, and a speedy trial. Of course, some exceptions may apply, but those are the basic rules.
7. Punishment – The Eighth Amendment protects persons from excessive fines or bail and other cruel and unusual punishments. This amendment is often cited in the debate over the use of capital punishment. Some argue that the death penalty is “cruel and unusual” and others disagree.
8. Later Amendments provided additional rights such as the right to vote, and also prohibited slavery.

III. Discussion.

Hold a discussion of alternative forms of government, stressing the benefits of freedoms of individuals, over despotism (the power of kings vs the rule of the people; the transfer of power of the President every four years vs a dictatorship; the rule of Iraq or Germany under a dictator vs a democracy). Establish why it is important that ultimate power rest solely with the people in order to preserve individual freedom.

THE LAW OF CONTRACTS

I. Introduction.

Each of you--from high school graduation until death--will make thousands of contracts and enter into thousands of “business” transactions.

- A. This is true whether man or woman, businessman, politician, doctor, lawyer, housewife, rich, poor, etc.
- B. Examples: (in possible chronological order)

Your Contract	Your Contract Obligations
<i>Get a job:</i> employment contract	Work for pay
<i>Rent a place to live:</i> lease/rental agreement	Pay rent; use reasonable care with the premises
<i>Buy a car:</i> financing contracts	Purchase with obligation to pay money
<i>Get married:</i> enter into the contract of marriage	Too numerous to mention
<i>Buy house:</i> financing or construction contracts	Purchase with obligations to pay money

. . . And so on, with about as many examples as you may wish to take time for.

- C. Many of these thousands of contracts pertain to comparatively small and unimportant things in life. Others, however, are involved in some of the very big things in your life. So, it is important to know something about them.

II. What is a contract?

- A. A contract is a situation where each party involved becomes obligated to the other, to do, or not to do, a particular thing.
- B. All parties must be competent to contract.
 - 1. Mentally incompetent persons, for example, are legally not capable of contracting.
 - 2. Minors are bound by the contracts they make, but they are allowed to disaffirm the contracts within a reasonable amount of time of attaining age 18. In disaffirming the contract, they must return all property and money they received under the contract.

- a. Exception for necessities (explain – always bound).
 - b. Only the minor, or the person acting in his behalf, such as his guardian, can claim such a contract is invalid.
 3. Married minors may enter into contracts.
- C. There must be mutual asset between the parties.
 1. One makes an offer, which is accepted by the other.
 2. There must be consideration (something of value given).
 3. There are many legal rules pertaining to the offer and acceptance, such as:
 - a. When an offer is effective (when received).
 - b. When an acceptance is effective (when sent in the manner used or specified in the offer).
- D. The contract must be legal.
 1. Certain contracts are invalid because our laws provide that they violate our “public policy” (example: a contract by which a man agrees to pay you to injure someone.)
 2. Some contracts are outlawed by laws passed by the legislature (explain).
 - a. Anti–trust, price fixing, etc.
 - b. Fair trade laws.
 - c. Gambling contracts.
 3. Some are outlawed by court–developed law.
- E. Although a contract may involve matters of great magnitude or importance, it may be very simple. On the other hand, it may be very complex.
 1. Some contracts, even though simple, must be in writing, to be valid, because the law says so.

2. Others, though very complex, could be enforced though they were made orally only (not that this is always a good idea).

III. Why is it a good idea to have a contract in writing?

- A. By this, we are not talking about every contract, such as your dollar purchase in the grocery store.
- B. If you and Joe shook hands on your deal—you know him like your brother—why do you need anything in writing?
 1. Protection against dishonesty is only one of the many reasons.
 2. People have poor memories. After time goes by, people have different recollections of what their agreement was (example: the game where a story is told from person-to-person, and who knows how it will come out).
 3. In some cases, writing is an actual legal requirement (Statute of Frauds). Examples include:
 - a. Conveyance of land.
 - b. Contract for sale of land.
 - c. Lease for over one year.
 - d. Real estate agency contracts.
 - e. Contract not to be performed in one year.
 - f. Promise to answer for debt of another.
 - g. Contract in consideration of marriage.
 4. In some cases, a written contract enables you to protect yourself against people who aren't even involved in your contract (example: by recording certain documents with register of deeds, notice of the existence of the contract is given to the whole world).
 5. A written contract shows what you meant to do, even if you later become disabled, or die.

IV. Why go to a lawyer?

- A. Most day-to-day contracts and business transactions are done without a lawyer. But in many cases a lawyer may be able to help.
- B. Over the years, in the case of many of the usual contracts, such as those pertaining to selling land, a whole series of rules and practices have arisen regarding the provisions usually used.
 - 1. Certain words and terms have come to have certain technical meanings.
 - 2. Certain things to watch out for have become obvious to lawyers.
- C. From lawyer's experience and training, they can:
 - 1. Inform you as to the things usually taken care of in a contract such as yours.
 - 2. Inform you where your problems might be.
 - 3. Have ideas as to things to be covered in the contract that you never thought of.
 - 4. Inform you how this contract may affect you in seemingly unrelated ways.
 - 5. A lawyer's advice, like that of your doctor upon a "checkup", can be preventive, by warning you of possible future difficulties, and advising you how to avoid them.
 - 6. A lawyer's advice can help you take advantage of possibilities available under the law (examples).
- D. One clause added or a few words changed, can make the difference between a good contract, and one that might better never have been written.

V. Do's and Don'ts regarding your contracts.

- A. In important agreements, give serious thought to having them checked by your lawyer. An ounce of prevention...
- B. Before you sign – know what the contract is and what it says.

- C. Read the entire contract before signing. Be sure it says what you understand your agreement to be.
 - 1. You're usually bound by what it says—not what you thought it said, **even if you never read it.**
 - 2. If anyone asks you to sign a contract without reading it through; don't sign!
 - 3. If anyone tries to discourage you from checking with your lawyer before signing, something is very likely fishy; don't sign!
 - D. Ask as many questions as are necessary to satisfy yourself.
 - E. Keep a complete and accurate copy of the contract.
- VI. Good rule—if it's important enough to sign, it's important enough to understand.

BUSINESS LAW

I. Why Go to a Lawyer?

Today's business world has grown quite complex with a variety of business entity types, each with its own legal liability and tax treatment characteristics. The laws governing businesses are voluminous, complex, and frequently changing. A competent lawyer will be able to assist in developing a solid business plan that will not only get you started in your new business, but also plan for the future.

II. The Business Plan/Client Goals

The first thing that a lawyer will do is to simply meet with you in order to get a better idea of what you want to accomplish with the business venture. For example:

- A. What are your goals, both short term and long term?
- B. How do you want the business to operate?
- C. Do you want to make money, or is this just a hobby?
- D. Who, if anyone, do you want to be involved in the business with you, and what will their roles be?

A thorough discussion of these and other important issues will provide the lawyer with the information needed to help prepare a good business plan for the business. A solid business plan is an essential first step in the planning process, as it will provide an operational guide to follow as the business grows and expands. Perhaps one of the most important uses of a business plan is to provide potential investors with a plan to use in assessing their investment risks. The chances of obtaining financing will be much higher if the potential investor has a well thought out and professionally prepared business plan to assess the risk of investment.

III. Choice of Entity

During the initial interview, a number of key issues should be discussed in order to complete the business plan. The first major formation decision is what type of business entity is best for your business venture? There are a variety of business structures to choose from, each with its own pros and cons. Generally, the two biggest areas of concern when choosing a type of business entity are the legal liability to the owners and the tax treatment of the business. The available types of business entities include:

- A. Sole proprietorship
1. Formation Requirements: None
 2. Liability: Owner is liable for all business obligations.
 3. Tax treatment: Taxes pass-through to the owner's individual tax return.
 4. Management: One owner controls all management functions
 5. Governing law: Basic contract law
- B. General Partnership
1. Formation requirements: None.
 2. Liability: Each partner is jointly and severally liable for partnership obligations
 3. Tax treatment: Taxes pass-through to the partners' individual tax returns.
 4. Management: Partnership agreement created by partners will govern management functions but in the absence of agreement, the default IUPA rules generally provide for equal management by all partners.
 5. Governing law: Iowa Uniform Partnership Act, Iowa Code ch.486A. (Most provisions may be altered by a partnership agreement).
- C. Limited Liability Partnership (LLP)
1. Formation requirements: Form a general partnership and file a statement of qualification with the secretary of state.
 2. Liability: Partners are given full-shield personal protection for partnership obligations, but remain liable for own actions.
 3. Tax treatment: Taxes pass-through to the partners' individual tax returns.
 4. Management: Same as general partnership.
 5. Governing law: Same as general partnership.

D. Limited Partnership (LP)

1. Formation requirements: File a certificate of limited partnership with the secretary of state.
2. Liability: General partners are jointly and severally liable for partnership obligations; limited partners are not personally liable for partnership obligations but remain liable for own actions.
3. Tax treatment: Taxes pass through to the partners' individual tax returns.
4. Management: General partners share the management functions of the partnership; limited partners have no control.
5. Governing law: Iowa Uniform Limited Partnership Act, Iowa Code ch.487. (Most provisions may be altered by partnership agreement).

E. Limited Liability Limited Partnership (LLLLP)

1. Formation requirements: Form limited partnership and then file statement of qualification with the secretary of state.
2. Liability: All partners are given full-shield personal protection for partnership obligations, but remain liable for own actions.
3. Tax treatment: Taxes pass through to the partners' individual tax returns.
4. Management: Same as limited partnership.
5. Governing law: Same as limited partnership.

F. Limited Liability Company (LLC)

1. Formation: File articles of organization with the secretary of state and may file operating agreement.
2. Liability: Members are provided full-shield personal protection for the LLC's obligations, but remain liable for own actions.
3. Tax treatment: Taxes pass through to the members' individual tax returns.

4. Management: In manager-managed, a board of managers handles management functions. In member-managed, members share management functions.
 5. Governing law: Iowa Limited Liability Company Act, Iowa Code ch.490A. (Many provisions may be altered by operating agreement).
- G. Corporation (including S corporations).
1. Formation: File articles of incorporation with secretary of state.
 2. Liability: All shareholders (owners) have full liability protection for corporate obligations, but remain liable for own wrongful actions.
 3. Tax treatment: Corporations are subject to double tax because corporation is viewed as a separate tax-paying entity. The corporation is taxed on its income, then the shareholders are taxed on distributions from the corporation. A corporation, if it meets certain requirements set out in the Internal Revenue Code, may elect to be taxed under subchapter "S." This results in the corporation being taxed under a pass-through scheme, much like partnerships.
 4. Management: Board of directors handle all management functions of the corporation. The board is elected by the shareholders.
5. Governing law: Iowa Business Corporations Act, Iowa Code ch.490.

RENTING A HOME

LANDLORD–TENANT LAW

- I. Introduction—relationship of the parties.
 - A. Lessor and Lessee.
 1. “Landlord” is the owner of the land and buildings.
 2. “Tenant” is the person in possession of the land.
 - B. Rent—the return which the landlord receives in exchange for permitting the tenant the use of the land.
 - C. The relationship of landlord and tenant is created by agreement.
 1. The rights of a tenant, though they arise from contract or agreement, are rights in or an interest in land.
 2. Thus the subject is a part of a larger subject of law relating to rights and duties arising out of the ownership and use of land.
 - D. Lease—a legal term used to describe the rights and obligations arising out of the relationship of landlord and tenant.
 1. It is the grant or transfer of certain rights in the land from the owner landlord to the tenant.
 2. The term “lease” also identifies the agreement between the parties.
 - E. The tenant has certain rights to the use of the land arising out of the relationship. Her possession is notice of such rights. Any purchaser of the property from the landlord would also be subject to the rights of the tenant, whatever they might be.
- II. Desirable elements of lease agreement.
 - A. Lease agreement should be in writing. If the term of the lease is in excess of one year, lease must be in writing to be valid.
 - B. Many people rent property, however, under what is called a tenancy at will. This means that the lease can be terminated by either party by proper notice to the other. (The notice requirements for termination will be discussed later.)

- C. Similarly, a lease for less than one year does not have to be written to be valid. If it is in writing, however, it will help in the resolution of disputes.
- D. Any written lease should contain the following written provisions:
1. Identification of landlord and tenant.
 2. Date the lease is executed.
 3. Date the tenant is to take possession.
 4. Permitted use of premises.
 5. Term of lease—when it ends.
 6. Rental—amount, when and where payable.
 7. Description of the property—what is tenant getting?
 8. Rights and duties with respect to repair and maintenance. Unless there is an agreement to the contrary, the landlord is responsible for making all repairs and doing whatever is necessary to put and keep the premises in a fit and habitable condition, including maintaining all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances. The tenant on the other hand, has a duty to use all the above-mentioned in a reasonable manner.
 9. Rights and duties with respect to improvements. In absence of agreement, tenant has no right to remodel or change the structure. Tenant may install and remove fixtures if their installation and removal does not injure the premises. (Speaker: explain more fully.)
 10. Provisions with respect to insurance. Landlord's duty to carry property insurance to cover the actual structure, but this will not cover the tenant's property in the building. The tenant can, and should, get renters insurance to cover all her property. This is usually very inexpensive.
 11. Utilities. These are the obligation of the tenant unless the landlord controls the source of supply or unless they agree otherwise.
 12. Destruction of premises by fire or other cause. If tenant is not responsible for destruction and premises cannot be used, tenant may end the lease. The agreement should provide for what hap-

pens in case of partial destruction (without agreement, tenant can vacate the damaged portion and reduce rent to fair rental value of remaining premises).

13. Condemnation. Unless entire area tenant is renting is condemned, tenant continues to be liable for rent. It is desirable to protect parties against this contingency.
14. Holding over. If lease term has expired and the tenant remains after end of term, landlord may sue for possession, and maybe for actual damages and reasonable attorney's fees.
15. Assignment and subletting. Tenant may assign or sublet (explain) but remains liable for rent. It may be desirable to protect landlord by requiring consent to subletting the property. Landlord can't be arbitrary in withholding consent.
16. Access. Landlord can access the premises anytime without notice in the case of an emergency. Otherwise, landlord must give at least 24 hours notice to the tenant and may only enter during reasonable times.

III. Termination of tenancy.

- A. Lease terminates at end of term, if term is specified by agreement.
- B. Tenancy at will can be terminated by either party.
 1. If the rental term is month-to-month, 30 days notice in writing is required.
 2. If rent paying period is less than one month, notice by either party equal to the time interval between rent payments is sufficient (give example).
 3. In all cases of neglect or refusal to pay rent due on a tenancy at will, a three-day notice to quit may be served.
- C. Three-day notice to quit or pay rent--explain use and effect of this notice.
- D. How notice is served:
 1. Personal delivery by law enforcement officer (sheriff).
 2. By certified or restricted certified mail.

IV. Remedies for removal.

- A. At the end of the term (when the term is specified) or after termination in any of the ways described above, landlord may simply remove tenant and re-enter premises, if he can do so peaceably.
- B. If tenant will not vacate without force, landlord may commence “unlawful detainer” action.
- C. Action may be commenced in district court and the court will order a hearing to take place within seven days.
- D. If the landlord has complied with the notice provisions and is otherwise entitled to possession, judge will issue writ to the sheriff, who will then remove tenant from possession of the premises.

V. Security Deposit.

- A. The most a landlord can require the tenant pay is an amount equal to two months rent.
- B. The landlord is required to keep the payment in a bank account separate from his own personal accounts—the funds cannot be commingled. Any interest earned during the first five years belongs to the landlord; the tenant gets all interest earned after five years.
- C. Within thirty days of the termination of the rental agreement, the landlord must either:
 - 1. Return the full payment to the tenant; or
 - 2. Withhold a portion or all of the payment and return a written statement detailing why deposit was withheld.
 - 3. The landlord may withhold payment for:
 - a. unpaid rent
 - b. restoring the dwelling to the condition it was in when the tenant moved in, except for ordinary wear and tear.
 - c. expenses incurred in removing a tenant that wrongfully held over the term.

- D. If a court finds that the landlord withheld the deposit in bad faith, it can impose punitive damages up to \$200 in addition to actual damages.

VI. Miscellaneous matters relating to landlord-tenant.

- A. Option to renew—doesn't exist in absence of specific agreement. If you are purchasing property where tenant is in possession, proper inquiry is necessary to determine the rights of the tenant.
- B. Option to purchase. Terms must be definitely ascertainable. Presents tax problem if rent is unreasonable or purchase price unreasonable.
- C. Where tenant removes without timely notice, landlord has obligation to minimize damages. If landlord makes use of premises such as redecorating, he may be accepting a surrender of the premises thereby forfeiting rights for damages against tenant. But otherwise, a tenant can not end his liability for rent by simply moving out.
- D. Rental provisions.
 - 1. Fixed rent.
 - 2. Percentage agreements.
 - 3. Net lease.
 - 4. Provisions for tenant to pay taxes or other obligations in addition to rent.
- E. If tenant makes improvements to property, landlord does not normally have to pay for them.
- F. If there is a sale or mortgage by landlord, purchaser or lender must observe rights of tenant. A buyer or lender should, therefore, be careful to inquire about the rights of tenants.

VII. Conclusion.

- A. Many people are directly affected by the relationship of landlord and tenant. Normally, form leases tend to be one-sided. An unwritten lease, on the other hand, leaves many matters for future dispute. It is important to give careful consideration to the problems discussed before entering into a lease and to have an agreement reduced to writing which adequately protects both parties.

- B. As a prospective tenant, you should be sure that the details of your agreement with your landlord are clear, and that both you and the landlord understand them fully.

BUYING YOUR HOME

I. Introduction.

Why do I need a lawyer when I buy my home? If I know the seller and trust her, what have I got to worry about? Whenever you buy something, whether it is a football, a car or a piece of land, you should try to be sure that you get what you pay for. Footballs and cars last only a few years and become worthless, but land outlasts many owners and may become much more valuable through the years. For this reason complicated rules have been developed through the centuries to determine who owns a piece of real estate and to protect the rights of that person. It's the lawyer's business to understand and use these rules.

II. "Rules" for buying a home.

A. Contract of purchase.

(In general) Having decided on the home you wish to buy and having agreed on the terms of sale with the seller, you need a contract which will protect both you and the seller. You already have heard about contracts in general, but there are certain specific requirements for a satisfactory real estate contract.

B. Specific requirements.

1. Writing.

The contract must be in writing. An oral agreement for the sale of land is unenforceable. What difference does that make if the parties know and trust each other? One may die or become incompetent or a third party may offer a great deal more for the land before the sale is completed.

2. Adequate description. A careful and accurate legal description avoids misunderstanding as to what property is included.

a. If any personal property is included in the deal, it should be described. This includes draperies, carpeting, appliances and furniture.

b. Items which may or may not be fixtures such as the television antenna or a partially built-in refrigerator should be described if they are included in the purchase.

3. Taxes and special assessments (Explain).

The question of who is to pay property taxes should be set forth; sometimes the taxes are prorated (Explain).

4. Insurance (Explain kinds involved).

The contract should state whether it is to be prorated (Explain).

5. Type of title. The contract should include:

- a. Provision for warranty deed (Explain).
- b. Guarantee of merchantable title (Explain) shown by abstract with provision for adequate examination by the purchaser's lawyer before the closing.

6. Possession.

- a. "Possession" means only the right to ownership of the property. If a third party is occupying it under a lease, "possession" means only the right to collect and keep the rents.
- b. The date when the purchaser is to receive "physical possession" should be set forth.
- c. In the event that the possession date and the closing date are different, provision may be made for interest payments.

7. Terms of payment. The contract should include:

- a. Total purchase price.
- b. The amount of earnest money (down payment). This provides a fund for damage payment to the seller. It does not bind the bargain. No money needed for that; just a well-written contract.
- c. "Subject to financing." The terms of the proposed financing should be set forth in detail.

8. Signed by the seller.

- a. All owners and their wives must sign.
- b. Contract to sell a home which is signed only by the husband is void.

9. It is wise to have a deed executed by the sellers placed in escrow pending final payment on the contract.

III. Examination of title.

A. Evidence of title in general.

The abstract gives the story of all transactions affecting the parcel of land since the government survey. It must be examined in detail. The examining attorney will render an opinion in writing.

B. Give a few examples of title defects such as:

1. Easements.
2. Tax liens.
3. Judgments.
4. Errors in description.
5. Mechanic's liens.

C. Curing of title objections (Explain).

IV. Closing.

A. In general.

1. It is the conference at which title is transferred to the buyer and the purchase price is transferred to the seller.
2. Describe where it is generally held and who is present.

B. Title.

1. Examination must be made to determine whether:
 - a. The defects disclosed in the title examination have been remedied.
 - b. Any defects have occurred in the title since the date of the abstract continuation.

- c. The instruments of conveyance and financing properly drafted and the proper revenue stamps affixed.
- C. Purchase price.
 - 1. The closing statement must be examined by the lawyer for each party to determine whether:
 - a. Taxes and insurance have been properly prorated.
 - b. The buyer and seller have been properly credited for expenses they have incurred.
- D. Escrow. In the event that minor defects in the title or the physical condition of the property have not been remedied by the time of the closing, part of the purchase money may be held in escrow (explain).

V. The lawyer's role.

- A. When is a lawyer necessary?

Her advice and help are needed in each of the three steps set out in the three main sections above.

- B. Can't someone such as a banker or real estate broker who has dealt with real estate for years do just as well?

No. Each profession has an area in which it is expert. The lawyer is an expert on rules of law. The broker and banker are experts on availability, quality and value of real estate and on the availability of money that can be borrowed.

- C. What will it cost me for a lawyer's services?

- 1. Discuss local bar rates. Fees vary slightly from locality to locality.
- 2. The lawyer's fees are only a minute percentage of the cost of a home. Few will run the risk of loss by fire without insurance on their homes. Similarly they should employ a lawyer to avoid the risk of loss when buying. For many, the home is the biggest purchase they'll ever make.

TORT CONCEPT

I. The Idea of a Tort.

- A. Definition. A civil wrong, other than breach of contract, for which a remedy may be obtained, usually in the form of damages; a breach of a duty that the law imposes on persons who stand in a particular relation to one another. *Black's Law Dictionary* (8th ed. 2004). Not all interests are legally protected. Your interest in not being punched in the nose is, but not your interest in the continued love and affection of your children.
1. How does the invasion come about? By intentional acts, negligent (careless) acts, or acts so dangerous they impose strict liability (explain) on the person doing them.
 2. The same act may be a crime. Criminal punishment does not rule out liability for money damages.

II. Intentional Torts.

- A. Physical harm and apprehension.
1. Intent—a person intends a result when the person acts for the purpose of accomplishing it or believes that the result is substantially certain to follow from the act.
 - a. A person who fires a bullet into a dense crowd may fervently pray that it will not hit anyone but since he or she must believe and know that it cannot avoid doing so, he or she intends it.
 - b. An anarchist who throws a bomb into the royal carriage may actually wish to kill no one but the King. Nevertheless, if he or she goes ahead with the deed knowing that the death of others in the carriage is a necessary and almost inevitable incident to that end, it must be said that he or she intends to kill them.
 2. Battery.
 - a. Definition. One is liable to another for unconsented, unprivileged contact with his or her person caused by acts intended to result in such contact. Neither actual harm nor apprehension is necessary to the action. However, one is assumed to consent to ordinary contact allowed by social usage.

- b. "That person hit me in the jaw." (A battery - you may collect damages generally.)
- c. "That person threw a stick intending to hit Jones, but it hit me instead. I was only a bystander." (A battery committed against you even though you were not the intended victim.)

3. Assault.

- a. One is liable for the apprehension of the immediate, harmful or offensive, contact with another's person which is caused by acts intended to result in such contact or cause such apprehension.
- b. "That person swung at me but missed." (Assault - distinguished by producing only harmful apprehension of harmful or offensive touching)
- c. "That person said he had a good mind to pop me in the eye." (Words alone are not an assault.)
- d. "That person swore and cussed at me and used abusive language." (Abusive words alone are not assault.)

4. Consent.

- a. "I said I could pin him, so we wrestled." (You can't recover for your wrenched back.)
- b. "We were boxing, but he kicked me in the shins." (No consent.)
- c. "I pulled a blind woman out of the path of a speeding automobile, but in doing so, knocked her down." (The law will assume the blind woman consented to such treatment in these circumstances.)
- d. "I kissed my girlfriend goodnight after our date." (The girl who makes no protest at a proposal to kiss her in the moonlight may have mental reservations but she cannot complain if the moon does not illuminate her reservations.)

6. Defenses of person or property.

- a. The privilege of self defense extends to the use of force which reasonably appears to be necessary for protection against a threatened interference with the person.
- b. "He tried to shoot me, but I beat him to the draw." (Such extreme means used to prevent extreme harm to oneself requires a reasonable belief that the other person is going to inflict such extreme harm.)
- c. There is no privilege to use violence after the assailant is disarmed or helpless, or all danger is clearly passed.

- d. "I saw these two people fighting. One picked up a stick and I prevented him from using it. While I held his arms the other fellow cut him with a knife that I hadn't seen." (Stay out of the fracas unless you reasonably believe the one you are helping has the privilege of self-defense.)
- e. "He wasn't looking where he was walking so I knocked him down to keep him from bumping into me." (You should have stepped aside if possible.)
- f. "If I had not punched Joe, Jim would have punched me." (You cannot harm one person to avoid harm to yourself from another.)

B. False Imprisonment.

- 1. False imprisonment is the confinement of a person within boundaries fixed by another without legal justification, by an act or breach of a duty intended to result in such confinement.
 - a. "Sure, I locked the door on them, but the back door was standing open." (Unless the person confined knows there is another means of escape, this is no defense to false imprisonment.)
 - b. "Sure, I locked both doors, but they could have broken a window." (No excuse.)
 - c. "I didn't imprison him. I just told him that if he budged from that chair I would slug him." (Threat of immediate force constitutes a confinement.)
 - d. "Imagine the store detective holding you to investigate shoplifting!" (Under the Iowa law, stores are privileged to make reasonable investigation of shoplifting.)

C. Citizen's arrests.

- 1. "I saw him rob the storekeeper." (You are privileged to arrest a person committing or attempting to commit a public offense in your presence or when a felony has been committed and you have reasonable grounds for belief that the person to be arrested has committed it.) (Explain limitation as to misdemeanor which you heard was committed.)

D. Damage to reputation.

- 1. Spoken v. written words. (The historic division between libel and slander is whether the defamatory words are written or spoken. But radio broadcasts, transcriptions, and motion pictures have all been

held to be libel. The criterion seems to be the permanency of the defamation.)

2. "He called me a crook to my face." (Unless there was someone else to hear it, you cannot recover because you were not damaged. The law gives you nothing for hurt feelings.)
3. "She told everyone Jane was pregnant." (Whether this is defamatory or not depends upon whether Jane was pregnant.) That the statement was the truth is a defense.
4. "He said all politicians are crooks." (There must be identification of the person slandered.)
5. "The music critic said my singing sounded like the wailing of the damned." (When you offer your talents to the public, you invite criticism.)
6. "My former employer said that I stole money from the firm." (Again, truth is a defense.)

III. Negligence.

- A. Duty + Breach + Causation + Damages = liability. (Unless the jury can find some fault that caused injury or damage to another, there is no liability based on negligence.)
 1. Fault in doing something improperly (examples: Driving too fast, burning rubbish too close to a building, etc.).
 2. Fault in failure to do something you have a duty to do (example: failure to stop at stop sign.)
- B. In absence of statute, ordinary care is the legal standard. (Ordinary care is that degree of care which an ordinary careful and prudent person would exercise under the circumstances.)
 1. "With your high IQ, you should have been more careful." (The fact that you are more intelligent than the ordinarily reasonable and prudent man does not generally require of you a higher standard of care.)
 2. "I noticed that the hand brake didn't hold well, but I forget things easily." (A poor memory does not relieve you of negligence.)

C. Statute may set the standard of care required.

“Everyone always drives over 60 miles per hour in the country.” (The legislature has said 60 miles an hour is the top reasonable speed. You are negligent if you exceed this limit and liable if your illegal speed causes an accident regardless of the jury’s thoughts on the reasonableness of the speed limit.)

D. Fault without causation. (No liability).

“When the officer at the accident scene asked for my driver’s license, I found it had expired a year ago. (You have violated the law, but the violation had nothing to do with the accident.)

E. Liability without fault: (Sometimes established by statute.)

In workmen’s compensation field an employer is liable for injuries to employee occurring during course of employment, without regard to employer’s negligence or fault (For reasons of public policy.)

F. Common situations of liability.

1. As a property owner and user:

a. Duty as to condition of your premises.

i. To a trespasser. (You have no duty to guard or repair your premises to protect trespassers from unsafe conditions about which you are aware. Exceptions: highly dangerous conditions where you know that trespassers are frequently present, traps, and attractive nuisances.) (Explain attractive nuisance.)

ii. Licensees. Generally owner or occupant of real property has a duty to warn of hidden dangers known by the owner to be dangerous if such danger is not known or not observable by a person exercising ordinary care. (Explain licensee.)

iii. To an invitee. (the possessor of land is obligated to use ordinary care to keep the premises reasonably safe for invitees, to ascertain the actual condition of the premises, and to make the area reasonably safe or give warning of the actual condition and risks involved.)

- b. Duty as to activities on your property. (You must use care toward anyone whose presence is known to you even if he or she is a trespasser. You have no duty to keep lookout for trespassers but must look out for guests and business invitees.)
- 2. As to owner of animals.
 - a. “Whenever a stranger comes down the street, my Ruben makes for his ankles growling and baring his teeth and attempts to bite him.” (Section 351.27 Iowa Statutes makes your dog a public nuisance and any strangers so assaulted can kill Ruben.)
 - b. “Ruben bit one of the neighbor children.” (You are liable in most circumstances. It is not the law in Iowa that Ruben gets one bite before you are put on notice that he is vicious.)
 - c. “Ruben dug up the neighbor’s petunias.” (Section 351.28 makes you liable for his damage to property.)
- 3. As a sports lover.
 - a. “I was hit by a foul ball!” (You probably cannot recover. Your negligence in sitting in a known zone of danger from batted balls probably precluded your recovery under the comparative negligence doctrine).
 - b. “A temperamental ball player threw his bat into the stands and hit me.” (You should recover for this injury.)
 - c. “I suffered a broken leg playing football.” (By entering the game you consented to the body contact involved that might otherwise be a battery. You cannot collect for accidental injuries caused by playing a contact sport.)

IV. Defenses to Negligence Actions.

A. Comparative Fault.

- 1. “I knew the bridge was in very bad condition, but I crossed it anyway.” (You were negligent in proceeding across in view of the known risk. This negligence may preclude your recovery). The jury is allowed to consider your fault in reducing your recovery. If the jury finds you at 51% fault or greater, you will be completely precluded from any recovery. For 50% and below, your recovery is reduced by the percentage of your fault.

Example 1: The jury finds \$100,000 in damages, and you are 60% at fault. You get nothing.

Example 2: The jury finds \$100,000 in damages, and you are 25% at fault. You get \$75,000.

B. Legal Excuse (explain).

YOUR PROPERTY, YOUR ESTATE AND YOUR WILL

I. What is Property? What is your Estate?

A. Definition of terms:

1. Property is defined as the right or interest which a person has in lands and personal property. (Explain.)
2. Your estate is the total value of your property ownership at any given time.

B. What will make up your estate?

1. Real property—your home, farm, business building, vacant lot, etc.
2. Personal property—cash, bank accounts, bonds, stocks, household goods and furnishings, personal effects, farm and business equipment, land being sold on contract to others, etc.
3. Life Insurance contracts—control asserted by designation of beneficiary in usual situation, but you can provide that the proceeds be paid into your general estate; also annuity contracts.
4. Special Assets—such items as partnership interests, social security and pension death benefits, etc.

C. What are the forms of property ownership?

1. Sole Ownership—you have exclusive control over the use, enjoyment, possession and disposition of the particular asset.
2. Joint Tenancy—you own a particular asset with one or more other persons, and upon your death your interest passes to the survivors, (right of survivorship).
3. Tenancy in Common—you own a particular asset with one or more other persons, and upon your death your interest does not pass to the surviving owners, but is distributed as part of your estate.
4. Life Estate—you have the use and enjoyment of a particular asset for as long as you live, but upon your death, the distribution is not controlled by you.

II. You and Your Will.

A. What is a Will? Can I make one?

1. Definition—a Will is a planned distribution of your property, (probably acquired over a lifetime of hard work) at your death. In addition, in your Will, you can name your Executor, who is the individual assigned the task of taking possession of all your personal estate, paying your debts and funeral expenses out of your assets and distributing the rest according to your plan. Also, you can create trusts and designate trustees to care for the interests of minors and incompetents over a longer period after your death. Trusts are also a very effective tool for reducing estate taxes.
2. Requirements of a valid Will.
 - a. Age. Anyone over 18 or a married individual.
 - b. Mental capacity. Individual must understand the nature of the instrument they are executing, know and understand the nature and extent of their property, remember the natural objects of their bounty, and know the disposition they desire to make.
 - c. Form. It is usually a written instrument normally drafted by an attorney according to certain requirements prescribed by statute to insure validity and make clear the wishes of the testator (the person who makes the Will).

B. Should you (or your parents) have a Will? The traditional arguments:

1. “We own everything jointly”—the survivor may also die before he or she has a chance to make a Will; or they may die simultaneously in an accident. Then what?
2. “I’m going to give everything away”—you may very well need to retain your assets for yourself, with rising medical costs, etc. Further, how can you be sure it will all be given away by the time you die? (consider gift taxes)
3. “I don’t have much”—even some of the smallest estates must be probated, particularly to give good title to real estate.
4. “I’m young and single”—a lot of young people die in auto accidents, and single persons’ heirs may be less defined or there may be more of them than a married person would normally have. If you

do own property, why not have it pass on your death just as you want it to?

5. “My spouse already has a Will”—one spouse’s Will does not provide for the distribution of the other spouse’s estate.
6. “My spouse will get everything anyway”—not if you have children, since the intestate laws make provision for the children.
7. “The kids will get everything anyway”—but even if they do (no spouse), some of them may be minors, whose interests may be better protected by trusts. Also, shouldn’t you know who is to administer your estate? This requires the appointment of guardians, accompanied with all the limitations and technicalities placed on them.
8. “Wills cost money, and fatten up the lawyers.” Like all professional fees you should expect to pay reasonably for the services. Your lawyer will not only draw your Will in a way that you may be assured it carry out your wishes but he or she will review your affairs with you and anticipate questions which otherwise might arise to create problems which should be avoided. Avoiding the expense of a Will may be the most costly action that you could take for those who will succeed to your estate. (Considerable savings may result from the provisions of a Will giving a power of sale of real estate, authorizing sale of personal property, naming an executor without surety bond, etc.) Attorneys’ fees after death are generally the same whether there was a Will or not.
9. “I’m putting everything in life insurance.” While life insurance may well form an important part of your estate plan, it may not be in your case the most effective or practical way to build your estate during life or to control it after your death. (Life insurance paid to a designated beneficiary excluded from Iowa inheritance tax.)

C. What if I die without a Will?

1. Distribution controlled by statute—according to a fairly logical plan based upon the number and degree of heirship, but not always the way you might like it. Distribution is subject to dower rights, homestead rights, widow and family allowances and selections. It is made by court-appointed administrator. In effect, it is a statute-made Will (describe in detail).
2. Special Situations (Speaker Explain).

- a. Proceedings by which survivor gets ownership of property held in joint tenancy.
- b. Proceedings by which remainderman (explain) gets ownership when life tenant dies.

D. If I make a Will, what should I do with it?

1. Keep it in a safe place; preferably either with an attorney or in a safe-deposit box, or deposit with the Clerk of Court. At home, the wrong person might get hold of it or it could be destroyed by fire or water.
2. Review it from time to time as to death of beneficiaries, or executor, value of estate, etc.
3. Revocation. This occurs either by making new Will, revoking the old Will, burning and destroying the old Will, or executing an instrument canceling the old Will. (When done by cancellation, revocation must be witnessed in the same manner as the making of a new Will.)
4. Changing and amending. Making new Will or codicil (amendment). Don't make any changes whatever in present one.

E. What matters does a Will not cover?

1. A Will governs distribution of individually owned property only; not joint property, payable on death items, or life insurance payable to designated beneficiary.
2. Bear in mind also that you cannot disinherit a wife by a Will, since she has an election to take what is given her in the Will or to take a statutory share. (Explain).

III. How is an Estate Settled at Death?

- A. "Must we go to Court?" Generally, yes. If there is a Will, file it with the Court, proper notice is given, the Will is proved, and an order is issued admitting the Will to probate and appointing Executor. If there is no Will, the court will, on application of an interested person, appoint an administrator who will publish notice of the appointment. You need a lawyer to handle the probate proceedings from beginning to end, and he or she will take care of all this for you. The Executor or administrator under the direction of the attorney will gather the assets, inventory them, and have them appraised by the court-appointed appraisers. The assets will then be liquidated to the extent needed to raise cash, and as much

further as the Will may direct or the heirs or beneficiaries request. After the debts and claims are settled and paid, the balance of the estate is distributed.

- B. What about taxes? The distributive shares are subject to Iowa inheritance tax and if the gross value of the estate exceeds a specified statutory amount, a Federal Estate Tax return must also be filed. Certain exemptions, exclusions and deductions are available, so these taxes are not as severe as often publicized. In addition, state and federal income tax returns are filed in pretty much the same manner, but on different forms, as if the deceased had lived.
- C. How much will all this cost? The ordinary fees for the executor, administrator and attorney are set by the Court and shall not exceed the fee schedule which is set out in § 633.197 of the Iowa Code. However, the Court may make further allowances in just and reasonable amounts for actual, necessary, and extraordinary services, including services in connection with real estate, tax and litigated matters. In addition, there are certain court costs such as filing fee, appraiser fees, charges for certified copies, recording papers, etc. Reference can be made to the current schedule, but it should be indicated that this is subject to change. (Speaker, explain and give some detail.)

CAREERS IN LAW

I. Introduction: Should you consider a career in Law?

Answer: Yes, if:

- A. You are a reasonably good student.
- B. You can read accurately, and enjoy doing it.
- C. You think you'd like work that involves you in helping to solve people's problems.
- D. You think you'd like to be a part of a profession that plays a vital part in making our society work.
- E. You want to have a background and training that fits you for a variety of interesting jobs.

II. How Do You Get to be a Lawyer?

- A. In high school: Take the college prep curriculum; emphasize English composition, government and history courses. Participate in such extracurricular activities as debate and student government.
- B. In college:
 - 1. Any good liberal arts course of study will provide a good background for law school. However, no specific course of study is required for admission to law school.
 - 2. Make the best grades possible. Entrance requirements are higher than ever and bare passing grades are inadequate for admission to law school.
 - 3. Seek out expert assistance from your college adviser.
 - 4. In junior or senior college year, take Law School Admission Test, given by Law School Admissions Council, Newton, Pennsylvania. www.lsac.org.
- C. In Law School:
 - 1. Normally three years of study.

2. Explain “Case Method”.
 3. There are no “major” fields of study in law school; much of the curriculum is required; most specialization comes only after you start to work.
 4. Try for good grades and participate in law school activities and organizations. There are many different organizations and you can surely find one that fits your interests.
- D. Admission to Bar:
1. Why admission is important.
 2. Requirements for admission:
 - a. Good moral character.
 - b. Formal legal education.
 - c. Bar examinations.

III. Work Available to Lawyer.

- A. Private practice
1. Practice alone.
 2. Association with firm.
 3. Small town v. large city.
- B. Other legal positions:
1. “House counsel” for a business firm.
 2. Government lawyer – city, state, federal.
 3. Military lawyer (in uniform), courts–martial, etc.
 4. Law teacher.
- C. Other fields where lawyers do well:
1. Business – law training is good business training; many lawyers become executives.
 2. Selling, especially real estate and life insurance.

3. Investigating work, as in insurance claims or for the F.B.I.
4. Politics – Large number of state and national leaders have legal training.

D. Are Lawyers Needed? Yes!

Dedicated lawyers are needed not only in the legal profession but in all areas.

IV. The Practice of Law.

A. Types of Legal Work.

1. International law. (Give example.)
2. Tax law. (Give example.)
3. Patent law. (Give example.)
4. Criminal law. (Give example.)
5. Tort and accident law. (Give example.)
6. Corporation law. (Give example.)
7. Many others.

B. How is it accomplished:

1. Court work.
2. Drafting instruments.
3. Investigation.
4. Counseling.

C. Discuss specialization in Legal Profession.

V. Lawyer' s Compensation.

A. Professional standing in community.

- B. Providing professional assistance to individuals, corporations or government.
- C. Protecting individual rights. (Explain lawyer's role is not always a popular one.)