Facultad de Derecho
Universidad de Buenos Aires

Programa de

Lecto-comprensión

Exámenes

Inglés Nivel I

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Fuente: www.lectlaw.com

Non Performance and Breach of Contract

The basic rule is that parties to contracts must perform as specified in the contract unless (1) the parties agree to the change in the contract's terms, or (2) the actions of the party who deviates from the terms of the contract are implicitly accepted ("ratified") by the action or non-action of the other party.

If there is no acceptance of deviation from the terms of the contract, and the deviation is serious enough to make any real difference in the intended result of the contract, then the deviating party is said to have breached the contract. His justified prevention or interference with the performance of the other party is also a breach.

Of course if one party fails more or less entirely to perform the contract, or totally prevents the performance of the contract by the other party, the situation is straightforward. The situation becomes more complex where the argument is over the quality of materials, the timing of work, or something of that sort.

Breach of contract leaves the non-performing or improperly performing party open to a claim for damages by the other party. The non-breaching party is relieved of his obligations under the contract by the other party's breach.

The aggrieved party, to help support his claim for breach, should have done all the things required of him under the contract until the time of breach, and must have done nothing to make it impossible or unreasonably difficult for the other party to perform his share. The non-performing party can be expected to make excuses for his conduct, and he will try to find ways to blame the other party—an excellent argument for performing one's own side of a contract punctiliously and in a manner that leaves a record which others can see.

There are so many possible ways for performance of a contract to give rise to dissatisfaction that the courts have been forced to analyze the matter in much more subtle terms than "breached" or "not breached."

The doctrine of "substantial performance" saves a party who has largely fulfilled his obligations under a contract from suffering major loss merely because he has unintentionally fallen short in some particular which does not affect the essence of the contract.

There has to be a limit to the quibbles of the dissatisfied customer, for example, or the courts would be swamped with trials over precise shades of paint and tiny imperfections in services. A party can unintentionally fall short of perfection, but if he has substantially performed his duties under the contract, he can still sue the other party for payment.

The dissatisfied party, on the other hand, can usually win some adjustment in the amount of payment as compensation for the minor defects in the performance.

Where a party's unintentional failure to perform fully does affect the essence of the contract, he cannot sue the other party "on the contract" in order to be paid. To the extent that his work has benefited the other party, he may recover on the theory of a contract implied by law (quasi-contract).

A. Responder las siguientes preguntas.

1. ¿Qué se afirma en el párrafo 1 en materia de cumplimiento contractual? ¿Cuáles son las excepciones?

2. ¿En qué casos se incurre en incumplimiento del contrato?

3. En el párrafo tres, ¿qué situaciones pueden plantearse respecto del incumplimiento contractual?

4. ¿Qué se puede reclamar en caso de incumplimiento?

5. ¿Qué requisitos debe haber cumplido el damnificado para fundar su reclamo?

6. ¿En qué consiste la teoría de "*substantial performance*"?

7. ¿Qué puede solicitar la parte damnificada como resultado de la aplicación de la teoría antes mencionada?

8. ¿Qué caso se presenta en el último párrafo?

B. En las siguientes oraciones indicar con un círculo a qué término hace referencia la palabra subrayada:

1	The aggrieved party, to help support his claim for breach, should have done all the things required of him under the contract until the time of breach, and must have done nothing to make **it** impossible or unreasonably difficult for the other party to perform his share.
2	The non-performing party can be expected to make excuses for his conduct, and **he** will try to find ways to blame the other party ...
3	The doctrine of "substantial performance" saves a party **who** has largely fulfilled his obligations under a contract from suffering major loss merely because he has unintentionally fallen short in some particular **which** does not affect the essence of the contract.

The American Lawyer: His Ethics and Service

Fuente: Your Introduction to Law by George G. Gouglin.

Practice and procedure for disciplining lawyers varies from state to state. In almost all jurisdictions, however, anyone may file a complaint concerning a lawyer's misconduct. Most state bar associations and many county associations have grievance committees, which are charged with receiving and investigating complaints, making preliminary findings, and, if they warrant it, referring complaints to the appropriate court. The court rules on the lawyer's conduct and may suspend him from practice or even disbar him. In some states, court proceedings are instituted and conducted by the attorney general of the state or by the county attorney.

A lawyer may be suspended from practice or disbarred if his conduct indicates that he cannot be trusted to advise and act for clients and also in those cases where his conduct indicates that he would cast serious reflection on the dignity of the court and on the reputation of the profession if he were allowed to continue to practice.

Most of the Canons of Ethics are faithfully observed by an overwhelming majority of lawyers in the United States. A few lawyers do not observe them either because they believe the Canons are unrealistic and inapplicable to modern business and professional conditions or for reasons of gain or in zeal to win cases.

Bar associations are constantly striving for stricter adherence to the Canons of Professional Ethics. The question is whether greater adherence should be brought about by educational processes or through harsher disciplinary action. Surveys throughout the country indicate that in some areas disciplinary action is more or less futile, for only the most brazen violations are prosecuted and grievance committee members are often too lenient with offenders.

A. Responder las siguientes preguntas:

1. ¿Qué se afirma en las dos primeras oraciones del *párrafo 1*?

2. ¿Qué comisiones operan en casi todos los colegios de abogados estadounidenses y qué funciones cumplen?

3. ¿Qué discrecionalidad tienen los tribunales?

4. ¿Cuál es el primer caso de aplicación de sanciones al que refiere el *párrafo 2*?

5. ¿Cuál es el segundo caso al que refiere el *párrafo 2*?

6. ¿Cuál es la actitud de los abogados respecto de los cánones de ética?

B. Expresar en castellano el contenido del párrafo subrayado.

The Conditions of Legal Validity

By Andrei Marmor

Fuente: The Nature of Law. Standford Encyclopedia of Philosophy
http://plato.standford.edu/entries/lawphil-nature

The main insight of Legal Positivism, that the conditions of legal validity are determined by social facts, involves two separate claims which have been labeled The Social Thesis and The Separation Thesis. The Social Thesis asserts that law is, profoundly, a social phenomenon, and that the conditions of legal validity consist of social facts. Early Legal Positivists followed Hobbes' insight that the law is, essentially, an instrument of political sovereignty, and they maintained that the basic source of legal validity resides in the facts constituting political sovereignty. Law, they thought, is basically the command of the sovereign. Later legal Positivists have modified this view, maintaining that social conventions, and not the facts about sovereignty, constitute the grounds of law. Most contemporary legal Positivists share the view that there are conventional rules of recognition, namely, social conventions which determine certain facts or events that provide the ways for the creation, modification, and annulment of legal standards. These facts, such as an act of legislation or a judicial decision, are the *sources of law* conventionally identified as such in each and every modern legal system.

Natural lawyers deny this insight, insisting that a putative norm cannot become legally valid unless it passes a certain threshold of morality. Positive law must confirm in its content to some basic precepts of Natural Law, that is, universal morality, in order to become law in the first place. In other words, Natural Lawyers maintain that the moral content of norms, and not just their social origins, also form part of the conditions of legal validity.

The Separation Thesis is an important negative implication of this Social Thesis, maintaining that there is a conceptual separation between law and morality, that is, between what the law is, and what the law ought to be. The Separation Thesis, however, has often been overstated. It is sometimes thought that Natural Law asserts, and Legal Positivism denies, that the law is, by necessity, morally good or that the law must have some minimal moral content. The Social Thesis certainly does not entail the falsehood of the assumption that there is something necessarily good in the law. Legal Positivism can accept the claim that law is, by its very nature or its essential functions in society, something good that deserves our moral appreciation. Nor is Legal Positivism forced to deny the plausible claim that wherever law exists, it would have to have a great many prescriptions which coincide with morality. There is probably a considerable overlap, and perhaps necessarily so, between the actual content of law and morality. Once again, the Separation Thesis, properly understood, pertains only to the conditions of legal validity. It asserts that the conditions of legal validity do not depend on the moral content of the norms in question. What the law is cannot depend on what it ought to be in the relevant circumstances.

Many contemporary legal Positivists would not subscribe to this formulation of the Separation Thesis. A contemporary school of thought, called Inclusive Legal Positivism, endorses the Social Thesis, namely, that the basic conditions of legal validity derive from social facts, such as social rules or conventions which happen to prevail in a given community. But, Inclusive Legal Positivists maintain, legal validity is sometimes a matter

of the moral content of the norms, depending on the particular conventions that happen to prevail in any given community. Those social conventions on the basis of which we identify the law may, but need not, contain reference to moral content as a condition of legality.

A. Responder.

1. ¿ Qué se afirma en la primera oración?

2. ¿ Cuál es el fundamento de la Tesis Social? (Indicar reglones de referencia).

Renglones de referencia:

3. ¿ Qué fundamenta la referencia a Hobbes?

Medical Malpractice Lawsuits

By Roy D'Silva. Published: 5/17/2007

Medical Malpractice lawsuits are quite different from other lawsuits. Here are some details about them.

Medical malpractice lawsuits are the latest daunting tasks medical and health care officers are facing today. Here are some details and other information about medical malpractice lawsuits.

The description of medical malpractice is simple enough. Any act or failure to act by a health care professional diminishing or deviating the accepted standards of services and practices of the medical community is termed as **medical malpractice**. These actions can cause injury to the patient. Medical malpractice can also be termed as professional negligence on part of the health care professional.

As in every lawsuit, medical malpractice lawsuits comprise of the plaintiff and the defendant. The plaintiff in a medical malpractice case is the patient, or any individual legally designated to act on the behalf of the patient. In case the patient is no more, and in case of a wrongful death suit, the administrator or executor of the deceased's estate can take on the role of the plaintiff.

The defendants in a medical malpractice lawsuit are the health care officials or at times entire institutions. Therefore, depending on the situation and gravity of the case, clinics, hospitals, medical corporations or managed care organizations may be defendants in a medical malpractice lawsuit. The term may also include nurses, dentists and any therapists. Nurses are liable to be party to the accusations in a medical malpractice lawsuit, as previous medical malpractice lawsuits have opined that nurses and other non-physicians cannot be protected for 'following orders'.

A successful medical malpractice case should prove that a legal duty of medical care and treatment was supposed to be undertaken by a health care officer or a health care institution on the patient and/or plaintiff. The case should further prove that the duty undertaken was breached and the medical care provider failed to perform their duties in line with the relevant standards of care. The case should further prove that the said duty was breached. This can be proved by sworn testimony or visible and proved results, in the form of injury, of obvious errors.

There are various lawyers who specialize in medical malpractice cases. These medical malpractice lawyers have previous experience and expertise to prove the truth to the trial courts and therefore prevent any injustice being meted out to the injustice.

The damages of a medical malpractice case may include punitive as well as compensatory damages. These damages may be economic or non-economic in nature. Non-economic damages comprise of psychological or physical harm, emotional distress or pain, while economical damages include financial losses, life care expenses and medical expenses.

A. Responder.

1. ¿ Quiénes pueden ser parte en un juicio de mala praxis médica?

2. ¿Quiénes pueden actuar como demandantes en caso de muerte por mala praxis médica?

3. ¿ Quiénes pueden ser demandados en un juicio de mala praxis médica?

4. ¿ Qué profesionales están excluidos del concepto de obediencia debida en una mala praxis médica?

5. ¿ Qué pruebas deben aportarse para que quede configurada la mala praxis?

6. ¿ A qué tipo de resarcimiento da lugar la mala praxis médica?

7. ¿ De qué índole pueden ser los daños al ser violada la obligación médica?

III. PLEADINGS AND MOTIONS > Rule 8.

General Rules of Pleading

Fuente: http://www.law.cornell.edu/rules/frcp/Rule8.htm

(a) Claims for Relief.

A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(b) Defenses; Admissions and Denials.

(1) In General.

In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(2) Denials — Responding to the Substance.

A denial must fairly respond to the substance of the allegation.

(3) General and Specific Denials.

A party that intends in good faith to deny all the allegations of a pleading — including the jurisdictional grounds — may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) Denying Part of an Allegation.

A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) Lacking Knowledge or Information.

A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) Effect of Failing to Deny.

An allegation — other than one relating to the amount of damages — is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(c) Affirmative Defenses.

(1) In General.

In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

1 accord and satisfaction;
2 arbitration and award;
3 assumption of risk;
4 contributory negligence;
10 illegality;
11 injury by fellow servant;
12 laches;
13 license;

5 discharge in bankruptcy;
6 duress;
7 estoppel;
8 failure of consideration;
9 fraud;
14 payment;
15 release;
16 res judicata;
17 statute of frauds;
18 statute of limitations;
19 and waiver.

45 **(2) Mistaken Designation.**

If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

A. Responder las siguientes preguntas.

1. ¿Qué debe contener un escrito de demanda?

2. ¿Qué debe hacer normalmente la parte al contestar un escrito?

3. ¿De qué manera se pueden negar los hechos expresados en la demanda?

4. ¿ Qué se debe en caso de negación parcial de los hechos?

5. Cuando una parte no tiene información suficiente: ¿qué debe hacer?, ¿qué efectos tendrá?

6. ¿En qué caso se considera que los hechos se niegan?

7. ¿Qué debe contener un escrito que sirva de contestación a otro? Incluir los ejemplos 4, 8, 11, 18 y 19.

8. ¿Qué se explica en (c) (2)?

B. Conforme al texto, indicar si las siguiente afirmaciones son verdaderas o falsas.

1. Cuando el tribunal es competente, no es necesario fundarlo por escrito.

   ☐ **verdadero** ☐ **falso**

2. Cuando una parte tiene intención de negar los hechos, sólo puede hacerlo en su totalidad.

   ☐ **verdadero** ☐ **falso**

3. Cuando una parte no conoce la totalidad de los hechos y lo expresa, dicha declaración a los efectos procesales equivale a una negación.

   ☐ **verdadero** ☐ **falso**

4. Cuando no se niega el resarcimiento pretendido en el escrito de contestación, este se considera aceptado.

   ☐ **verdadero** ☐ **falso**

Fuente: http://www.supremecourtus.gov

The Court as an Institution

The Constitution elaborated neither the exact powers and prerogatives of the Supreme Court nor the organization of the Judicial Branch as a whole. Thus, it was left to Congress and to the Justices of the Court through their decisions to develop the Federal Judiciary and a body of Federal law.

The establishment of a Federal Judiciary was a high priority for the new government, and the first bill introduced in the United States Senate became the Judiciary Act of 1789. The act divided the country into 13 judicial districts, which were, in turn, organized into three circuits: the Eastern, Middle, and Southern. The Supreme Court, the country's highest judicial tribunal, was to sit in the Nation's Capital, and was initially composed of a Chief Justice and five Associate Justices. For the first 101 years of the Supreme Court's life -but for a brief period in the early 1800's- the Justices were also required to "ride circuit" and hold circuit court twice a year in each judicial district.

The Supreme Court first assembled on February 1, 1790, in the Merchants Exchange Building in New York City -then the Nation's Capital. Chief Justice John Jay was, however, forced to postpone the initial meeting of the Court until the next day since, due to transportation problems, some of the Justices were not able to reach New York until February 2.

The earliest sessions of the Court were devoted to organizational proceedings. The first cases reached the Supreme Court during its second year, and the Justices handed down their first opinion in 1792.

During its first decade of existence, the Supreme Court rendered some significant decisions and established lasting precedents. However, the first Justices complained of the Court's limited stature; they were also concerned about the burdens of .riding circuit under primitive travel conditions. Chief Justice John Jay resigned from the Court in 1795 to become Governor of New York and, despite the pleading of President John Adams, could not be persuaded to accept reappointment as Chief Justice when the post again became vacant in 1800.

Consequently, shortly before being succeeded in the White House by Thomas Jefferson, President Adams appointed John Marshall of Virginia to be the fourth Chief Justice. This appointment was to have a significant and lasting effect on the Court and the country. Chief Justice Marshall's vigorous and able leadership in the formative years of the Court was central to the development of its prominent role in American government. Although his immediate predecessors had served only briefly, Marshall remained on the Court for 34 years and five months and several of his colleagues served for more than 20 years.

Members of the Supreme Court are appointed by the President subject to the approval of the Senate. To ensure an independent Judiciary and to protect judges from partisan pressures, the Constitution provides that judges serve during .good Behaviour,. which has generally meant life terms. To further assure their independence, the Constitution provides that judges. salaries may not be diminished while they are in office.

The number of Justices on the Supreme Court changed six times before settling at the present total of nine in 1869.

A. Responder según el texto.

1. ¿Por qué se cita a la constitución en el primer párrafo?

2. ¿Quiénes desarrollaron originalmente la organización del Poder Judicial?

3. ¿Cuál fue la prioridad del nuevo gobierno y qué acciones la reflejan?

4. ¿Cómo se organizó la justicia federal a partir de la ley sancionada?

5. ¿Cómo desarrollaba sus funciones?

6. ¿Cuál fue la actividad inicial de la Corte Suprema durante los 2 primeros años de funcionamiento?

7. ¿Qué ocurrió durante los primeros 10 años de funcionamiento?

8. ¿Quién fue John Jay y qué decisión tomó y por qué?

9. ¿Por qué se incluye la referencia al Presidente John Adams y al año 1800?

B. Asignar un título a cada párrafo y resumir su contenido.

Párrafo 1	**Título:**
Contenido:	
Párrafo 2	**Título:**
Contenido:	
Párrafo 3	**Título:**
Contenido:	

Civil Rights Act of 1866

Fuente: Wikipedia, the free encyclopedia http://en.wikipedia.org/wiki/Civil_Rights_Act_of_1866

Contents of Act & Controversy

Throughout American history several pieces of legislation have been called the Civil Rights Act - this was the first such act. It was the most important action by Congress towards protecting the rights of Freedmen during Reconstruction. The Republican-dominated United States Congress passed the act in March 1866, as a counterattack against the Black Codes in the southern United States, which had been recently enacted by all former slave states following the passage of the Thirteenth Amendment to the United States Constitution. Included in the Civil Rights Act were the rights to make contracts, sue, bear witness in court and own private property. President Andrew Johnson vetoed the bill, saying that blacks were not qualified for United States citizenship and that the bill would "operate in favor of the colored and against the white race."

The Republicans in congress overrode the presidential veto on April 9, 1866. The act declared that "all persons born in the United States not subject to any foreign power, excluding Indians not taxed," were citizens of the United States. Such citizens were "of every race and color" and "without regard to any previous condition of slavery or involuntary servitude." As citizens they could make and enforce contracts, sue and be sued, give evidence in court, and inherit, purchase, lease, sell, hold, and convey real estate and personal property. Persons who denied these rights to former slaves were guilty of a misdemeanor, and upon conviction faced a fine not exceeding $1,000 and/or imprisonment not exceeding one year. It was the first major law ever enacted due to an override of a presidential veto.

Congressional action in regard to this legislation also gave impetus to a question concerning Congress's constitutional authority to make such a law. The questions were quickly put to rest following the proposal and ratification of the Fourteenth Amendment.

CONSEQUENCES

A far-reaching consequence of this act is that since 1866, it has been illegal to discriminate in housing based on race. However, federal solutions were not provided for, and remedies were left to the individuals involved. Because those being discriminated against had limited access to legal help, this left many victims of discrimination without recourse. Since the latter half of the 20th century, there have been an increasing number of remedies provided under this act, including the landmark Jones v. Mayer decision in 1968.

Section 1981 of the Civil Rights Act of 1866 was the first major anti-discrimination employment statute. This act prohibited employment discrimination based on race and color. This Act has been interpreted by the Supreme Court to protect African Americans, Asian Americans, white Americans and other groups.

Based on Shaare Tefila Congregation v. Cobb, 481 U.S. 615 (1987) 107 S.Ct. 2019, the Civil Rights Act of 1866 covers people of the Jewish religion because at the time the act was passed, Jewish people were considered a distinct race. Section 1981 of the Civil Rights Act of 1866 protects from discrimination identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics. Similarly, Arabs are protected under the act.

A. Responder las siguientes preguntas e indicar el renglón de referencia.

1. ¿Por qué es relevante la referencia a la historia de los Estados Unidos de América en la primera oración?

Renglón de referencia:

2. ¿Por qué es significativa la referencia a marzo de 1866?

Renglón de referencia:

3. ¿Qué derechos y garantías se mencionan en la nueva legislación?

Renglón de referencia:

4. ¿Por qué se menciona al Presidente Andrew Johnson?

Renglón de referencia:

5. ¿Qué sucedió en abril de 1866 y a quienes se consideraban ciudadanos a partir de esa fecha?

Renglón de referencia:

6. ¿Qué derechos adquirían las personas al obtener la condición de ciudadanos?

Renglón de referencia:

7. ¿Qué sucedería a quienes no ajustaran sus acciones a la nueva norma?

Renglón de referencia:

8. ¿Cuál es la idea principal expresada en el párrafo de los renglones 21 a 23 (subrayado)?

Renglón de referencia:

B. Resumir las consecuencias que produjo la entrada en vigencia de la con respecto a lo siguiente:

Raza

Empleo

Religión

Fuente: http://www.abajournal.com/magazine/a_supreme_case_of_contempt/

A Supreme Case of Contempt

Note: Members can now listen free online to this month's CLE, "A Turn-of-the-Century Lynching that Launched 100 Years of Federalism."

The case was *United States v. Shipp*. There were nine defendants, all charged with contempt of court—contempt of the Supreme Court, that is. The U.S. attorney general had filed the charges against them directly with the court, thus giving it original jurisdiction in the matter. The petition alleged that the defendants and other people engaged in actions "with the intent to show their contempt and disregard for the orders of this honorable court ... and for the purpose of preventing Ed Johnson from exercising and enjoying a right secured to him by the Constitution and laws of the United States."

It was a full-blown trial. There were special prosecutors, dozens of witnesses and a special master assigned to take the evidence. The trial record exceeded 2,200 pages. Each side was given a full day of oral argument before the justices.

Chief Justice Melville W. Fuller, who normally encouraged his colleagues to write the court's opinions, decided that the importance of this case demanded that he take on the responsibility. Before reading the opinion that accompanied their verdict, Fuller—in his typically soft, almost inaudible voice —noted to a packed courtroom that the Supreme Court had entered new territory for which there was no precedent.

A hundred years later, *United States v. Shipp* has faded into the haze of precedent and history, but legal historians say its impact remains undiminished. *Shipp* has been cited as the genesis of federal habeas corpus actions in state criminal cases. The case also was a pivotal turning point in asserting the importance of the rule of law and the need for an independent judiciary.

"In countries all over the world, the United States is helping develop legal systems similar to ours," says Thomas E. Baker, a constitutional law professor at the Florida International University College of Law in Miami. "But the one thing that has been most difficult to teach is respect for the law. We had to learn it the hard way. There is no better example, there is no clearer symbolic precedent of establishing and enforcing the rule of law than this case."

But despite its legal importance, *Shipp* provided the climax to an amazing story involving a cast of memorable characters—perhaps most of all two unknown African-American lawyers who, because of their tenacity and bravery, changed the U.S. justice system. As a reward for their efforts, those two lawyers saw their client murdered, their practices destroyed, their families threatened and their homes burned to the ground. Fearing for their lives, they never returned to their hometown

after attending the Supreme Court hearing in Washington, D.C., on that spring day in 1909.

"This story reminds us why we became lawyers and of the important role of lawyers in our society," says Judge John E. Jones III of the U.S. District Court in Williamsport, Pa., and a member of the executive committee for the National Conference of Federal Trial Judges in the ABA's Judicial Division. "The lessons taught in this case are just as important today as they were a century ago."

A. Leer cuidadosamente el texto y contestar las siguientes preguntas:

1. Consigne los dos posibles significados del título.

1.

2.

2. ¿Cómo se desarrolló el caso *Shipp*?

3. ¿Qué cargo ostentaba Melville W. Fuller; cómo procedió y por qué?

4. ¿Qué opina el profesor Thomas E. Baker respecto del impacto de este caso en el sistema?

5. Según el autor del artículo, (a) ¿quiénes fueron actores importantes en el caso *Shipp* y por qué? (b) ¿qué consecuencias les trajo su accionar?

(a):

(b) Consecuencias:

6. ¿Qué opina el juez John E. Jones III respecto del caso?

7. ¿Para qué casos se cita a *Shipp* como precedente importante?

1.

2.

3.

Fuente: http //topics.law.cornell.edu/wex/securities_law_history

Securities law history

Why Securities Laws?

The development of federal securities law was spurred by the stock market crash of 1929, and the resulting Great Depression. In the period leading up to the stock market crash, companies issued stock and enthusiastically promoted the value of their company to induce investors to purchase those securities. Brokers in turn sold this stock to investors based on promises of large profits but with little disclosure of other relevant information about the company. In many cases, the promises made by companies and brokers had little or no substantive basis, or were wholly fraudulent. With thousands of investors buying up stock in hopes of huge profits, the market was in a state of speculative frenzy that only ended on October 29, 1929, when the market crashed as panicky investors sold off their investments en masse.

In reaction to this calamity, and at President Franklin Roosevelt's instigation, Congress set out to enact laws that would prevent speculative frenzies. After a series of hearings that brought to light the severity of the abuses leading to the crash, Congress enacted the Securities Act of 1933 (the "Securities Act"), and the Securities Exchange Act of 1934 (the "Exchange Act"). The key theme of the federal securities law is the need to give investors access to information about the securities they buy and the companies that issue securities. Federal securities laws primarily accomplish this by putting the burden on companies to disclose information about themselves and the securities they issue. The efficacy of these disclosure requirements is backed up by broad liability for fraud under the Securities Act and the Exchange Act for both issuers and sellers of securities. It is clear that Congress intended to ensure that investors had access to balanced, non-fraudulent information.

An Overview of the Regulatory Framework

Congress' power to enact the securities laws derives from the Interstate Commerce Clause; the securities market is a national one, so Congress has the constitutional power to regulate the securities markets. The Securities Act of 1933 (Securities Act) and the Securities Exchange Act of 1934 (Exchange Act) are federal laws that provide for private causes of actions under which investors may recover for fraud, as well as for certain violations of the registration and disclosure processes mandated by the federal securities laws. In addition, the Exchange Act created the Securities and Exchange Commission (SEC), a federal agency that has the authority to promulgate rules pursuant to the federal securities acts and to enforce federal law and its own rules. The SEC also regulates the securities business. Under the Exchange Act, the SEC has the authority to register, regulate

and discipline broker-dealers, regulate the securities exchanges, and review actions of the securities exchanges' self-regulatory organizations (SROs).

Well before Congress enacted the federal laws, most states also had their own securities laws, which today are known as blue sky laws. Congress drafted the federal securities laws against the backdrop of pre-existing state regulation, and in interpreting the federal securities laws, courts often reach back into relevant state law to interpret certain definitions or concepts that Congress used when drafting federal law. State law and federal law do not correspond perfectly. Although there is some overlap, state law may provide for causes of action unavailable under federal law, while federal law may provide for causes of action unavailable in a particular state. State laws can be very different from state to state, and from federal law; key differences are what kinds of products and transactions are covered by the laws, as well registration requirements for brokers, dealers, and companies who issue securities, and the breadth and causes of action available under anti-fraud provisions. For example, New York's securities law, the Martin Act, only permits the Attorney General to bring a suit for violations. Individual investors may bring private suits for common-law fraud law in order to recover.

A. Responder las siguientes preguntas:

1. ¿Qué ocurría antes de la Gran Depresión, cuál fue la actitud asumida por las compañías y por los operadores bursátiles y cuáles fueron las consecuencias?

2. ¿Cuál fue la actitud del presidente Roosevelt ante la situación y cuál fue el resultado?

3. ¿Cúal es la clave de las leyes que se mencionan en el texto y cómo se cumplen?

4. ¿Qué garantías otorgan estas leyes a los inversores?

5. ¿Qué facultades de la SEC figuran en el texto?

6. ¿Cuál es la relación entre la legislación federal y la de los estados?

7. ¿Cuáles son las diferencias básicas entre la ley federal y las leyes de los estados?