



**CHAPMAN UNIVERSITY SCHOOL OF LAW  
SECOND ANNUAL SUMMER DISCUSSION SERIES  
2006**

Once again this summer, Professor Donald Kochan will lead an 8-session Summer Discussion Series. Each session starts with a brief introduction to the topic and then is an open forum for discussion. Kochan, or an agent, will start it off and then its no-holds-barred discussion. This year, we're going to congregate in the back courtyard/patio behind Kennedy Hall for each session. Bring a brown bag meal.

Kochan doesn't get paid to do this (we thought someone might underwrite Kochan's quirky idea but it never worked out – yet). You don't get paid to come. But, you don't get charged to come either. Then again, you don't get credit to come. So, *come anyway* – a rational economic actor would take advantage of an unpriced educational and interactive opportunity. All students, staff, incoming students, faculty, and strangers/members of the community are welcome. A reminder will be sent out a few days before each session, usually along with a non-required but suggested very short reading on the issues to be discussed.

**June 1, 2006, Noon**

\*\*Dostoevsky, CSI, and Deontology: Law, Punishment, Psychology and “Perfect” Crimes

**June 8, 2006, 6:00 pm**

\*\*Preservation Hall: What's the Jazz on Legal Issues Underlying the Future of New Orleans and the Preservation of Its Historic Landmarks and Cultural Contribution to the Country? (eminent domain, legal relief, governmental liabilities, legislation)

**June 15, 2006, Noon**

\*\*Pride and Precedent: How Should the Roberts Court Deal With a Potentially Dramatic Shift in Supreme Court Position?

**June 22, 2006, 6:00 pm**

\*\*Hypocrisy or Necessity: The Berlin Wall, the Great Wall of China, and the Debate on United States Immigration Law

**June 29, 2006, Noon**

\*\*A Peek At What Professors Do, an Inquiry into What They Should Do, and How Did They Come To Be Professors Anyway .

**July 6, 2006, Noon**

\*\*A Tale of Two Citations: The Craft of Distinguishing Cases

**July 13, 2006, Noon**

\*\*I Pity the Fool! Mr. T, Individual Responsibility, Consumer Protection, and the Development of Tort (particularly products) Liability

**July 27, 2006, 6:00 pm**

\*\*Sovereignty and Susceptibility: Can and Should a Sole Superpower Succeed in Sustaining Peace in Every Corner of the Continents?



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2006

Session 1: June 1, 2006

Noon on Back Patio

**Dostoevsky, CSI, and Deontology:  
Law, Punishment, Psychology  
and “Perfect” Crimes**

**Suggested Readings:**

- William Burnham, *The Legal Context and Contributions of Dostoevsky’s Crime and Punishment*, 100 MICH L. REV. 1227 (2002) (ATTACHED)
- *Deontological Ethics*, <http://en.wikipedia.org/wiki/Deontology>

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**June 8, 2006, 6:00 pm**

\*\*Preservation Hall: What’s the Jazz on Legal Issues Underlying the Future of New Orleans and the Preservation of Its Historic Landmarks and Cultural Contribution to the Country?

**June 15, 2006, Noon**

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*Session 2: June 8, 2006*  
*6:00 PM on Back Patio*

**Preservation Hall: What's the Jazz on Legal  
Issues Underlying the Future of New Orleans and  
the Preservation of Its Historic Landmarks and  
Cultural Contributions to the Country?**

***Suggested Readings and Resources***

<http://www.achp.gov/overview.html>

<http://www.post-gazette.com/pg/05264/575108.stm>

*See also*

<http://www.tulane.edu/rebirth/news.html>

<http://www.achp.gov/NHPA.pdf>

<http://www.achp.gov/related.html>

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Session 3: June 15, 2006

Noon on Back Patio

**Pride and Precedent:**

**How Should the Roberts Court Deal With a Potentially  
Dramatic Shift in Supreme Court Position?**

**Suggested Readings and Resources**

<http://www.nybooks.com/articles/18330>

<http://www.newsmax.com/archives/articles/2005/9/13/103353.shtml>

and

Black's Law Dictionary (8th ed. 2004), precedent

PRECEDENT

**precedent** (pres-<<schwa>>-d<<schwa>>nt), *n.* **1.** The making of law by a court in recognizing and applying new rules while administering justice. [Cases: [Courts](#) ¶87. [C.J.S. Courts](#) §§ 135-136.] **2.** A decided case that furnishes a basis for determining later cases involving similar facts or issues. See STARE DECISIS. [Cases: [Courts](#) ¶89. [C.J.S. Courts](#) §§ 139-140, 144-146, 161-164, 166-167.] -- **precedential**, *adj.*

"In law a precedent is an adjudged case or decision of a court of justice, considered as furnishing a rule or authority for the determination of an identical or similar case afterwards arising, or of a similar question of law. The only theory on which it is possible for one decision to be an authority for another is that the facts are alike, or, if the facts are different, that the principle which governed the first case is applicable to the variant facts." William M. Lile et al., *Brief Making and the Use of Law Books* 288 (3d ed. 1914). "A precedent ... is a judicial decision which contains in itself a principle. The underlying principle which thus forms its authoritative element is often termed the *ratio decidendi*.

The concrete decision is binding between the parties to it, but it is the abstract *ratio decidendi* which alone has the force of law as regards the world at large." John Salmond, *Jurisprudence* 191 (Glanville L. Williams ed., 10th ed. 1947).

"One may say, roughly, that a case becomes a precedent only for such a general rule as is necessary to the actual decision reached, when shorn of unessential circumstances." 1

James Parker Hall, Introduction, *American Law and Procedure* xlviii (1952).  
"One may often accord respect to a precedent not by embracing it with a frozen logic but by drawing from its thought the elements of a new pattern of decision." Lon L. Fuller, *Anatomy of the Law* 151 (1968).

**binding precedent.** A precedent that a court must follow. • For example, a lower court is bound by an applicable holding of a higher court in the same jurisdiction. -- Also termed *authoritative precedent; binding authority*. Cf. *imperative authority* under AUTHORITY (4). [Cases: [Courts ¶88, 107](#). [C.J.S. Courts §§ 139, 165, 175](#); *Criminal Law* § 1665; *Trade-Marks, Trade-Names, and Unfair Competition* § 187.]

**declaratory precedent.** A precedent that is merely the application of an already existing legal rule.

**original precedent.** A precedent that creates and applies a new legal rule.

**persuasive precedent.** A precedent that is not binding on a court, but that is entitled to respect and careful consideration. • For example, if the case was decided in a neighboring jurisdiction, the court might evaluate the earlier court's reasoning without being bound to decide the same way. [Cases: [Courts ¶89, 96\(5\), 97\(1, 5\)](#). [C.J.S. Courts §§ 139-140, 144-146, 152-153, 158-159, 161-164, 166-167](#).]

**precedent sub silentio** (s<<schwa>>b s<<schwa>>-len-shee-oh). A legal question that was neither argued nor explicitly discussed in a judicial decision but that seems to have been silently ruled on and might therefore be treated as a precedent.

**3. DOCTRINE OF PRECEDENT. 4.** A form of pleading or property-conveyancing instrument. • Precedents are often compiled in book form and used by lawyers as guides for preparing similar documents.

"Collections of Precedents have existed from very early times. In this connection precedents must not be confused with judicial precedents or case law. We refer here simply to common-form instruments compiled for use in practice, whereby the lawyer can be more or less certain that he is using the correct phraseology for the particular case before him. They were used both in conveyancing and litigation.... It is interesting to note that these precedents were apparently among the first legal works to be published after printing was introduced. Collections of conveyancing precedents continued to be brought up to date or new volumes issued ...." A.K.R. Kiralfy, *Potter's Outlines of English Legal History* 42-43 (5th ed. 1958).

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Black's Law Dictionary (8th ed. 2004), doctrine of precedent

## DOCTRINE OF PRECEDENT

**doctrine of precedent. 1.** The rule that precedents not only have persuasive authority but also must be followed when similar circumstances arise. • This rule developed in the 19th century and prevails today. See STARE DECISIS. [Cases: [Courts ¶88](#). [C.J.S. Courts § 139](#); *Trade-Marks, Trade-Names, and Unfair Competition § 187.] **2.** A rule that precedents are reported, may be cited, and will probably be followed by courts. • This is the rule that prevailed in England until the 19th century.*

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**June 21, 2006, 6:00 pm**

\*\*Hypocrisy or Necessity: The Berlin Wall, the Great Wall of China, and the Debate on United States Immigration Law (PLEASE NOTE THE CHANGED DATE)

**June 29, 2006, Noon**

\*\*A Peek At What Professors Do, an Inquiry into What They Should Do, and How Did They Come To Be Professors Anyway .

**July 6, 2006, Noon**

\*\*A Tale of Two Citations: The Craft of Distinguishing Cases

**July 13, 2006, Noon**

\*\*I Pity the Fool! Mr. T, Individual Responsibility, Consumer Protection, and the Development of Tort (particularly products) Liability

**July 27, 2006, 6:00 pm**

\*\*Sovereignty and Susceptibility: Can and Should a Sole Superpower Succeed in Sustaining Peace in Every Corner of the Continents?

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Session 4: Wednesday, June 21, 2006  
(Please Note the Changed Date)  
6:00 PM on Back Patio

**Hypocrisy or Necessity:  
The Berlin Wall, the Great Wall of China, and  
the Debate on United States Immigration Law**

**Suggested Readings and Resources**

[http://en.wikipedia.org/wiki/Tear\\_down\\_this\\_wall](http://en.wikipedia.org/wiki/Tear_down_this_wall)

[http://www.ronaldreagan.com/sp\\_11.html](http://www.ronaldreagan.com/sp_11.html)

[http://www.nydailynews.com/news/ideas\\_opinions/story/411104p-347791c.html](http://www.nydailynews.com/news/ideas_opinions/story/411104p-347791c.html)

<http://www.washingtonpost.com/wp-dyn/content/article/2006/04/06/AR2006040601380.html>

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**July 6, 2006, Noon**

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**July 13, 2006, Noon**

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Session 5: June 29, 2006  
Noon on Back Patio

**A Peek At What Professors Do,  
an Inquiry into What They Should Do, and  
How Did They Come To Be Professors Anyway**

**Suggested Readings and Resources**

[http://eric\\_goldman.tripod.com/resources/becomingalawprofessor.htm](http://eric_goldman.tripod.com/resources/becomingalawprofessor.htm)

<http://www.lawschool.cornell.edu/faculty-pages/wendel/teaching.htm>

<http://www.aals.org/nlt2004/hanna.pdf>

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Session 6: July 6, 2006  
Noon on Back Patio

## A Tale of Two Citations: The Craft of Distinguishing Cases

### Suggested Readings and Resources

[http://en.wikipedia.org/wiki/Common\\_Law](http://en.wikipedia.org/wiki/Common_Law)

<http://www.abdn.ac.uk/law/mooting/page4.shtml>

(This is Scottish but has a succinct summary that applies here too)

See also:

<http://aler.oxfordjournals.org/cgi/content/abstract/8/1/33>

and the readings from the "Pride and Precedent" discussion,  
which are at least somewhat relevant

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*Session 7: July 13, 2006*  
*Noon on Back Patio*

**I Pity the Fool!**  
**Mr. T, Individual Responsibility, Consumer  
Protection, and the Development of Tort Liability**

**Suggested Readings and Resources**

[http://en.wikipedia.org/wiki/Tort\\_reform](http://en.wikipedia.org/wiki/Tort_reform)

<http://www.newsbatch.com/tort.htm>

*See also:*

<http://www.house.gov/jec/tort/tort/tort.htm>

*Just for fun given the title:*

<http://www.imdb.com/title/tt0084967/>

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*Session 8: July 27, 2006*  
*Final 2006 Summer Session*  
*6:00 PM on Back Patio*

**Sovereignty and Susceptibility:  
Can and Should a Sole Superpower  
Succeed in Sustaining Peace in  
Every Corner of the Continents?**

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***Suggested Readings and Resources***

<http://en.wikipedia.org/wiki/Sovereignty>

Westlaw: 38 GWILR 349

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Thanks to all who joined in the discussions this summer!