

# BACE LAW REPORT

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## Sources of Massachusetts Law: Historical Case Review of the Opinions of the Supreme Judicial Court (SJC)

Individuals often ask legal questions as if there is a static or short and accurate deliverable answer. Most people loathe the standard lawyer response of “it depends.” When faced with a legal issue, one wants clarity, but due to the very nature and source of American law, it is generally impossible to state the law on any topic in a sentence or two. The answers to the following everyday legal questions require an analysis of legislative acts (statutes), judicial case opinions, and/or administrative regulations:

*“What is the law relevant to when I can enter my roommate’s bedroom?”*

*“If my spouse incurs debt, and we divorce, am I liable for the obligations?”*

*“What is the difference between a pyramid scheme, and a legitimate multi-level marketing business?”*

The laws of the Commonwealth are a fluid combination of statutes, which are

enacted by the legislature, judicial case opinions, and administrative regulations.

Although the elected officials that make up our Legislature are charged with the primary task of debating and enacting laws, it is the role of the Judiciary to interpret those laws. The judicial decisions, or caselaw, the actual written opinions of judges are also a source of American law. Judges in the Commonwealth adhere to a concept referred to as *stare decisis*, an abbreviated version of *stare decisis et non quieta overa*, which in Latin translates to a need to stand by precedents, and leave undisturbed settled points.

In effect, Judges are required to adhere to the reported case decisions of the past in order to create stability and predictability in the law. If a current situation was similar to a previous case, without exigent circumstances, Judges are required to follow that line of case decisions, and base their decision on the same legal reasoning. Thus, the decisions of the Commonwealth’s Supreme Judicial Court (“SJC”) are a fundamental source of our state

laws. The SJC is the Commonwealth's highest, and the Western Hemisphere's oldest appellate court and was established in 1692. Each day, the Court renders decisions on diverse set of cases, interpreting both statutes and regulations; webcasts of the oral arguments are currently available online at <http://www.suffolk.edu/sjc/>.

The history of these decisions, and the text of the decisions themselves is, actually, *the law*. The decisions of the SJC at the beginning of the twentieth century are particularly interesting. These historical judicial opinions not only reveal the law at that time, but they also expose the way of life in the Commonwealth.

As an illustration of our constantly changing laws, the role of the judiciary, and the importance of consulting an attorney in the event of a dispute or complex legal issue, the following is a brief review of the caselaw of the beginning of the twentieth century.

### **Illegal Butter**

Boston native Oliver Wendell Holmes served as the Chief Justice of the SJC prior to his thirty year service on the United States Supreme Court. Justice Holmes enlisted and fought in the American Civil War, was shot in

the neck and chest, studied law at Harvard, and was known as "The Great Dissenter," for his penchant for disagreeing with other members of the Court.

Justice Holmes issued the opinion in *Commonwealth v. James Mullen*. James Mullen was charged in Chelsea with having in his possession, "one pound of a certain product commonly called oleomargarine, made partly out of oleaginous substance *not* produced from unadulterated milk or cream...and that said product...was in imitation of yellow butter" *Id.* at 133. Mullen was found guilty. It was illegal in the Commonwealth to produce oleomargarine, color it yellow, and attempt to sell it as butter by statute. The Chief Justice concisely pointed out that there is nothing wrong or illegal with selling "oleomargarine." But, according to Holmes, Mullen's critical error was adding a coloring to his product so that it appeared yellow and similar to butter. The intent of the law was likely to protect the producers of unadulterated butter from imitators. Justice Holmes stated, "The defendant had no right to keep such a substance for sale in any form or manner," *Id.* at 134. This case and the associated statute are a forerunner to the modern consumer protection

laws, which prevent misrepresentation and unfair and deceptive practices on behalf of businesses.

### **Medicinal Cigars**

Isaac H. Goldsmith sold two good cigars and an ounce of tobacco on the Lord's day; he was found guilty. *Commonwealth v. Isaac H. Goldsmith*, 176 Mass 104 (1900). Selling cigars or tobacco on Sunday was prohibited and illegal in the Commonwealth in 1900, according to a statute, but Mr. Goldsmith's attorney adeptly argued that the goods were sold for "medicinal purposes," and therefore the statute was inapplicable. Herein lies the importance of an attorney and the power of interpretation of the judiciary. At the time of the sale, the savvy store owner said, "I will sell them to you as drugs. I cannot help what you want them for, I sold them to you as drugs" *Id.* at 105. The Court reasoned that cigars, although they may contain an ingredient or element that may be called a drug, are ordinarily not drugs, and therefore not within the exception to the statute.

### **Horrific Illegal Medical Procedure**

One often hears that the world today has denigrated, as brutal murders, vast financial pyramid schemes, and other awful crimes are

reported in the news. However, the charges of Justice Holmes' Court and that time period included the same, if not more brutal instances of violence.

Frederick H. Barrows had a trunk full of business cards, upon which was written the following advertisement:

*"3 to 5 P.M. 7 to 9 P.M. F. H. Barrows, magnetic treatments, female irregularities a specialty. 925 Washington St., Boston."*

Another card stated:

*"F.H. Barrows, magnetic and electric treatments, for all female weaknesses,...cancer, tumor, etc..."*

Without delving into the more offensive details, Barrows was in the business of performing medical procedures on women in order to intentionally cause a miscarriage. *Commonwealth v. Frederick H. Barrows*, 176 Mass 17 (1900). The actions were illegal according to statute. He guaranteed "quick and thorough cures of female troubles." He did business under the names "Dr. Bailey" and also "Dr. Herman" in order to instill confidence in his victims. *Id.* at 18. The business cards and other ads were offered as evidence by the prosecution

on the basis that they tended to allow a jury to infer that Barrows was advertising himself as an abortionist.

Mercifully, the Judge allowed the cards to be admitted, and the jury returned a verdict of guilty. However, Barrows appealed the decision, which required a judicial review of the statute, and a determination of whether or not the statute was applicable to his particular circumstances.

No matter what one's view of the decisive abortion issue, many believe incorrectly that if the now famous decision of *Roe v. Wade* were to be overturned, abortion would immediately become illegal across the country. *Roe* is a federal Supreme Court case, and thus, if overturned, each state would likely be free to determine abortion rights through their respective legislatures.

### **Railroad Death**

Caselaw, and the judicial reasoning therein, can often shape our culture and societal norms. Today, it would be inconceivable that one could board the MBTA's commuter rail, and position oneself on the platform outside of the car for the trip. Clearly, passengers are required to sit in a seat in today's world. These policies are a direct result of lawsuits from injured passengers. On the evening of January

21, 1899, a passenger boarded the Lynn & Boston Railway in Lynn at about ten o'clock in the evening. The railcar had a platform at either end of the car, for overflow passengers who were not able to find a seat. The platforms *had no railings, and no gates*. The passenger was thrown from the car, and died on the way to Lynn Hospital. *Margaret Byron v. Lynn & Boston Railroad Company*, 177 Mass 303 (1901). One nearby passenger noted, "I saw the deceased was falling and I grabbed him by the coat,...but couldn't hold him." *Id.* at 304. Today, the operation of a railroad with cars packed full of passengers with no railing or gates would arguably be negligence per se. However, the SJC held that the defendants were not negligent, as they did nothing unusual; such cars were common, and jolts during a trip were to be expected. *Id.* at 305. This case is illustrative of the changing law, and the shifting burdens of responsibility.

Should you require an opinion with respect to a legal issue, do not hesitate to contact this office; A proactive approach is almost always more effective. This office strives to provide clarity to the extent possible, but the answer will likely "depend."

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