

Rule v. Standard

AEJMC Teaching Ideas Competition

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Introduction

My goal with this R-rated exercise is to teach students the distinction between rules (absolute, inflexible) and standards (situational, flexible).

Rationale

The rule-standard distinction is important in law and ethics (not to mention parenting). Students should know how to determine what's a rule and what's a standard, how to craft rules and standards of their own, and how to explain the strengths and weaknesses of each.

Implementation

Using a PowerPoint (attached), I explain rules and standards, discuss the pros and cons of each, provide examples from law and ethics, and then take students through an exercise in legal reasoning.

I explain the legal norm that all fathers must pay child support, except for those who become fathers via artificial insemination performed in medical facilities. Is this a rule or standard? Students agree it's a rule. Then I run through five scenarios, some outlandish, all authentic. Most are taken from a law review article by Michael J. Higdon, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1761333.

For each of the following, I ask if the father must pay child support:

1. A woman lies about using birth control, has sex, and gets pregnant.
2. A 34-year-old woman has sex with a 15-year-old boy. She gets pregnant.
3. A man arrives at a party drunk and passes out. He awakens in bed with most of his clothes off. A woman tells friends she had sex with him while he was unconscious, and it saved her the hassle of going to a sperm bank. She's pregnant.

4. A woman asks a friend for his sperm so she can self-inseminate. She gets pregnant.
5. A man visits a hospital to see a relative. Before he reaches the room, a nurse asks if he'd like oral sex. She has him wear a condom. Afterward, she says she'll throw it out. She gets pregnant.

Students argue over which men ought to have to pay child support and why. One distinction they draw is whether a sex act occurred without the man's consent, which would excuse the fathers in #2 (minors can't consent) and #3. We talk about whether the good Samaritan in #4 ought to be punished for his act of charity. We also discuss whether the men in #1 and #5 are equally culpable.

After a debate, students vote on who must pay child support. Virtually everyone thinks that justice requires excusing some of the men from the obligation.

At the end, I reveal which men were ordered to pay child support: all of them. Rules are rules.

Outcomes

The exercise gets students engaged in a lively, sometimes raucous discussion. The absolutism of legal rules leaves many of them aghast. We return to the rule-standard distinction in discussing pre-*Sullivan* libel law, the FCC's indecency ban, statutes of limitation, and other topics.