中國文化大學教師教學創新暨教材研發獎勵成果報告書

壹、 計畫名稱

英美法總論教學研究與改進

貳、 實施課程、授課教師姓名

英美法總論 陳盈如副教授

參、 前言

本計畫之提出係為配合學校鼓勵教師改善教學品質，並就教師教學方式以及教材做進一步之改進、創新，以增進學生學習成效。本學期英美法總論課程採互動式教學模式，除老師上課講述英美法的基本概念，教師將在每周上傳ppt至學校課輔平台，輔助教學，使學生在課前即得取得教材，得以進行課前預習與課後複習。學生因在課前已做預習，在上課時則採用問答互動模式，教師在上課時提出一些法律議題及案件，讓學生思考，並有發言及互相辯論之機會。本課程亦將推動問題導向之學習，透過實際問題及做中學的方式，結合理論與實務，從多元角度培養學生主動學習及解決問題的能力。一般法學院在教學時，多以教授法律條文以及其解釋為主，學生對於實務上之判例研讀較不足，無法窺見實務發展之真貌。因此，本堂課將以不同教學方式，使學生得以藉由英美法總論課程，窺探美國所謂判例法之精神，藉以幫助學生在將來得以將其所學會之法律資料搜尋技巧以及問題解決方式應用在其日後之執業生涯，達學用合一之目的。最後，為配合學校英語教學之目標，本課堂採全英語授課。全英語授課與教材，藉由外國法規與判決之介紹與分析，營造優質國際化環境，提升學生語言能力及國際視野。

肆、 計畫特色及具體內容

本堂課之特色如下：

(一) 電子化教材：所有教材皆以電子化呈現，並會欲先在課堂開始前上傳至課程網站，使同學可以預先複習，並可幫助同學系統性之學習，以利教學成效之展現。

(二) 問題導向學習方式：在課堂中，會拋給同學許多新興的法律爭議，使同學就該議題提出自己的觀點，並與持不同觀點之同學相互討論，以加深對該議題法律上的認識。

(三) 蘇格拉底式教學法：以美國法院之判決作為上課之教材，上課前先發給同學新的判決，使同學預先研讀，上課時，部分會採美國法學院所謂蘇格拉底式教法，以問答方式，幫助同學更深入了解每個案件以及判決背後所隱含之法理以及法律原則。並且在每堂課後以小考的方式，確保每位同學皆有跟上教學內容，以及使同學有動力將每週指定之英文判決研讀完畢。

(四) 全英語授課：全英語授課與教材，藉由外國法規與判決之介紹與分析，營造優質國際化環境，提升學生語言能力及國際視野。

本堂課之具體執行方法：

(一) 本課程之執行方法，係以翻轉教學(Flipped Learning)，讓學生在上課前事先預習課程內容，課堂中則透過問題解決或討論，進行雙向溝通的教學活動、透過問題導向學習(Problem-Based Learning)，以實際問題或專案為核心，培養學生主動學習、批判思考和問題解決能力。

(二) 本課程每週皆會指定閱讀教材或美國法院判決，請同學事先研讀，並做成筆記。筆記內容應以判決摘要(case brief)的方式完成，每週上課之前30分鐘，將由教師隨機抽點同學就上週研讀之內容，藉由其所作之Case Brief，說明該案例之事實、分析該案例之法律上爭點，並以提出法院應該之裁判理由。藉以訓練同學遇到問題時，在短時間當中，可以以邏輯性思考對該問題進行分析，一步一步找出解決該法律上爭議時，應討論之問題以及相關之法律依據。

(三) 本課堂每上完一個主題，都以小考方式，測驗同學對於上課內容之吸收程度。本學期之評量方式，以三次小考加上一次的判決摘要，以及上課發言參與度做為學期評量方式，鼓勵同學課前預習，參與發言，並在課後複習並加以測驗，以強化學習成效與思辯能力。

伍、實施成效及影響（量化及質化，且說明是否達到申請時所期之學習目標與預期成效）

(一) 本學期課程中，除就英美法系與大陸法系之差別做出介紹外，本堂課致力於行雙向溝通的教學活動、透過問題導向學習，以實際問題為核心，培養學生主動學習、批判思考和問題解決能力。本學期一共請一年級新生閱讀五個美國法院判決，隨機抽點同學就上週研讀之內容，藉由其所作之Case Brief，說明該案例之事實、分析該案例之法律上爭點，並理解法院之裁判理由。本學期盡量使每位同學都有發言之機會，並就同學所回答之問題，做出論辯，提升批判思考和問題解決能力。

(二) 另外，本課堂教授同學閱讀判決，並就判決做成判決摘要，使同學可以就法律人最重要之判決研析，有初步了解，並可就個案爭議中的法律爭點與裁判理由，做出分析，窺探美國所謂判例法之精神，藉以幫助學生在將來得以將其所學會之法律資料搜尋技巧以及問題解決方式應用在其日後之執業生涯，達學用合一之目的。

(三) 授課教材全英語，授課方式亦為全英語，惟為顧及同學英文程度，除英語授課外，亦輔以中文解釋，確保在大班授課下，多數同學都可以對課程內容加以吸收。

(四) 本課堂每上完一個主題，都以小考方式，測驗同學對於上課內容之吸收程度。本學期之評量方式，以三次小考加上一次的判決摘要，以及上課發言參與度做為學期評量方式，鼓勵同學課前預習，參與發言，並在課後複習並加以測

驗，以強化學習成效與思辯能力。本學期之測驗結果，多數同學成績表現過半在70分以上，學習成效良好。判決摘要多數同學皆能掌握案例之事實、分析該案例之法律上爭點，並理解法院之裁判理由，多數學生之判決摘要在80分以上。

伍、 結論

本課程學生人數較多，使學生事先預習課程內容，上課不以傳統講述為重，而係以問題分析以及蘇格拉底式的問答教學方式，使同學可以先自行學習，再由教師藉由問答，刺激其對於問題之邏輯性思考與解決問題之能力，將使同學對於各個法律爭議有更深入之了解與思考。並藉由課後小考，確保同學的學習成效。並藉由判決摘要之練習，掌握並理解判決，習得法律人最重要之思辯與分析能力。上課以實際案例請同學就其事先預習之內容，做為其解決實務案例之基礎，一方面確認學生之學習成效，一方面使學生在短時間內刺激其對於問題之邏輯性思考與解決問題之能力，藉由每一週重複之練習，將可大幅度改善傳統上同學對於法律議題邏輯性思考之缺陷，協助同學建立解決問題之模式與思考方式。

此外，本課程採全英語授課與教材，藉由外國法規與判決之介紹與分析，營造優質國際化環境，提升學生語言能力及國際視野。並藉由不同學院、語言、文化與專業背景之學生相互學習與討論，對同一法律爭議，就其不同之觀點發表意見，將更有助於學生獨立與批判性思考，而非僅侷限於法律人思維。整體而言，執行成效良好，符合計畫當初之初衷。

陸、 附件

(一) 附件一：本學期學生所完成之判決摘要
(二) 附件二：本學期測驗題目
(三) 附件三：本學期教授之法院判決範本

109學年度第2學期 英美法總論 考試試題紙				
考試科目(中文名稱)	系級學號 姓名 Student ID and Name	考試時間 Due by	命題教師	頁數
英美法總論 Intro to U.S. Law		Upload by 6月15日 23:59	陳盈如	

Pleas type your answer here and upload this page only

Case Name: L.A. Fitness International, LLC v. Mayer, 980 So.2d 550 (Fla.App.2008)

Author of the case: Taylor, J

Facts:

Robert Strayer, an L.A. Fitness sales representative, testified that he heard someone call for help. He told the receptionist to call 911, and ran to the back of the gym. He saw the member, Tringali, fallen from stepping machine and lain on the ground. Then Strayer touched Tringali to check his left wrist and felt a faint pulse. He also noted the red color of Tringali's face and concluded that Tringali had an oxygen supply. According to preliminary assessment and his observation, Strayer, who was certified in CPR, decided not to attempt CPR and possibly make matters worse. He testified that Tringali's face had just begun to turn blue when the paramedics arrived. As witness, every patron has different testimonies. EMS attached a valve mask with oxygen, performed CPR, and used a defibrillator to treat Tringali, but in vain. Tringali was dead, his daughter sued L.A. Fitness for negligence by failure to render aid. The jury awarded $729,000 on damage. L.A. Fitness appealed.

Procedural History:

The Circuit Court entered judgment on a jury verdict that total damages awarded were $729,000. L.A. Fitness appealed from the judgment. Appellee cross-appealed, contending that the trial court erroneously instructed the jury on comparative negligence.

Issue:

(1) Although business owners have a duty to provide "first aid" to business invitees facing medical emergencies, such obligation whether encompass the duty to perform skilled treatment, such as cardiopulmonary resuscitation (CPR).

(2) While health club employee's preliminary action in assessing member, did not commit employee to performing CPR on member if that was indicated, whether health club was liable for member's death based upon negligence in undertaking to render services to another.

(3) Whether health breach its duty to member by failing to have an automatic external defibrillator (AED) on the premises.

Holding (and Judgment):

(1) No, owners' obligation does not encompass the duty to perform skilled treatment, such as cardiopulmonary resuscitation (CPR).

(2) No, health club could not be liable for member's death based upon negligence in undertaking to render services to another.

(3) No, health club did not breach its duty to member by failing to have an automatic external defibrillator (AED) on the premises.

Rule of Law:

(1) The skilled treatment, the principle of Restatement of Torts (Second) § 314A indicate, "that a proprietor is under an ordinary duty of care to render aid to an invitee after he knows or has reason to know the invitee is ill or injured." L.A. Fitness cites three Florida cases which contends, establish its common law duty: Grunow v. Valor Corp. of Florida, 904 So.2d 551 (Fla. 4th DCA 2005); Coccarello v. Round Table of Coral Gables, Inc., 421 So.2d 194, 195 (Fla. 3rd DCA 1982), and Starling v. Fisherman's Pier, Inc., 401 So.2d 1136 (Fla. 4th DCA 1981).

(2) The Negligent Undertaking, Restatement of Torts (Second) § 323, which states that one who undertakes, gratuitously or for consideration to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if his failure to exercise such care increases the risk of such harm, or the harm is suffered because of the other's reliance upon the undertaking.

(3) The setting of defibrillator (AED), the Florida legislature has adopted the "Cardiac Arrest Survival Act" § 768.1325, Fla. Stat., which does not require that an AED be placed in any building or location or that an acquirer of an AED have persons trained in the use of AEDs available on the premises.

Reasoning:

(1) The obligation of provide "first aid" to business invitees, however, it does not encompass the duty to perform skilled treatment, such as CPR. Cardiopulmonary resuscitation (CPR), which requires training, is more than mere "first aid." It requires training and recertification. Non-medical employees certified in CPR remain laymen and should have discretion in deciding when to utilize the procedure. Courts have similarly found that the Heim-lich maneuver is a rescue technique that is not included in a business owner's duty to render aid to patrons facing medical emergencies.

(2) L.A. Fitness argues that its employees' actions in checking on Tringali did not amount to an undertaking to perform CPR on him. It cites Daley v. U.S., 499 F.Supp. 1005 (D.Mass.1980), in explaining why this "negligent undertaking" doctrine does not apply in this case. The purpose of the PRECOM is to assist in determining whether to do anything further, however instituting a PRECOM commits the Coast Guard to nothing. Failure to follow it up is not comparable to abandoning a search that is already underway. L.A. Fitness employee Strayer took the preliminary step of assessing the decedent. Whether that assessment committed him to performing CPR if that was indicated. The court do not believe that it did.

(3) Citing cases from other jurisdictions which uniformly found that health clubs and other business

establishments have no common law duty to have an AED on the premises. See Rotolo, 59 Cal.Rptr.3d at 770, Salte, 286 Ill.Dec. 622, 814 N.E.2d at 614–15; Atcovitz; 812 A.2d at 1218; Rutnik, 672 N.Y.S.2d at 451. As well as F.S. § 768.1325, it is persuasive that L.A. Fitness did not breach its duty to the deceased by failing to have an AED on its premises.

My Comments:

In recent years, the term CPR has become more and more prevalent in Taiwan. Even high school and university students are learning CPR as a skill. With the prevalence of chronic diseases and the trend towards younger people, patients with a history of chronic diseases are likely to collapse or even have their breathing and heartbeat stopped in a sudden situation. CPR is a way for a bystander to temporarily resuscitate a patient before the ambulance crew arrives. However, I have read a survey interview where many respondents said that even though they had CPR skills, they were afraid to perform emergency life-saving tasks. This is because CPR is a risky procedure that requires calm judgment in an emergency situation, and it is difficult to administer it correctly. If a patient with a chance of survival dies because of someone's own misguided efforts to save him or her, then a stranger's life is probably sacrificed because of someone's mistakes. After all, many people have the knowledge and skills to perform CPR, but they are not really professionals.

Returning to the case, although Strayer was certified in CPR, he was not a medical professional. An error of determination in an emergency situation cannot be attributed to his failure to meet his duty of reasonable care, nor can he be held negligent for failing to perform CPR. Liability for negligence is not based on the failure to provide assistance to patients when professional treatment is required. Strayer had called for ambulance personnel in a reasonable amount of time and provided due care. Therefore, I think that the judgment in this appeal is reasonable.

Intro to U.S. Laws Quiz 1

Common Law v. Civil Law

Name: Class: Student ID:

1. Civil Law is (a) codified law (b) case law (c) judge-made law (d) English law.
2. Common law rules are (a) codified law (b) rendered by lower courts (c) mostly reported judgments (d) less specific and detailed in comparison to civil law rules.
3. Taiwan is a (a) civil law country (b) common law country.
4. Which legal system is a comprehensive system of rules and principles usually arranged in codes and easily accessible to citizens and jurists? (a) civil law (b)common law.
5. Which legal system that its principles and rules are embodied in case law rather than legislative enactments, applicable to the government and protection of persons and property that derive their authority from the community customs and traditions that evolved over the centuries as interpreted by courts? (a) civil law (b) common law.
6. The term “common law” has some meanings in legal system. Which of the following is NOT a meaning of the term “common law”?(a) The body of law as made by judges through the determination of cases. (b) A legal system that is based on that of England. (c) Laws created by Legislative Department or Congress.
7. Which of the following countries DOES NOT have a common law legal system?(a) England (b) Australia (c) United States of America (d) France
8. How common law judges frame the question of a case? (a) What should we do this time? (b) What did we do last time? (c) What will we do next time?
9. What common law focuses on? (a) codified law (b) facts
10. What does Stare Decisis mean? (a) The courts are bound by prior decisions made by higher courts (b) The court interprets the law each time without consulting to the previous decisions. (c) The higher court decision is not binding on the lower court decision
11. What is not the advantage of Stare Decisis? (a) reduce the appellate courts’ workload (b)the appellate courts need not re-tread the same ground continually (c) preserves a superior court’s role as final arbiter of the law (d) lower courts have freedom to interpret the law as they wish.
12. Which answer is wrong when we talk about how to overrule a precedent? Overrule (a) by a lower court decision (b) by a higher court decision (c) by a new enacted codified law (d) by a decision made by the higher court itself.
13. What is the meaning of vertical stare decisis? (a) The lower court is bound by the higher court decision. (b) The higher court is bound by its own previous decisions. (c) The U.S. Supreme Court decisions are binding only to the Federal Courts.
14. What is the meaning of horizontal stare decisis? (a) The lower court is bound by the higher court decision. (b) The higher court is bound by its own previous decisions. (c) The U.S. Supreme Court decisions are binding only to the Federal Courts.
15. What is not the benefit of the vertical stare decisis? (a) The lower courts don’t need to try the cases with similar facts again and again. (b) Appellate Courts will have less workload, because the lower court will follow the precedent they made. (c) A superior court will become the final arbiter of the law.

16. What is not the advantage of stare decision? (a) increase the reliance on judicial decisions (b) develop legal rules that are predictable and consistent (c) stare decisis can make sure the decision is the most correct
17. In the following cases we talk before, what is the material difference of facts between the two situations? A. Let us say that in case (1) a man driving a Ford Mondeo runs over an old lady who was lawfully using a zebra crossing. The man is held to be liable in negligence. B. Let us say that in case (2) a woman driving a BMW runs over an old man who was crossing the road.
    (a) Luxury car and normal car (b) male and female (c) lawfully using a zebra crossing and just crossing the road without further description.
18. What are the function of doctrine in civil law and common law? (a) In civil law, the function of doctrine is to provide all practitioners and courts guidelines for how to handle and decide a case by enacting basic and general rules of law through legislative process. (b) In civil law, the function of doctrine is useless, it's just a reference for the practitioners to handle the cases. (c) In common law, the function of doctrine is to create an abstract rule first and then apply the rule to the current case.
19. In *Moore v. Wal-Mart Stores, Inc.*, which one of the following is the premises liability in California? (a) The store owner shall be liable for all the slip-and-fall cases happened inside their store. (b) The store owner is only liable for the slip-and-fall cases if it had the knowledge of the dangerous condition existed to cause the damages and should have enough time to eliminate the dangerous condition. (c) The store owner is not liable for the safety of its customer, which is the sole responsibility of customers.
20. In *Moore v. Wal-Mart Stores, Inc.*, which of the following is the decision of the Court of Appeal? (a) the trial court jury was incorrected instructed, and the court of appeal reversed the lower court decision (b) the trial court decided the case correctly, and the Court of Appeal affirmed the lower court decision (c) the trial court instructed the jury correctly, and the Court of Appeal affirmed the jury award in trail court.

Answer:

1 – 5 :

6 – 10:

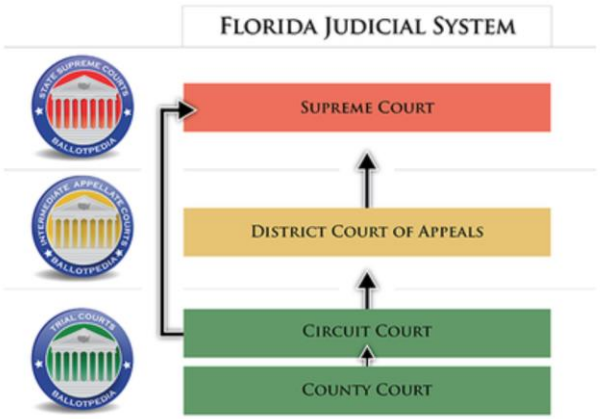
11-15:

15-20:

KeyCite Red Flag - Severe Negative Treatment
Judgment Vacated by Rice v. Arnold, Fla., August 31, 1951

45 So.2d 195

Supreme Court of Florida, Special Division B.



RICE
v.
ARNOLD.

(Party Name)

March 24, 1950.

Synopsis

Action in mandamus by Joseph Rice against H. H. Arnold, as Superintendent of the Miami Springs Country Club, to require respondent to permit relator the use of facilities of country club golf course during all of the hours in which course is usually open or to show cause before the court for its refusal to do so. The Circuit Court, Dade County, Charles A. Carroll, J., denied relator a peremptory writ of mandamus, and he appealed. The Supreme Court, Chapman, J., held that it did not appear that the one day allotment of the facilities of the golf course to the Negroes discriminated against the Negroe race since the days of playing each week were approtioned to the number of white and colored golfers according to the record of the course kept by the respondent.

Judgment affirmed.
(Affirmed, Reversed, Remanded)

Opinion

CHAPMAN, Justice.

This is an action in mandamus originating in the Circuit Court of Dade County, Florida, stemming from the following factual situations: **(Facts)**The City of Miami owns and operates golf links known as the Miami Springs Country Club for the use and enjoyment of its citizens and residents and ***196** their guests. The city delegated to the respondent, H. H. Arnold, the authority to supervise and manage the golf course, inclusive of the power to promulgate reasonable rules and regulations necessary for the use and enjoyment thereof in behalf of the public. The petitioner, a colored man, on April 27, 1949, requested of the respondent the right and privilege to play on the municipally owned golf links, but the request, it is contended, was arbitrarily and unlawfully denied.

The respondent, superintendent of the Miami Springs Country Club, concedes that the petitioner is a colored man, a citizen and resident of the City of Miami; now and for many years past a general policy of segregation of races has existed in both the State of Florida and City of Miami. The Miami Springs Country Golf Course until recently has been used exclusively by golfers of the white or Caucasian race, as no demands to use the course were made by Negroes until April 11, 1949, when several colored men, after complying with all the rules of the golf links were permitted to use the golf course, when the dates of playing and the number of Negro golf players were accurately recorded. This record reflects the following:

'April 12th, 1949, Tuesday-8 players;

'April 13, 1949, Wednesday-6 players;

'April 14, 1949, Thursday-12 players;

'April 15, 1949, Friday-52 players;

'April 16, 1949, Saturday-8 players;

'April 17, 1949, Sunday-6 players.

The costs of maintenance and operation of the Miami Springs Country Club Golf Course are paid exclusively from green fees paid by golfers for the use of the course and in order that it remain a self sustaining project it is essential that an average of 200 golfers daily use the course and pay the prescribed fees. The white patrons of the course refused and have declined to patronize the golf course and share the facilities thereof at the same time with the Negro golfers. The total revenues arising from the small number of Negro players using the course and paying the green fees, when standing alone, are insufficient to pay the actual operating and maintenance costs of the links. The golf course facilities previously supplied the citizens and residents of Miami will be

abandoned (a) if the use of the course is exclusively restricted to the Negro golfers, because it will not be financially self sustaining; (b) if Negro golfers are permitted to share the facilities of the course with the white golfers the latter will not patronize it, thereby resulting in an operational loss.

Pursuant to the existing general policy of segregation and in order to make the facilities of the golf course available to the public and usable by the two races and to avoid an abandonment thereof, the respondent superintendent adopted a rule for the operation of the links applicable to both Negro and white golfers. The Negro golfers under the rule use the facilities of the course one day each week and the white golfers use it the remaining six days of the week. The rule or policy so adopted and now in force and effect designate the days of the week in which white golfers will be allotted the exclusive use of the facilities of the golf course; and the days of the week in which the exclusive use of the facilities of the golf course will be allotted to Negro golfers. Pursuant to an administrative policy and in behalf of the public interest the above rule was adopted by the Superintendent of the course which allotted the facilities of the course at different times to the white and colored golfers. If the ratio of colored golfers requesting the use of the facilities of the course shall from time to time increase, then the rule supra promulgated may or can be altered to conform to the demands of an increased number of colored golfers, thereby accommodating all citizen and resident golfers and their guests as to the facilities of the course without regard to race or color. **Under the operation of this rule the two races now and for some time past have used and enjoyed the recreational facilities of the course.**

The commands of the alternative writ as issued required the respondent to permit the relator the use of the facilities of the Miami Springs Country Club Golf Course 'during all of the hours in which the course is usually open or show cause before the Court for his refusal so to do'. In the order denying ***197** the relator below a peremptory writ of mandamus as prayed for the trial court, in part, said: 'In a determination of this case it must be noted at the outset that the command of the alternative writ would require that the city's public golf course superintendent permit the relator to use the course at all hours when it is open to public play. In order for relator to be entitled to a peremptory writ of mandamus it must appear that there is a clear legal duty for the respondent to comply and perform'. (lower court decision)

The controlling question presented by the record is viz.: (Issue)Are the constitutional rights of the relator-appellant violated by the rule adopted and now in effect regulating the use of the facilities of the Miami Springs Country Club Golf Course owned and operated by the city and maintained exclusively by the green fees paid for the facilities by the golfers? The white and Negro golfers functioning under the rule use the facilities of the course, but on different days of the week. It appears that if the Negroes are permitted the use of the course with the white golfers, then the white golfers will not patronize the course. The green fees paid by the Negro golfers and insufficient to support and maintain the course. The rule allows the Negro golfers to use the course one day of the week and the white golfers six days. It is argued that the adopted rule avoids a clash of the two races; funds are made available to the city with which to supply golfing facilities to the public; golfing facilities can be supplied the public by the city only in the manner provided for by the rule, otherwise the services will be abandoned.

(Plaintiff's Allegations) Counsel for relator-appellant contend that the rule, supra, violates the 14th Amendment to the Federal Constitution; Section 1 of the Declaration of Rights of the Florida Constitution, F.S.A.; it is contrary to the holdings of the Supreme Court of the United States as enunciated in State of Missouri ex rel. Gaines v. Canada, 305 U.S. 337, 59 S.Ct. 232, 83 L.Ed. 208; McCabe v. Atchison, Topeka & Santa F. R. Co., 235 U.S. 151, 35 S.Ct. 69, 59 L.Ed. 169; Strauder v. West Virginia, 100 U.S. 303, 25 L.Ed. 664, and similar cases. It is not contended that the City of Miami must maintain a golf course for the use and benefit of the Negroes but since the city elected to supply golfing facilities to the public, then equal facilities must be provided to the relator and other members of the Negro race; that the relator-appellant and white golfers have a constitutional right to play the course at all times when it is open to the public.

(Rule of Law)[1] [2] It is generally conceded that an equal protection of the law operates as a protection against any state action, or municipality as an arm of the state, by statute or otherwise, which denies to any person equal protection on account of race or color. If substantially equal accommodations, facilities or privileges, are provided for persons of different races, then there is no violation of the equal protection clause of the Federal Constitution. **(some explanations/applications of the law)**Thus it has been held that a state may constitutionally forbid the co-education of different races in the same private school. Berea College v. Commonwealth, 123 Ky. 209, 94 S.W. 623, 124 Am.St.Rep. 344, 13 Ann.Cas. 337, on appeal Berea College v. Kentucky, 211 U.S. 45, 29 S.Ct. 33, 53 L.Ed. 81. It may assign different portions of parks for the exclusive use of different races. Warley v. Board of Park Comm'rs, 233 Ky. 688, 26 S.W.2d 554. It may prohibit the sale of liquor to different races at the same saloon. State ex rel. Tax Collector v. Falkenheiner, 123 La. 617, 49 So. 214.

In the case of State ex rel. Weaver v. Board of Trustees, 126 Ohio 290, 185 N.E. 196, Dorris Weaver, a colored girl, in a mandamus action sought admission to a 'Home Economics Course' of the University of Ohio. The Home was so managed that the white students bought groceries,

cooked and dined together as a common enterprise. They lived together two in a room with roommates of their own selection and had a common bath and toilet facilities. The relator was by the University authorities granted living quarters equipped in a similar manner to other buildings on the campus and no one interfered with her rights and privileges in pursuing the educational ***198** courses offered and she had an opportunity to entertain her friends and associates as granted to other students. She had been denied the privilege of residing and associating with white students and partaking in their family or communal life. Mandamus was denied-the court pointed out that (Reasoning) when the government secured to each of its citizens equal rights before the law, equal opportunity for improvement, it had accomplished the end for which it was organized. Courts are powerless to eradicate social instincts or to abolish distinctions based on physical differences and the attempt to do so only accentuates existing difficulties. It cannot be overlooked that persons of the same tastes and desires, whether white or black, usually associate together to enjoy themselves to the best advantages. People generally move in the circles in which they are likely to be suited or matched. The reason for the rule was to prevent friction between the white and negro golfers on the course.

[3] The relator-appellant requests this Court to hold as a matter of law that he is entitled to use the city's golf course at all hours and times it is open to play despite the findings of fact in the court below that he now enjoys substantially equal accommodations provided for persons of the different races. It does not appear by the record that the one day allotment of the facilities of the course to the Negroes discriminated against the Negro race. The days of playing each week were apportioned to the number of white and colored golfers according to the record of the course kept by the respondent. If an increased demand on the part of the Negro golfers is made to appear, then more than one day each week will be allotted.

[4] [5] Mandamus is a legal remedy which is not always awarded as a matter of right but in the exercise of sound judicial discretion, and then only when based on equitable principles. The relator must establish a clear legal right to its issuance and further show than no other adequate remedy exists. State ex rel. Dixie Inn v. City of Miami, 156 Fla. 784, 24 So.2d 705, 163 A.L.R. 577. Reversible error has not clearly been made to appear.

Affirmed.

ADAMS, C. J., HOBSON, J., and TAYLOR, Associate Justice, concur.

All Citations

45 So.2d 195

End of Document