

INTRODUCTION

New Jersey's 1947 Constitution created a court system capable of responding to the needs of New Jersey's citizens, and to changes in our society. For more than seven decades, New Jersey's Supreme Court has gained recognition nationally among state high courts for its timely, prudent and well-conceived innovations to the common law.

The common law, like other judicial principles, arises out of court rulings resolving controversies presented to courts by people in search of a solution. Individuals and others, ordinarily with the help of lawyers, select the issues to present to a court. In effect, the common law results from judicial decisions resolving those issues case-by-case.

ORIGINATION OF THE COMMON LAW

Being one of the original 13 colonies, New Jersey has been strongly influenced by English law, and the Anglo-Saxon tradition. The "three branches" of government enshrined in the U.S. Constitution, and in the New Jersey Constitution, are derived from English history: the king was the executive branch, parliament the legislative branch, and the courts the judicial branch. It was in the English judiciary that a formal – civilized – system for resolving disputes and addressing crimes originated among English speaking people. It was in the early courts in England that the common law took root and evolved into our current system of courts, judges and juries. The common law we know today dates back to the 12th and 13th centuries and derives from the reign of King Henry II, who appointed judges to resolve disputes among his subjects.

The meaning of the term *common* law was twofold: the English Court of Common Pleas addressed issues arising from quarrels among *commoners*; and the mission of such courts was to create a collective body of law based upon local customs, that is, a unified system of law *common* throughout all of England.

Common law is rooted in the central role of the judge in the continual restatement and gradual refinement of legal doctrines through court decisions. The common law is grounded in history and societal interests. In deciding a case, the role of the judge is to interpret and apply earlier decisions, or precedent.

Under the Anglo-Saxon tradition, litigation is by its nature “adversarial.” Litigation begins when a person files a lawsuit (or a criminal complaint) against another. Each side is the other’s adversary, responsible for presenting evidence and arguing their position to a judge who renders impartial decisions based upon the merits of the facts presented in light of the law. The development of a centralized and hierarchical system of courts, which assured litigants of a structured appeal process, was originally empowered by English kings and then by Parliament. This appeal process was critical for the judiciary and its decisions in gaining the respect of the community at large.

Common law relies upon “precedent,” also referred to by the Latin phrase *stare decisis*, which means “to stand by things decided.” (Latin terms arise regularly in the law because the early English system was in large part based upon Roman law.) The doctrine of *stare decisis* obligates judges to respect the essential legal principles of decisions applied in similar cases previously determined by higher courts and frequently those of equal status. Over time, a procedural system, and court rules, were developed by judges to ensure consistency and fairness in the handling of diverse matters. Those rules, in turn created the need for legal professionals, skilled in understanding, arguing and applying the law on behalf of clients in the various court settings.

Though the courts play a pivotal role, much “law” is created through the passage of legislation that becomes part of the statutory law. As a result, when presented with a dispute regarding the enforcement of a statute, the inquiry of the court shifts to discovering the intent of the legislature.

EVOLUTION OF THE COMMON LAW IN NEW JERSEY

New Jersey celebrates and thrives in its diversity, and as a result, we have long been a place where competing visions of America come into conflict. Nonetheless, as modern U.S. history has shown, wherever America is going, New Jersey usually gets there first.

When competing visions of the role of state government in society have come into conflict, our courts, as the third branch of government, have been confronted with significant challenges. Sometimes, when rendering decisions to difficult questions, various observers have expressed concern that our Supreme Court has been too assertive. Yet as noted by retired New Jersey Supreme Court Justice Gary Stein, “[t]here are so many circumstances in which courts are required to act because the other branches of government have not. A great example would be the right-to-die cases. Before the Karen Ann Quinlan case¹ there was simply no law in New Jersey that would

authorize the family of someone who was thought to be brain-dead to cut off life support, like a respirator.”

Karen Ann Quinlan was the first case in the nation that raised issues regarding the removal of life-support. The problem was that whoever unplugged her respirator would be participating in her death, and thus, susceptible to a charge of some form of homicide. Ms. Quinlan's father loved her deeply and believed that the respirator should be cut off. And so, the New Jersey Supreme Court had to decide a question that had not been resolved by the other branches of government, namely, is it permissible, under any circumstance, for a respirator to be cut off? As discussed in greater detail later in this website, the Karen Ann Quinlan case charted a new path in the common law and has been followed by many courts throughout our country and the world.

In a most dramatic fashion, the Quinlan decision vividly illustrates those situations in which “[c]ourts are asked to intercede in areas where the Legislature and the executive branch have stood silent. And, when that happens, it's my view [Justice Stein's] that the court is obligated to do its job, do its job in a thoughtful and responsible and careful way.”²

Not long after the adoption of the 1947 Constitution, Chief Justice Arthur T. Vanderbilt, in his dissent in *Fox v. Snow*,³ expressed the approach of the New Jersey Supreme Court regarding the need for the common law to continually evolve. The majority's ruling on a disputed estate and the intent of the decedent is long forgotten, yet Vanderbilt's full-throated dissent has been followed by many other courts. “The common law would be sapped of its life blood if *stare decisis* were to become a god instead of a guide...We should not permit the dead hand of the past to weigh so heavily upon the law that it perpetuates rules of law without reason.”⁴ Finally, Vanderbilt quoted one of his mentors, Harvard Law School Dean, Roscoe Pound, “Law must be stable, and yet it cannot stand still.”⁵

The need for judges to play a leadership role in adapting the law to a changing society has been expressed frequently by some of America's most respected legal minds. United States Supreme Court Justice, Oliver Wendell Holmes, Jr., in his book, *The Common Law*, coined this aphorism. “The life of the law has not been logic: it has been experience.” Another great American judge, Benjamin Cardozo, famously wrote, “Law never is, but always about to be.”

The first major decision in which Vanderbilt's legal philosophy was the basis for a bold expansion of the common law of the United States was in *Henningsen v. Bloomfield Motors, Inc.*⁶ in 1960. In *Henningsen*, the plaintiff (the party bringing the claim) was the injured purchaser of a new car, only several days' old, which had seriously malfunctioned. The defendants (the parties being sued) were an auto dealer and the Chrysler Corporation.

In a decision written by New Jersey Supreme Court Justice John J. Francis, a unanimous court ruled that the dealer and Chrysler were liable to plaintiff for breach of an "implied warranty of merchantability" and reasonable fitness for the intended purpose, namely that a new car should be safe to drive on the highway. In doing so, the court stated, "The task of the judiciary is to administer the spirit as well as the letter of the law. On issues such as the present one, part of that burden is to protect the ordinary man against the loss of important rights through what, in effect, is the unilateral act of the manufacturer."⁷ Continuing, the court said, "The history of the law shows that legal doctrines, as first expounded, often prove to be inadequate under the impact of later experience. In such cases, the need for justice has stimulated the necessary qualifications or adjustments."⁸ Most legal commentators agree that the *Henningsen* decision was the beginning of modern products liability law in America.

Several years after *Henningsen*, in 1965 New Jersey's Supreme Court decided an appeal of a contract dispute that caught the attention of other state courts. In the case of *Palisades Property, Inc. v Brunetti*,⁹ in a decision written by Justice Vincent Haneman, the high Court ruled that "In every contract there is an implied covenant that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract; in other words, in every contract there exists an implied covenant of good faith and fair dealing. Where fairness and justice require, even though the parties to a contract have not expressed an intention in specific language, the courts may impose a constructive condition to accomplish such a result when it is apparent that it is necessarily involved in the contractual relationship."¹⁰ The decision in *Brunetti* is now part of the common law in nearly every state in America.

As important as contracts can often be in our lives, where we live is even more important. New Jersey is the most densely populated state, and many people do not own their homes, but rather rent their living units, subject to the terms of a lease agreement.

Several years after the *Brunetti* decision, in 1970, the state’s landlord-tenant courts received what one learned commentator has referred to as “shock therapy.”¹¹ The New Jersey Supreme Court in *Marini v. Ireland*¹² held that in every lease agreement between a landlord and tenant there is an implied covenant of habitability and livability fitness. A residential lease is for a “dwelling.” If for some reason within the landlord’s control, the tenant’s dwelling becomes uninhabitable, then it is the landlord’s responsibility to make repairs to ensure that the leased premises are fit for habitation. Thus, a tenant cannot be evicted for nonpayment of rent for a unit that is uninhabitable. Today, when these situations arise, and the tenant has demonstrated to the court that there are repairs that need to be made by the landlord, the tenant can pay rent into the court. The rent is paid to the landlord upon completion of the needed repairs. Many states have followed New Jersey’s lead and have embraced a common law implied covenant of habitability and livability.

As shown by this brief discussion, and in the portions of this website that follow, New Jersey rejects the mindset that the ordinary person should be left to their own devices when interacting in a marketplace in which there are crafty people, eager to take advantage of less sophisticated persons. Our court system strives to be informed of, and attentive to, new circumstances in society, such as changes in technologies or cultural norms, which often result in novel legal issues requiring the Court to take a fresh look at old issues.

As stated the New Jersey Supreme Court stated in *Henningsen*, “The task of the judiciary is to administer the spirit as well as the letter of the law.”¹³ As you will see in the sections that follow in this website, New Jersey has been a leader in expanding the common law in America. Our high Court has led the way on issues ranging from the safety of persons and property, criminal law, workplace behavior, and personal rights, to education, contract disputes, planning and zoning, and attorney ethics. The common law is a pole star in resolving disputes, and the discussion that follows confirms that our state’s Supreme Court is acknowledged as a leader in ensuring that the law does not stand still.

¹ *In re Quinlan*, 70 N.J. 10, 355 (1976), discussed in interview of Justice Gary Stein

² Justice Gary Stein interview

³ *Fox v. Snow*, 6 N.J. 12 (1950).

⁴ *Id.* at 23, 27.

⁵ *Id.* at 24 (citing ROSCOE POUND, INTERPRETATIONS OF LEGAL HISTORY (1923)).

⁶ *Henningsen v. Bloomfield Motors*, 32 N.J. 358 (1960).

⁷ *Id.* at 403.

⁸ *Id.* at 386.

⁹ *Palisades Property Inc. v. Brunetti*, 44 N.J. 117 (1965).

¹⁰ *Id.* at 130.

¹¹ Richard H. Chused, *Marini v. Ireland (1970): Protecting Low Income Renters by Judicial Shock Therapy*, in *COURTING JUSTICE, 10 NEW JERSEY CASES THAT SHOOK THE NATION 24* (Paul L. Tractenberg ed., 2013).

¹² *Marini v. Ireland*, 56 N.J. 130 (1970).

¹³ *Henningsen*, 32 N.J. at 403.