WEEK #1 HANDOUT

Consider the following stories:

**The Lawyer and the Farmer**
Up in Minnesota, one of Mr. Olsen’s cows was hit by a railroad train and died. The railroad dispatched a lawyer to meet with Mr. Olsen.

“We understand, of course, that the deceased was a very docile and valuable animal,” said the lawyer in his most persuasive and gentlemanly manner, “and we sympathize with you and your family in your loss. But, Mr. Olsen, you must remember this: Your cow had no business being upon our tracks. Those tracks are our private property and when she invaded them, she became a trespasser. Technically speaking, you, as her owner, became a trespasser also. But we have no idea to carry the issue into court and possibly give you trouble. Now then, what would you regard as a fair settlement between you and the railroad company?”

“Well,” said Mr. Olsen slowly, “I’m a poor old farmer, but I can give you two hundred dollars if that will settle the matter.”

**The Lawyer and the Slaveowner**
In the days before the Civil War, a Southern plantation-owner got into financial difficulty. The Fugitive Slave Act had been passed, which allowed Southern slaveowners to hunt their fugitive slaves in the North and take them back. This planter, considering how he might extricate himself from his embarrassments, got trace of one of his fugitive slaves – a favorite girl, who had been brought up in his house, and got a good deal of education there along with his daughters.

She had escaped to the North and settled in Philadelphia, where she married a storekeeper, with whom she had several children.

The planter went to Philadelphia, taking all necessary evidence with him, sent for the storekeeper, and told him he had come to recover a slave of his, whom the storekeeper had married.

The unhappy man demanded evidence, but the planter laid before him incontrovertible proof that the woman was his runaway slave, and therefore, in the eyes of the law, his property.

“You are, of course, aware also,” said the planter, “that as the children follow the condition of the mother, your children are also legally my property. However, I don’t wish to break up your family. I am willing to sell you both your wife and her children; but it will cost you $3000. I am sorry to come upon you in this way, but I have to look after my own interests, and I must either have the money, or take your wife and children with me.”
The man asked for a night to determine what to do, and the planter agreed.

The man went to see a lawyer, who said, “There is no recourse. You must pay that $3000.” Nonetheless, Philadelphia lawyers have a reputation for smartness; and this one, after discussion with the storekeeper and going home with him and seeing his wife, ultimately said he would undertake the case and do his best. “But,” he added, “that $3000 will have to be paid.”

Next day he went to the planter’s hotel, taking with him $3000. He saw the planter and said he had come to pay him the money and get the deed of sale. The planter was delighted. The papers were duly made out, signed and handed over to the lawyer, who gave him the $3000 in return.

“A very handsome girl she has been,” said the lawyer, referring to the storekeeper’s wife, who had been the principal subject of the negotiation. “Intelligent; highly educated, too.”

“That’s so,” said the planter. “That girl was brought up in my house, and educated like one of my own daughters.”

“That’s just the point I was going to refer to,” said the lawyer. “I am going to bring an action against you for that.”

The planter stared.

“Yes,” continued the lawyer, “it is a penal offence in your State, as you know, to educate a slave, and I think that this is a case where the law ought certainly to be put in force.”

The planter fidgeted uneasily.

“And yet,” said the lawyer, “I would not like to be hard on you. If you hand back that $3000, I shall let you off.”

The planter bit his lip. He knew that an action against him would involve worse consequences than the loss of $3000; and, at last, with the best grace he could, handed back the money.

The lawyer carried the news to the storekeeper and his wife, gave them back their $3000, and handed over the deed of sale, which secured them against future risk.

Stories adapted from Mark Galantner, Lowering the Bar: Lawyer Jokes and Legal Culture 123-24 and 138-39 (2005), and sources cited therein.

How would you characterize the conduct of the two lawyers? Which one do you think acts more ethically? Why? Do you see a difference in their approaches to their clients’ legal problems? What do you think explains the difference (if any) in your reactions to them?