Introduction

During 1998 and 1999, I participated in a series of meetings in Vienna convened under the auspices of the United Nations. Their purpose was to hammer out, as quickly as possible, an international agreement on transnational organized crime,[1] as well as a set of supplementary protocols on the specific issues of trafficking,[2] migrant smuggling,[3] and the trade in small arms.[4] My job, as the representative of Mary Robinson, the then-High Commissioner for Human Rights, was to use her voice in persuading States not to dilute or let go of the basic international human rights principles to which they were already committed. We had good reason to be worried. Migrant smuggling had recently been identified as a security threat by the preferred destination countries in Europe, North America, and Australia, and had moved from the margins to the mainstream of international political concern. Human trafficking, an obscure but jealously guarded mandate of the UN's human rights system, had been similarly elevated and, in the process, unceremoniously snatched away from its traditional home.

For those of us from the United Nations' various human rights and humanitarian agencies thrown together in Vienna, the existence of a very real problem was beyond dispute. Despite an impressive, if disparate, array of international legal protections, it was clear to our organizations that forced labor, child labor, debt bondage, forced

[1] United Nations Convention against Transnational Organized Crime, 2225 UNTS 209, done Nov. 15, 2000, entered into force Sept. 29, 2003 (Organized Crime Convention).

[2] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, done Nov. 15, 2000, GA Res. 55/25, Annex II, UN GAOR, 55th Sess., Supp. No. 49, at 53, UN Doc. A/45/49 (Vol. I) (2001), entered into force Dec. 25, 2003 (Trafficking Protocol).

[3] Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, done Nov. 15, 2000, GA Res. 55/25, Annex III, UN GAOR, 55th Sess., Supp. No. 49, at 62, UN Doc. A/45/49 (Vol. I) (2001), entered into force Jan. 28, 2004.

[4] Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime GA Res. 255, Nov. 15, 2000, UN Doc. A/RES/55/255 (2001), done May 31, 2001, entered into force July 3, 2005.

marriage, and commercial sexual exploitation of children and adults were flourishing, virtually unchecked in many parts of the world. Globalization, bringing with it the promise of wider markets and greater profits, had created complex new networks and even new forms of exploitation. We all believed that trafficking was an appropriate focus for international law. We also agreed that the existing international legal framework was woefully inadequate, and the chances of the human rights system coming to the rescue were slim. However, it was far from clear that another area of international law, another part of the international system, was up to the challenge. Certainly, among the delegates in Vienna, there seemed to be little understanding or acknowledgment of the role that States play in trafficking or of the moral and legal responsibilities that this involvement entails. I recall, at one of these meetings, a corridor conversation with a very senior member of one of the leading delegations. He was kind but dismissive of our efforts to ensure that human rights were integrated into the final agreements, particularly the one dealing with trafficking. "You have to understand," he said, "this is not like torture. It's not even about human rights. We governments are not the villains here. Traffickers are just criminals. We can't be responsible for what they are doing. In fact, if it wasn't that we needed the cooperation of other countries to catch them, I wouldn't even be here." Those remarks neatly encapsulate many of the issues that lie at the heart of this book.

The end result of the negotiations, at least in respect of the Trafficking Protocol, was better than many had predicted. Following fractious debate, the first international legal definition of trafficking proved to be sufficiently broad to embrace all but a very small range of situations in which women, men, and children are severely exploited for private profit.[5] Importantly, the Protocol's general obligation to criminalize trafficking[6] would, in practice, apply to exploitative practices taking place within as well as across national borders. States also agreed to a limitations clause maintaining the application of existing rights and obligations.[7] It was in relation to specific commitments of protection and support for victims that the Trafficking Protocol disappointed. The flaw, however, was not considered to be a fatal one. International human rights law already provided substantial, if underutilized protections, and subsequent legal developments, particularly at the regional level, were expected to provide ample authority to fill any remaining gaps. As this book demonstrates, that optimism was not misplaced. Over the past decade, the legal and political landscape around this previously marginal issue has been radically transformed. While not quite "high politics," trafficking is now firmly on the international political agenda. It is the subject of a vast array of international legal rules and a plethora of "soft" standards. Previously moribund international legal prohibitions on practices such as slavery, servitude, forced labor, bonded labor, and forced marriage have

5 Trafficking Protocol, at Art. 3(a).
6 Ibid. at Art. 5.
7 Ibid. at Art. 14.

been resurrected, reinvigorated, and in some cases reinterpreted as a result of their connection to trafficking. In Africa, Asia, and particularly Europe, regional groupings of States have moved to support or even strengthen the internationally agreed standards.[8] Many States have enacted their own specialist trafficking laws and established new institutions and processes to ensure their effective implementation. Even those States traditionally distrustful of the international legal and political process have had no trouble in joining – or in some cases even leading – this unprecedented international movement.

A Changing Role for Human Rights Law. A full appreciation of the new legal landscape around trafficking requires an understanding of the changing role and position of international human rights law. Until very recently, it would have been difficult, if not impossible, to identify a practitioner working in this area who did not view trafficking solely through the lens of human rights. However, the drafting process for the Trafficking Protocol provided some important and occasionally uncomfortable insights into the place of human rights within a broader international legal and political context. On the positive side, there are not many fields of international law, outside this one, where the gains for the poor and the marginalized are potentially greater than for the rich and the privileged. Making human rights the center of thinking about trafficking stops us from being sidetracked by the slick arguments of those who would prefer it be approached as a straightforward issue of migration, of public order, or of organized crime. It prevents an uncritical acceptance of the strange legal fiction, explored at various points throughout this book, that "trafficking" and "migrant smuggling" are two completely different crimes involving helpless, virtuous victims on the one side, and foolish or greedy adventurers, complicit in their own misfortune, on the other. Perhaps most importantly, a human rights approach

[8] See, for example, European Union and African States, "Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children," adopted by the Ministerial Conference on Migration and Development, Nov. 22–23, 2006; "Conclusions and Recommendations of the Meeting of National Authorities on Trafficking in Persons," adopted by the Organization of American States, Docs. OEA/Ser.K/XXXIX and RTP/doc. 16/06 rev. 1, Mar. 17, 2006; European Union, "EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings," OJ C 2005/C 311/01, Dec. 9, 2005; Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-region, adopted on Oct. 29, 2004 in Yangon (by Cambodia, China, Lao PDR, Myanmar, Thailand, and Vietnam); Organization for Security and Co-operation in Europe (OSCE) Permanent Council, "OSCE Action Plan To Combat Trafficking In Human Beings," OSCE Doc. PC.DEC/557, July 24, 2003; European Union, "Brussels Declaration on Preventing and Combating Trafficking in Human Beings," EU Doc. 14981/02, Nov. 29, 2002; European Union, Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA), OJ L 203/1, Aug. 1, 2002; Economic Community of West African States, "ECOWAS Initial Plan of Action against Trafficking in Persons (2002–2003)," adopted by the Twenty-Fifth Ordinary Session of Authority of Heads of State and Government, Dec. 20–21, 2001. For a recent overview of regional initiatives against trafficking see "Report submitted by the Special Rapporteur on Trafficking in Persons, Especially Women and Children, Joy Ngozi Ezeilo," UN Doc. A/HRC/14/32, May 4, 2010.

makes clear that trafficking is woven deeply and inextricably into the fabric of an inequitable, unjust, and hypocritical world.

On the negative side, the disadvantages of a traditional, exclusively rights-based response to trafficking are significant. Such disadvantages are connected fundamentally to the inherent political, legal, and structural weaknesses of the international human rights system itself. It cannot be a coincidence that nothing much happened to trafficking in the fifty years it occupied a hallowed, if irrelevant, position on the sidelines of the United Nations' human rights system. During the entire twentieth century, when trafficking and its array of associated practices "belonged" exclusively to the international human rights system, States could not even agree on a definition, much less on specific legal obligations. International oversight of trafficking and related forms of "private" exploitation was almost nonexistent. Despite the presence of relatively straightforward prohibitions in two major treaties, and an impressive selection of related standards in others, trafficking was (and still is) rarely linked to the violation of a specific provision of a specific treaty. All in all, working out the "wrong" of trafficking with reference to international human rights law was a difficult and frustrating task for the human rights lawyer.

I was among those human rights lawyers and activists who, in the late 1990s, decried the removal of trafficking from the sacred chambers of the international human rights system to the area of the United Nations that dealt with drugs and crime. When it became clear that the UN Crime Commission was going to develop a treaty on trafficking, we were, in the best tradition of our profession, righteously outraged. Surely this was the task of human rights? Surely trafficking was too important, too sensitive, to entrust it to an alien UN environment that knew (or, we suspected, cared) little about human rights? A decade later, it is necessary to acknowledge that there is no way the international community would have a definition and an international treaty on trafficking if this issue had stayed within the realms of the human rights system. Even if that troubled system had managed to found its own treaty, such an instrument probably would not have tackled those mundane but critical issues such as criminal jurisdiction, mutual legal assistance, or extradition. No human rights treaty on trafficking or any related issue would have been able to link itself to a parent instrument that set out detailed obligations for tackling corruption, exchanging evidence across national borders, and seizing assets of offenders. No human rights treaty would have received the necessary number of ratifications to permit its entry into force a mere two years after its adoption. Certainly, no human rights treaty would have prompted the raft of international, regional, and national reforms that we have witnessed over the past decade. Perhaps most importantly, no conceivable action of the international human rights system could have focused the same level of global attention and resources on debt bondage, forced labor, sexual servitude, forced marriage, and other exploitative practices that continue to plague all regions and most countries of the world.

Since its adoption, the Trafficking Protocol has served international law very well. It has provided both a framework and an impetus for the generation of a comprehensive range of international, regional, and national norms and standards. These articulate, with much greater clarity than was ever previously possible, the obligations of States in relation to both ending impunity for traffickers and providing support, protection, and justice for those who have been exploited. The level of normative precision secured through this new legal framework and the nature and the intensity of oversight are, for the human rights lawyer, particularly striking. From that perspective, it is not helpful to continue to be aggrieved about the fact that these changes were generated outside the formal human rights system. The international human rights system amply demonstrated over many years that, on its own, it was incapable of taking any serious steps toward eliminating trafficking and other forms of private exploitation. Through the legal instruments developed over the past decade, that system has now been given new and better tools with which to work. The real test of its effectiveness, relevance, and resilience will lie in the way it responds to this challenge.

Accepting the constraints of international human rights law does not require one to renounce the faith. Trafficking goes to the very heart of what human rights law is trying to prevent. From its earliest days to the present, human rights law has loudly proclaimed the fundamental immorality and unlawfulness of one person appropriating the legal personality, labor, or humanity of another. Human rights law has battled the demons of discrimination on the basis of race and sex; it has demanded equal or at least certain key rights for aliens; it has decried and outlawed arbitrary detention, forced labor, debt bondage, forced marriage, and the commercial sexual exploitation of children and women; and it has championed freedom of movement and the right to leave and return to one's own country. There can be no doubt that the spirit of the entire corpus of human rights law rejects, absolutely, the practices and results that are integral to the human trafficking process. As this book will clearly show, human rights law is central to any credible and effective response to trafficking. Human rights law and its enforcement mechanisms are critically important when it comes to ensuring that national responses to trafficking do not violate established rights or circumvent the obligations that States owe to all persons. Ultimately, however, trafficking and its associated harms are multidimensional problems that do not, in the end, belong to one discipline or one branch of law. Combating contemporary exploitation will require a full arsenal of modern, smart weaponry, not just one precious but blunted sword.

The Limits of Knowledge and the Hazards of Objectivity. In trafficking, as in any other area, the attainment of knowledge is an ongoing endeavor. International lawyers working in this field must be part of the journey of discovery and resist the temptation to accept simplistic responses to complex, perhaps intractable problems. An informed understanding of the dynamics of trafficking and an appreciation

of the social and political environment within which norms are constructed and implemented are essential when it comes to identifying rules, prioritizing their importance, and applying the law, as carefully and honestly as possible, to specific circumstances. For example, an international legal obligation to address trafficking-related "demand" cannot be effectively applied, or even well described, unless and until the underlying concept is properly understood. This requires an appreciation of the political dimensions of the demand discourse, as well as an insight into the dynamics of the trafficking process itself. An awareness of the gender dimensions of trafficking is a prerequisite for deciding whether a State's response (or nonresponse) to trafficking violates the international legal prohibition of nondiscrimination on the basis of sex. The international legal scholar must be ready to identify limits of current knowledge, for example, on the nature and scope of the problem,[9] and to accept the impact that such limits will impose on the task of identifying and applying legal norms. She or he should also be prepared to venture outside the discipline of international law if this is required to secure an adequate understanding of the problem that international law is seeking to address – or indeed, to assess the potential or actual impact of policy preferences enshrined in law. This is not a matter of diluting or confusing the law through promiscuous alliances. It is an essential aspect of ensuring the relevance and accessibility of legal knowledge.

International legal scholarship around trafficking can only be improved through an awareness of actual or potential biases – and an acknowledgment of the extent to which such biases operate to influence scholarship. The goal is not to produce work that is value-free. Rather it should be to ensure that individual beliefs, preferences, and values are not deliberately used to distort, misrepresent, or otherwise manipulate the description, presentation, or explanation of "the law as it is." This is more difficult than it sounds. On an issue such as trafficking, the temptation to blur the boundaries between moral claims and legal obligations is strong. As noted above, the way in which international law is developed, identified, and applied can

[9] Reliable data on trafficking patterns and numbers is notoriously difficult to secure, a reality that appears lost on many international legal scholars who regularly cite statistics and numbers that are unverified and unverifiable. For an introduction to the "complexities and pitfalls" of measuring trafficking, see E.U. Savona and S. Stefanizzi eds., *Measuring Human Trafficking* (2007). For a withering critique of the oft-cited global figures on trafficking provided by the US Department of State, see US Government Accountability Office, "Human Trafficking: Better Data, Strategy and Reporting Needed to Enhance UN Antitrafficking Efforts Abroad," July 2006, available at http://www.gao.gov/new.items/d06825.pdf (accessed Nov. 22, 2009). See also D.A. Feingold, "Trafficking in Numbers: The Social Construction of Human Trafficking Data," in P. Andreas and K.M. Greenhill eds., *Sex, Drugs and Body Counts: The Politics of Numbers in Global Crime and Conflict* (forthcoming 2010); H.M. Ali, "Data Collection on Victims of Human Trafficking: An Analysis of Various Sources," (2010) 6(1) *Journal of Human Security* 55; K. Kangaspunta, "Measuring the Immeasurable: Can the Severity of Human Trafficking Be Ranked?" (2010) 9 *Criminology & Public Policy* 257; and L.S. Wyler and A. Siskin, "Trafficking in Persons: U.S. Policy and Issues for Congress," Congressional Research Service (2010), available at http://www.fpc.state.gov/documents/organization/139278.pdf (accessed June 9, 2010).

serve to entrench a strategically useful confusion between *lex lata* and *lex ferenda*. Of course, as Rosalyn Higgins has pointed out:

> Reference to "the correct legal view" or "rules" can never avoid the element of choice (though it can seek to disguise it), nor can it provide guidance to the preferable decision. In making this choice, one must inevitably have consideration for the humanitarian, moral and social purpose of the law.[10]

The absence of common agreement over the values and purpose of the law is reflected in a body of scholarly writing that, with a few exceptions, demonstrates an uncanny alignment between policy preference and legal analysis. In other words, scholars are all too frequently succumbing to that understandable temptation to conflate the law as it is with the law as they feel it ought to be. In complex, controversial, and fledgling areas of international law, such as trafficking, it is especially important that *the law make the scholarship*, rather than *the scholarship make the law*.[11] It is on the basis of such considerations that I have conceived my role in writing this book. That role is a modest and essentially technical one: to observe, describe, classify, and explain the law as it currently stands; to separate law from what is not law; to acknowledge rather than ignore or gloss over weaknesses, gaps, and deficiencies; to be objective whenever possible; and to be truthful when the outcome is not optimal or where objectivity is difficult.

The Structure of this Book. Recent legal developments in the field of human trafficking, in particular the expansion of trafficking law outside the traditionally vague domain of human rights, provide a unique opportunity to clarify the relevant obligations, including their scope and substantive content, with a level of exactness that was never previously possible. The task of clarifying obligations is important because, despite more and better laws, there is still abundant evidence of uncertainty and disagreement as to what States must do – or not do – when it comes to human trafficking. Inevitable legal complexities are one explanation but certainly not the only obstacle to clarity. Except where an immediate strategic interest can be met, States are generally reluctant to tie themselves down to obligations that are so specific as to give rise to clear and measurable expectations. Normative imprecision is, in this sense, a tool by which States exercise control over the international political and legislative process. As long as the law remains unclear, they can continue to argue about it. As long as the law remains unclear, they will, almost certainly, not be brought to task for failing to apply it.

[10] R. Higgins, *Problems and Process: International Law and How We Use It* (1994), at 5.

[11] See J. d'Aspremont, "Softness in International Law: A Self-Serving Quest for New International Legal Materials," (2008) 19 *European Journal of International Law* 1075, esp. at 1091–3. See also D.J. Bederman, "What's Wrong With International Legal Scholarship?" (2000) 1 *Chicago Journal of International Law* 75.

States are not alone in succumbing to the lure of normative imprecision. For reform-minded advocates, including some international lawyers, the inexactness and ambiguity that has characterized the international legal framework around trafficking has proven irresistible – providing ample and uncritical space within which to articulate and defend certain normative claims, often based on legitimate moral or humanitarian concerns, that may not otherwise have survived rigorous examination. Overly generous interpretations of legal rules, however well intended, are likely just as harmful to the integrity of international law as avoidance of obligation through failure to articulate and specify. There are other reasons for promoting greater normative clarity at the international level. One of the more pressing is the risk that the international legal framework around trafficking will be sidelined or rendered irrelevant through the emergence of a parallel unilateral regime that has adopted its own criteria for measuring State performance.[12]

For those concerned with using legal rules to shape the behavior of States, normative precision in international law is not a luxury but an operational necessity. States must understand exactly what international law requires of them if the international legal system is to have any hope of influencing and attaching consequences to their actions. A clear understanding of relevant rules is also essential for advocacy that purports to draw its authority from international law. This book divides that difficult but necessary process into several steps. The first of these is to identify the "wrong" of trafficking: Which primary international legal rules are implicated, and of these, which are the most relevant and the most important? Under what circumstances will a State actually be held legally responsible for violations of the primary rules and what consequences attach to such responsibility? The second step is to transform commonly vague primary rules, and even more opaque secondary rules, into precise obligations that are capable of measurable implementation. The third and final step is to move beyond the rules and examine the mechanisms and processes that are in place to promote and monitor State behavior with respect to their international legal obligations.

The first task, working out the international legal "wrong" of trafficking, is not as easy as it may first appear. The composite nature of the trafficking phenomenon guarantees that it does not sit comfortably within existing categories and boundaries of international law. Human rights law, for example, does not contain a clear prohibition on trafficking. The question of whether or not such a prohibition exists, or whether it can be inferred, or whether other prohibitions that do exist can be made to fit the trafficking phenomenon, can only be answered (tentatively) with reference to a myriad of sources, instruments, and standards. In addition, international human rights law is no longer the sole (or perhaps even the major) element of the international legal framework around trafficking. International criminal law, international humanitarian law, labor law, migration law, and refugee law are all relevant, to a

[12] See further, discussion of the US reporting and sanctions mechanism in Chapter 9.4.

greater or lesser extent, to the issue of trafficking. Of critical importance is the relatively new field of "transnational criminal law," which includes, alongside treaties on drug trafficking and corruption, the Organized Crime Convention and its previously mentioned Protocol on trafficking in persons. As noted above, these treaties have been supplemented by a number of international and regional instruments, which, with only a few exceptions, add considerably to our understanding of the "wrong" of trafficking. Chapters 1 through 3, addressing, respectively, the international legal definition, the international legal framework, and specific legal issues, together confirm the existence of a strong if not yet fully formed body of relevant primary rules.

As my encounter with the delegate in Vienna demonstrated, States repeatedly deny legal responsibility for trafficking and for the violations of human rights that are integral to the trafficking process. In some cases, refutation of responsibility is based on the argument that the primary wrong (the trafficking) was committed by a private individual or entity and not by the State itself. In other cases, responsibility is not accepted because the State claims to have done everything reasonably possible to avoid the harm. An understanding of the principles of international legal responsibility as they apply in the trafficking context is an essential prerequisite for examining and, if found wanting, rejecting claims of this kind. In all cases, it first becomes a question of working out whether an act or omission can be attributed to the State. In some situations, where the act or omission can be linked directly to State institutions or State officials acting in their official capacity, the question of attribution can be easily settled. It then remains only to demonstrate that the act in question was indeed a breach of an international legal obligation. Taken together, attribution and breach equals responsibility. However, traffickers are people, not States, their institutions, or their representatives. This is a problem because, as the International Law Commission has pointed out: "[a]s a general principle, the conduct of private persons or entities is not attributable to the State under international law."[13] How general is the general rule? Can countries of origin, transit, and destination for trafficked persons absolve themselves of any responsibility to these individuals on the basis that the conduct complained of is not directly attributable to them? Does the content of the primary rule itself (establishing the breach of the international legal obligation) have any bearing on whether or not a State can evade responsibility and its consequences? Chapter 4 engages with the "devilishly difficult"[14] international rules of State responsibility in seeking a response to these and other questions.

The second step in clarifying the international legal framework around trafficking is to identify the specific obligations that flow from the primary and secondary rules.

[13] International Law Commission (ILC), Draft Articles on Responsibility of States for Internationally Wrongful Acts, Report of the International Law Commission on the Work of Its Fifty-third Session, UN GAOR, 56th Sess., Supp. No. 10, at 43, UN Doc. A/56/10 (2001), at Art. 8, para. 1.

[14] D.D. Caron, "The ILC Articles on State Responsibility: The Paradoxical Relationship Between Form and Authority," (2002) 96 *American Journal of International Law* 857, at 872.

As noted above, States must understand what is required of them before it becomes possible for these same requirements to influence their decision making. The more precise and action-oriented the identified obligations are the better. They must be able to answer the basic questions that are asked everywhere and everyday in the context of real situations. For example: Are States required to criminalize trafficking? If so, does international law include specific requirements with regard to criminalization, jurisdiction, and penalties? Does the international legal principle *aut dedere aut judicare* ("extradite or prosecute") apply to trafficking? Are States required, as a matter of international law, to investigate trafficking and, if so, to what standard? Are they required to protect and support all victims? Is there a different standard of protection and support owed to child victims of trafficking? Can victims be prosecuted or detained for status-related offenses? Can States force victims to return home even if this is unsafe? Can they be forced to accept returning victims? Do victims have an enforceable right to remedies? What limits, if any, does international law place on States' response to the crime of trafficking? Must States cooperate with other States and, if so, in what areas and to what extent? Specific legal obligations of States are identified and discussed under the following headings: obligations of protection and support, in Chapter 5; obligations related to repatriation and remedies, in Chapter 6; obligations of an effective criminal justice response, in Chapter 7; and obligations to prevent trafficking and to respond lawfully, in Chapter 8.

The final part of the book, and its final chapter, addresses a difficult but critical question: How can the international legal order around trafficking be made to work? That order includes a range of formal mechanisms established for the specific purpose of overseeing and thereby promoting national implementation of applicable international legal rules. Supplementing (and sometimes supplanting) these mechanisms are less traditional structures and processes including the controversial but highly influential unilateral reporting and sanctions system established by the U.S. government, as well as transnational networks operating within and between national government agencies, intergovernmental organizations, and NGOs. Chapter 9 identifies and explores some of the factors or variables that may help explain and even predict the impact of international legal rules relating to trafficking on the behavior of States. It uses these insights to examine, in turn, the structure, functioning, and potential of the most important compliance mechanisms and processes.

Trafficking was identified as an international legal issue more than a century ago – well before the formation of anything that even vaguely resembled a credible international legal system. Over the past decade, the international community has made clear that trafficking is important enough to be the subject of detailed rules. Ascertaining those rules with certainty is a critical function of the international lawyer. It is, however, only the first one. Until they are applied, laws only exist as abstract concepts and, as such, have little external value. It is therefore also the task of the international lawyer to take those rules, match them with a set of facts, ascertain