

HENRY CHEESEMAN

BUSINESS LAW

ELEVENTH EDITION



BUSINESS LAW

ELEVENTH EDITION

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*To my wife, Jin,
and our twins,
Ziva and Xavier*

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PREFACE

New to the Eleventh Edition

This eleventh edition of *Business Law* is a significant revision of Professor Cheeseman's business law and legal environment text that includes many new cases and features, as well as new text and examples.

New U.S. Supreme Court Cases

More than 10 new U.S. Supreme Court cases, including:

- Chapter 2: *Bristol-Myers Squibb Company v. Superior Court of California* (Under the Due Process Clause, California lacked personal jurisdiction over non-resident plaintiffs.)
- Chapter 3: *Ernst & Young LLC v. Morris* (The U.S. Supreme Court held that an arbitration agreement that provided for individualized one-on-one arbitration, and with a collective class, was enforceable.)
- Chapter 4: *Tennessee Wine and Spirits Retailers Association v. Thomas* (A state law that required a two-year state residency to obtain a retail liquor store license unduly burdened interstate commerce in violation of the Commerce Clause.)
- Chapter 4: *Iancu v. Brunetti* (A federal law that prohibits the registration of trademarks that consist of or comprise "immoral or scandalous matter" violates the Free Speech Clause of the First Amendment to the U.S. Constitution.)
- Chapter 7: *WesternGeco LLC v. ION Geophysical Corporation* (A company that engaged in patent infringement and sold the infringing technology was liable for lost profits suffered by the patent holder.)
- Chapter 8: *Collins v. Virginia* (The Fourth Amendment to the U.S. Constitution was violated when a police officer conducted a warrantless search of the curtilage of a house.)
- Chapter 32: *Janus v. American Federation of State, County, and Municipal Employees, Council 31* (Public-sector labor union agency-shop arrangements violate the First Amendment to the U.S. Constitution.)
- Chapter 33: *Bostock v. Clayton County, Georgia* (The U.S. Supreme Court held that Title VII

Information Technology

CASE 7.1 U.S. SUPREME COURT CASE Patent Infringement

WesternGeco LLC v. ION Geophysical Corporation

138 S.Ct. 2129 (2018)
Supreme Court of the United States

"The Patent Act gives patent owners a civil action for infringement."

—Clarence Thomas, Justice

Facts

Petitioner WesternGeco LLC owns four patents relating to a system that it developed for surveying the ocean floor. WesternGeco does not sell its technology or license it to competitors. Instead, it uses the technology itself, performing surveys for oil and gas companies. ION Geophysical Corporation, a U.S.-based company, used WesternGeco's public patent information and began manufacturing and selling competing systems to foreign companies, which in turn sold the systems in the U.S. in direct competition with WesternGeco. The foreign companies

made millions of dollars in profits from such sales. WesternGeco sued ION for patent infringement. The jury found ION liable for patent infringement and ordered ION to pay \$12.5 million in damages as a royalty payment to WesternGeco. The jury also assessed \$93 million against ION for the profits lost by WesternGeco because of foreign company sales of ION's infringing technology. The U.S. court of appeals held that ION was not liable for the foreign company sales. WesternGeco appealed to the U.S. Supreme Court.

Issue

Can WesternGeco recover damages from ION for profits WesternGeco lost because of foreign company sales of ION's infringing technology?

CASE 33.1 U.S. SUPREME COURT CASE Homosexual and Transgender Discrimination

Bostock v. Clayton County, Georgia

140 S.Ct. 1731, 2020 U.S. Lexis 3252 (2020)
Supreme Court of the United States

"An individual's homosexuality or transgender status is not relevant to employment decisions."

—Neil Gorsuch, Justice

Facts

The U.S. Supreme Court consolidated three cases that started in the same way: an employer fired a long-time employee shortly after the employee revealed that he or she is homosexual or transgender—and allegedly for no reason other than the employee's homosexuality or transgender status. Each employee brought suit under Title VII alleging unlawful discrimination on the basis of sex. The three cases are:

Issue

Does Title VII prohibit employment discrimination against homosexual and transgender individuals?

Language of the U.S. Supreme Court

Today, we must decide whether an employer can fire someone simply for being homosexual or transgender. The answer is clear. An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids.

of the Civil Rights Act of 1964 prohibits employment discrimination against homosexual and transgender individuals.)

- Chapter 46: *Ohio v. American Express Company* (Merchant fees charged by American Express to retailers who accept Amex credit cards are not an unreasonable restraint of trade.)

New State and Federal Court Cases

More than 30 new state and federal court cases, including:

- Chapter 3: *Casey v. McDonald's Corporation* (Summary judgment was granted to McDonald's when the restaurant was sued for damages by a patron who was injured by another patron during a fight at the restaurant.)

- Chapter 5: *Reckis v. Johnson & Johnson* (Producer of Children's Motrin pain reliever was ordered to pay \$50 million in damages to a child who suffered severe permanent injuries because the company negligently failed to warn of potential of life-threatening disease.)

- Chapter 5: *Stevens v. MTR Gaming Group, Inc.* (Casino and manufacturer of gaming machines is not liable for damages to a patron with a gambling addiction who lost substantial money at the casino.)

- Chapter 6: *Ford Motor Company v. Trejo* (Ford Motor Company is liable for product liability to the spouse of man killed in a rollover accident because an SUV's roof was defectively designed and did not withstand crushing during a rollover accident.)

- Chapter 7: *Disney Enterprises, Inc. v. VidAngel, Inc.* (Disney and other movie and film studios were granted an injunction that enjoined a third party from streaming edited versions of their copyrighted works.)

- Chapter 9: *McKee v. Isle of Capri Casinos, Inc.* (Due to an error in a casino slot machine, the screen showed that a gambler had won \$41,797,550.16 when in fact she had won \$1.85. The casino did not have to pay the greater amount because its digital contract, which the gambler had not read, stated "Malfunctions Void All Pays and Plays.")

- Chapter 12: *Langlois v. NOVA River Runners, Inc.* (A release of liability clause in a river-rafting contract signed by a husband was enforceable and prevented

his spouse from recovering damages for his accidental death while river rafting.)

- Chapter 18: *Erie Insurance Company v. Amazon.com, Inc.* (Amazon.com is not a seller of the goods that it distributes for third-party sellers on its online website.)

- Chapter 21: *Sorchaga v. Ride Auto, LLC* (An "as is" warranty disclaimer is not enforceable where the seller has made fraudulent statements to induce a purchaser to buy a product.)

CASE 5.3 STATE COURT CASE *Negligence*

Reckis v. Johnson & Johnson

28 N.E.3d 445, 471 Mass. 272 (2015)
Supreme Judicial Court of Massachusetts

"We cannot say that the jury's award is greatly disproportionate to Samantha's grave injuries."
—Margot Botsford, Justice

Facts

When seven-year-old Samantha Reckis had a fever and sinus congestion, her father, Richard, purchased a bottle of Children's Motrin, which is a brand of ibuprofen manufactured by a division of Johnson & Johnson. It is an anti-inflammatory drug used to

the afternoon. That night Samantha had a fever and congestion, so Richard gave her a second dose of Children's Motrin.

The next morning Samantha woke with redness and a rash on her chest and neck, and a sore throat; she had the same fever and congestion as she had the night before. Richard gave her a third dose of Children's Motrin. Throughout the day, Samantha had a fever, nasal congestion, crusty eyes, cracked lips, and a rash. Samantha's mother, Lisa, gave Samantha a

CASE 18.1 FEDERAL COURT CASE *Seller*

Erie Insurance Company v. Amazon.com, Inc.

925 F.3d 135 (2019)
United States Court of Appeals for the Fourth Circuit

"When Amazon sells its own goods on its website, it has the responsibility of a seller, just as any other retailer would have."

—Paul Niemeyer, Circuit Judge

Facts

Trung Cao purchased online an LED headlamp used for cycling, camping, and hiking and gave it as a gift to his friends, Minh and Anh Nguyen. Both Cao and the Nguyens lived in Maryland. Cao purchased the headlamp on Amazon.com's website, which stated that the headlamp was "sold by: Dream Light" and "fulfilled by: Amazon." Cao paid by credit card. Ama-

that Amazon was liable as a seller of the headlamp. Amazon argued that it was not the seller but that Dream Light was the seller. The U.S. district court held that Amazon was not the seller of the headlamp and therefore was not liable. Erie appealed.

Issue

Was Amazon the seller of the headlamp?

Language of the Court

The ordinary meaning of a seller is one that offers property for sale, with sale defined as the transfer of ownership of and title to property of

- Chapter 40: *Salazar v. McDonald's Corporation* (McDonald's, as the franchisor, was not a joint employer with a franchisee and was therefore not liable for the franchisee's violation of overtime pay and wage laws.)
- Chapter 51: *Yung v. Grant Thornton, LLP* (Accountants were found liable for committing fraud on a client, and the client was awarded \$80 million in punitive damages.)
- Chapter 54: *Devengoechea v. Bolivarian Republic of Venezuela* (Commercial activity exception to sovereign immunity applied and permitted a lawsuit against a foreign government to proceed in U.S. district court.)

New Special Features on Ethics

More than 10 new special features covering ethics, including:

- Chapter 1: **Ethics:** *Apple Agrees to Pay \$500 Million to Settle Consumer Fraud Lawsuit*
- Chapter 8: **Ethics:** *Billion-Dollar Ponzi Scheme Collapses*
- Chapter 30: **Ethics:** *Are U.S. Retailers Liable for Unsafe Working Conditions of Suppliers Located in Foreign Countries?*
- Chapter 39: **Ethics:** *Coca-Cola Shareholder Resolution on Sugar and Public Health*
- Chapter 42: **Ethics:** *France Fines Apple for Secretly Slowing Down Older iPhones*
- Chapter 44: **Ethics:** *Regulation of Tobacco Products and Electronic Nicotine Delivery Systems*
- Chapter 44: **Ethics:** *False Product Claims and Fake Reviews on Amazon*
- Chapter 46: **Ethics:** *Tech Companies Settle Lawsuit for Agreeing Not to Solicit Each Other's Employees*

Ethics

Apple Agrees to Pay \$500 Million to Settle Consumer Fraud Lawsuit

It is impossible to discuss business and business law without also discussing business ethics. Many decisions made by businesses, managers, and employees have an ethical component. Their duty is not only to act legally but also to act ethically. Sometimes companies are caught acting unethically. Consider the following case involving Apple Inc.

Apple is the developer, designer, and distributor of many

Once Apple's actions were uncovered, dozens of class action lawsuits were filed against the company, alleging that Apple engaged in fraudulent conduct intended to sell more new iPhones. Apple denied any wrongdoing. The lawsuits were consolidated into one lawsuit heard by a U.S. district court located in California. Evidence was developed over a two-year period. Before the case went to trial, however, Apple agreed to a settlement.

New Features on Information Technology, Critical Legal Thinking, and Contemporary Environment

More than 10 new special features covering critical legal thinking, information technology, and contemporary environment, including:

- Chapter 3: **Information Technology:** *Facebook Settles Algorithmic Discrimination Lawsuits*
- Chapter 5: **Information Technology:** *Apple Not Liable for Accident Caused by Driver's Texting*
- Chapter 11: **Critical Legal Thinking:** *Doctrine of Promissory Estoppel Requires a Subcontractor to Honor Its Bid*
- Chapter 21: **Information Technology:** *Warranty Disclaimers in Social Media Software Licenses*

Information Technology

Facebook Settles Algorithmic Discrimination Lawsuits

The social media giant Facebook has a vast trove of personal and demographic data on its users that attracts companies to post advertisements on Facebook. Facebook's system and algorithms permit data mining that allows advertisers to micro-target any desired group of Facebook users. However, federal civil rights acts prohibit discrimination in employment, housing, and granting of credit based on race, ethnicity, sex, age, disabilities, and other protected classes.

against Facebook alleging that it engaged in discrimination in violation of federal antidiscrimination laws.

Facebook originally denied liability. However, after discovery of further evidence, Facebook reached an agreement to settle the civil rights lawsuits brought against it. Pursuant to the agreement, Facebook must create a separate portal for advertisements in the areas of employment, housing, and credit on Facebook, Instagram, and Messenger, and can no longer

- Chapter 44: Contemporary Environment: *Bioengineered Food Disclosure Law*
- Chapter 44: Contemporary Environment: *Nutrition Facts Label*

New and Revised Text

New text and material have been added throughout this book that discuss recent laws and modern issues, including:

- **United States–Mexico–Canada Agreement (USMCA)** A new regional trade agreement that reduces tariffs and regulatory restrictions on goods and services sold or transferred among the United States, Mexico, and Canada. The USMCA replaces the North American Free Trade Agreement (NAFTA)
- **Foreign Investment Risk Review Modernization Act (FIRRMA)** A new federal statute that prohibits the acquisition by foreign governments and agencies of critical U.S. technologies and infrastructure, personal private data, or sensitively located real estate, and prohibits U.S.-origin technology transfers.
- **FDA Enforcement Policy on Cartridge-Based Electronic Nicotine Delivery Systems (ENDS)** A Food and Drug Administration (FDA) policy that eliminates the sale of most flavored cartridge-based electronic nicotine delivery systems (ENDS) and regulates the marketing and sale of these products
- **Music Modernization Act (MMA)** A new federal statute that modernizes copyright law regarding digital streaming and downloading of music and provides a method for licensing music.
- **Clarifying Lawful Overseas Use of Data Act (CLOUD Act)** A new federal statute that establishes rules for how tech companies must respond to warrants issued by law enforcement agencies.
- **Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED ACT)** A new federal statute that provides protections against illegal robocalls, spam calls and texts, and malicious caller ID spoofing.
- **Securities and Exchange Commission (SEC) Guidelines** New guidelines issued by the SEC that state that initial coin offerings (ICO) and security token offerings (STO) are subject to federal securities laws.
- **First Step Act** A new federal statute that reforms federal sentencing laws and promotes rehabilitation rather than just punishment of certain convicted criminals.

In addition, the text has been significantly revised in many areas, including electronic contracts, cybercrime, securities law, consumer protection, ethics, business organizations (partnerships, limited liability companies, and corporations), immigration law, and other subjects.

Bringing Business Law to Life

Students and graduates are guided and protected by law and legal principles every day of their lives. These laws and legal principles are based on common sense. They are not mysterious or hidden, or difficult to understand. In fact, they

United States–Mexico–Canada Agreement (USMCA)

54.5 Describe the United States–Mexico–Canada Agreement (USMCA) and the relevant provisions of the treaty.

In 1994, the United States, Mexico, and Canada entered into the **North American Free Trade Agreement (NAFTA)**, a trade treaty between the three countries. Although often referred to as a “free trade” pact, NAFTA was primarily a managed trade agreement that eliminated some duties, tariffs, and barriers to trade, but also permitted duties, tariffs, and trade restrictions on protected goods and services.

Beginning in 2018, at the instigation of the United States, the three countries entered into negotiations to replace NAFTA. In 2020, the three countries ratified the **United States–Mexico–Canada Agreement (USMCA)**, a new trade treaty between the member nations. The USMCA replaces NAFTA. The trade zone brings

United States–Mexico–
Canada Agreement (USMCA)

are very straightforward. The results reached by the application of legal principles are quite predictable and understandable.

You are the benefactors of centuries of laws developed to meet the needs of society and business. Just think of the rights you have: freedom to enter into contracts; freedom of speech, assembly, and religion; protections afforded by consumer protection and environmental laws, laws that protect employees from discrimination in the workplace, and laws you should know if you are starting a business. The law keeps pace with society and technological innovation. You will study laws developed for the Information Age and that apply to your digital world.

Business law is not difficult. Should you study the material in this text? Yes. Is it difficult to learn the concepts and laws in this text? No. At the end of every semester I always have students say to me that they were originally apprehensive about taking their business law or legal environment course, but in the end found that the material was easy to understand and extremely useful to their personal life and future in business.

To help you learn the concepts, the text is extremely readable. Cases throughout demonstrate how the law is applied to people like you and to situations similar to those in which you will be involved. Hundreds of definitions and summaries are placed throughout the text. This text, and its examples and Pedagogical features, make the rules and concepts of law come to life.

Solving Learning and Teaching Challenges

Pedagogical Features of the Textbook

In addition to a clearly written text, the book contains several major Pedagogical features that enhance a student's learning experience, including:

- **Examples** Examples are placed throughout the chapters of the text to demonstrate the application of legal concepts and rules to the real world. These examples work exceptionally well to clarify the concepts and issues studied in this course. There's no guessing at what a legal term means or how it applies; an example immediately shows you. More than 1,000 examples are presented in this text.
- **Definitions** A running glossary of definitions of the terms and concepts discussed in the text are presented in each chapter. These definitions allow students to review key concepts as they read the chapter or subsequently when they review a chapter or study for exams. Definitions are available when you need them; that is, when you are reading a chapter. More than 1,600 definitions appear in the margins of this book.
- **Concept Summaries** Concept Summaries are conveniently placed throughout the chapters of this book. These features summarize important concepts and laws immediately after they have been presented in a chapter. These summaries appear within the chapters, thus supporting your learning of the course materials. Concept Summaries help reinforce a student's mastery of the material.
- **End-of-Chapter Case Questions** Multiple case questions appear at the end of each chapter that set forth the facts of actual lawsuits. These are not hypothetical cases, but real-life situations and disputes that persons like yourself have encountered. These cases may be used during class discussions, assigned for group or class presentation, or designated as individual or collaborative writing assignments. There are more than 300 case questions in this text.

These and other features of the text, as well as exceptional student resources that accompany the text, combine to provide students with a valuable educational experience.

Critical Legal Thinking

Interest Rates of Over 1,000 Percent per Year on Consumer Loans Found Unconscionable

"We conclude that the interest rates in this case are substantively unconscionable."

—Edward Chavez, Justice

B&B Investment Group, Inc. marketed high-cost signature loans of \$50 to \$300 from offices located in New Mexico. B&B targeted the working poor, most of whom were less educated and financially unsophisticated individuals who were usually under or near the poverty level. Most borrowers did not have a bank account, or if they did, it was to receive government assistance deposits. The loans were for one year, on which B&B charged annual percentage interest rates ranging from 1,147 to 1,500 percent. B&B employees were instructed to describe loan costs as \$1.00 or \$1.50 per day, which was itself usually only half of what the loan cost daily, and to never disclose the annual percentage rate (APR).

If borrowers failed to make required loan payments, B&B would have their wages garnished so that their employers were required to make the loan payments out of the borrower's paycheck. Based on the terms of the loans, borrowers were liable for B&B's costs on collecting the debt, including attorney fees. Nonpayment of loans destroyed the credit ratings of the borrowers who missed loan payments.

The attorney general for the state of New Mexico sued B&B for unconscionable trade practices. The Supreme Court of New Mexico held that the small-principal, high-interest-rate signature loans made by B&B were unconscionable. The court stated, "We conclude that the interest rates in this case are substantively unconscionable. We hold it is grossly unreasonable and against public policy to offer installment loans at 1,147 to 1,500 percent interest."

The Supreme Court of New Mexico ordered B&B to refund all money collected on the loans that exceeded 15 percent of the loan principal and to refund any fees and penalties it collected from the borrowers. The court also issued an injunction against B&B's engaging in unfair practices in the future. *State of New Mexico v. B&B Investment Group, Inc.*, 329 P3d 658, 2014 N.M. Lexis 230 (Supreme Court of New Mexico, 2014)

Critical Legal Thinking Questions

The general rule is "A contract is a contract is a contract" that will be enforced according to its terms. Why did the courts adopt the equity doctrine of unconscionable contract that deviates from the legal rule? In addition, the court could have voided the loan contracts entirely and let the borrowers keep the money B&B loaned to them. Do you think that the court should have imposed this penalty?

Developing Skills for Your Career

If you have not yet decided on a major, you may be thinking that this course is not relevant to you. Let me assure you it is. Whether or not you plan a career in business, the lessons you learn in this course will help you in business and in your life in many ways. Moreover, it is through the aggregate of your educational experience that you will have the opportunity to develop many of the skills that employers have identified as critical to success in the workplace. In this course, and specifically in this text, you will have the opportunity to develop your critical thinking skills and practice

these skills by analyzing the legal principles, cases, and examples provided throughout this text.

For more information and resources, visit www.pearson.com.

Acknowledgments

When I first began writing this book, I was a solitary figure, researching cases online and in the law library and writing text on the computer and by hand at my desk. As time passed, others entered upon the scene—copyeditors, developmental editors, reviewers, and production personnel—and touched the project and made it better. Although my name appears on the cover of this book, it is no longer mine alone. I humbly thank the following persons for their contributions to this project.

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My Family

I would like to dedicate this book to my wife, Jin, and our twins, Ziva and Xavier.

My Relatives

I thank my parents—Henry B. and Florence, deceased—who had a profound effect on me and my ability to be a professor and writer. I also thank other members of my family, particularly my brother Gregory—with whom a special bond exists as twins—and the rest of my family, including my sister Marcia, deceased; Gregory's wife, Lana; my nephew Gregory and his wife, Karen; my niece Nicky and her husband Jerry; and my great nieces Addison, Lauren, and Shelby.

Students

I'd like to acknowledge the students at the University of Southern California (USC) and the students at other colleges and universities in the United States and around the world. Their spirit, energy, and joy are contagious. I loved teaching my students (and, as important, my students teaching me). At the end of each semester, I was sad that the students I had come to know were moving on. But each new semester brought another group of students who were a joy to teach. And thus, the cycle continued.

Colleagues

I would like to thank Kerry Fields, my colleague who teaches business, international, real estate, and employment law courses at the University of Southern California, who is a superb professor and a wonderful friend. I also thank Kevin Fields, my colleague who teaches business, corporation, and real estate law courses at the University of Southern California, who is an excellent professor and also a close friend.

Business Law Professors

I would also like to thank the professors who teach business law, legal environment of business, and other law-related courses at undergraduate and MBA programs at colleges and universities in the United States and around the world for their dedication to the discipline. Their experience in the law and teaching ability make them some of the greatest professors on any college or university campus.

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Author's Personal Statement

While writing the preface and acknowledgments, I have thought about the thousands of hours I have spent researching, writing, and preparing this manuscript. I've loved every minute, and the knowledge gained has been sufficient reward for the endeavor. I hope this book and its supplementary materials will serve you as well as they have served me.

*With joy and sadness,
 emptiness and fullness,
 honor and humility,
 I surrender the fruits of this labor*

Henry R. Cheeseman

ABOUT THE AUTHOR

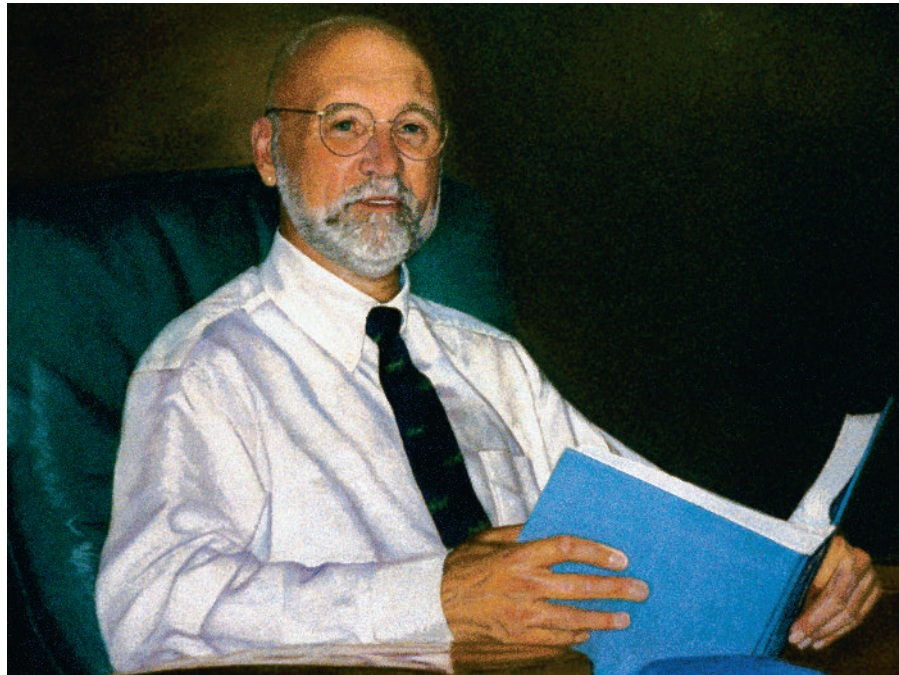
Henry R. Cheeseman is professor emeritus of the Marshall School of Business of the University of Southern California (USC), Los Angeles, California.

Professor Cheeseman earned a bachelor's degree in finance from Marquette University, both a master's in business administration (MBA) and a master's in business taxation (MBT) from the University of Southern California, a juris doctor (JD) degree from the University of California at Los Angeles (UCLA) School of Law, a master's degree with an emphasis on law and economics from the University of Chicago, and a master's in law (LLM) degree in financial institutions law from Boston University.

Professor Cheeseman was director of the Legal Studies in Business Program at the University of Southern California. He taught business law, legal environment, and ethics courses in both the MBA and undergraduate programs of the Marshall School of Business. At the MBA level, he developed and taught courses on corporate governance, securities regulation, mergers and acquisitions, and bankruptcy law. At the undergraduate level, he taught courses on business law, the legal environment of business, ethics, business organizations, cyberlaw, and intellectual property.

Professor Cheeseman received the Golden Apple Teaching Award on many occasions by being voted by the students as the best professor at the Marshall School of Business. He was named a fellow of the Center for Excellence in Teaching at the University of Southern California by the dean of the Marshall School of Business. The USC's Torch and Tassel Chapter of the Mortar Board, a national senior honor society, tapped Professor Cheeseman for recognition of his leadership, commitment, and excellence in teaching.

Professor Cheeseman writes leading business law and legal environment textbooks that are published by Pearson Education, Inc. These textbooks include *Business Law*, *Contemporary Business Law*, and *Legal Environment of Business*.

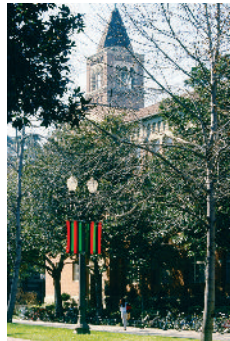


To the Students

Contemporary students have different needs than previous generations. Having existed in an information technology world for your entire lives, you think, learn, and process information in different ways than prior generations. This new eleventh edition of *Business Law* and its student support materials have been designed especially for your needs.

As you embark on your study of the law, you will learn that this course presents the “real world”—that is, real legal disputes involving real people like you. The course also offers you an opportunity to develop critical thinking skills that will serve you in addressing legal and other issues that you may encounter. And lastly, learning the subject matter of this course will help you make more informed and confident decisions in your business and personal life.

Each semester your youth, enthusiasm, and questions motivate your professor’s teaching. Every time you open your minds to look at an issue from a new perspective or critically question something, they receive a wonderful reward for the work they do. I remind myself of this every time I write and revise *Business Law*. My goal is to present business law in a way that will spur you to ask “how” and “why” as you study this course material in a classroom or online setting.



Business law is an evolving outgrowth of its environment and keeps changing to meet the demands of the modern world. This new eleventh edition of *Business Law* emphasizes coverage of digital law, information technology, and e-commerce as key parts of the legal environment. In addition, this book covers social and ethical issues that are important to the study of law.

It is my wish that my commitment to these goals shines through in this labor of love, and I hope you have as much pleasure in using this book as I have had in creating it for you.

Henry R. Cheeseman

PART

I

Legal Environment, Judicial System, Dispute Resolution, and Constitutional Law

Henry R. Cheeseman



Legal Heritage and the Information Age

U.S. CAPITOL, WASHINGTON DC

The U.S. Congress, which is a bicameral system made up of the U.S. Senate and the U.S. House of Representatives, creates federal law by enacting statutes. Each state has two senators and is allocated a certain number of representatives based on population. The U.S. Senate and U.S. House of Representatives are based in the Capitol building.



Henry R. Cheeseman

Learning Objectives

After studying this chapter, you should be able to:

- 1.1** Define law.
- 1.2** Describe the flexibility of the law.
- 1.3** List and describe the schools of judicial thought.
- 1.4** Learn the history and development of American law.
- 1.5** List and describe the sources of law in the United States.
- 1.6** Describe the doctrine of *stare decisis*.
- 1.7** Describe how existing laws are being applied to the digital environment and how new laws are being enacted that specifically address issues of the information age.
- 1.8** Learn what critical legal thinking is and how to apply it to analyzing legal cases.
- 1.9** Learn how the material, cases, and lessons of this book will apply to your future career.

“Where there is no law, there is no freedom.”

—John Locke (1632–1704)
Second Treatise of Government, Sec. 57

Introduction to Legal Heritage and the Information Age

In the words of Judge Learned Hand, “Without law we cannot live; only with it can we insure the future which by right is ours. The best of men’s hopes are enmeshed in its success.”¹ Every society makes and enforces laws that govern the conduct of the individuals, businesses, and other organizations that function within it.

Although the law of the United States is based primarily on English common law, other legal systems, such as Spanish and French civil law, also influence it. The sources of law in this country are the U.S. Constitution, state constitutions, federal and state statutes, ordinances, administrative agency rules and regulations, executive orders, and judicial decisions by federal and state courts.

Businesses that are organized in the United States are subject to its laws. They are also subject to the laws of other countries in which they operate. Businesses organized in other countries must obey the laws of the United States when doing business here. In addition, businesspeople owe a duty to act ethically in the conduct of their affairs, and businesses owe a responsibility not to harm society.

This chapter discusses the nature and definition of law, theories about the development of law, the history and sources of law in the United States, and the application of the law to the information age.

Human beings do not ever make laws; it is the accidents and catastrophes of all kinds happening in every conceivable way that make law for us.

Plato (427–347 BCE)
Laws IV, 709

What Is Law?

1.1 Define law.

The law consists of rules that regulate the conduct of individuals, businesses, and other organizations in society. It is intended to protect persons and their property against unwanted interference from others. In other words, the law forbids persons from engaging in certain undesirable activities. Consider the following passage:

Hardly anyone living in a civilized society has not at some time been told to do something or to refrain from doing something, because there is a law requiring it, or because it is against the law. What do we mean when we say such things?

At the end of the 18th century, Immanuel Kant wrote of the question “What is law?” that it “may be said to be about as embarrassing to the jurist as the well-known question ‘What is truth?’ is to the logician.”²

A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect.

Sir Walter Scott
Guy Mannering, Ch. 37 (1815)

Definition of Law

The concept of **law** is broad. Although it is difficult to state a precise definition, *Black’s Law Dictionary* gives one that is sufficient for this text:

*Law, in its generic sense, is a body of rules of action or conduct prescribed by controlling authority, and having binding legal force. That which must be obeyed and followed by citizens subject to sanctions or legal consequences is a law.*³

law

That which must be obeyed and followed by citizens, subject to sanctions or legal consequences; a body of rules of action or conduct prescribed by controlling authority and having binding legal force.

The following feature discusses the functions of the law.

Contemporary Environment

Functions of the Law

The law is often described by the function it serves in a society. The primary *functions* served by the law in this country are the following:

1. Keeping the peace
- Example Some laws make certain activities crimes.
2. Shaping moral standards
- Example Some laws discourage drug and alcohol abuse.
3. Promoting social justice
- Example Some laws prohibit discrimination in employment.
4. Maintaining the status quo
- Example Some laws prevent the forceful overthrow of the government.
5. Facilitating orderly change
- Example Laws are enacted only after considerable study, debate, and public input.
6. Facilitating planning
- Example Well-designed commercial laws allow businesses to plan their activities, allocate their productive resources, and assess the risks they take.
7. Providing a basis for compromise
- Example Laws allow for the settlement of cases prior to trial. Approximately 95 percent of all lawsuits are settled in this manner.
8. Maximizing individual freedom
- Example The rights of freedom of speech, religion, and association are granted by the First Amendment to the U.S. Constitution.

CONCEPT SUMMARY

FUNCTIONS OF THE LAW

1. Keep the peace	5. Facilitate orderly change
2. Shape moral standards	6. Facilitate planning
3. Promote social justice	7. Provide a basis for compromise
4. Maintain the status quo	8. Maximize individual freedom

Fairness of the Law

The U.S. legal system is one of the most comprehensive, fair, and democratic systems of law ever developed and enforced. Nevertheless, some misuses and oversights of our legal system—including abuses of discretion and mistakes by judges and juries, unequal applications of the law, and procedural mishaps—allow some guilty parties to go unpunished.

Example In *Standefer v. United States*,⁴ Chief Justice Warren Burger of the U.S. Supreme Court stated, “This case does no more than manifest the simple, if discomforting, reality that different juries may reach different results under any criminal statute. That is one of the consequences we accept under our jury system.”

The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges.
Anatole France (1844–1924)

Flexibility of the Law

1.2 Describe the flexibility of the law.

United States law evolves and changes along with the norms of society, technology, and the growth and expansion of commerce in the United States and the world. The following quote by Judge Jerome Frank discusses the value of the adaptability of law:

The law always has been, is now, and will ever continue to be, largely vague and variable. And how could this be otherwise? The law deals with human relations in their most complicated aspects. The whole confused, shifting helter-skelter of life parades before it—more confused than ever, in our kaleidoscopic age.

The constant development of unprecedented problems requires a legal system capable of fluidity and pliancy. Our society would be straightjacketed were not the courts, with the able assistance of the lawyers, constantly overhauling the law and adapting it to the realities of ever-changing social, industrial, and political conditions; although changes cannot be made lightly, yet rules of law must be more or less impermanent, experimental and therefore not nicely calculable.

Much of the uncertainty of law is not an unfortunate accident; it is of immense social value.⁵

A landmark U.S. Supreme Court case—*Brown v. Board of Education*—is discussed in the following feature. This case shows the flexibility of the law because the U.S. Supreme Court overturned a past decision of the Court.

Law must be stable and yet it cannot stand still.

Roscoe Pound
Interpretations of Legal History (1923)

Critical Legal Thinking

Are there any benefits for the law being “vague and variable”? Are bright-line tests possible for the law? Explain the statement, “Much of the uncertainty of law is not an unfortunate accident; it is of immense social value.”

Critical Legal Thinking

Brown v. Board of Education

“We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place.”

—Earl Warren, Chief Justice

Slavery was abolished by the Thirteenth Amendment to the Constitution in 1865. The Fourteenth Amendment, added to the Constitution in 1868, contains the Equal Protection Clause, which provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” The original intent of this amendment was to guarantee equality to freed African Americans. But equality was denied to African Americans for a century. This included discrimination in housing, transportation, education, jobs, service at restaurants, and other activities.

In 1896, the U.S. Supreme Court decided the case *Plessy v. Ferguson*.⁶ In that case, the state of Louisiana had a law that provided for separate but equal accommodations for African American and White railway passengers. The Supreme Court held that the “separate but equal” state law did not violate the Equal Protection Clause of the Fourteenth Amendment. The “separate but equal” doctrine was then applied to all areas of life, including public education.

It was not until 1954 that the U.S. Supreme Court decided a case that challenged the “separate but equal” doctrine as

it applied to public elementary and high schools. In ***Brown v. Board of Education***, a unanimous Supreme Court, in an opinion written by Chief Justice Earl Warren, reversed prior precedent and held that the separate but equal doctrine violated the Equal Protection Clause of the Fourteenth Amendment to the Constitution. In its opinion, the Court stated,

Today, education is perhaps the most important function of state and local governments. We conclude that in the field of public education the doctrine of “separate but equal” has no place. Separate educational facilities are inherently unequal.

After *Brown v. Board of Education* was decided, it took court orders as well as U.S. army enforcement to integrate many of the public schools in this country. *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 1954 U.S. Lexis 2094 (Supreme Court of the United States, 1954).

Critical Legal Thinking Questions

It has been said that the U.S. Constitution is a “living document”—that is, one that can adapt to changing times. Do you think this is a good policy? Or should the U.S. Constitution be interpreted narrowly and literally, as originally written?

**OLD ORANGE COUNTY
COURTHOUSE,
SANTA ANA, CALIFORNIA**

Courts hear and decide civil and criminal cases. Court decisions are based on what the law says and what the evidence proves. Courts also protect individuals from abusive government action.



Henry R. Cheeseman

Schools of Jurisprudential Thought

1.3 List and describe the schools of judicial thought.

jurisprudence

The philosophy or science of law.

The philosophy or science of the law is referred to as **jurisprudence**. There are several different philosophies about how the law developed, ranging from the classical natural theory to modern theories of law and economics and critical legal studies. Classical legal philosophies are discussed in the following paragraphs.

Natural Law School

The **Natural Law School** of jurisprudence postulates that the law is based on what is “correct.” Natural law philosophers emphasize a **moral theory of law**—that is, law should be based on morality and ethics. Natural law is “discovered” by humans through the use of reason and choosing between good and evil.

Examples Documents such as the U.S. Constitution, the Magna Carta, and the United Nations Charter reflect this theory.

Historical School

The **Historical School** of jurisprudence believes that the law is an aggregate of social traditions and customs that have developed over the centuries. It believes that changes in the norms of society will gradually be reflected in the law. To these legal philosophers, the law is an evolutionary process.

Example Historical legal scholars look to past legal decisions (precedent) to solve contemporary problems.

Analytical School

The **Analytical School** of jurisprudence maintains that the law is shaped by logic. Analytical philosophers believe that results are reached by applying principles

WEB EXERCISE

Go to www.loc.gov/exhibits/brown/brown-brown.html and read information about the U.S. Supreme Court’s decision in *Brown v. Board of Education*.

of logic to the specific facts of a case. The emphasis is on the logic of the result rather than on how the result is reached.

Example When a bill is introduced in the U.S. House of Representatives or U.S. Senate, Democrat, Republican, third-party, and independent members often must reach a compromise for a law to be enacted.

Sociological School

The **Sociological School** of jurisprudence asserts that the law is a means of achieving and advancing certain sociological goals. The followers of this philosophy, known as *realists*, believe that the purpose of law is to shape social behavior. Sociological philosophers are unlikely to adhere to past law as precedent.

Examples Laws that make discrimination in employment illegal and laws that impose penalties for drunk driving reflect this theory.

The law is not a series of calculating machines where definitions and answers come tumbling out when the right levers are pushed.

William O. Douglas
Dissent, A Safeguard of Democracy (1948)

Command School

The philosophers of the **Command School** of jurisprudence believe that the law is a set of rules developed, communicated, and enforced by the ruling party rather than a reflection of the society's morality, history, logic, or sociology. This school maintains that law changes when the ruling class changes.

Example During certain military conflicts, such as World War II and the Vietnam War, the federal government has enacted draft laws that require men of a certain age to serve in the military if they meet certain physical and other requirements.

Critical Legal Studies School

The **Critical Legal Studies School** proposes that legal rules are unnecessary and are used as an obstacle by the powerful to maintain the status quo. Critical legal theorists argue that legal disputes should be solved by applying arbitrary rules that are based on broad notions of what is “fair” in each circumstance. Under this theory, subjective decision making by judges would be permitted.

Example This school postulates that many sexual assault laws make it difficult to litigate and prosecute sexual assault cases because the laws were drafted without factoring in the impact on victims of the experience of sexual assault. Therefore, says this school, judges should have broad discretion to decide whether a sexual assault has occurred.

A kingdom founded on injustice never lasts.
Lucius Annaeus Seneca
(4 BCE–65 ACE)

Law and Economics School

The **Law and Economics School** believes that promoting market efficiency should be the central goal of legal decision making. This school is also called the **Chicago School**, named after the University of Chicago, where it was first developed.

Example Proponents of the law and economics theory suggest that the federal government's policy of subsidizing housing—by a law that permits a portion of interest paid on mortgage loans to be deducted from an individual borrower's federal income taxes and laws that created government-sponsored enterprises (Fannie Mae and Freddie Mac) that purchase low-rate interest mortgages made by banks and other lending institutions—provide incentives so that too many homes are built. If these laws did not exist, then the free market would determine the exact number of homes that should be built.

CONCEPT SUMMARY**SCHOOLS OF JURISPRUDENTIAL THOUGHT**

School	Philosophy
Natural Law	Postulates that law is based on what is “correct.” It emphasizes a moral theory of law—that is, law should be based on morality and ethics.
Historical	Believes that law is an aggregate of social traditions and customs.
Analytical	Maintains that law is shaped by logic.
Sociological	Asserts that the law is a means of achieving and advancing certain sociological goals.
Command	Believes that the law is a set of rules developed, communicated, and enforced by the ruling party.
Critical Legal Studies	Maintains that legal rules are unnecessary and that legal disputes should be solved by applying arbitrary rules based on fairness.
Law and Economics	Believes that promoting market efficiency should be the central concern of legal decision making.

History of American Law**1.4** Learn the history and development of American law.

When the American colonies were first settled, the English system of law was generally adopted as the system of jurisprudence. This was the foundation from which American judges developed a common law in America.

English Common Law

English common law was law developed by judges who issued their opinions when deciding cases. The principles announced in these cases became

English common law

Law developed by judges who issue their opinions when deciding a case. The principles announced in these cases became precedent for later judges deciding similar cases.

**PALACE OF WESTMINSTER,
LONDON, ENGLAND**

The court system of England consists of trial courts that hear criminal and civil cases and appellate courts. The House of Lords, in London, is the supreme court of appeal. The legal profession of England is divided into two groups: solicitors and barristers. Solicitors are lawyers who have direct contact with clients and handle legal matters for clients other than appearing in court. Barristers are engaged to appear in court on behalf of a client.



precedent for later judges deciding similar cases. The English common law can be divided into cases decided by the *law courts*, *equity courts*, and *merchant courts*.

Law Courts Prior to the Norman Conquest of England in 1066, each locality in England was subject to local laws, as established by the lord or chieftain in control of a local area. There was no countrywide system of law. After 1066, William the Conqueror and his successors to the throne of England began to replace the various local laws with one uniform system of law. To accomplish this, the king or queen appointed loyal followers as judges in all local areas. These judges were charged with administering the law in a uniform manner, in courts that were called **law courts**. Law at that time tended to emphasize the form (legal procedure) over the substance (merit) of a case. The only relief available at law courts was a monetary award for damages.

Chancery (Equity) Courts Because of some unfair results and limited remedies available in the law courts, a second set of courts—the **Court of Chancery** (or **equity court**)—was established. These courts were under the authority of the lord chancellor. Persons who believed that the decision of a law court was unfair or believed that the law court could not grant an appropriate remedy could seek relief in the Court of Chancery. Rather than emphasize legal procedure, the chancery court inquired into the merits of the case. The chancellor's remedies were called *equitable remedies* because they were shaped to fit each situation. Equitable orders and remedies of the Court of Chancery took precedence over the legal decisions and remedies of the law courts.

Merchant Courts As trade developed during the Middle Ages, merchants who traveled about England and Europe developed certain rules to solve their commercial disputes. These rules, known as the “law of merchants,” or the **Law Merchant**, were based on common trade practices and usage. Eventually, a separate set of courts was established to administer these rules. This court was called the **Merchant Court**. In the early 1900s, the Merchant Court was absorbed into the regular law court system of England.

The following feature discusses the adoption of English common law in the United States.

Landmark Law

Adoption of English Common Law in America

All the states—except Louisiana—of the United States of America base their legal systems primarily on the English common law. In the United States, the law, equity, and merchant courts have been merged. Thus, most U.S. courts permit the aggrieved party to seek both legal and equitable orders and remedies.

The importance of **common law** to the American legal system is described in the following excerpt from Justice Douglas's opinion in the 1841 case *Penny v. Little*:

The common law is a beautiful system, containing the wisdom and experiences of ages. Like the people it ruled and protected, it was simple and crude in its infancy

*and became enlarged, improved, and polished as the nation advanced in civilization, virtue, and intelligence. Adapting itself to the conditions and circumstances of the people and relying upon them for its administration, it necessarily improved as the condition of the people was elevated. The inhabitants of this country always claimed the common law as their birthright, and at an early period established it as the basis of their jurisprudence.*⁷

Currently, the law of the United States (Anglo-American law) is a combination of law created by the judicial system and by congressional legislation.

The following feature discusses the development of the civil law system in Europe.

Global Law

Civil Law System of France and Germany

One of the major legal systems that developed in the world in addition to the Anglo-American common law system is the **Romano-Germanic civil law system**. This legal system, which is commonly called the **civil law**, dates to 450 BCE, when Rome adopted the Twelve Tables, a code of laws governing Roman society. A compilation of Roman law, called the *Corpus Juris Civilis* (“Body of Civil Law”), was completed in CE 534. Later, two national codes—the **French Civil Code of 1804** (the **Napoleonic Code**) and the **German Civil Code of 1896**—became models for countries that adopted civil codes.

In contrast to the Anglo-American law, in which laws are created by the judicial system as well as by congressional legislation, the civil code and parliamentary statutes are the sole sources of the law in most civil law countries. Thus, the adjudication of a case is simply the application of the code or the statutes to a particular set of facts. In some civil law countries, court decisions do not have the force of law.

Many countries in Europe still follow the civil law system.

Sources of Law in the United States

1.5 List and describe the sources of law in the United States.

In the more than 200 years since the founding of the United States and the adoption of the English common law, the lawmakers of this country have developed a substantial body of law. The *sources of modern law* in the United States are discussed in the paragraphs that follow.

Constitutions

The **Constitution of the United States of America** is the *supreme law of the land*. This means that any law—whether federal, state, or local—that conflicts with the U.S. Constitution is unconstitutional and therefore unenforceable.

The principles enumerated in the U.S. Constitution are extremely broad because the framers of the Constitution intended them to be applied to evolving social, technological, and economic conditions. The U.S. Constitution is often referred to as a “living document” because it is so adaptable.

The U.S. Constitution established the structure of the federal government. It created three branches of government and gave them the following powers:

- The **legislative branch** (Congress) has the power to make (enact) the law.
- The **executive branch** (president) has the power to enforce the law.
- The **judicial branch** (courts) has the power to interpret and determine the validity of the law.

Powers not given to the federal government by the Constitution are reserved for the states. States also have their own constitutions. **State constitutions** are often patterned after the U.S. Constitution, although many are more detailed. State constitutions establish the legislative, executive, and judicial branches of state government and establish the powers of each branch. Provisions of state constitutions are valid unless they conflict with the U.S. Constitution or any valid federal law.

Treaties

The U.S. Constitution provides that the president, with the advice and consent of two-thirds of the Senate, may enter into **treaties** with foreign governments. Treaties become part of the supreme law of the land. With increasing international economic relations among nations, treaties will become an even more important source of law that will affect business in the future.

Constitution of the United States of America

The supreme law of the United States.

treaty

A compact made between two or more nations.

Federal Statutes

Statutes are written laws that establish certain courses of conduct that covered parties must adhere to. The U.S. Congress is empowered by the Commerce Clause and other provisions of the U.S. Constitution to enact **federal statutes** to regulate foreign and interstate commerce.

Examples The federal Clean Water Act regulates the quality of water and restricts water pollution. The federal Securities Act of 1933 regulates the issuance of securities. The federal National Labor Relations Act establishes the right of employees to form and join labor organizations.

Federal statutes are organized by topic into **code books**. This is often referred to as **codified law**. Federal statutes can be found in these hardcopy books and online.

The following feature describes how a bill becomes law.

statute

Written law enacted by the legislative branch of the federal and state governments that establishes certain courses of conduct that covered parties must adhere to.

Contemporary Environment

How a Bill Becomes Law

The **U.S. Congress** is composed of two chambers, the **U.S. House of Representatives** and the **U.S. Senate**. Thousands of **bills** are introduced in the U.S. Congress each year, but only a small percentage of them become law. The process of legislation at the federal level is as follows:

1. A member of the U.S. House of Representatives or U.S. Senate introduces a bill in his or her **chamber**. The bill is assigned a number: "H.R. [number]#" for House bills and "S [number]#" for Senate bills. All bills for raising revenue must originate in the U.S. House of Representatives.
2. The bill is referred to the appropriate **committee** for review and study. The committee can do the following: (1) reject the bill; (2) report it to the full chamber for vote; (3) simply not act on it, in which case the bill is said to have died in committee—many bills meet this fate; or (4) send the bill to a **subcommittee** for further study. A subcommittee can let the bill die or report it back to the full committee.
3. Bills that receive the vote of a committee are reported to the full chamber, where they are debated and voted on. If the bill receives a majority vote of the chamber, it is sent to the other chamber, where the previously outlined process is followed. If the second chamber makes no changes in the original bill, the bill is reported for vote by that chamber. If the second chamber makes significant changes to the bill, a **conference committee** that is made up of members of both chambers will try to reconcile the differences. If a compromise version is agreed to by the conference committee, the bill is reported for vote.
4. A bill that is reported to a full chamber must receive the majority vote of the chamber, and if it receives this vote, it is forwarded to the other chamber. If a majority of the second chamber approves the bill, it is then sent to the president's desk.
5. If the president signs a bill, it becomes law. If the president takes no action for 10 days, the bill automatically becomes law. If the president vetoes the bill, the bill can be passed into law if two-thirds of the members of the House and two-thirds of the members of the Senate vote to override the veto and approve the bill. Many bills that are vetoed by the president do not obtain the necessary two-thirds vote to override the veto.

Because of this detailed and political legislative process, few of the many bills that are submitted by members of the U.S. House of Representatives or U.S. Senate become law.

State Statutes

State legislatures enact **state statutes**. Such statutes are placed in code books. State statutes can be accessed in these hardcopy code books or online.

Examples The state of Florida has enacted the Lake Okeechobee Protection Act to protect Lake Okeechobee and the northern Everglades ecosystem. The Nevada Corporations Code outlines how to form and operate a Nevada corporation. The Texas Natural Resources Code regulates oil, gas, mining, geothermal, and other natural resources in the state.

Critical Legal Thinking

Why is the process of the U.S. Congress enacting statutes so complex? What checks and balances are built into the system before a bill can become law?

ordinance

Law enacted by local government bodies, such as cities and municipalities, counties, school districts, and water districts.

Ordinances

State legislatures often delegate lawmaking authority to local government bodies, including cities and municipalities, counties, school districts, and water districts. These governmental units are empowered to adopt **ordinances**. Ordinances are also codified.

Examples Mackinac Island, Michigan, a city of 19th-century Victorian-style houses and buildings, has enacted ordinances that keep the island car free, keep out fast-food chains, and require buildings to adhere to era-specific aesthetic standards. Other examples of city ordinances include zoning laws, building codes, and sign restrictions.

Executive Orders

executive order

An order issued by a member of the executive branch of the government.

The executive branch of government, which includes the president of the United States and state governors, is empowered to issue **executive orders**. This power is derived from express delegation from the legislative branch and is implied from the U.S. Constitution and state constitutions.

Example In response to North Korea's pursuit of nuclear and missile programs, the launching of ballistic missiles in the area of Japan and other countries, cyberattacks on U.S. government and other computer systems, and engaging in other actions that are detrimental to the interests of the United States and constitute a threat to national security, the president issued executive orders freezing the assets of the government of North Korea and the Workers' Party of Korea located in the United States, and prohibiting U.S. companies and individuals from selling or transferring products and services to the government of North Korea and parties associated with the government of North Korea that relate to energy, metal, graphite, mining, coal, transportation, financial services, software, and any other products and services that would benefit the nuclear and missile program of the government of North Korea.

WHITE HOUSE, WASHINGTON DC

The White House is located at 1600 Pennsylvania Avenue, Washington DC. The White House is the principal residence and office of the president of the United States of America.



Henry R. Cheeseman

Regulations and Orders of Administrative Agencies

The legislative and executive branches of federal and state governments are empowered to establish **administrative agencies** to enforce and interpret statutes enacted by Congress and state legislatures. Many of these agencies regulate business.

Examples Congress has created the Securities and Exchange Commission (SEC) to enforce federal securities laws and the Federal Trade Commission (FTC) to enforce consumer protection statutes.

Congress or the state legislatures usually empower these agencies to adopt **administrative rules and regulations** to interpret the statutes that the agency is authorized to enforce. These rules and regulations have the force of law. Administrative agencies usually have the power to hear and decide disputes. Their decisions are called **orders**. Because of their power, administrative agencies are often informally referred to as the “fourth branch of government.”

administrative agencies

Agencies (such as the Securities and Exchange Commission and the Federal Trade Commission) that the legislative and executive branches of federal and state governments are empowered to establish.

Judicial Decisions

When deciding individual lawsuits, federal and state courts issue **judicial decisions**. In these written opinions, a judge or justice usually explains the legal reasoning used to decide the case. These opinions often include interpretations of statutes, ordinances, and administrative regulations and the announcement of legal principles used to decide the case. Many court decisions are reported by electronic research services such as Lexis, on the internet, and in books.

judicial decision

A decision about an individual lawsuit issued by a federal or state court.

Priority of Law in the United States

As mentioned previously, the U.S. Constitution and treaties take precedence over all other laws in the United States. Federal statutes take precedence over federal regulations. Valid federal law takes precedence over any conflicting state or local law. State constitutions rank as the highest state law. State statutes take precedence over state regulations. Valid state law takes precedence over local laws.

CONCEPT SUMMARY

SOURCES OF LAW IN THE UNITED STATES

Source of Law	Description
Constitutions	The U.S. Constitution establishes the federal government and enumerates its powers. Powers not given to the federal government are reserved to the states. State constitutions establish state governments and enumerate their powers.
Treaties	The president, with the advice and consent of two-thirds of the Senate, may enter into treaties with foreign countries.
Codified law: statutes and ordinances	Statutes are enacted by Congress and state legislatures. Ordinances are enacted by municipalities and local government bodies. They establish courses of conduct that covered parties must follow.
Executive orders	Issued by the president and governors of states. Executive orders regulate the conduct of covered parties.

(continued)

Source of Law	Description
Regulations and orders of administrative agencies	Administrative agencies are created by the legislative and executive branches of government. They may adopt rules and regulations that regulate the conduct of covered parties as well as issue orders.
Judicial decisions	Courts decide controversies. In doing so, a court issues an opinion that states the decision of the court and the rationale used in reaching that decision.

precedent

A rule of law established in a court decision. Lower courts must follow the precedent established by higher courts.

stare decisis

Latin for “to stand by the decision.”
Adherence to precedent.

Critical Legal Thinking

Why was the doctrine of *stare decisis* developed? What would be the consequences if the doctrine of *stare decisis* was not followed?

Even when laws have been written down, they ought not always to remain unaltered.

Aristotle (384–322 BCE)

Doctrine of Stare Decisis

1.6 Describe the doctrine of stare decisis.

Based on common law tradition, past court decisions become **precedent** for deciding future cases. Lower courts must follow the precedent established by higher courts. That is why all federal and state courts in the United States must follow the precedents established by U.S. Supreme Court decisions.

The courts of one jurisdiction are not bound by the precedents established by the courts of another jurisdiction, although they may look to each other for guidance.

Example State courts of one state are not required to follow the legal precedents established by the courts of another state.

Adherence to precedent is called the doctrine of **stare decisis** (“to stand by the decision”). The doctrine of *stare decisis* promotes uniformity of law within a jurisdiction, makes the court system more efficient, and makes the law more predictable for individuals and businesses.

The doctrine of *stare decisis* is discussed in the following excerpt from Justice Musmanno’s decision in *Flagiello v. Pennsylvania*:

*Without stare decisis, there would be no stability in our system of jurisprudence. Stare decisis channels the law. It erects lighthouses and flies the signal of safety. The ships of jurisprudence must follow that well-defined channel which, over the years, has been proved to be secure and worthy.*⁸

A court may later change or reverse its legal reasoning if a new case is presented to it and change is warranted. The U.S. Supreme Court has stated, “Overruling precedent is never a small matter. What we can decide, we can undecide. But *stare decisis* teaches that we should exercise that authority sparingly.”⁹

Law in the Information Age

1.7 Describe how existing laws are being applied to the digital environment and how new laws are being enacted that specifically address issues of the information age.

In a span of about three decades, computers and other electronic devices have revolutionized society. Computers, once primarily used by businesses, have permeated the everyday lives of most people outside work as well. In addition, many other electronic devices are commonly in use, such as smartphones, tablets, televisions, digital cameras, and electronic game devices. In addition to the digital devices, technology has brought new ways of communicating, such as email and texting, as well as the use of social networks.

The information age arrived before new laws were written that were unique and specific to this environment. Courts have applied existing laws to the new

digital and technological environment by requiring interpretations and applications. In addition, new laws have been written that apply specifically to this new digital and information technology environment. The U.S. Congress has led the way, enacting many new federal statutes to regulate the new environment.

The application of existing laws to the digital and technology environment and new laws that have been enacted that specifically address legal issues of the information age are discussed throughout this text.

The following feature discusses business ethics.

Ethics

Apple Agrees to Pay \$500 Million to Settle Consumer Fraud Lawsuit

It is impossible to discuss business and business law without also discussing business ethics. Many decisions made by businesses, managers, and employees have an ethical component. Their duty is not only to act legally but also to act ethically. Sometimes companies are caught acting unethically. Consider the following case involving Apple Inc.

Apple is the developer, designer, and distributor of many forms of digital technology, including the ubiquitous iPhone. In 2007 Apple released its first version of the iPhone, which has subsequently gone through almost annual iterations. Some users move on to the next version immediately, while other users continue using older versions of the phones as long as they work for their purposes.

Apple continually provides software updates for prior models. Most users think that these updates make their phones work more efficiently, and in most cases they probably do. However, in some updates Apple secretly included software that actually made the phone's performance slower and the phone harder to use. Apple did not reveal this fact to consumers, tricking many users into believing that their older phones were simply slowing down from age. As a result, many people gave up their older iPhones and bought new iPhones.

Once Apple's actions were uncovered, dozens of class action lawsuits were filed against the company, alleging that Apple engaged in fraudulent conduct intended to sell more new iPhones. Apple denied any wrongdoing. The lawsuits were consolidated into one lawsuit heard by a U.S. district court located in California. Evidence was developed over a two-year period. Before the case went to trial, however, Apple agreed to a settlement.

In 2020, Apple agreed to pay at minimum \$325 million and at maximum \$500 million to users of iPhones who had their phones secretly slowed down. Lead plaintiffs received \$1,500 each, and those that gave evidence received \$3,500 each. All other class members received about \$25 each. Apple agreed to pay the plaintiffs' lawyers \$90 million. Apple now notifies iPhone users of software updates that would cause an adverse effect on performance, offering users the choice to opt out of such updates.

Ethics Questions

What reason would Apple have not to tell consumers that it was slowing down older iPhones when the users installed software updates? Was there any legitimate reason not to make this fact public? Do you think that the settlement amount was fair?

Critical Legal Thinking

1.8 Learn what critical legal thinking is and how to apply it to analyzing legal cases.

The U.S. Supreme Court, which is composed of nine justices, often issues non-unanimous decisions. Why? It is because each justice has analyzed the facts of a case and the legal issue presented, applied critical legal thinking to reason through the case, and come up with his or her own conclusion. The key is that each justice applied critical thinking in reaching his or her conclusion.

Critical thinking is important to all subjects taken by college and university students, no matter what their major or what course is taken. But critical thinking in law courses—referred to as *critical legal thinking*—is of significance because in the law there is not always a bright-line answer; in fact, there seldom is. This is where the famous “gray area” of the law appears. Thus, critical thinking becomes especially important in solving legal disputes.

Critical Legal Thinking

A method of thinking that consists of investigating, analyzing, evaluating, and interpreting information to solve a legal issue or case.

Socratic method

A process that consists of a series of questions and answers and a give-and-take inquiry and debate between a professor and students.

“Education is the kindling of a flame, not the filling of a vessel.”

Socrates (469–399 BCE)

IRAC method

A method used to examine a law case. *IRAC* is an acronym that stands for *issue*, *rule*, *application*, and *conclusion*.

Defining Critical Legal Thinking

What is critical legal thinking? **Critical legal thinking** consists of investigating, analyzing, evaluating, and interpreting information to solve simple or complex legal issues or cases. Critical legal thinking requires intellectually disciplined thinking. This requires a person to recognize and identify problems, engage in logical inquiry and reasoning, evaluate information and appraise evidence, consider alternative perspectives, question assumptions, identify unjustified inferences and irrelevant information, evaluate opposing positions and arguments, and assess one’s own thinking and conclusions.

Your professors have a deep understanding of critical legal thinking that they have developed during years of study in law school, in teaching and scholarship, and often in private practice or government employment as well. Over the course of the semester, they will impart to you not only knowledge of the law but also a unique and intelligent way of thinking through and solving complex problems. Critical legal thinking can serve 21st-century students and leaders.

Socratic Method

In class, many law professors use the **Socratic method** when discussing a case. The Socratic method consists of the professor asking students questions about a case or legal issue to stimulate critical thinking by the students. This process consists of a series of questions and answers and a give-and-take inquiry and debate between a professor and the students. The Socratic method stimulates class discussions. Good teachers recognize and focus on the questions and activities that stimulate the mind. The Socratic method of questioning is named after the Greek philosopher Socrates.

IRAC Method

Legal cases are usually examined using the following critical legal thinking method. First, the *facts* of the case must be investigated and understood. Next, the *legal issue* that is to be answered must be identified and succinctly stated. Then, the *law* that is to be applied to the case must be identified, read, and understood. Once the facts, law, and legal issue have been stated, critical thinking must be used in applying the law to the facts of the case. This requires that the decision maker—whether a judge, juror, or student—*analyze*, examine, evaluate, interpret, and apply the law to the facts of the case. Last, the critical legal thinker must reach a *conclusion* and state his or her judgment. In the study of law, this process is often referred to as the **IRAC method** (an acronym that stands for **issue**, **rule**, **application**, and **conclusion**) as outlined in the following:

- I = What is the *legal issue* in the case?
- R = What is the *rule* (law) of the case?
- A = What is the court’s *application* and its rationale?
- C = What was the *conclusion* or outcome of the case?

This text—whether in its print or electronic version—offers students ample opportunities to develop and apply critical legal thinking. The text contains real-world cases in which actual disputing parties have become embroiled. The law cases are real, the parties are real, and the decisions reached by juries and judges are real. Some cases are easier to decide than others, but all provide a unique set of facts that require critical legal thinking to solve.

Developing Skills for Your Career

1.9 Learn how the material, cases, and lessons of this book will apply to your future career.

If you are not pursuing a profession in law, you may think this text is irrelevant to your future career. Let me assure you that that is not the case. Whatever career path you follow, you will be able to take the lessons from this text and develop career skills that are useful, regardless of the future job you will hold. Communication, critical thinking, collaboration, knowledge application and analysis, business ethics and social responsibility, and information technology application are key to a successful career today, and this text will help you develop many of these employment skills.

Court cases presented throughout the text will develop your critical legal thinking skills as you are asked to apply what you have learned to situations similar to those that you may encounter during your career. Some cases push beyond legal thinking, and into the question of ethical thinking. As you pick apart complex cases and legal issues, you will develop your analytical thinking skills.

Class discussion, homework, and other content will develop your written and oral communication skills through meaningful discussion and assignments, honing your ability to communicate effectively.

This book, its content, cases, special features, critical thinking questions, and other material and assignments will well prepare you to solve actual business issues that you will encounter during your future career.

Key Terms and Concepts

Administrative agencies (13)	Court of Chancery (equity court) (9)	Judicial branch (courts) (10)	Romano-Germanic civil law system (10)
Administrative rules and regulations (13)	Critical Legal Studies School (7)	Judicial decision (13)	Sociological School (7)
Analytical School (7)	Critical legal thinking (16)	Jurisprudence (6)	Socratic method (16)
Bills (11)	English common law (8)	Law (3)	<i>Stare decisis</i> (14)
<i>Brown v. Board of Education</i> (5)	Executive branch (president) (10)	Law and Economics School (Chicago School) (7)	State constitution (10)
Chamber (11)	Executive order (12)	Law courts (9)	State statute (11)
Civil law (10)	Federal statute (11)	Law Merchant (9)	Statute (11)
Code book (11)	French Civil Code of 1804 (the Napoleonic Code) (10)	Legislative branch (Congress) (10)	Subcommittee (11)
Codified law (11)	German Civil Code of 1896 (10)	Merchant Court (9)	Treaty (10)
Command School (7)	Historical School (6)	Moral theory of law (6)	U.S. Congress (11)
Committee (11)	IRAC method (16)	Natural Law School (6)	U.S. House of Representatives (11)
Common law (9)		Order (13)	U.S. Senate (11)
Conference committee (11)		Ordinance (12)	
Constitution of the United States of America (10)		Precedent (14)	

Critical Legal Thinking Cases

1.1 School of Jurisprudential Thought The legislature of the state of Texas enacted the Top Ten Percent Law, which guarantees college admission to students who graduate from a Texas high school in the top 10 percent of their class. Those students may choose to attend any of the public universities in the state,

including the University of Texas at Austin (University). The University admits approximately 25 percent of an incoming class from applicants who do not qualify for admission under the 10 percent rule. These students are admitted based on a combination of their Academic Index (AI), which is calculated by

combining an applicant's SAT score and academic performance in high school, and Personal Achievement Index (PAI), which is a holistic review of the applicant's essays, leadership and work experience, extracurricular activities, community service, and other special characteristics. Race is given weight as a factor within the PAI. The University states that it includes race as a factor in admissions so that it can create a diverse student body.

Petitioner Abigail Fisher applied for admission to the University's freshman class. She was not in the top 10 percent of her high school class, but qualified to be evaluated for admission through the holistic review. Fisher's application was rejected by the University. Fisher, who is white, filed suit, alleging that the University's consideration of race as part of its holistic review process disadvantaged her and other white applicants in violation of the Equal Protection Clause of the U.S. Constitution.

The U.S. district court entered judgment in the University's favor. The U.S. court of appeals affirmed, determining that the holistic admission standard of the University conformed to the Equal Protection Clause. Fisher appealed to the U.S. Supreme Court. Is the race-conscious admissions program at the University of Texas lawful under the Equal Protection Clause? What school of jurisprudential thought do you think a holistic admissions policy promotes? *Fisher v. University of Texas at Austin*, 136 S.Ct. 2198, 2016 U.S. Lexis 4059 (Supreme Court of the United States, 2016)

1.2 Fairness of the Law In 1909, the state legislature of Illinois enacted a statute called the Woman's 10-Hour Law. The law prohibited women who were employed in factories and other manufacturing facilities from working more than 10 hours per day. The law did not apply to men. W. C. Ritchie & Co., an employer, brought a lawsuit that challenged the statute as being unconstitutional, in violation of the equal protection clause of the Illinois constitution.

In upholding the statute, the Illinois Supreme Court stated,

It is known to all men (and what we know as men we cannot profess to be ignorant of as judges) that woman's physical structure and the performance of maternal functions place her at a great disadvantage in the battle of life; that while a man can work for more than 10 hours a day without injury to himself, a woman, especially when the burdens of motherhood are upon her, cannot; that while a man can work standing upon his feet for more than 10 hours a day, day after day, without injury to himself, a woman cannot; and that to require a woman to stand upon her feet for more than 10 hours in any one day and perform severe manual labor while thus standing, day after day, has the effect to impair her health, and that as weakly and sickly women cannot be mothers of vigorous children.

We think the general consensus of opinion, not only in this country but in the civilized countries of Europe, is, that a working day of not more than 10 hours for women is justified for the following reasons: (1) the physical organization of women, (2) her maternal function, (3) the rearing and education of children, (4) the maintenance of the home; and these conditions are, so far, matters of general knowledge that the courts will take judicial cognizance of their existence.

Surrounded as women are by changing conditions of society, and the evolution of employment which environs them, we agree fully with what is said by the Supreme Court of Washington in the Buchanan case; "law is, or ought to be, a progressive science."

Is the statute fair? Would the statute be lawful today? Should the law be a "progressive science"? *W. C. Ritchie & Co. v. Wayman, Attorney for Cook County, Illinois*, 91 N.E. 695, 1910 Ill. Lexis 1958 (Supreme Court of Illinois)

Ethics Cases

1.3 Ethics Case When the Constitution was ratified by the original colonies in 1788, it delegated to the federal government the exclusive power to regulate commerce with Native American tribes. During the next 100 years, as the colonists migrated westward, the federal government entered into many treaties with Native American nations. One such treaty was with the Ojibwe Indians in 1837, whereby the Ojibwe sold land located in the Minnesota territory to the United States. The treaty provided, "The privilege of hunting, fishing, and gathering wild rice, upon the lands, the rivers and the lakes included in the territory ceded, is guaranteed to the Indians." The state of Minnesota was admitted into the Union in 1858.

In 1990, the Mille Lacs Band of the Ojibwe tribe sued the state of Minnesota, seeking declaratory judgment that they retained the hunting, fishing, and gathering rights provided in the 1837 treaty and an injunction to prevent Minnesota from interfering with those rights. The state of Minnesota argued that when Minnesota entered the Union in 1858, those rights were extinguished. Are the hunting, fishing, and gathering rights guaranteed to the Ojibwe in the 1837 treaty still valid and enforceable? Did the state of Minnesota act ethically when it asserted that the Ojibwe's hunting, fishing, and gathering rights no longer were valid? *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 119 S.Ct. 1187, 1999 U.S. Lexis 2190 (Supreme Court of the United States)

1.4 Ethics Case In 1975, after the war in Vietnam, the U.S. government discontinued draft registration for men in this country. In 1980, after the Soviet Union invaded Afghanistan, President Jimmy Carter asked Congress for funds to reactivate draft registration. President Carter suggested that both men and women be required to register. Congress allocated funds only for the registration of men. Several men who were subject to draft registration brought a lawsuit that challenged the law as being unconstitutional, in violation of the Equal Protection Clause of the U.S. Constitution. The U.S. Supreme Court upheld the constitutionality of the draft registration law, reasoning as follows:

The question of registering women for the draft not only received considerable national attention and was the subject of wide-ranging public debate, but also was extensively considered by Congress in hearings, floor debate, and in committee. The foregoing clearly establishes that the decision to exempt women from registration was not the “accidental by-product of a traditional way of thinking about women.”

This is not a case of Congress arbitrarily choosing to burden one of two similarly situated groups,

such as would be the case with an all-black or all-white, or an all-Catholic or all-Lutheran, or an all-Republican or all-Democratic registration. Men and women are simply not similarly situated for purposes of a draft or registration for a draft.

Justice Marshall dissented, stating,

The Court today places its imprimatur on one of the most potent remaining public expressions of “ancient canards about the proper role of women.” It upholds a statute that requires males but not females to register for the draft, and which thereby categorically excludes women from a fundamental civil obligation. I dissent.

What arguments did the U.S. Supreme Court assert to justify requiring men, but not women, to register for the draft? Is the law, as determined by the U.S. Supreme Court, fair? Do you agree with the dissent? *Rostker, Director of Selective Service v. Goldberg*, 453 U.S. 57, 101 S.Ct. 2646, 1981 U.S. Lexis 126 (Supreme Court of the United States)

Notes

1. *The Spirit of Liberty*, 3rd ed. (New York, NY: Alfred A. Knopf, 1960).
2. “Introduction,” in *The Nature of Law: Readings in Legal Philosophy*, M. P. Golding (New York, NY: Random House, 1966).
3. Henry Campbell Black. *Black’s Law Dictionary*, 5th ed. (St. Paul, Minnesota: West).
4. 447 U.S. 10, 100 S.Ct. 1999, 1980 U.S. Lexis 127 (Supreme Court of the United States).
5. Jerome Frank. *Law and the Modern Mind* (New York: Brentano’s, 1930).
6. 163 U.S. 537, 16 S.Ct. 1138, 1896 U.S. Lexis 3390 (Supreme Court of the United States, 1896).
7. 4 Ill. 301, 1841 Ill. Lexis 98 (Ill.).
8. *Flagiello, Appellant, v. Pennsylvania Hospital* 417 Pa. 486, 208 A.2d 193, 1965 Pa. Lexis 442 (Supreme Court of Pennsylvania).
9. 135 S.Ct. 2401, 2015 U.S. Lexis 4067 (Supreme Court of the United States, 2015).

Courts and Jurisdiction

SUPREME COURT OF THE UNITED STATES, WASHINGTON DC

The highest court in the land is the Supreme Court of the United States, located in Washington DC. The U.S. Supreme Court decides the most important constitutional law cases and other important issues it deems ripe for review and decision. The Supreme Court's unanimous and majority decisions are precedent for all the other courts in the country.



Henry R. Cheeseman

Learning Objectives

After studying this chapter, you should be able to:

- 2.1** Describe state court systems.
- 2.2** Describe the federal court system.
- 2.3** Describe the U.S. Supreme Court and the types of cases it decides.
- 2.4** Explain the jurisdiction of federal courts and compare it with the jurisdiction of state courts.
- 2.5** Define *standing to sue*, *jurisdiction*, and *venue*.
- 2.6** Explain how jurisdiction is applied to digital commerce.

“I was never ruined but twice; once when I lost a lawsuit,
and once when I won one.”

—Voltaire (1694–1778)

Introduction to Courts, Jurisdiction, and Administrative Law

There are two major court systems in the United States: (1) the federal court system and (2) the court systems of the 50 states, Washington DC (District of Columbia), and territories of the United States. Each of these systems has jurisdiction to hear different types of lawsuits.

This chapter discusses state court systems, the federal court system, and the jurisdiction of courts to hear and decide cases.

*The glorious uncertainty
of law.*

Thomas Wilbraham
*A toast at a dinner of judges
and counsel at Serjeants’
Inn Hall, 1756*

State Court Systems

2.1 Describe state court systems.

Each state, Washington DC, and each territory of the United States has its own separate court system (hereafter collectively referred to as **state courts**). State courts resolve more than 95 percent of the lawsuits brought in this country. Most state court systems include the following: *limited-jurisdiction trial courts*, *general-jurisdiction trial courts*, *intermediate appellate courts*, and a *highest state court*.

Limited-Jurisdiction Trial Courts

State **limited-jurisdiction trial courts**, which are sometimes referred to as **inferior trial courts**, hear matters of a specialized or limited nature.

Examples Traffic courts, juvenile courts, justice-of-the-peace courts, probate courts, family law courts, and courts that hear misdemeanor criminal law cases are limited-jurisdiction courts in many states.

Because limited-jurisdiction courts are trial courts, evidence can be introduced and testimony can be given. Most limited-jurisdiction courts keep records of their proceedings. A decision of such a court can usually be appealed to a general-jurisdiction court or an appellate court.

Many states have also created **small claims courts** to hear civil cases involving small dollar amounts (e.g., \$5,000, \$10,000). Generally, the parties must appear individually and cannot have lawyers represent them. The decisions of small claims courts are often appealable to general-jurisdiction trial courts or appellate courts.

General-Jurisdiction Trial Courts

Every state has a **general-jurisdiction trial court**. These courts are often referred to as **courts of record** because the testimony and evidence at trial are recorded and stored for future reference. These courts hear cases that are not within the jurisdiction of limited-jurisdiction trial courts, such as felonies or civil cases involving more than a certain dollar amount.

Some states divide their general-jurisdiction courts into two divisions, one for criminal cases and the other for civil cases. Evidence and testimony are given at general-jurisdiction trial courts. The decisions handed down by these courts are appealable to an intermediate appellate court or the state supreme court, depending on the circumstances.

**limited-jurisdiction trial
court (inferior trial court)**

A court that hears matters of a specialized or limited nature.

WEB EXERCISE

Use www.google.com or another internet search engine and find out whether your state has a small claims court. If so, what is the dollar-amount limit for cases to qualify for small claims court?

**general-jurisdiction trial
court (court of record)**

A court that hears cases of a general nature that is not within the jurisdiction of limited-jurisdiction trial courts. Testimony and evidence at trial are recorded and stored for future reference.

**BANDERA COUNTY
COURTHOUSE,
BANDERA, TEXAS**

*This is a county courthouse of
the state of Texas.*

Witold Skrypczak/Alamy Stock Photo



**intermediate appellate court
(appellate court or court of
appeals)**

A court that hears appeals from trial courts.

Intermediate Appellate Courts

In many states, **intermediate appellate courts** (also called **appellate courts** or **courts of appeals**) hear appeals from trial courts. They review the trial court record to determine whether there have been any errors at trial that would require reversal or modification of the trial court's decision. Thus, an appellate court reviews either pertinent parts or the whole trial court record from the lower court. No new evidence or testimony is permitted.

The parties usually file legal *briefs* with the appellate court stating the law and facts that support their positions. Appellate courts usually grant a brief oral hearing to the parties. Appellate court decisions are appealable to the state's highest court. In sparsely populated states that do not have an intermediate appellate court, trial court decisions can be appealed directly to the state's highest court.

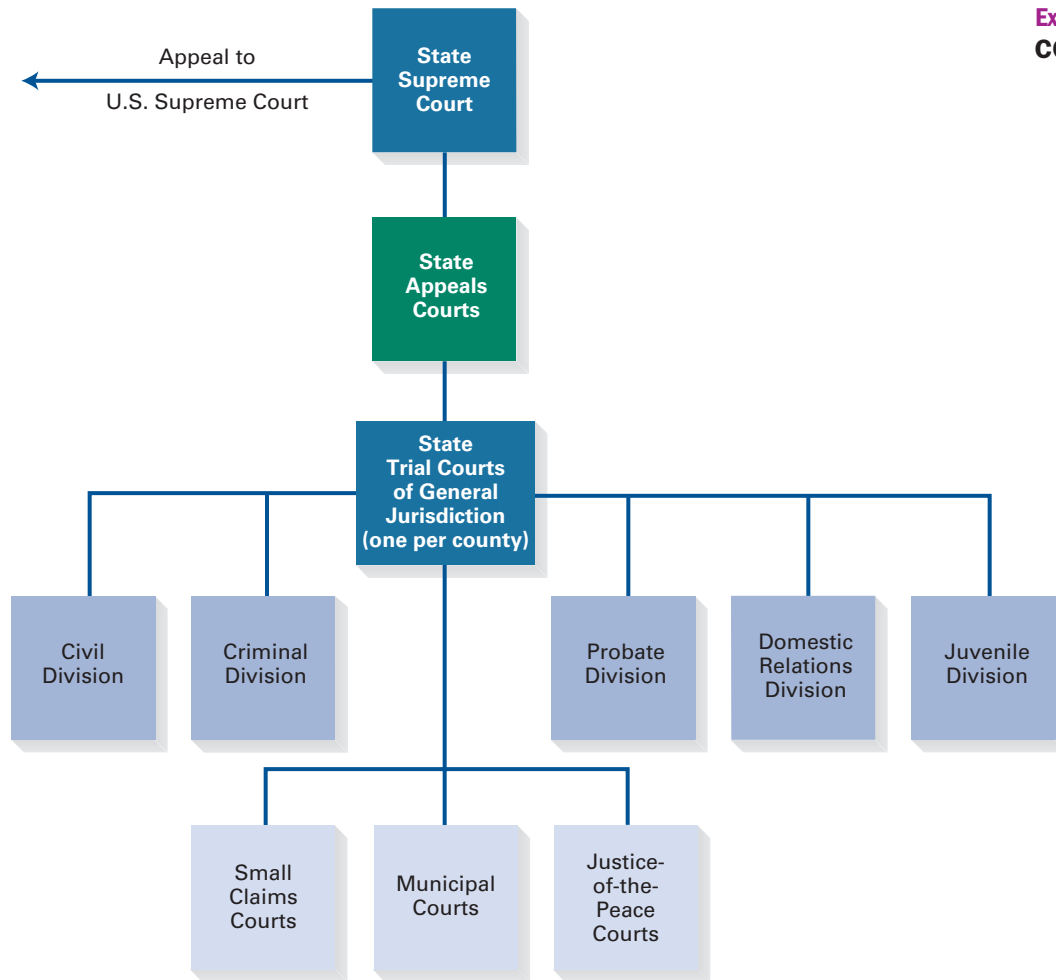
highest state court

The highest court in a state court system; it hears appeals from intermediate appellate state courts and certain trial courts.

Highest State Court

Each state has a **highest state court** in its court system. Many states call this highest court the **state supreme court**. Some states use other names for their highest courts. The function of a state's highest court is to hear appeals from intermediate appellate state courts and certain trial courts. No new evidence or testimony is heard. The parties usually submit pertinent parts of or the entire lower court record for review. The parties also submit legal briefs to the court and are usually granted a brief oral hearing. Decisions of highest state courts are final unless a question of law is involved that is appealable to the U.S. Supreme Court.

Exhibit 2.1 portrays a typical state court system. Exhibit 2.2 lists the websites for the court systems of the 50 states, the District of Columbia, and territories associated with the United States.

Exhibit 2.1 TYPICAL STATE COURT SYSTEM

The following feature discusses special business courts.

Business Environment

Delaware Courts Specialize in Business Disputes

In most states, business and commercial disputes are heard by the same courts that hear and decide criminal, landlord–tenant, matrimonial, medical malpractice, and other non-business-related cases. One major exception to this standard has been the state of Delaware, where a special chancery court hears and decides business litigation.

The **Delaware Court of Chancery**, which decides cases involving corporate governance, fiduciary duties of corporate officers and directors, mergers and acquisitions, and other business issues, has earned a reputation for its expertise in handling and deciding corporate matters. Perhaps the

existence of this special court and a corporation code that tends to favor corporate management are the primary reasons that more than 50 percent of the corporations listed on the New York Stock Exchange (NYSE) and the NASDAQ stock exchange are incorporated in Delaware.

Businesses tend to favor special commercial courts because the judges in these courts have the expertise to decide complex business lawsuits. The courts are also expected to be more efficient in deciding business-related cases, thus saving time and money for the parties. Other states are also establishing courts that specialize in commercial matters.

**Exhibit 2.2 WEBSITES
FOR STATE, DISTRICT
OF COLUMBIA, AND
TERRITORY COURT
SYSTEMS**

State, District, or Territory	Website
Alabama	judicial.alabama.gov
Alaska	courts.alaska.gov
Arizona	https://www.azcourts.gov
Arkansas	https://www.arcourts.gov
California	www.courts.ca.gov
Colorado	https://www.courts.state.co.us
Connecticut	https://www.jud.ct.gov
Delaware	https://courts.delaware.gov
District of Columbia	https://www.dccourts.gov
Florida	https://www.flcourts.org
Georgia	georgiacourts.gov
Guam	www.guamcourts.org
Hawaii	https://www.courts.state.hi.us
Idaho	https://isc.idaho.gov
Illinois	www.illinoiscourts.gov
Indiana	https://www.in.gov/judiciary/
Iowa	https://www.iowacourts.gov
Kansas	www.kscourts.org
Kentucky	https://courts.ky.gov/Pages/default.aspx
Louisiana	www.lasc.org
Maine	https://www.courts.maine.gov
Maryland	https://www.courts.state.md.us
Massachusetts	https://www.mass.gov/orgs/massachusetts-court-system
Michigan	https://courts.michigan.gov/Pages/default.aspx
Minnesota	www.mncourts.gov
Mississippi	https://courts.ms.gov
Missouri	https://www.courts.mo.gov
Montana	https://courts.mt.gov
Nebraska	https://supremecourt.nebraska.gov
Nevada	https://nvcourts.gov
New Hampshire	https://www.courts.state.nh.us
New Jersey	https://www.njcourts.gov
New Mexico	https://www.nmcourts.gov
New York	www.courts.state.ny.us
North Carolina	https://www.nccourts.gov
North Dakota	https://www.ndcourts.gov
Northern Mariana Islands	www.nmijudiciary.com
Ohio	www.sconet.state.oh.us
Oklahoma	www.oscn.net/oscn/schome/
Oregon	https://www.courts.oregon.gov/Pages/default.aspx
Pennsylvania	www.pacourts.us
Puerto Rico	www.ramajudicial.pr
Rhode Island	https://www.courts.ri.gov/Pages/default.aspx
South Carolina	https://www.sccourts.org
South Dakota	www.ujis.sd.gov
Tennessee	www.tsc.state.tn.us
Texas	www.courts.state.tx.us
Utah	https://www.utcourts.gov/index.html
Vermont	www.vermontjudiciary.org
Virginia	www.courts.state.va.us
Virgin Islands	www.visuperiorcourt.org
Washington	www.courts.wa.gov
West Virginia	www.courtswv.gov
Wisconsin	https://www.wicourts.gov
Wyoming	https://www.courts.state.wy.us

Federal Court System

2.2 Describe the federal court system.

Article III of the U.S. Constitution provides that the federal government's judicial power is vested in one "Supreme Court." This court is the U.S. Supreme Court. Article III authorizes Congress to establish "inferior" federal courts. Pursuant to its Article III power, Congress has established the U.S. district courts, the U.S. courts of appeals, and the U.S. bankruptcy courts. Pursuant to other authority in the Constitution, the U.S. Congress has established other federal courts. Federal judges of the U.S. Supreme Court, U.S. courts of appeals, and U.S. district courts are appointed for life by the president, with the advice and consent of the Senate. Judges of other courts are not appointed for life but are appointed for various periods of time (e.g., bankruptcy court judges are appointed for 14-year terms).

It is, emphatically, the province and duty of the judicial department, to say what the law is.

Marbury v. Madison
5 U.S. 137 (1803)

John Marshall, Chief Justice
Supreme Court of the
United States

Special Federal Courts

The **special federal courts** established by Congress have limited jurisdiction. They include the following:

- **U.S. Tax Court.** The U.S. Tax Court hears cases that involve federal tax laws. Website: <https://www.ustaxcourt.gov>.
- **U.S. Court of Federal Claims.** The U.S. Court of Federal Claims hears cases brought against the United States. Website: www.uscfc.uscourts.gov.
- **U.S. Court of International Trade.** The U.S. Court of International Trade hears civil cases arising out of customs and international trade laws of the United States. Website: <https://www.cit.uscourts.gov>.
- **U.S. Bankruptcy Court.** The U.S. Bankruptcy Court hears cases that involve federal bankruptcy laws. Website: <https://www.uscourts.gov/services-forms/bankruptcy>.
- **U.S. Court of Appeals for the Armed Forces.** The U.S. Court of Appeals for the Armed Forces exercises appellate jurisdiction over members of the armed services. Website: <https://www.armfor.uscourts.gov>.
- **U.S. Court of Appeals for Veterans Claims.** The U.S. Court of Appeals for Veterans Claims exercises jurisdiction over decisions of the Department of Veterans Affairs. Website: www.uscourts.cave.gov.

The following feature discusses a controversial court of the federal court system.

special federal courts

Federal courts that hear matters of specialized or limited jurisdiction.

WEB EXERCISE

Go to the website of the FISA court at www.fisc.uscourts.gov. Read the description of the court.

Contemporary Environment

Foreign Intelligence Surveillance Court

In 1978, Congress created the **U.S. Foreign Intelligence Surveillance Court (FISA court)**, located in Washington DC. The 11 judges of the FISA court are appointed by the chief justice of the United States.

The FISA court hears requests by federal law enforcement agencies, such as the Federal Bureau of Investigation (FBI) and National Security Agency (NSA), for warrants, called **FISA warrants**, to conduct physical searches and electronic surveillance of Americans or foreigners in the United States who are deemed a threat to national security. The application for a surveillance warrant is heard by one of the judges who sit on the court. It is rare for an application for a warrant to be rejected by the FISA court.

The FISA court is a "secret court" because its hearings are not open to the public and its decisions are classified. The court rarely releases documents, and when it does, the documents are usually highly redacted; that is, certain sensitive information is either removed or obscured before release. FISA court website: <https://www.fisc.uscourts.gov>.

If the FISA court denies a government application for a FISA warrant, the government may appeal the decision to the **U.S. Foreign Intelligence Surveillance Court of Review (FISCR)**. FISCR website: <https://www.fisc.uscourts.gov/fiscr>.

U.S. DISTRICT COURT, LAS VEGAS, NEVADA

This is the Lloyd D. George United States District Court for the District of Nevada, in Las Vegas, Nevada. This is a federal trial court. This federal trial court, along with the other U.S. district courts located throughout the country, hears and decides lawsuits concerning matters over which it has jurisdiction.



Henry R. Cheeseman

U.S. District Courts

The **U.S. district courts** are the federal court system's trial courts of *general jurisdiction*. There are 94 U.S. district courts. There is at least one federal district court in each state and the District of Columbia, and heavily populated states and geographically large states have more than one district court.

Examples California, New York, and Texas each have four U.S. district courts.

The geographical area served by each court is referred to as a **district**. The federal district courts are empowered to impanel juries, receive evidence, hear testimony, and decide cases. Most federal cases originate in federal district courts.

U.S. territorial courts are federal trial courts located on Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. These courts have jurisdiction similar to U.S. district courts.

U.S. Courts of Appeals

The **U.S. courts of appeals** are the federal court system's intermediate appellate courts. There are 13 circuits in the federal court system. The first 12 are geographical. Eleven are designated by numbers, as the "First Circuit," "Second Circuit," "Third Circuit," and so on. The geographical area served by each court is referred to as a **circuit**. A 12th circuit court, located in Washington DC, is called the **U.S. District of Columbia Circuit**.

Congress created a 13th court of appeals in 1982. It is called the **U.S. Court of Appeals for the Federal Circuit**, located in Washington DC. This court has special appellate jurisdiction to review the decisions of the Court of Federal Claims, the Patent and Trademark Office, and the Court of International Trade. It was created to provide uniformity in the application of federal law in certain areas, particularly patent law.

As appellate courts, each of these courts hears appeals from the district courts located in its circuit as well as from certain special courts and federal administrative agencies. An appellate court reviews the record of the lower court or

U.S. district courts

The federal court system's trial courts of general jurisdiction.

U.S. courts of appeals

The federal court system's intermediate appellate courts.

U.S. Court of Appeals for the Federal Circuit

A U.S. court of appeals in Washington DC that has special appellate jurisdiction to review the decisions of the Court of Federal Claims, the Patent and Trademark Office, and the Court of International Trade.

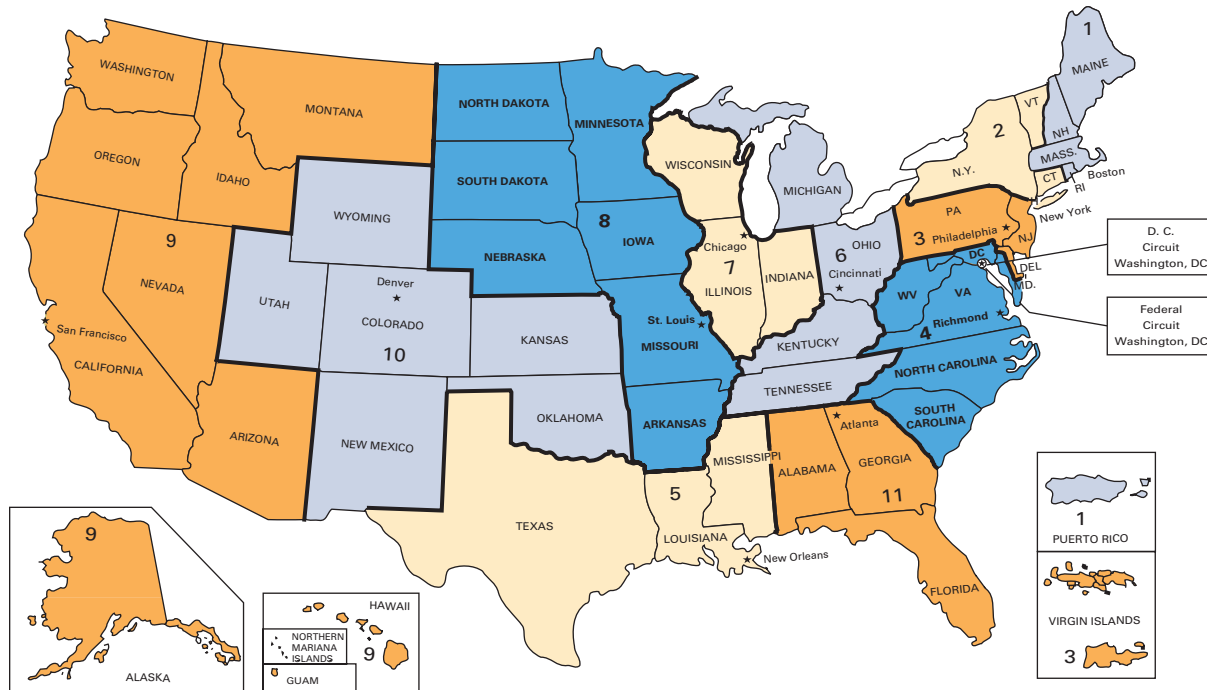


Exhibit 2.3 MAP OF THE FEDERAL CIRCUIT COURTS

administrative agency proceedings to determine whether there has been any error that would warrant reversal or modification of the lower court decision. No new evidence or testimony is heard. The parties file legal briefs with the court and are given a short oral hearing. The number of judges of various U.S. courts of appeals ranges from approximately 6 to 30. Appeals are usually heard by a three-judge panel. After a decision is rendered by the three-judge panel, a petitioner can request an *en banc* review by the full appeals court.

Exhibit 2.3 shows a map of the 13 federal circuit courts of appeals. Exhibit 2.4 lists the websites of the 13 U.S. courts of appeals.

U. S. Court of Appeals	Main Office	Website
First Circuit	Boston, Massachusetts	www.ca1.uscourts.gov
Second Circuit	New York, New York	www.ca2.uscourts.gov
Third Circuit	Philadelphia, Pennsylvania	www.ca3.uscourts.gov
Fourth Circuit	Richmond, Virginia	www.ca4.uscourts.gov
Fifth Circuit	New Orleans, Louisiana	www.ca5.uscourts.gov
Sixth Circuit	Cincinnati, Ohio	www.ca6.uscourts.gov
Seventh Circuit	Chicago, Illinois	www.ca7.uscourts.gov
Eighth Circuit	St. Paul, Minnesota	www.ca8.uscourts.gov
Ninth Circuit	San Francisco, California	www.ca9.uscourts.gov
Tenth Circuit	Denver, Colorado	www.ca10.uscourts.gov
Eleventh Circuit	Atlanta, Georgia	www.ca11.uscourts.gov
District of Columbia	Washington DC	www.dcd.uscourts.gov
Court of Appeals for the Federal Circuit	Washington DC	www.cafc.uscourts.gov

Exhibit 2.4 WEBSITES FOR THE FEDERAL COURTS OF APPEALS

Supreme Court of the United States (U.S. Supreme Court)

The highest court in the United States, located in Washington DC. The Supreme Court was created by Article III of the U.S. Constitution.

WEB EXERCISE

Go to the website www.supremecourt.gov/about/biographies.aspx. Who are the current members of the Supreme Court? Who is the chief justice? Pick a justice and read his or her biography.

Critical Legal Thinking

Is the U.S. Supreme Court apolitical? Explain the difference between a policy-oriented Supreme Court and an original constructionist Supreme Court. Why are U.S. Supreme Court justices appointed for life?

Supreme Court of the United States**2.3** Describe the U.S. Supreme Court and the types of cases it decides.

The highest court in the land is the **Supreme Court of the United States**, also called the **U.S. Supreme Court**, located in Washington DC. The Court is composed of 9 justices who are nominated by the president and confirmed by the Senate. The president appoints one justice as the **chief justice of the U.S. Supreme Court**, who is responsible for the administration of the Court. The other 8 justices are **associate justices of the U.S. Supreme Court**. The website of the U.S. Supreme Court is <http://www.supremecourt.gov>.

Following is Alexis de Tocqueville's 1840 description of the Supreme Court's role in U.S. society:

The peace, the prosperity, and the very existence of the Union are vested in the hands of the justices of the Supreme Court. Without them, the Constitution would be a dead letter: the executive appeals to them for assistance against the encroachments of the legislative power; the legislature demands their protection against the assaults of the executive; they defend the Union from the disobedience of the states, the states from the exaggerated claims of the Union; the public interest against private interests, and the conservative spirit of stability against the fickleness of the democracy.¹

The following feature discusses the process of choosing a U.S. Supreme Court justice.

Contemporary Environment**Process of Nominating and Confirming a U.S. Supreme Court Justice**

To strike a balance of power between the executive and legislative branches of government, Article II, Section 2, of the U.S. Constitution gives the president the power to appoint Supreme Court justices "with the advice and consent of the Senate." This means that the majority of senators must approve the president's nominee for that nominee to become a justice of the U.S. Supreme Court.

With the advice of senators and others, the president selects a candidate and nominates that person for the U.S. Supreme Court. The U.S. Senate Judiciary Committee holds a hearing on the nominee. The committee examines records concerning the nominee and holds a hearing where witnesses are heard from and the nominee is subjected to questioning by committee members. The committee votes and sends its recommendation to the full Senate, where the Senate conducts a debate on the merits of the nominee. When the debate ends, the Senate votes on the nomination. The nominee is confirmed if a majority of the senators present and voting vote for confirmation. If there is a tie vote, the vice president, who presides over the Senate, casts the deciding

vote. Many recent Senate hearings on nominees have been somewhat contentious.

President George W. Bush, a Republican, while in office from 2001 to 2009, placed two justices on the Supreme Court, Chief Justice John G. Roberts Jr. and Associate Justice Samuel A. Alito Jr. Both justices were confirmed by the U.S. Senate.

President Barack Obama, a Democrat, while in office from 2009 to 2017, placed two justices on the Supreme Court, Associate Justice Sonia Sotomayor and Associate Justice Elena Kagan. Justice Sotomayor is the first Hispanic person to be a justice of the Supreme Court.

President Donald Trump, a Republican, nominated Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett as associate justices of the Supreme Court. Each was confirmed by the U.S. Senate.

A president who is elected to one or two four-year terms in office may have the opportunity to nominate justices to the U.S. Supreme Court who, if confirmed, may serve many years after the president leaves office.

Jurisdiction of the U.S. Supreme Court

The Supreme Court, which is an appellate court, hears appeals from federal circuit courts of appeals and, under certain circumstances, from federal district courts, special federal courts, and the highest state courts. No new evidence or testimony is heard. As with other appellate courts, the lower court record is reviewed to