The Legal Environment Today

Building Skills You Will Need Tomorrow

Roger LeRoy Miller
Frank B. Cross

9th Edition

BUSINESS LAW TODAY SERIES

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Roger LeRoy Miller
Institute for University Studies
Arlington, Texas

Frank B. Cross
Herbert D. Kelleher
Centennial Professor in Business Law
University of Texas at Austin

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Roger LeRoy Miller
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Designer: Chris Doughman

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Preface

The study of the legal environment of business has universal applicability. A student entering any field of business must have at least a passing understanding of business law in order to function in the real world. *The Legal Environment Today,* Ninth Edition, provides such information in an interesting and contemporary way.

Additionally, students preparing for a career in accounting, government and political science, economics, and even medicine can use much of the information that they learn in a legal environment of business course. In fact, every individual throughout his or her lifetime can benefit from a knowledge of contracts, employment relationships, real property law, land-use control, and other legal topics. Consequently, we have adopted a new theme throughout this text—*Building Skills You Will Need Tomorrow*—and fashioned the Ninth Edition as a useful "tool for living" for all of your students (including those taking the CPA exam).

We have spent a great deal of effort making the Ninth Edition more contemporary, exciting, and visually appealing than ever before. We have also added many new features and special pedagogical devices that focus on building skills that your students will need, along with addressing basic legal, ethical, global, and corporate issues.

New and Updated Features

The Ninth Edition of *The Legal Environment Today* is filled with exciting new and updated features designed to spark student interest and help build skills for future careers.

1. **Entirely new *Business Blog*** features underscore the importance of the text material to real-world businesses. Each of these features discusses a major U.S. company that is engaged in a dispute involving a topic covered in the chapter. Some examples include:
   - *Samsung and Forced Arbitration* (Chapter 2)
   - *The Battle of the Smartphone Makers* (Chapter 8)
   - *Facebook and Google in a World of Antitrust Law* (Chapter 24)
2. **Entirely new *Building Analytical Skills*** features appear in numerous chapters of the text. These features are useful tools to help students build the legal analysis skills that they will need to answer questions and case problems in the book, on exams, and in business situations. Subjects include:
   - *Licensing Is a Defense to Copyright Infringement* (Chapter 8)
   - *Determining When a Breach Is Material* (Chapter 11)
   - *Retaliation Claims* (Chapter 16)
3. **Entirely new *hypotheticals* in many chapter introductions** provide a real-world link that generates student interest and highlights specific legal concepts that will be discussed in the chapter. These hypotheticals—often based on real cases or business situations—help to introduce and illustrate legal issues facing managers, companies, and even industries.
4. ***Digital Update*** features examine cutting-edge cyberlaw topics, such as:
   - *Does Everyone Have a Constitutional Right to Use Social Media?* (Chapter 4)
   - *Using Twitter to Cause Seizures—A Crime?* (Chapter 6)
   - *Does Cloud Computing Have a Nationality?* (Chapter 18)

5. ***Ethics Today*** features focus on the ethical aspects of a topic being discussed in order to emphasize that ethics is an integral part of the legal environment of business. Examples include:
   - *Is It Ethical (and Legal) to Brew "Imported" Beer Brands Domestically?* (Chapter 7)
   - *Is It Fair to Classify Uber and Lyft Drivers as Independent Contractors?* (Chapter 14)
   - *Programs That Predict Employee Misconduct* (Chapter 18)
6. ***Beyond Our Borders*** features illustrate how other nations deal with specific legal issues to give students a sense of the global legal environment. Topics include:
   - *Aleve versus Flanax—Same Pain Killer, Different Countries* (Chapter 8)
   - *Can a River Be a Legal Person?* (Chapter 22)
7. ***Landmark in the Legal Environment*** features discuss a landmark case, statute, or development that has significantly affected the legal environment of business. Examples include:
   - *Palsgraf v. Long Island Railroad Co.* (Chapter 5)
   - *Limited Liability Company (LLC) Statutes* (Chapter 17)
   - *Changes to Regulation A: Regulation A+* (Chapter 19)
8. ***Linking Business Law to [one of the six functional fields of business]*** features appear in select chapters to underscore how the law relates to other fields of business. For instance, Chapter 1 has a feature titled *Linking Business Law to Corporate Management: Dealing with Administrative Law.*

New Emphasis on Making Ethical Business Decisions—The IDDR Approach

The ability of businesspersons to reason through ethical issues is now more important than ever. For the Ninth Edition of *The Legal Environment Today*, we have created a completely new framework for helping students (and businesspersons) make ethical decisions**—the IDDR approach**, which is introduced in Chapter 3, Ethics in Business. This systematic approach provides students with a clear step-by-step process to analyze the legal and ethical implications of decisions that arise in everyday business operations. The IDDR approach uses four logical steps:

- **Step 1: Inquiry**
- **Step 2: Discussion**
- **Step 3: Decision**
- **Step 4: Review**

Students can easily remember the first letter of each step by using the phrase "I Desire to Do Right." A *completely revised Chapter 3* details the goals of each IDDR step and then provides a sample scenario to show students how to apply this new approach to ethical decision making. In addition to introducing the IDDR approach, we have made Chapter 3 more current and more practical. We also present fewer theoretical ethical principles and focus more on real-life application of ethical principles.

After Chapter 3, to reinforce the application of the IDDR approach, students are asked to use its steps when answering each chapter's *A Question of Ethics* problem. Each of these problems has been updated and is based on a 2017 case. In addition, the Ninth Edition includes *Ethics Today* features in most chapters, many of which have been refreshed with timely topics involving the ever-evolving technologies and trends in business.

New Emphasis on Skill Building

Today's leaders need to be able to recognize and analyze legal (and ethical) issues, resolve disputes, and deal with government regulations. For that reason, for the Ninth Edition we have adopted a new subtitle and theme: *Building Skills You Will Need Tomorrow.*

We incorporate this theme throughout the text using many of the newly added features. For instance, both the chapter-opening hypotheticals and the *Business Blog* features highlight current legal issues and strengthen students' ability to recognize such issues in the real world. The *Building Analytical Skills* features guide students through the steps of legal reasoning and analysis to a conclusion. The new IDDR approach to ethical reasoning also provides a step-by-step approach so that students can recognize and resolve ethical issues. At the conclusion of every chapter, we provide a *Chapter Skill-Building Exercise* that reinforces students' comprehension of the chapter topics, along with two *Issue Spotter* questions for practice in identifying the issues.

New Cases and Case Problems

The Ninth Edition of *The Legal Environment Today* has new cases and case problems from 2018 and 2017 in every chapter. The new cases have been carefully selected to illustrate important points of law and to be of high interest to students and instructors. We have made it a point to find recent cases that enhance learning and are straightforward enough for legal environment students to understand.

Certain cases and case problems have been carefully chosen as good teaching cases and are designated as *Spotlight Cases* and *Spotlight Case Problems*. Some examples include *Spotlight on Apple, Spotlight on Beer Labels, Spotlight on Nike*, and *Spotlight on the Seattle Mariners*. Instructors will find these *Spotlight* decisions useful to illustrate the legal concepts under discussion, and students will enjoy studying the cases because they involve interesting and memorable facts. Other cases have been chosen as *Classic Cases* because they established a legal precedent in a particular area of law.

Each case concludes with a section, called *Critical Thinking*, that includes at least one question. Each question is labeled *Ethical, Economic, Legal Environment, Political, Social,* or *What If the Facts Were Different?* In addition, *Classic Cases* include an *Impact of This Case on Today's Legal Environment* section that clarifies how the case has affected the legal environment. Suggested answers to all case-ending questions can be found in the *Solutions Manual* for this text.

Many New Highlighted and Numbered Case Examples

Many instructors use cases and examples to illustrate how the law applies to business. This edition of *The Legal Environment Today* offers hundreds of highlighted and consecutively numbered *Examples* and *Case Examples*. *Examples* illustrate how the law applies in a specific situation, and *Case Examples* present the facts and issues of an actual case and then describe the court's decision and rationale. New to this edition are *Spotlight Case Examples,* which deal with especially high-interest cases, and *Classic Case Examples,* which discuss older, landmark decisions. The numbered *Examples* and *Case Examples* features are integrated throughout the text to help students better understand how courts apply legal principles in the real world.

Critical Thinking and Legal Reasoning Elements

For this edition of *The Legal Environment Today,* we have included a discussion of legal reasoning in Chapter 1. The new *Building Analytical Skills* features that can be found throughout the text emphasize legal reasoning skills as well. Critical thinking questions conclude most of the features and cases in this text. Also, at the end of each chapter, a *Debate This* question requires students to think critically about the rationale underlying the law on a

particular topic. The chapter-ending materials also include a section entitled *Time-Limited Team Assignment* that requires students to think critically about, analyze, and answer questions about some aspect of the legal environment discussed in the chapter.

Answers to all critical thinking questions, as well as to the *Business Scenarios and Case Problems* at the end of every chapter, are presented in the Ninth Edition's *Solutions Manual*. In addition, the answer to every *Business Case Problem with Sample Answer* appears in *Appendix D*.

Other Pedagogical Devices within Each Chapter

- ***Learning Objectives*** (questions listed at the beginning of each chapter and repeated in the margins of the text provide a framework of main chapter concepts for the student).
- **Margin definitions** of each boldfaced ***Key Term***.
- **Quotations** and ***Know This*** (margin features).
- **Exhibits** (in most chapters).
- **Photographs** (with critical-thinking questions) **and cartoons**.

Chapter-Ending Pedagogy

- ***Chapter Skill-Building Exercise*** (in every chapter).
- ***Debate This*** (a statement or question at the end of *each Chapter Skill-Building Exercise*).
- ***Key Terms*** (with appropriate page references to their margin definitions).
- ***Chapter Summary*** (in table format).
- ***Issue Spotters*** (in every chapter with answers in *Appendix C*).
- ***Business Scenarios and Case Problems*** (including, in every chapter, a *Business Case Problem with Sample Answer* that is answered in *Appendix D*; in selected chapters, a *Spotlight Case Problem*; and in every chapter, *A Question of Ethics* problem—based on a 2017 case—that applies this Ninth Edition's ***IDDR approach*** to business ethics).
- ***Time-Limited Team Assignment*** (in every chapter).

Unit-Ending Pedagogy

Each of the four units in the Ninth Edition of *The Legal Environment Today* concludes with a *Task-Based Simulation*. This feature presents a hypothetical business situation and then asks a series of questions about how the law applies to various actions taken by the firm. To answer the questions, the student must apply the laws discussed throughout the unit. (Answers are provided in the *Solutions Manual*.)

Supplements

The Legal Environment Today, Ninth Edition, provides a comprehensive supplements package designed to make the tasks of teaching and learning more enjoyable and efficient. The following supplements are available for instructors.

MindTap Business Law for *The Legal Environment Today,* Ninth Edition

MindTap™ is a fully online, highly personalized learning experience built on authoritative Cengage Learning content. By combining readings, multimedia, activities, and assessments into a singular Learning Path, *MindTap Business Law* guides students through their course

with ease and engagement. Instructors personalize the Learning Path by customizing Cengage Learning resources and adding their own content via apps that integrate into the *MindTap* framework seamlessly with Learning Management Systems.

The *MindTap Business Law* product provides a four-step Learning Path, Case Repository, Adaptive Test Prep, and an Interactive eBook designed to meet instructors' needs while also allowing instructors to measure skills and outcomes with ease. Each and every item is assignable and gradable. This gives instructors knowledge of class standings and students' mastery of concepts that may be difficult. Additionally, students gain knowledge about where they stand—both individually and compared to the highest performers in class.

New for this edition, the *MindTap* will include both excerpted and summarized cases. Having both types of cases, along with our Case Collection feature, will allow instructors to provide a personalized learning experience that's the best fit for students, helping them reach higher levels of critical thinking.

Cengage Testing Powered by Cognero

Cengage Testing Powered by Cognero is a flexible online system that allows instructors to do the following:

- Author, edit, and manage *Test Bank* content from multiple Cengage Learning solutions.
- Create multiple test versions in an instant.
- Deliver tests from their Learning Management System (LMS), classroom, or wherever they want.

Start Right Away! *Cengage Testing Powered by Cognero* works on any operating system or browser.

- Use your standard browser; no special installs or downloads are needed.
- Create tests from school, home, the coffee shop—anywhere with Internet access.

What Instructors Will Find

- ***Simplicity at every step.*** A desktop-inspired interface features drop-down menus and familiar, intuitive tools that take instructors through content creation and management with ease.
- ***Full-featured test generator.*** Create ideal assessments with a choice of fifteen question types—including true/false, multiple choice, opinion scale/Likert, and essay. Multi-language support, an equation editor, and unlimited metadata help ensure that instructor tests are complete and compliant.
- ***Cross-compatible capability.*** Import and export content into other systems.

Instructor's Companion Website

The *Instructor's Companion Website* contains the following supplements:

- ***Instructor's Manual.*** Includes sections entitled *"Additional Cases Addressing This Issue"* at the end of selected case synopses.
- ***Solutions Manual.*** Provides answers to all questions presented in the text, including the *Learning Objectives*, the questions in each case and feature, the *Issue Spotters*, the *Business Scenarios and Case Problems, Time-Limited Team Assignments*, and the unit-ending *Task-Based Simulation* features.
- ***Test Bank.*** A comprehensive test bank contains multiple choice, true/false, and short essay questions.
- ***Case-Problem Cases.***
- ***Case Printouts.***
- ***PowerPoint Slides.***
- ***Lecture Outlines.***
- ***MindTap Integrated Syllabus.***
- ***MindTap Answer Key.***

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Wade M. Chumney
Georgia Tech

Corey Ciocchetti
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Brent D. Clark
Davenport University

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Teresa Gillespie
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Jeanne M. Gohl-Noice
Parkland College

Gary Greene
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Ruth Ann Hall
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Eloise Hassell
University of North Carolina, Greensboro

Penelope L. Herickhoff
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Arlene M. Hibschweiler
University at Buffalo

Whitney Johnson
Saint Cloud State University

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Santa Clara University

Susan Key
University of Alabama at Birmingham

Karrin Klotz
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Y. S. Lee
Oakland University

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Winona State University

William J. McDevitt
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Tom Moore
Georgia College and State University

Michael J. O'Hara
University of Nebraska at Omaha

Mark Phelps
University of Oregon

Lemoine D. Pierce
Georgia State University

G. Keith Roberts
University of Redlands

Jeanette Rogers
Jefferson State Community College

Gary Sambol
Rutgers, the State University of New Jersey, Camden Campus

Linda Samuels
George Mason University

Martha Wright Sartoris
North Hennepin Community College

Gwen Seaquist
Ithaca College

Craig Stilwell
Michigan State University

Joyce Stoneking
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Dawn R. Swink
University of St. Thomas

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Through the years, we have enjoyed an ongoing correspondence with many of you who have found points on which you wish to comment. We continue to welcome all comments and promise to respond promptly. By incorporating your ideas, we can continue to write a legal environment text that is best for you and best for your students.

R.L.M.
F.B.C.

Dedication

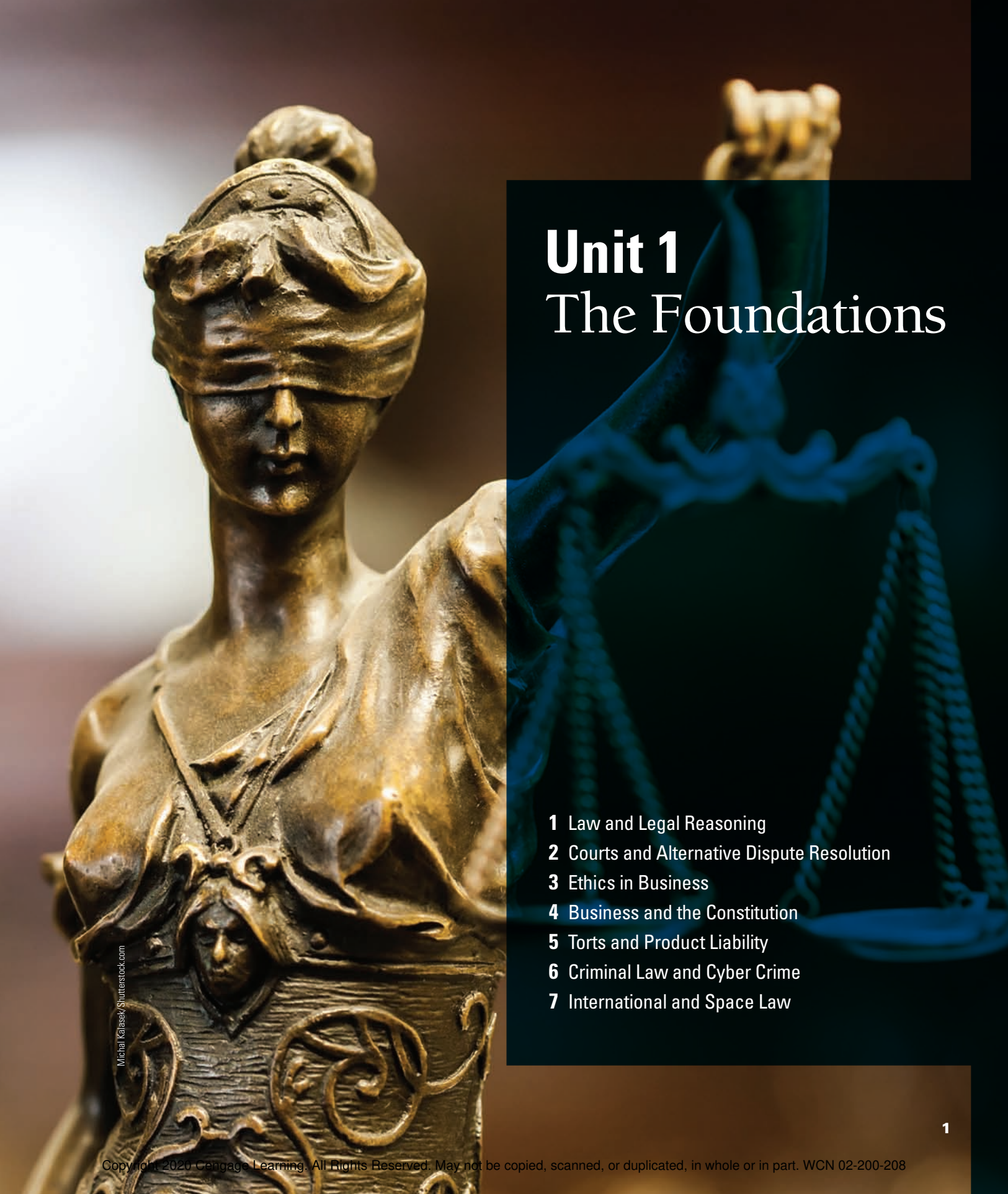
To Sabine,

Thanks for sharing
your fabulous illustrations.
Keep going forever.

R.L.M.

To my parents and sisters.

F.B.C.



Unit 1
The Foundations

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1 Law and Legal Reasoning

Learning Objectives

The five Learning Objectives *below are designed to help improve your understanding. After reading this chapter, you should be able to answer the following questions:*

1. What are four primary sources of law in the United States?
2. What is the common law?
3. What is the difference between remedies at law and remedies in equity?
4. When might a court depart from precedent?
5. What are some important differences between civil law and criminal law?

Law Enforceable rules governing relationships among individuals and between individuals and their society.

"Laws should be like clothes. They should be made to fit the people they are meant to serve."

Clarence Darrow
1857–1938
(American lawyer)

In the chapter-opening quotation, Clarence Darrow asserts that law should be created to serve the public. As you are part of that public, the law is important to you. Those entering the world of business will find themselves subject to numerous laws and government regulations. A basic knowledge of these laws and regulations is beneficial—if not essential—to anyone contemplating a successful career in today's business environment.

Although the law has various definitions, they all are based on the general observation that **law** consists of *enforceable rules governing relationships among individuals and between individuals and their society*. In some societies, these enforceable rules consist of unwritten principles of behavior, while in other societies they are set forth in ancient or contemporary law codes. In the United States, our rules consist of written laws and court decisions created by modern legislative and judicial bodies. Regardless of how such rules are created, they all have one feature in common: *they establish rights, duties, and privileges that are consistent with the values and beliefs of a society or its ruling group.*

In this introductory chapter, we look at how business law and the legal environment affect business decisions. For instance, suppose that Hellix Telecommunications, Inc., wants to buy a competing cellular company. Once it has acquired this competitor, it wants to offer unlimited data plans. Management fears that if it does not expand, one of its bigger rivals will put it out of business. But Hellix cannot simply buy its rival in whatever manner it chooses. Nor is it free to offer just any low-cost cell phone plan to its customers. It has to follow the laws and regulations pertaining to its proposed actions. Some of these rules depend on interpretations made by various federal regulatory agencies. The rules that

control Hellix's actions reflect past and current thinking about how large telecommunications companies should and should not act.

Our goal in this text is not only to teach you specific laws but also to teach you how to think about the legal environment and to develop your critical thinking and legal reasoning skills. The laws may change, but the ability to analyze and evaluate the legal (and ethical) ramifications of situations as they arise is an invaluable and lasting skill.

1–1 Business Activities and the Legal Environment

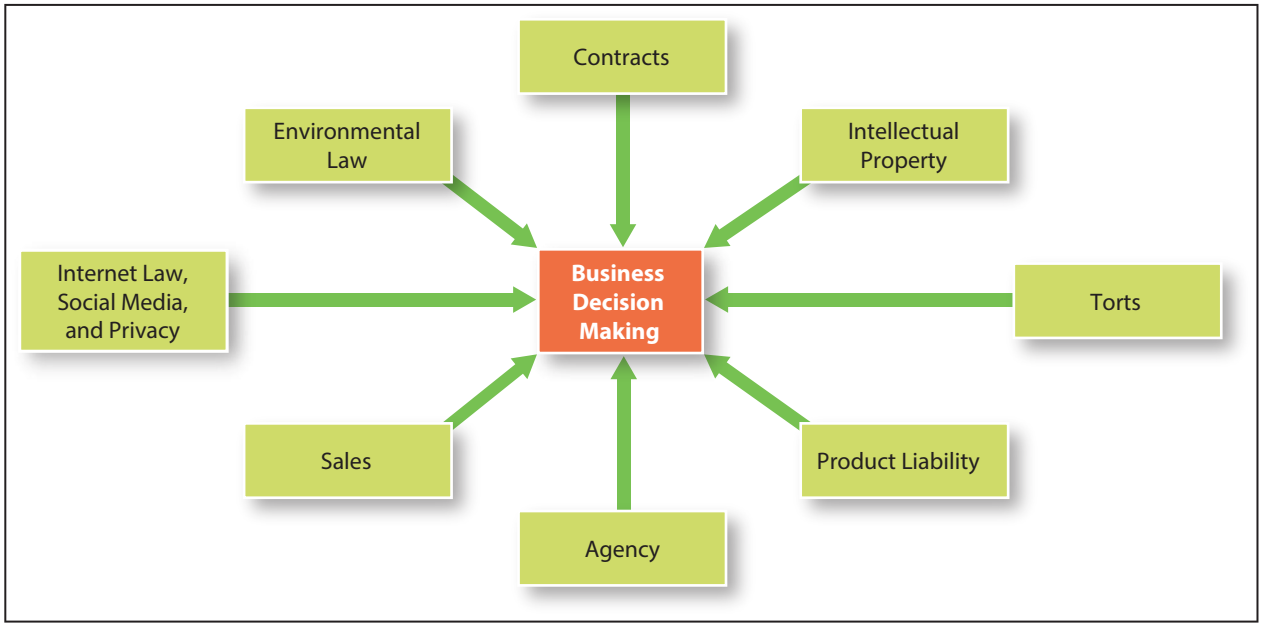
Laws and government regulations affect all business activities—from hiring and firing decisions to workplace safety, the manufacturing and marketing of products, business financing, and more. To make good business decisions, businesspersons need to understand the laws and regulations governing these activities. And simply being aware of what conduct can lead to legal **liability** is not enough. Businesspersons must develop critical thinking and legal reasoning skills so that they can evaluate how various laws might apply to a given situation and determine the potential result of their course of action. Businesspersons must also think critically about whether their decisions are ethical. In addition, they must consider the consequences of their decisions for stockholders and employees.

Liability The state of being legally responsible (liable) for something, such as a debt or obligation.

1–1a Many Different Laws May Affect a Single Business Transaction

As you will note, each chapter in this text covers a specific area of the law and shows how the legal rules in that area affect business activities. Although compartmentalizing the law in this fashion facilitates learning, it does not indicate the extent to which many different laws may apply to just one transaction. This is where the critical thinking skills that you will learn throughout this book become important. Exhibit 1–1 illustrates various areas of law that may influence business decision making.

Exhibit 1–1 Areas of the Law That May Affect Business Decision Making



Example 1.1 When Mark Zuckerberg, a Harvard student, first launched Facebook, others claimed that Zuckerberg had stolen their ideas for a social networking site. They filed a lawsuit against him alleging theft of intellectual property, fraudulent misrepresentation, and violations of partnership law and securities law. Facebook ultimately paid $65 million to settle those claims out of court.

Since then, Facebook has been sued repeatedly for violating users' privacy (and federal laws) by tracking their website usage and by scanning private messages for purposes of data mining and user profiling. Facebook's business decisions have also come under scrutiny by federal regulators, such as the Federal Trade Commission (FTC), and by international authorities, such as the European Union. The company settled a complaint filed by the FTC alleging that Facebook had failed to keep "friends" lists and other user information private.

1–1b Linking Business Law to the Six Functional Fields of Business

In all likelihood, you are taking a business law or legal environment course because you intend to enter the business world, though some of you may plan to become full-time practicing attorneys. Many of you are taking other business school courses and may therefore be familiar with the following functional fields of business:

1. Corporate management.
2. Production and transportation.
3. Marketing.
4. Research and development.
5. Accounting and finance.
6. Human resource management.

One of our goals in this text is to show how legal concepts can be useful for managers and businesspersons, whether their activities focus on management, marketing, accounting, or some other field. To that end, certain chapters include a special feature called "*Linking Business Law to* [one of the six functional fields of business]."

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Why is basic knowledge of business law and the legal environment so important today?

1–2 Sources of American Law

Primary Source of Law A document that establishes the law on a particular issue, such as a constitution, a statute, an administrative rule, or a court decision.

Learning Objective 1

What are four primary sources of law in the United States?

American law has numerous sources. **Primary sources of law,** or sources that establish the law, include the following:

- The U.S. Constitution and the constitutions of the various states.
- Statutes, or laws, passed by Congress and by state legislatures.
- Regulations created by administrative agencies, such as the federal Food and Drug Administration.
- Case law (court decisions).

We describe each of these important primary sources of law in the following pages and discuss how to find statutes, regulations, and case law in the appendix at the end of this chapter.

Secondary Source of Law A publication that summarizes or interprets the law, such as a legal encyclopedia, a legal treatise, or an article in a law review.

Secondary sources of law are books and articles that summarize and clarify the primary sources of law. Legal encyclopedias, compilations (such as *Restatements of the Law*, which summarize court decisions on particular topics), official comments to statutes, treatises, articles in law reviews published by law schools, and articles in other legal

journals are examples of secondary sources of law. Courts often refer to secondary sources of law for guidance in interpreting and applying the primary sources of law discussed here.

1–2a Constitutional Law

The federal government and the states have separate written constitutions that set forth the general organization, powers, and limits of their respective governments. **Constitutional law** is the law as expressed in these constitutions.

Constitutional Law The body of law derived from the U.S. Constitution and the constitutions of the various states.

The U.S. Constitution is the supreme law of the land. As such, it is the basis of all law in the United States. A law in violation of the U.S. Constitution, if challenged, will be declared unconstitutional and will not be enforced, no matter what its source.

The Tenth Amendment to the U.S. Constitution reserves to the states all powers not granted to the federal government. Each state in the union has its own constitution. Unless it conflicts with the U.S. Constitution or a federal law, a state constitution is supreme within that state's borders.

1–2b Statutory Law

Laws enacted by legislative bodies at any level of government, such as the statutes passed by Congress or by state legislatures, make up the body of law generally referred to as **statutory law.** When a legislature passes a statute, that statute ultimately is included in the federal code of laws or the relevant state code of laws. Whenever a particular statute is mentioned in this text, we usually provide a footnote showing its **citation** (a reference to a publication in which a legal authority—such as a statute or a court decision—or other source can be found). In the appendix following this chapter, we explain how you can use these citations to find statutory law.

Statutory Law The body of law enacted by legislative bodies (as opposed to constitutional law, administrative law, or case law).

Citation A reference to a publication in which a legal authority—such as a statute or a court decision—or other source can be found.

Statutory law also includes local **ordinances**—statutes (laws, rules, or orders) passed by municipal or county governing units to administer matters not covered by federal or state law. Ordinances commonly have to do with city or county land use (zoning ordinances), building and safety codes, and other matters affecting only the local governing unit.

Ordinance A regulation enacted by a city or county legislative body that becomes part of that state's statutory law.

A federal statute, of course, applies to all states. A state statute, in contrast, applies only within the state's borders. State laws thus vary from state to state. No federal statute may violate the U.S. Constitution, and no state statute or local ordinance may violate the U.S. Constitution or the relevant state constitution.

Example 1.2 The tension between federal, state, and local laws is evident in the national debate over so-called "sanctuary cities"—cities that limit their cooperation with federal immigration authorities. Normally, local law enforcement officials are supposed to alert federal immigration authorities when they come into contact with undocumented immigrants. Then federal immigration officials request that the local authorities detain the individuals for possible deportation.

A number of U.S. cities, however, have adopted either local ordinances or explicit policies that do not follow this procedure. Police in sanctuary cities often do not ask or report the immigration status of individuals with whom they come into contact. ■

Michael Dwyer / Alamy

How have local "sanctuary cities" frustrated federal immigration procedures?

Uniform Law A model law developed by the National Conference of Commissioners on Uniform State Laws for the states to consider enacting into statute.

Uniform Laws During the 1800s, the differences among state laws frequently created difficulties for businesspersons conducting trade and commerce among the states. To counter these problems, a group of legal scholars and lawyers formed the National Conference of Commissioners on Uniform State Laws (NCCUSL, online at www.uniformlaws.org) in 1892 to draft **uniform laws** ("model statutes") for the states to consider adopting. The NCCUSL still exists today and continues to issue uniform laws: it has issued more than two hundred uniform acts since its inception.

Each state has the option of adopting or rejecting a uniform law. *Only if a state legislature adopts a uniform law does that law become part of the statutory law of that state*. Furthermore, a state legislature may choose to adopt only part of a uniform law or to rewrite the sections that are adopted. Hence, even when many states have adopted a uniform law, those laws may not be entirely "uniform."

The Uniform Commercial Code (UCC) One of the most important uniform acts is the Uniform Commercial Code (UCC), which was created through the joint efforts of the NCCUSL and the American Law Institute.[1] The UCC was first issued in 1952 and has been adopted in all fifty states,[2] the District of Columbia, and the Virgin Islands. The UCC facilitates commerce among the states by providing a uniform, yet flexible, set of rules governing commercial transactions. Because of its importance in the area of commercial law, we cite the UCC frequently in this text.

1–2c Administrative Law

Administrative Law The body of law created by administrative agencies in order to carry out their duties and responsibilities.

Administrative Agency A federal or state government agency created by the legislature to perform a specific function, such as to make and enforce rules pertaining to the environment.

Executive Agency An administrative agency within the executive branch of government. At the federal level, executive agencies are those within the cabinet departments.

Independent Regulatory Agency An administrative agency that is not considered part of the executive branch and is not subject to the authority of the president. Independent agency officials cannot be removed without cause.

Another important source of American law is **administrative law,** which consists of the rules, orders, and decisions of administrative agencies. An **administrative agency** is a federal, state, or local government agency established to perform a specific function. Regulations govern a business's capital structure and financing, its hiring and firing procedures, its relations with employees and unions, and the way it manufactures and markets its products. Regulations enacted to protect the environment also often play a significant role in business operations.

Federal Agencies At the national level, the cabinet departments of the executive branch include numerous **executive agencies.** The U.S. Food and Drug Administration, for instance, is an agency within the U.S. Department of Health and Human Services. Executive agencies are subject to the authority of the president, who has the power to appoint and remove their officers.

The president's power is less pronounced in regard to **independent regulatory agencies,** whose officers serve for fixed terms and cannot be removed without just cause. Major independent regulatory agencies at the federal level include the Federal Trade Commission, the Securities and Exchange Commission, and the Federal Communications Commission.

State and Local Agencies There are administrative agencies at the state and local levels as well. Commonly, a state agency (such as a state pollution-control agency) is created as a parallel to a federal agency (such as the Environmental Protection Agency). Just as federal statutes take precedence over conflicting state statutes, federal agency regulations take precedence over conflicting state regulations. (See the *Linking Business Law to Corporate Management* feature for a discussion of the levels of regulation.)

1. This institute was formed in the 1920s and consists of practicing attorneys, legal scholars, and judges.
2. Louisiana has adopted only Articles 1, 3, 4, 5, 7, 8, and 9.

Linking Business Law to Corporate Management

Dealing with Administrative Law

Whether you work for a large corporation or own a small business, you will be dealing with multiple aspects of administrative law. All federal, state, and local government administrative agencies create rules that have the force of law. In fact, as a manager, you probably will need to pay more attention to administrative rules and regulations than to laws passed by local, state, and federal legislatures.

The three levels of government create three levels of rules and regulations though their respective administrative agencies. As a manager, you will have to learn about agency regulations that pertain to your business activities. It will be up to you, as a corporate manager or a small-business owner, to discern which of these regulations are most important and whether violating them could create significant liability.

Critical Thinking

Why are owner/operators of small businesses at a disadvantage relative to large corporations when they attempt to decipher complex regulations that apply to their businesses?

1–2d Case Law and Common Law Doctrines

The rules of law announced in court decisions constitute another basic source of American law. These rules include interpretations of constitutional provisions, of statutes enacted by legislatures, and of regulations created by administrative agencies. Today, this body of judge-made law is referred to as **case law.** Case law—the doctrines and principles announced in cases—governs all areas not covered by statutory law or administrative law and is part of our common law tradition. We look at the origins and characteristics of the common law in some detail in the pages that follow.

Case Law The rules of law announced in court decisions. Case law interprets statutes, regulations, constitutional provisions, and other case law.

1–3 The Common Law

Learning Objective 2
What is the common law?

Because of our colonial heritage, much of American law is based on the English legal system. A knowledge of this tradition is crucial to understanding our legal system today because judges in the United States still apply common law principles when deciding cases.

1–3a Early English Courts

In early England, disputes were settled according to local legal customs and regional traditions. As a result, similar disputes were decided differently in different regions. After the Normans conquered England in 1066, William the Conqueror and his successors began the process of unifying the country under their rule. One of the means they used to do this was the establishment of the king's courts, or *curiae regis*. The king's courts sought to establish a uniform set of rules for the country as a whole. The courts decided disputes by looking at the rules and principles underlying judges' decisions in earlier cases. They attempted to resolve similar controversies in a consistent way. Each judgment became part of the law on the subject and served as a guide for future decisions—a legal **precedent.**

Precedent A court decision that serves as a guide for deciding subsequent cases involving identical or similar legal principles or facts.

Over several centuries, these decisions developed into a body of **common law**—that is, law developed from judicial decisions. The English eventually brought this method of deciding disputes to the British colonies and set up legal systems based on it. When the United States was formed, it incorporated the common law system.

Common Law The body of law developed from judicial decisions in English and U.S. courts, not attributable to a legislature.

Remedy The relief given to an innocent party to enforce a right or compensate for the violation of a right.

Court of Law Historically, a court in which the only remedies that could be granted were things of value, such as money damages.

Remedy at Law A remedy available in a court of law. Money damages are awarded as a remedy at law.

Damages A sum of money claimed or awarded in compensation for a loss or injury.

Courts of Law and Remedies at Law The early king's courts could grant only very limited kinds of **remedies** (the legal means to enforce a right or redress a wrong). If one person wronged another in some way, the king's courts could award as compensation one or more of the following: (1) land, (2) items of value, or (3) money.

The courts that awarded this compensation became known as **courts of law,** and the three remedies were called **remedies at law.** (Today, the remedy at law normally takes the form of monetary **damages**—an amount given to a party whose legal interests have been injured.) This system made the procedure for settling disputes more uniform. When a complaining party wanted a remedy other than economic compensation, however, the courts of law could do nothing, so "no remedy, no right."

Courts of Equity When individuals could not obtain an adequate remedy in a court of law, they petitioned the king for relief. Most of these petitions were decided by an adviser to the king, called a *chancellor*, who had the power to grant new and unique remedies. Eventually, formal chancery courts, or **courts of equity,** were established. *Equity* is a branch of law—founded on notions of justice and fair dealing—that seeks to supply a remedy when no adequate remedy at law is available.

Learning Objective 3

What is the difference between remedies at law and remedies in equity?

Court of Equity A court that decides controversies and administers justice according to equitable rules, principles, and precedents.

Remedy in Equity A remedy allowed by courts in situations where remedies at law are not appropriate. Equitable remedies include injunction, specific performance, and rescission.

Breach The failure to perform a legal obligation.

Equitable Maxims General propositions of law that have to do with fairness (equity).

Remedies in Equity The remedies granted by the equity courts became known as **remedies in equity,** or equitable remedies. These remedies include specific performance, injunction, and rescission. *Specific performance* involves ordering a party to perform an agreement as promised. An *injunction* is an order to a party to cease engaging in a specific activity or to undo some wrong or injury. *Rescission* is the cancellation of a contractual obligation.

As a general rule, today's courts, like the early English courts, will not grant equitable remedies unless the remedy at law—monetary damages—is inadequate. **Example 1.3** Ted forms a contract (a legally binding agreement) to purchase a parcel of land that he thinks will be perfect for his future home. The seller **breaches** (fails to fulfill) this agreement. Ted could sue the seller for the return of any deposits or down payment he might have made on the land, but this is not the remedy he really wants. What Ted wants is to have a court order the seller to perform the contract. In other words, Ted will seek the equitable remedy of specific performance because monetary damages are inadequate in this situation. ■

Equitable Maxims In fashioning appropriate remedies, judges often were (and continue to be) guided by so-called **equitable maxims**—propositions or general statements of equitable rules. Because of their importance, both historically and in our judicial system today, we present these maxims in this chapter's *Landmark in the Legal Environment* feature.

1–3b Legal and Equitable Remedies Today

The establishment of courts of equity in medieval England resulted in two distinct court systems: courts of law and courts of equity. The courts had different sets of judges and granted different types of remedies. During the nineteenth century, however, most states in the United States adopted rules of procedure that resulted in the combining of courts of law and equity. A party now may request both legal and equitable remedies in the same action, and the trial court judge may grant either or both forms of relief.

The distinction between legal and equitable remedies remains relevant to students of business law and the legal environment, however, because these remedies differ. To seek the proper remedy for a wrong, you must know what remedies are available. Additionally, certain vestiges of the procedures used when there were separate courts of law and equity

Equitable Maxims

In medieval England, courts of equity were expected to use discretion in supplementing the common law. Even today, when the same court can award both legal and equitable remedies, it must exercise discretion. Students of business law should know that courts often invoke equitable principles and maxims when making their decisions.

Here are some of the most significant equitable maxims:

1. *Whoever seeks equity must do equity.* (Anyone who wishes to be treated fairly must treat others fairly.)
2. *Where there is equal equity, the law must prevail.* (The law will determine the outcome of a controversy in which the merits of both sides are equal.)
3. *One seeking the aid of an equity court must come to the court with clean hands.* (Plaintiffs must have acted fairly and honestly.)
4. *Equity will not suffer a wrong to be without a remedy.* (Equitable relief will be awarded when there is a right to relief and there is no adequate remedy at law.)
5. *Equity regards substance rather than form.* (Equity is more concerned with fairness and justice than with legal technicalities.)
6. *Equity aids the vigilant, not those who rest on their rights.* (Equity will not help those who neglect their rights for an unreasonable period of time.)

The last maxim has come to be known as the *equitable doctrine of laches*. The doctrine arose to encourage people to bring lawsuits while the evidence was fresh. If they failed to do so, they would not be allowed to sue. What constitutes a reasonable time, of course, varies according to the circumstances of the case.

Time periods for different types of cases are now usually fixed by *statutes of limitations*—that is, statutes that set the maximum time period during which a certain action can be brought. After the time allowed under a statute of limitations has expired, no action can be brought, no matter how strong the case was originally.

Application to Today's Legal Environment *The equitable maxims listed underlie many of the legal rules and principles that are commonly applied by the courts today—and that you will read about in this book.*

For instance, you will read in a later chapter about the doctrine of substantial performance. Under this doctrine of contract law, a party who in good faith substantially performs as required under a contract may be entitled to compensation even if the performance was defective in some way. A key requirement is good faith, meaning that the defect in the party's performance was unintentional or accidental. The requirement of good faith reflects the first and third maxims on the list, that whoever seeks to recover and be treated fairly by a court must have acted fairly and honestly in the situation.

still exist. For instance, a party has the right to demand a jury trial in an action at law but not in an action in equity. Exhibit 1–2 summarizes the procedural differences (applicable in most states) between an action at law and an action in equity.

Exhibit 1–2 Procedural Differences between an Action at Law and an Action in Equity

Procedure	Action at Law	Action in Equity
Initiation of lawsuit	By filing a complaint.	By filing a petition.
Decision	By jury or judge.	By judge (no jury).
Result	Judgment.	Decree.
Remedy	Monetary damages.	Injunction, specific performance, or rescission.

1–3c *Stare Decisis*

Stare Decisis A common law doctrine under which judges are obligated to follow the precedents established in prior decisions.

We noted earlier that the king's courts sought to bring consistency to the court system by basing their decisions on earlier decisions, or precedents. The practice of deciding new cases with reference to precedents eventually became a cornerstone of the English and U.S. judicial systems. The practice forms a doctrine called ***stare decisis***[3] ("to stand on decided cases").

Under the doctrine of *stare decisis*, judges are obligated to follow the precedents established within their jurisdictions. (The term *jurisdiction* refers to the power of the court to decide a particular type of case in a specific geographic area.) Once a court has set forth a principle of law as being applicable to a certain set of facts, that court must apply the principle in future cases involving similar facts. Courts of lower rank within the same jurisdiction must do likewise. Thus, *stare decisis* has two aspects:

1. A court should not overturn its own precedents unless there is a strong reason to do so.
2. Decisions made by a higher court are binding on lower courts.

Binding Authority Any source of law that a court *must* follow when deciding a case.

Controlling Precedents Controlling precedents in a jurisdiction are referred to as binding authorities. A **binding authority** is any source of law that a court *must* follow when deciding a case. Binding authorities include constitutions, statutes, and regulations that govern the issue being decided, as well as court decisions that are controlling precedents within the jurisdiction. United States Supreme Court case decisions, no matter how old, remain controlling until they are overruled by a subsequent decision of the Supreme Court, by a constitutional amendment, or by congressional legislation.

Learning Objective 4
When might a court depart from precedent?

***Stare Decisis* and Legal Stability** The doctrine of *stare decisis* helps the courts to be more efficient because if other courts have carefully reasoned through a similar case, their legal reasoning and opinions can serve as guides. *Stare decisis* also makes the law more stable and predictable. If the law on a given subject is well settled, someone bringing a case to court can usually rely on the court to make a decision based on what the law has been. See this chapter's *Ethics Today* feature for a discussion of how courts often defer to case precedent even when they disagree with the reasoning in the case.

Although courts are obligated to follow precedents, a court may sometimes decide that a precedent is incorrect or that a change in society or technology has rendered it inapplicable. In that situation, the court may rule contrary to the precedent. Cases that overturn precedent often receive a great deal of publicity.

Library of Congress, Prints & Photographs Division [LC-DIG-ppmsca-03119]

School integration occurred in 1954 after the Supreme Court decision in *Brown v. Board of Education of Topeka.*

Classic Case Example 1.4 The United States Supreme Court expressly overturned precedent in the landmark case *Brown v. Board of Education of Topeka.*[4] The Court concluded that separate educational facilities for whites and blacks, which had previously been upheld as constitutional,[5] were inherently unequal. The Court's departure from precedent in the *Brown* decision received a tremendous amount of publicity as people began to realize the ramifications of this change in the law.

Note that a lower court will sometimes avoid applying a precedent set by a higher court in its jurisdiction by distinguishing the two cases based on their facts. When this happens, the lower court's ruling will stand unless it is appealed to a higher court and that court overturns it.

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3. Pronounced *stahr-ee* dih-*si*-sis.
4. 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).
5. See *Plessy v. Ferguson*, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896).

Stare Decisis versus Spider-Man

Ethics Today

Supreme Court Justice Elena Kagan, in a case involving Marvel Comics' Spider-Man, noted that, "What we can decide, we can undecide. But *stare decisis* teaches that we should exercise that authority sparingly." Using words from a Spider-Man comic book, she went on to say that "in this world, with great power there must also come—great responsibility."[a] In its decision in the case—*Kimble v. Marvel Entertainment, LLC*—the Supreme Court applied *stare decisis* and ruled against Stephen Kimble, the creator of a toy related to the Spider-Man figure.[b]

Can a Patent Involving Spider-Man Last Super Long?

A patent is an exclusive right granted to the creator of an invention. Under U.S. law, patent owners generally possess that right for twenty years, and can license others to use their patents during that period. In other words, they can allow others (called *licensees*) to use their invention in return for a fee (called *royalties*). But the Supreme Court ruled more than fifty years ago that a licensee (a party entitled to use a patent) cannot be forced to pay royalties to a patent holder after the patent has expired.[c]

In the *Kimble* case, Kimble owned the patent on a toy Spider-Man glove equipped with a valve and a canister of pressurized foam that shot fake webs. In 1990, Kimble had tried to cut a deal with Marvel Entertainment concerning his toy, but he was unsuccessful. Then Marvel started selling its own version of the toy. Kimble sued Marvel for patent infringement, and won. As a result, Kimble and Marvel entered into a licensing contract with a lump-sum payment plus a royalty to Kimble of 3 percent of all sales of the toy. The agreement did not specify an end date for royalty payments to Kimble. When the patent expired, Marvel sued to have the payments stop, consistent with the Court's earlier decision.

A majority of the Supreme Court justices agreed with Marvel. As Justice Kagan said in the opinion, "Patents endow their holders with certain super powers, but only for a limited time." The Court recognized that the fifty-year-old decision was perhaps based on what today is an outmoded understanding of economics. Some even claim that the decision may hinder competition and innovation. But "respecting *stare decisis* means sticking to some wrong decisions."

The Ethical Side

Supreme Court Justice Samuel A. Alito, Jr., wrote a dissenting opinion questioning the adherence to this precedent. In it, he stated, "The decision interferes with the ability of parties to negotiate licensing agreements that reflect the true value of a patent, and it disrupts contractual expectations. *Stare decisis* does not require us to retain this baseless and damaging precedent. . . . *Stare decisis* is important to the rule of law, but so are correct judicial decisions."

In other words, *stare decisis* means that courts should adhere to precedent in order to promote predictability and consistency. But in the business world, shouldn't the parties to a contract be the ones to decide on the contract's terms? Suppose, for instance, that a patent licensee is cash-strapped in its initial use of the patent and needs to reduce yearly costs. Why can't the licensing agreement allow the licensee to make smaller royalty payments over a longer time period—even if that period exceeds the life of the patent?

Critical Thinking

When is the Supreme Court justified in not *following the doctrine of* stare decisis*?*

a. "Spider-Man," *Amazing Fantasy*, No. 15 (1962), p. 13.
b. 135 S.Ct. 2401, 192 L.Ed.2d 463 (2015). Also see *Howard v. Ford Motor Co.*, 2016 WL 4077260 (S.D.Miss. 2016).
c. *Brulotte v. Thys Co.*, 379 U.S. 29, 85 S.Ct. 176 (1964).

When There Is No Precedent Occasionally, courts must decide cases for which no precedents exist, called *cases of first impression*. For instance, as you will read throughout this text, new technologies present many novel and challenging issues for the courts to decide.

Example 1.5 Google Glass is a Bluetooth-enabled, hands-free, wearable computer. A person using Google Glass can take photos and videos, surf the Internet, and do other things by

using voice commands. Many people have expressed concerns about this wearable technology because it makes it much easier to secretly film or photograph others. Numerous bars and restaurants have banned the use of Google Glass to protect their patrons' privacy. Driver safety has been another concern. A California woman was ticketed for wearing Google Glass while driving. But the court dismissed this case of first impression because it was not clear whether the device had been in operation at the time of the offense.

Persuasive Authority Any legal authority or source of law that a court may look to for guidance but need not follow when making its decision.

When deciding cases of first impression, courts often look at **persuasive authorities**—legal authorities that a court may consult for guidance but that are not binding on the court. A court may consider precedents from other jurisdictions, for instance, although those precedents are not binding. A court may also consider legal principles and policies underlying previous court decisions or existing statutes. Additionally, a court might look at issues of fairness, social values and customs, and public policy (governmental policy based on widely held societal values). Today, federal courts can also look at unpublished opinions (those not intended for publication in a printed legal reporter) as sources of persuasive authority.

1–3d *Stare Decisis* and Legal Reasoning

Legal Reasoning The process by which a judge harmonizes his or her opinion with the judicial decisions in previous cases.

In deciding what law applies to a given dispute and then applying that law to the facts or circumstances of the case, judges rely on the process of **legal reasoning.** Through the use of legal reasoning, judges harmonize their decisions with those that have been made before, as the doctrine of *stare decisis* requires.

Students of business law and the legal environment also engage in critical thinking and legal reasoning. For instance, you may be asked to provide answers for some of the case problems that appear at the end of every chapter in this text. Each problem describes the facts of a particular dispute and the legal question at issue. If you are assigned a case problem, you will be asked to determine how a court would answer that question, and why. In other words, you will need to give legal reasons for whatever conclusion you reach. We look here at the basic steps involved in legal reasoning.

Basic Steps in Legal Reasoning At times, the legal arguments set forth in court opinions are relatively simple and brief. At other times, the arguments are complex and lengthy. Regardless of the length of a legal argument, however, the basic steps of the legal reasoning process remain the same. These steps—which you can also follow when analyzing cases and case problems—form what is commonly referred to as the IRAC method of legal reasoning. IRAC is an acronym formed from the first letters of the words *Issue, Rule, Application*, and *Conclusion*. To apply the IRAC method, you ask the following four questions:

1. **Issue—*What are the key facts and issues?*** This may sound obvious, but before you can analyze or apply the relevant law to a specific set of facts, you must clearly understand those facts. In other words, you should read through the case problem carefully—more than once, if necessary. Make sure that you understand the identity of the **plaintiff** (the one who initiates the lawsuit) and **defendant** (the one being sued) in the case and the progression of events that led to the lawsuit.

   Plaintiff One who initiates a lawsuit.

   Defendant One against whom a lawsuit is brought, or the accused person in a criminal proceeding.

   Suppose that Anna Tovar comes before the court claiming *assault* (words or acts that wrongfully and intentionally make another person apprehensive of harmful or offensive contact). Tovar claims that Bryce Maddis threatened her while she was sleeping. Although Tovar was unaware that she was being threatened, her roommate, Jan Simon, heard Maddis make the threat. In this scenario, the identity of the parties is obvious. Tovar is the plaintiff, and Maddis is the defendant.

   The legal issue in this case is whether the defendant's threat constitutes the tort of assault even though the plaintiff was unaware of that threat at the time it occurred. (A tort is a wrongful act brought under civil rather than criminal law.)

2. **Rule**—***What rule of law applies to the case?*** A rule of law may be a state or federal statute, a state or federal administrative agency regulation, or a rule stated by the courts in previous decisions. Often, more than one rule of law will be applicable to a case.

   In our hypothetical case, Tovar **alleges** (claims) that Maddis committed a tort. Therefore, the applicable law is the common law of torts—specifically, tort law governing assault. Case precedents involving similar facts and issues thus would be relevant.

Allege To state, recite, assert, or charge.

3. **Application**—***How does the rule of law apply to the particular facts and circumstances of this case?*** This step is often the most difficult because each case presents a unique set of facts, circumstances, and parties. Although cases may be similar, no two cases are ever identical in all respects.

   Normally, judges (and lawyers and law students) try to find **cases on point**—previously decided cases that are as similar as possible to the one under consideration. In this situation, there might be case precedents showing that if a victim is unaware of the threat of harmful or offensive contact, then no assault occurred. These would be cases on point that tend to prove that the defendant did not commit assault and should win the case.

Case on Point A previous case involving factual circumstances and issues that are similar to those in the case before the court.

   There might, however, also be cases showing that a sexual assault, at least, can occur even if the victim is asleep. These could be cases on point in the plaintiff's favor. You will need to carefully analyze whether there are any missing facts in Tovar's claim. For instance, you might want to know what specific threat Maddis made (and Tovar's roommate overheard). Did he threaten to rape, kill, or beat her? Did he know that she was asleep when he made the threat? Did he know that her roommate heard the threat and would relay it to her when she awoke? Sometimes, you will want to obtain additional facts such as these before analyzing which case precedents should apply.

4. **Conclusion**—***What conclusion should be drawn?*** This step normally presents few problems. Usually, the conclusion is evident if the previous three steps have been followed carefully. In our sample problem, for instance, your analysis may lead you to conclude that Maddis did not commit a tort because Tovar could not prove all of the required elements of assault.

Jurisprudence The science or philosophy of law.

Natural Law The oldest school of legal thought, based on the belief that the legal system should reflect universal ("higher") moral and ethical principles that are inherent in human nature.

There Is No One "Right" Answer Many people believe that there is one "right" answer to every legal question. In many legal controversies, however, there is no single correct result. Good arguments can usually be made to support either side of a legal controversy. Quite often, a case does not involve a "good" person suing a "bad" person. In many cases, both parties have acted in good faith in some measure or in bad faith to some degree. Additionally, each judge has her or his own personal beliefs and philosophy. At least to some extent, these personal factors shape the legal reasoning process.

1–3e Schools of Legal Thought

How judges apply the law to specific cases, including disputes relating to the business world, depends in part on their philosophical approaches to law. The study of law, often referred to as **jurisprudence,** includes learning about different schools of legal thought and discovering how each school's approach to law can affect judicial decision making.

The Natural Law School Those who adhere to the **natural law** theory believe that a higher, or universal, law exists that applies to all human beings and that written laws should imitate these inherent principles. If a written law is unjust, then it is not a true (natural) law and need not be obeyed.

The natural law tradition is one of the oldest and most significant schools of jurisprudence. It dates back to the days of the Greek philosopher Aristotle (384–322 B.C.E.), who distinguished between natural law and the laws governing a particular nation. According to Aristotle, natural law applies universally to all humankind.

Science History Images / Alamy

What is the basic premise of Aristotle's natural law theory?

The notion that people have "natural rights" stems from the natural law tradition. Those who claim that a specific foreign government is depriving certain citizens of their human rights are implicitly appealing to a higher law that has universal applicability. The question of the universality of basic human rights also comes into play in the context of international business operations. U.S. companies that have operations abroad often hire foreign workers as employees. Should the same laws that protect U.S. employees apply to these foreign employees? This question is rooted implicitly in a concept of universal rights that has its origins in the natural law tradition.

Legal Positivism A school of legal thought centered on the assumption that there is no law higher than the laws created by a national government. Laws must be obeyed, even if they are unjust, to prevent anarchy.

Legal Positivism

Positive law, or national law, is the written law of a given society at a particular point in time. In contrast to natural law, it applies only to the citizens of that nation or society. Those who adhere to **legal positivism** believe that there can be no higher law than a nation's positive law.

According to the positivist school, there is no such thing as "natural rights." Rather, human rights exist solely because of laws. If the laws are not enforced, anarchy will result. Thus, whether a law is morally "bad" or "good" is irrelevant. The law is the law and must be obeyed until it is changed—in an orderly manner through a legitimate lawmaking process. A judge who takes this view will probably be more inclined to defer to an existing law than would a judge who adheres to the natural law tradition.

Historical School A school of legal thought that looks to the past to determine what the principles of contemporary law should be.

The Historical School

The **historical school** of legal thought emphasizes the evolutionary process of law by concentrating on the origin and history of the legal system. This school looks to the past to discover what the principles of contemporary law should be. The legal doctrines that have withstood the passage of time—those that have worked in the past—are deemed best suited for shaping present laws. Hence, law derives its legitimacy and authority from adhering to the standards that history has shown to be workable. Followers of the historical school are likely to adhere strictly to decisions made in past cases.

Legal Realism A school of legal thought that holds that the law is only one factor to be considered when deciding cases and that social and economic circumstances should also be taken into account.

Legal Realism

In the 1920s and 1930s, a number of jurists and scholars, known as *legal realists*, rebelled against the historical approach to law. **Legal realism** is based on the idea that law is just one of many institutions in society and that it is shaped by social forces and needs. This school holds that because the law is a human enterprise, judges should look beyond the law and take social and economic realities into account when deciding cases.

Legal realists also believe that the law can never be applied with total uniformity. Given that judges are human beings with unique experiences, personalities, value systems, and intellects, different judges will obviously bring different reasoning processes to the same case. Female judges, for instance, might be more inclined than male judges to consider whether a decision might have a negative impact on the employment of women or minorities.

1–4 Classifications of Law

Substantive Law Law that defines, describes, regulates, and creates legal rights and obligations.

Procedural Law Law that establishes the methods of enforcing the rights established by substantive law.

The law can be organized according to several classification systems. One system, for instance, classifies law as either substantive or procedural. **Substantive law** includes all laws that define, describe, regulate, and create legal rights and obligations. **Procedural law** consists of all laws that establish the methods of enforcing the rights established by substantive law.

Note that many statutes contain both substantive and procedural provisions. **Example 1.6** A state law that provides employees with the right to workers' compensation benefits for

on-the-job injuries is a substantive law because it creates legal rights. The law may also include procedural provisions that establish the methods by which an employee must notify the employer about an on-the-job injury, prove the injury, and periodically submit additional proof to continue receiving workers' compensation benefits.

Another system categorizes law as federal law or state law. Another distinguishes between private law (dealing with relationships between persons) and public law (addressing the relationship between persons and their governments). Still other classification systems, discussed next, identify law as civil or criminal or as national or international.

Civil Law The branch of law dealing with the definition and enforcement of all private or public rights, as opposed to criminal matters.

Learning Objective 5

What are some important differences between civil law and criminal law?

1–4a Civil Law and Criminal Law

Civil law spells out the rights and duties that exist between persons and between persons and their governments, as well as the relief available when a person's rights are violated. Typically, in a civil case, a private party sues another private party who has failed to comply with a duty (although the government can also sue a party for a civil law violation). Much of the law discussed in this text is civil law, including contract law and tort law. Note that *civil law* is not the same as a *civil law system*. As you will read shortly, a **civil law system** is a legal system based on a written code of laws.

Civil Law System A system of law derived from Roman law that is based on codified laws (rather than on case precedents).

Criminal law, in contrast, is concerned with wrongs committed against the public as a whole. Criminal acts are defined and prohibited by local, state, or federal government statutes. Thus, criminal defendants are prosecuted by public officials, such as a district attorney (D.A.), on behalf of the state, not by their victims or other private parties. Some statutes, such as those protecting the environment or investors, have both civil and criminal provisions.

Criminal Law The branch of law that defines and punishes wrongful actions committed against the public.

Junial Enterprises/Shutterstock

A witness points out someone in the courtroom to the judge.

1–4b National and International Law

The law of a particular nation, such as the United States or Sweden, is **national law.** National law, of course, varies from country to country because each country's law reflects its unique culture, customs, and values. Even though the laws and legal systems of various countries differ substantially, broad similarities do exist, as discussed in this chapter's *Beyond Our Borders* feature.

International law, unlike national law, applies to more than one nation. **International law** is a body of written and unwritten laws observed by independent nations and governing the acts of individuals as well as governments. It is a mixture of rules and constraints derived from a variety of sources, including the laws of individual nations, customs developed among nations, and international treaties and organizations.

National Law Law that pertains to a particular nation (as opposed to international law).

International Law The law that governs relations among nations.

International law must accommodate two conflicting goals of individual nations. Every nation desires to benefit economically from its dealings with other nations. At the same time, each nation is motivated by a need to be the final authority over its own affairs. International law attempts to balance these priorities by providing international rules while respecting the rights of individual countries.

The key difference between national law and international law is that government authorities can enforce national law. If a nation violates an international law, however, enforcement is up to other countries or international organizations, which may or may not choose to act.

If persuasive tactics such as negotiation fail, the only option is to take coercive actions against the violating nation. Coercive actions range from the severance of diplomatic relations and boycotts to, as a last resort, war.

National Law Systems

Despite their varying cultures and customs, almost all countries have laws governing torts, contracts, employment, and other areas. Two types of legal systems predominate around the globe today. One is the common law system of England and the United States, which we have discussed elsewhere. The other system is based on Roman civil law, or "code law," which relies on the legal principles enacted into law by a legislature or governing body.

Civil Law Systems

Although national law systems share many commonalities, they also have distinct differences. In a *civil law system*, the primary source of law is a statutory code, and case precedents are not judicially binding, as they normally are in a common law system. Although judges in a civil law system commonly refer to previous decisions as sources of legal guidance, those decisions are not binding precedents (*stare decisis* does not apply).

Exhibit 1–3 lists some countries that today follow either the common law system or the civil law system. Generally, those countries that were once colonies of Great Britain have retained their English common law heritage. The civil law system, which is used in most continental European nations, has been retained in the countries that were once colonies of those nations. In the United States, the state of Louisiana, because of its historical ties to France, has in part a civil law system, as do Haiti, Québec, and Scotland.

Islamic Legal Systems

A third, less prevalent legal system is common in Islamic countries, where the law is often influenced by *sharia*, the religious law of Islam. Islam is both a religion and a way of life. *Sharia* is a comprehensive code of principles that governs the public and private lives of Islamic persons and directs many aspects of their day-to-day life, including politics, economics, banking, business law, contract law, and social issues.

Although *sharia* affects the legal codes of many Muslim countries, the extent of its impact and its interpretation vary widely. In some Middle Eastern nations, aspects of *sharia* have been codified in modern legal codes and are enforced by national judicial systems.

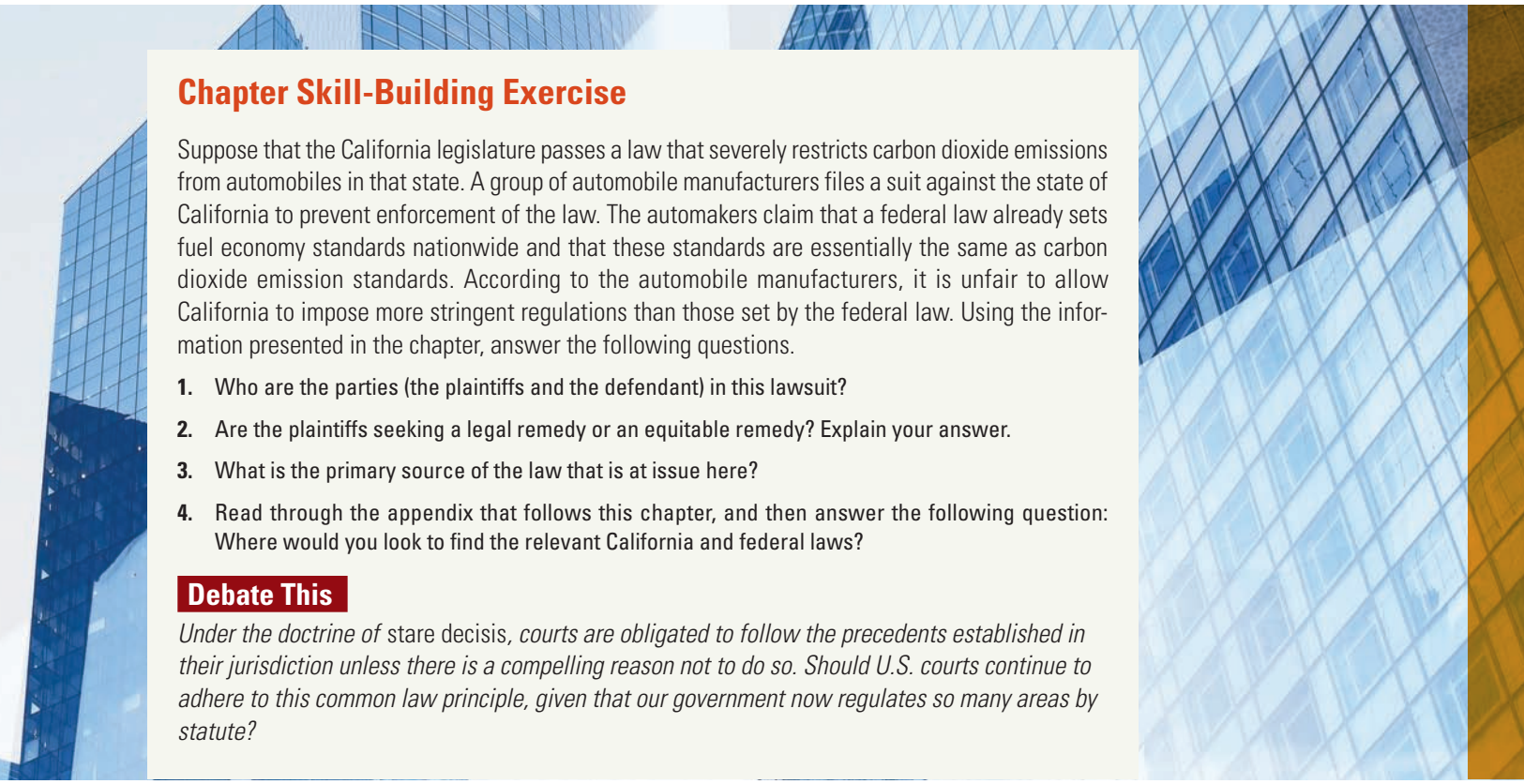
Beyond Our Borders

Critical Thinking

Discuss any advantages the civil law system might offer over the common law system and vice versa.

Exhibit 1–3 The Legal Systems of Selected Nations

Civil Law		Common Law	
Argentina	Indonesia	Australia	Nigeria
Austria	Iran	Bangladesh	Singapore
Brazil	Italy	Canada	United Kingdom
Chile	Japan	Ghana	United States
China	Mexico	India	Zambia
Egypt	Poland	Israel	
Finland	South Korea	Jamaica	
France	Sweden	Kenya	
Germany	Tunisia	Malaysia	
Greece	Venezuela	New Zealand	



Chapter Skill-Building Exercise

Suppose that the California legislature passes a law that severely restricts carbon dioxide emissions from automobiles in that state. A group of automobile manufacturers files a suit against the state of California to prevent enforcement of the law. The automakers claim that a federal law already sets fuel economy standards nationwide and that these standards are essentially the same as carbon dioxide emission standards. According to the automobile manufacturers, it is unfair to allow California to impose more stringent regulations than those set by the federal law. Using the information presented in the chapter, answer the following questions.

1. Who are the parties (the plaintiffs and the defendant) in this lawsuit?
2. Are the plaintiffs seeking a legal remedy or an equitable remedy? Explain your answer.
3. What is the primary source of the law that is at issue here?
4. Read through the appendix that follows this chapter, and then answer the following question: Where would you look to find the relevant California and federal laws?

Debate This

Under the doctrine of stare decisis, *courts are obligated to follow the precedents established in their jurisdiction unless there is a compelling reason not to do so. Should U.S. courts continue to adhere to this common law principle, given that our government now regulates so many areas by statute?*

Key Terms

administrative agency 6
administrative law 6
allege 13
binding authority 10
breach 8
case law 7
case on point 13
citation 5
civil law 15
civil law system 15
common law 7
concurring opinion 27
constitutional law 5
court of equity 8
court of law 8
criminal law 15
damages 8
defendant 12
dissenting opinion 27
equitable maxims 8
executive agency 6
historical school 14
independent regulatory agency 6
international law 15
jurisprudence 13
law 2
legal positivism 14
legal realism 14
legal reasoning 12
liability 3
majority opinion 27
national law 15
natural law 13
ordinance 5
***per curiam* opinion** 27
persuasive authority 12
plaintiff 12
plurality opinion 27
precedent 7
primary source of law 4
procedural law 14
remedy 8
remedy at law 8
remedy in equity 8
secondary source of law 4
stare decisis 10
statutory law 5
substantive law 14
uniform law 6

Chapter Summary: Law and Legal Reasoning

Sources of American Law	1. ***Constitutional law***—The law as expressed in the U.S. Constitution and the various state constitutions. The U.S. Constitution is the supreme law of the land. State constitutions are supreme within state borders to the extent that they do not violate the U.S. Constitution or a federal law. 2. ***Statutory law***—Laws or ordinances created by federal, state, and local legislatures and governing bodies. None of these laws can violate the U.S. Constitution or the relevant state constitutions. Uniform laws, when adopted by a state legislature, become statutory law in that state. 3. ***Administrative law***—The rules, orders, and decisions of federal or state government administrative agencies. 4. ***Case law and common law doctrines***—Judge-made law, including interpretations of constitutional provisions, of statutes enacted by legislatures, and of regulations created by administrative agencies. The common law—the doctrines and principles embodied in case law—governs all areas not covered by statutory law or administrative law.
The Common Law	1. ***Common law***—Law that originated in medieval England with the creation of the king's courts, or *curiae regis*, and the development of a body of rules that were common to all regions of the country. 2. ***Remedies***—A remedy is the means by which a court enforces a right or compensates for a violation of a right. Courts typically grant legal remedies (monetary damages) but may also grant equitable remedies (specific performance, injunction, or rescission) when the legal remedy is inadequate or unavailable. 3. ***Stare decisis***—A doctrine under which judges "stand on decided cases"—or follow the rule of precedent—in deciding cases. *Stare decisis* is the cornerstone of the common law tradition. 4. ***Stare decisis and legal reasoning***—Judges use legal reasoning to harmonize their decisions with those that have been made before, as required by the doctrine of *stare decisis*. The basic steps of legal reasoning form the *IRAC method* of legal reasoning. IRAC stands for *Issue, Rule, Application,* and *Conclusion*. First, clearly grasp the relevant facts and identify the issue. Second, determine the rule of law that applies to the case. Third, analyze (using *cases on point*) how the rule of law applies to the particular facts of the dispute, and fourth, arrive at a conclusion. 5. ***Schools of legal thought***—Judges' decision making is influenced by their philosophy of law. The following are four important schools of legal thought, or legal philosophies: **a.** Natural law tradition—One of the oldest and most significant schools of legal thought. Those who believe in natural law hold that there is a universal law applicable to all human beings and that this law is of a higher order than positive, or conventional, law. **b.** Legal positivism—A school of legal thought centered on the assumption that there is no law higher than the laws created by the government. Laws must be obeyed, even if they are unjust, to prevent anarchy. **c.** Historical school—A school of legal thought that stresses the evolutionary nature of law and looks to doctrines that have withstood the passage of time for guidance in shaping present laws. **d.** Legal realism—A school of legal thought that generally advocates a less abstract and more realistic approach to the law that takes into account customary practices and the circumstances in which transactions take place.
Classifications of Law	The law can be organized according to several classification systems, including substantive or procedural law, federal or state law, and private or public law. Two broad classifications are civil and criminal law, and national and international law.

Issue Spotters

1. The First Amendment to the U.S. Constitution provides protection for the free exercise of religion. A state legislature enacts a law that outlaws all religions that do not derive from the Judeo-Christian tradition. Is this law valid within that state? Why or why not? (See *Sources of American Law*.)
2. Under what circumstances might a judge rely on case law to determine the intent and purpose of a statute? (See *The Common Law*.)

—Check your answers to the *Issue Spotters* against the answers provided in Appendix C at the end of this text.

Business Scenarios and Case Problems

1–1. Binding versus Persuasive Authority. A county court in Illinois is deciding a case involving an issue that has never been addressed before in that state's courts. The Iowa Supreme Court, however, recently decided a case involving a very similar fact pattern. Is the Illinois court obligated to follow the Iowa Supreme Court's decision on the issue? If the United States Supreme Court had decided a similar case, would that decision be binding on the Illinois court? Explain. (See *The Common Law*.)

1–2. Remedies. Arthur Rabe is suing Xavier Sanchez for breaching a contract in which Sanchez promised to sell Rabe a Van Gogh painting for $150,000. (See *The Common Law*.)

1. If Rabe wants Sanchez to perform the contract as promised, what remedy should Rabe seek?
2. Suppose that Rabe wants to cancel the contract because Sanchez fraudulently misrepresented the painting as an original Van Gogh when in fact it is a copy. In this situation, what remedy should Rabe seek?
3. Will the remedy Rabe seeks in either situation be a remedy at law or a remedy in equity?

1–3. Sources of Law. Which source of American law takes priority in the following situations, and why? (See *Sources of American Law*.)

1. A federal statute conflicts with the U.S. Constitution.
2. A federal statute conflicts with a state constitutional provision.
3. A state statute conflicts with the common law of that state.
4. A state constitutional amendment conflicts with the U.S. Constitution.

1–4. Philosophy of Law. After World War II ended in 1945, an international tribunal of judges convened at Nuremberg, Germany. The judges convicted several Nazi war criminals of "crimes against humanity." Assuming that the Nazis who were convicted had not disobeyed any law of their country and had merely been following their government's (Hitler's) orders, what law had they violated? Explain. (See *The Common Law*.)

1–5. Spotlight on AOL—Common Law. AOL, LLC, mistakenly made public the personal information of 650,000 of its members. The members filed a suit, alleging violations of California law. AOL asked the court to dismiss the suit on the basis of a "forum-selection" clause in its member agreement that designates Virginia courts as the place where member disputes will be tried. Under a decision of the United States Supreme Court, a forum-selection clause is unenforceable "if enforcement would contravene a strong public policy of the forum in which suit is brought." California has declared in other cases that the AOL clause contravenes a strong public policy. If the court applies the doctrine of *stare decisis*, will it dismiss the suit? Explain. [*Doe 1 v. AOL, LLC,* 552 F.3d 1077 (9th Cir. 2009)] (See *The Common Law*.)

1–6. Sources of Law. Under a Massachusetts state statute, large wineries could sell their products through wholesalers or to consumers directly, but not both. Small wineries could use both methods. Family Winemakers of California filed a suit against the state, arguing that this restriction gave small wineries a competitive advantage in violation of the U.S. Constitution. The court agreed that the statute was in conflict with the Constitution. Which source of law takes priority, and why? [*Family Winemakers of California v. Jenkins*, 592 F.3d 1 (1st Cir. 2010)] (See *Sources of American Law*.)

1–7. Business Case Problem with Sample Answer—Reading Citations. Assume that you want to read the entire court opinion in the case of *Worldwide TechServices, LLC v. Commissioner of Revenue,* 479 Mass. 20, 91 N.E.3d 650 (2018). Read the section entitled "Finding Case Law" in the appendix that follows this chapter, and then explain specifically where you would find the court's opinion. (See *Finding Case Law*.)

—For a sample answer to Problem 1–7, go to Appendix D at the end of this text.

A Question of Ethics

1–8. The Doctrine of Precedent. Sandra White operated a travel agency. To obtain lower airline fares for her nonmilitary clients, she booked military-rate travel by forwarding fake military identification cards to the airlines. The government charged White with identity theft, which requires the "use" of another's identification. The trial court had two cases that represented precedents.

In the first case, David Miller obtained a loan to buy land by representing that certain investors had approved the loan when, in fact, they had not. Miller's conviction for identity theft was overturned because he had merely said that the investors had done something when they had not. According to the court, this was not the "use" of another's identification.

In the second case, Kathy Medlock, an ambulance service operator, had transported patients for whom there was no medical necessity to do so. To obtain payment, Medlock had forged a physician's signature. The court concluded that this was "use" of another person's identity. [*United States v. White*, 846 F.3d 170 (6th Cir. 2017)] (See *Sources of American Law*.)

1. Which precedent—the *Miller* case or the *Medlock* case—is similar to White's situation, and why?
2. In the two cases cited by the court, were there any ethical differences in the actions of the parties? Explain your answer.

Time-Limited Team Assignment

1–9. Court Opinions. Read through the subsection entitled "Decisions and Opinions" in the appendix that follows this chapter, and then break into teams to answer the following questions. (See *Reading and Understanding Case Law*.)

1. One team will explain the difference between a concurring opinion and a majority opinion.
2. Another team will outline the difference between a concurring opinion and a dissenting opinion.
3. The third team will explain why judges and justices write concurring and dissenting opinions, given that these opinions will not affect the outcome of the case at hand, which has already been decided by majority vote.

Appendix to Chapter 1

Finding and Analyzing the Law

This text includes numerous references, or *citations*, to primary sources of law—federal and state statutes, the U.S. Constitution and state constitutions, regulations issued by administrative agencies, and court cases. A citation identifies the publication in which a legal authority—such as a statute or a court decision or other source—can be found. In this appendix, we explain how you can use citations to find primary sources of law. Note that in addition to being published in sets of books, as described next, most federal and state laws and case decisions are available online.

1A–1 Finding Statutory and Administrative Law

When Congress passes laws, they are collected in a publication titled *United States Statutes at Large*. When state legislatures pass laws, they are collected in similar state publications. Most frequently, however, laws are referred to in their codified form—that is, the form in which they appear in the federal and state codes. In these codes, laws are compiled by subject.

1A–1a *United States Code*

The *United States Code* (U.S.C.) arranges all existing federal laws of a public and permanent nature by subject. Each of the fifty-two subjects into which the U.S.C. arranges the laws is given a title and a title number. For example, laws relating to commerce and trade are collected in "Title 15, Commerce and Trade." Titles are subdivided by sections.

A citation to the U.S.C. includes title and section numbers. Thus, a reference to "15 U.S.C. Section 1" means that the statute can be found in Section 1 of Title 15. ("Section" may be designated by the symbol §, and "Sections" by §§.) In addition to the print publication, the federal government also provides a searchable online database of the *United States Code* at www.gpo.gov (click on "Explore and Research" and then "GPO's Federal Digital System" to find the *United States Code*).

Commercial publications of these laws are available and are widely used. For example, Thomson Reuters publishes the *United States Code Annotated* (U.S.C.A.). The U.S.C.A. contains the complete text of laws included in the U.S.C., notes of court decisions that interpret and apply specific sections of the statutes, and the text of presidential proclamations and executive orders. The U.S.C.A. also includes research aids, such as cross-references to related statutes, historical notes, and other references. A citation to the U.S.C.A. is similar to a citation to the U.S.C.: "15 U.S.C.A. Section 1."

1A–1b State Codes

State codes follow the U.S.C. pattern of arranging laws by subject. The state codes may be called codes, revisions, compilations, consolidations, general statutes, or statutes, depending on the state.

In some codes, subjects are designated by number. In others, they are designated by name. For example, "13 Pennsylvania Consolidated Statutes Section 1101" means that the statute can be found in Title 13, Section 1101, of the Pennsylvania code. "California Commercial Code Section 1101" means the statute can be found in Section 1101 under the subject heading "Commercial Code" of the California code. Abbreviations are commonly used. For instance, "13 Pennsylvania Consolidated Statutes Section 1101" may be abbreviated "13 Pa. C.S. § 1101," and "California Commercial Code Section 1101" may be abbreviated "Cal. Com. Code § 1101."

1A–1c Administrative Rules

Rules and regulations adopted by federal administrative agencies are initially published in the *Federal Register*, a daily publication of the U.S. government. Later, they are incorporated into the *Code of Federal Regulations* (C.F.R.).

Like the U.S.C., the C.F.R. is divided into titles. Rules within each title are assigned section numbers. A full citation to the C.F.R. includes title and section numbers. For example, a reference to "17 C.F.R. Section 230.504" means that the rule can be found in Section 230.504 of Title 17.

1A–2 Finding Case Law

Before discussing the case reporting system, we need to look briefly at the court system. There are two types of courts in the United States: federal courts and state courts. Both the federal and the state systems consist of several levels, or tiers, of courts. *Trial courts*, in which evidence is presented and testimony is given, are on the bottom tier (which also includes lower courts handling specialized issues). Decisions from a trial court can be appealed to a higher court, which commonly is an intermediate *court of appeals*, or an *appellate court*. Decisions from intermediate courts of appeals may be appealed to an even higher court, such as a state supreme court or the United States Supreme Court.

1A–2a State Court Decisions

Most state trial court decisions are not published in books (except in New York and a few other states, which publish selected trial court opinions). Decisions from state trial courts are typically filed in the office of the clerk of the court, where the decisions are available for public inspection. (Increasingly, they can be found online as well.)

Written decisions of the appellate, or reviewing, courts, however, are published and distributed (in print and online). Many of the state court cases presented in this textbook are from state appellate courts. The reported appellate decisions are published in volumes called *reports* or *reporters*, which are numbered consecutively. Thus, the appellate court decisions of a particular state are found in that state's reporters. Official reports are published by the state, whereas unofficial reports are published by nongovernment entities.

Regional Reporters State court opinions appear in regional units of the National Reporter System, published by Thomson Reuters. Most lawyers and libraries have these reporters because they publish cases more quickly and are distributed more widely than the state-published reporters. In fact, many states have eliminated their own reporters in favor of the National Reporter System.

The National Reporter System divides the states into the following geographic areas: *Atlantic* (A., A.2d, or A.3d), *North Eastern* (N.E., N.E.2d or N.E.3d), *North Western* (N.W. or N.W.2d), *Pacific* (P., P.2d, or P.3d), *South Eastern* (S.E. or S.E.2d), *South Western* (S.W., S.W.2d, or S.W.3d), and *Southern* (So., So.2d, or So.3d). (The *2d* and *3d* in the preceding abbreviations refer to *Second Series* and *Third Series*, respectively.) The states included in each of these regional divisions are indicated in Exhibit 1A–1, which illustrates the National Reporter System.

Exhibit 1A–1 The National Reporter System—Regional/Federal

Regional Reporters	Coverage Beginning	Coverage
Atlantic Reporter (A., A.2d, or A.3d)	1885	Connecticut, Delaware, District of Columbia, Maine, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island, and Vermont.
North Eastern Reporter (N.E., N.E.2d, or N.E.3d)	1885	Illinois, Indiana, Massachusetts, New York, and Ohio.
North Western Reporter (N.W. or N.W.2d)	1879	Iowa, Michigan, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin.
Pacific Reporter (P., P.2d, or P.3d)	1883	Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, Washington, and Wyoming.
South Eastern Reporter (S.E. or S.E.2d)	1887	Georgia, North Carolina, South Carolina, Virginia, and West Virginia.
South Western Reporter (S.W., S.W.2d, or S.W.3d)	1886	Arkansas, Kentucky, Missouri, Tennessee, and Texas.
Southern Reporter (So., So.2d, or So.3d)	1887	Alabama, Florida, Louisiana, and Mississippi.
Federal Reporters		
Federal Reporter (F., F.2d, or F.3d)	1880	U.S. Circuit Courts from 1880 to 1912; U.S. Commerce Court from 1911 to 1913; U.S. District Courts from 1880 to 1932; U.S. Court of Claims (now called U.S. Court of Federal Claims) from 1929 to 1932 and since 1960; U.S. Courts of Appeals since 1891; U.S. Court of Customs and Patent Appeals since 1929; U.S. Emergency Court of Appeals since 1943.
Federal Supplement (F.Supp., F.Supp.2d, or F.Supp.3d)	1932	U.S. Court of Claims from 1932 to 1960; U.S. District Courts since 1932; U.S. Customs Court since 1956.
Federal Rules Decisions (F.R.D.)	1939	U.S. District Courts involving the Federal Rules of Civil Procedure since 1939 and Federal Rules of Criminal Procedure since 1946.
Supreme Court Reporter (S.Ct.)	1882	United States Supreme Court since the October term of 1882.
Bankruptcy Reporter (Bankr.)	1980	Bankruptcy decisions of U.S. Bankruptcy Courts, U.S. District Courts, U.S. Courts of Appeals, and the United States Supreme Court.
Military Justice Reporter (M.J.)	1978	U.S. Court of Military Appeals and Courts of Military Review for the Army, Navy, Air Force, and Coast Guard.

NATIONAL REPORTER SYSTEM MAP

Case Citations After appellate decisions have been published, they are normally referred to (cited) by the name of the case; the volume, name, and page number of the state's official reporter (if different from the National Reporter System); the volume, name, and page number of the National Reporter; and the volume, name, and page number of any other selected reporter. (Citing a reporter by volume number, name, and page number, in that order, is common to all citations. The year that the decision was issued is often included at the end in parentheses.) When more than one reporter is cited for the same case, each reference is called a *parallel citation*.

Note that some states have adopted a "public domain citation system" that uses a somewhat different format for the citation. For example, in Ohio, a Ohio court decision might be designated "2018-Ohio-79," meaning that the case was decided in the year 2018 by an Ohio state court and was the 79th decision issued by that court during that year. Parallel citations to the *Ohio Appellate Reporter* and the *North Eastern Reporter* are still included after the public domain citation.

Consider the following case citation: *Connecticut Coalition for Justice in Education Funding, Inc. v. Rell,* 327 Conn. 650, 176 A.3d 28 (2018). We see that the opinion in this case can be found in Volume 327 of the official *Connecticut Appellate Court Reports*, on page 650. The parallel citation is to Volume 176 of the *Atlantic Reporter, Third Series*, page 28.

When we present opinions in this text, in addition to the reporter, we give the name of the court hearing the case and the year of the court's decision. Sample citations to state court decisions are explained in Exhibit 1A–2.

1A–2b Federal Court Decisions

Federal district (trial) court decisions are published unofficially in the *Federal Supplement* (F. Supp., F.Supp.2d, or F.Supp.3d), and opinions from the circuit courts of appeals (federal reviewing courts) are reported unofficially in the *Federal Reporter* (F., F.2d, or F.3d). Cases concerning federal bankruptcy law are published unofficially in *Bankruptcy Reporter* (Bankr. or B.R.).

The official edition of United States Supreme Court decisions is the *United States Reports* (U.S.), which is published by the federal government. Unofficial editions of Supreme Court cases include *Supreme Court Reporter* (S.Ct.) and the *Lawyers' Edition of the Supreme Court Reports* (L.Ed. or L.Ed.2d). Sample citations for federal court decisions are also listed and explained in Exhibit 1A–2.

1A–2c Unpublished Opinions

Many court opinions that are not yet published or that are not intended for publication can be accessed through Westlaw® (abbreviated in citations as "WL"), an online legal database. When no citation to a published reporter is available for cases cited in this text, we give the WL citation (such as 2018 WL 266332, which means it was case number 266332 decided in the year 2018. In addition, federal appellate court decisions that are designated as unpublished may appear in the *Federal Appendix* (Fed.Appx.) of the National Reporter System.

Sometimes, both in this text and in other legal sources, you will see blanks left in a citation. This occurs when the decision will be published, but the particular volume number or page number is not yet available.

1A–2d Old Case Law

On a few occasions, this text cites opinions from old, classic cases dating to the nineteenth century or earlier. Some of these cases are from the English courts. The citations to these cases may not conform to the descriptions given above because they were published in reporters that are no longer used today.

Exhibit 1A–2 How to Read Citations

STATE COURTS

298 Neb. 630, 905 N.W.2d 523 (2018)[a]

- *N.W.* is the abbreviation for the publication of state court decisions rendered in the *North Western Reporter* of the National Reporter System. *2d* indicates that this case was included in the *Second Series* of that reporter.
- *Neb.* is an abbreviation for *Nebraska Reports,* Nebraska's official reports of the decisions of its highest court, the Nebraska Supreme Court.

19 Cal.App.5th 495, 228 Cal.Rptr.3d 169 (2018)

- *Cal.Rptr.* is the abbreviation for the unofficial reports—titled *California Reporter*—of the decisions of California courts.

157 A.D.3d 486, 69 N.Y.S.3d 26 (2018)

- *N.Y.S.* is the abbreviation for the unofficial reports—titled *New York Supplement*—of the decisions of New York courts.
- *A.D.* is the abbreviation for the *New York Appellate Division Reports*, which hears appeals from the New York Supreme Court—the state's general trial court. The New York Court of Appeals is the state's highest court, analogous to other states' supreme courts.

343 Ga.App. 889, 808 S.E.2d 891 (2018)

- *Ga.App.* is the abbreviation for *Georgia Appeals Reports,* Georgia's official reports of the decisions of its court of appeals.

FEDERAL COURTS

___ U.S. ___, 138 S.Ct. 617, 199 L.Ed.2d 501 (2018)

- *L.Ed.* is an abbreviation for *Lawyers' Edition of the Supreme Court Reports*, an unofficial edition of decisions of the United States Supreme Court.
- *S.Ct.* is the abbreviation for *Supreme Court Reporter,* an unofficial edition of decisions of the United States Supreme Court.
- *U.S.* is the abbreviation for *United States Reports*, the official edition of the decisions of the United States Supreme Court. The blank lines in this citation (or any other citation) indicate that the appropriate volume of the case reporter has not yet been published and no page number is available.

a. The case names have been deleted from these citations to emphasize the publications. It should be kept in mind, however, that the name of a case is as important as the specific page numbers in the volumes in which it is found. If a citation is incorrect, the correct citation may be found in a publication's index of case names. In addition to providing a check on errors in citations, the date of a case is important because the value of a recent case as an authority is likely to be greater than that of older cases from the same court.

(*Continues*)

Exhibit 1A–2 How to Read Citations, Continued

FEDERAL COURTS (Continued)

879 F.3d 1052 (9th Cir. 2018)

9th Cir. is an abbreviation denoting that this case was decided in the U.S. Court of Appeals for the Ninth Circuit.

___ F.Supp.3d ___, 2018 WL 388590 (W.D.Wash. 2018)

W.D.Wash. is an abbreviation indicating that the U.S. District Court for the Western District of Washington decided this case.

WESTLAW® CITATIONS[b]

2018 WL 416255

WL is an abbreviation for Westlaw. The number 2018 is the year of the document that can be found with this citation in the Westlaw database. The number 416255 is a number assigned to a specific document. A higher number indicates that a document was added to the Westlaw database later in the year.

STATUTORY AND OTHER CITATIONS

18 U.S.C. Section 1961(1)(A)

U.S.C. denotes *United States Code*, the codification of *United States Statutes at Large*. The number 18 refers to the statute's U.S.C. title number and 1961 to its section number within that title. The number 1 in parentheses refers to a subsection within the section, and the letter A in parentheses to a subsection within the subsection.

UCC 2–206(1)(b)

UCC is an abbreviation for *Uniform Commercial Code*. The first number 2 is a reference to an article of the UCC, and 206 to a section within that article. The number 1 in parentheses refers to a subsection within the section, and the letter b in parentheses to a subsection within the subsection.

***Restatement (Third) of Torts*, Section 6**

Restatement (Third) of Torts refers to the third edition of the American Law Institute's *Restatement of the Law of Torts*. The number 6 refers to a specific section.

17 C.F.R. Section 230.505

C.F.R. is an abbreviation for *Code of Federal Regulations*, a compilation of federal administrative regulations. The number 17 designates the regulation's title number, and 230.505 designates a specific section within that title.

b. Many court decisions that are not yet published or that are not intended for publication can be accessed through Westlaw, an online legal database.

1A–3 Reading and Understanding Case Law

The cases in this text have been condensed from the full text of the courts' opinions, and the facts, decision, and remedy segments have been paraphrased by the authors. For those wishing to review court cases for future research projects or to gain additional legal information, the following sections will provide useful insights into how to read and understand case law.

1A–3a Case Titles and Terminology

The title of a case, such as *Adams v. Jones*, indicates the names of the parties to the lawsuit. The *v.* in the case title stands for *versus*, which means "against." In the trial court, Adams was the plaintiff—the person who filed the suit. Jones was the defendant. If the case is appealed, however, the appellate court will sometimes place the name of the party appealing the decision first, so the case may be called *Jones v. Adams*. Because some reviewing courts retain the trial court order of names, it is often impossible to distinguish the plaintiff from the defendant in the title of a reported appellate court decision. You must carefully read the facts of each case to identify the parties.

The following terms and phrases are frequently encountered in court opinions and legal publications. Because it is important to understand what these terms and phrases mean, we define and discuss them here.

Parties to Lawsuits The party initiating a lawsuit is referred to as the *plaintiff* or *petitioner*, depending on the nature of the action, and the party against whom a lawsuit is brought is the *defendant* or *respondent*. Lawsuits frequently involve more than one plaintiff and/or defendant.

When a case is appealed from the original court or jurisdiction to another court or jurisdiction, the party appealing the case is called the *appellant*. The *appellee* is the party against whom the appeal is taken. (In some appellate courts, the party appealing a case is referred to as the *petitioner*, and the party against whom the suit is brought or appealed is called the *respondent*.)

Judges and Justices The terms *judge* and *justice* are usually synonymous and represent two designations given to the judges in various courts. All members of the United States Supreme Court, for example, are referred to as justices. And justice is the formal title usually given to judges of appellate courts, although this is not always the case. In New York, a justice is a judge of the trial court (which is called the Supreme Court), and a member of the Court of Appeals (the state's highest court) is called a judge. The term *justice* is commonly abbreviated to J., and *justices* to JJ. A Supreme Court case might refer to Justice Sotomayor as Sotomayor, J., or to Chief Justice Roberts as Roberts, C.J.

Decisions and Opinions Most decisions reached by reviewing, or appellate, courts are explained in written *opinions*. The opinion contains the court's reasons for its decision, the rules of law that apply, and the judgment. You may encounter several types of opinions as you read appellate cases, including the following:

- When all the judges (or justices) agree, a *unanimous opinion* is written for the entire court.
- When there is not unanimous agreement, a **majority opinion** is generally written. It outlines the views of the majority of the judges deciding the case.
- A judge who agrees (concurs) with the majority opinion as to the result but not as to the legal reasoning often writes a **concurring opinion**. In it, the judge sets out the reasoning that he or she considers correct.
- A **dissenting opinion** presents the views of one or more judges who disagree with the majority view.
- Sometimes, no single position is fully supported by a majority of the judges deciding a case. In this situation, we may have a **plurality opinion**. This is the opinion that has the support of the largest number of judges, but the group in agreement is less than a majority.
- Finally, a court occasionally issues a ***per curiam* opinion** (*per curiam* is Latin for "of the court"), which does not indicate which judge wrote the opinion.

Majority Opinion A court opinion that represents the views of the majority (more than half) of the judges or justices deciding the case.

Concurring Opinion A court opinion by one or more judges or justices who agree with the majority but want to make or emphasize a point that was not made or emphasized in the majority's opinion.

Dissenting Opinion A court opinion that presents the views of one or more judges or justices who disagree with the majority's decision.

Plurality Opinion A court opinion that is joined by the largest number of the judges or justices hearing the case, but less than half of the total number.

***Per Curiam* Opinion** A court opinion that does not indicate which judge or justice authored the opinion.

1A–3b A Sample Court Case

To illustrate the various elements contained in a court opinion, we present an annotated court opinion in Exhibit 1A–3. The opinion is from an actual case that the United States Court of Appeals for the Tenth Circuit decided in 2018.

Exhibit 1A–3 A Sample Court Case

This section contains the citation—the name of the case, the name of the court that heard the case, the reporters in which the court's opinion can be found, and the year of the decision.

YEASIN v. DURHAM

United States Court of Appeals, Tenth Circuit,

719 Fed.Appx. 844 (2018).

This line provides the name of the judge (or justice) who authored the court's opinion.

Gregory A. *PHILLIPS*, Circuit Judge.

* * * *

The court divides the opinion into sections, each headed by an explanatory heading. The first section summarizes the facts of the case.

BACKGROUND

* * * *

[Navid] Yeasin and A.W. [were students at the University of Kansas when they] dated from the fall of 2012 through June 2013. On June 28, 2013, Yeasin physically restrained A.W. in his car, took her phone from her, threatened to commit suicide if she broke up with him, threatened to spread rumors about her, and threatened to make the University of Kansas's "campus environment so hostile, that she would not attend any university in the state of Kansas."

Battery is an unexcused and harmful or offensive physical contact intentionally performed.

For this conduct, Kansas charged Yeasin with * * * **battery** * * * . A.W. * * * obtained a **protection order** against Yeasin.

A *protection order* is an order issued by a court that protects a person by requiring another person to do, or not to do, something. The order can protect someone from being physically or sexually threatened or harassed.

* * * A.W. filed a complaint against Yeasin with the university's Office of Institutional Opportunity and Access (IOA). * * * The IOA * * * issued * * * a **no-contact order** * * * [that] "prohibited [Yeasin] from initiating, or contributing through third-parties, to any physical, verbal, electronic, or written communication with A.W., her family, her friends or her associates."

A *no-contact order* prohibits a person from being in contact with another person.

[Despite the order,] Yeasin posted more than a dozen tweets about A.W., including disparaging comments about her body.

A *hearing* is a proceeding before a decision-making body. Testimony and other evidence can be presented to help determine the issue.

[The university held a **hearing** to **adjudicate** A.W.'s complaint against Yeasin. Both parties testified. The hearing panel submitted the **record** to Dr. Tammara Durham, the university's vice provost for student affairs, for a decision regarding whether and how to sanction Yeasin's conduct.]

To *adjudicate* is to hear evidence and arguments in order to determine and resolve a dispute.

A *record* is a written account of proceedings.

Exhibit 1A–3 A Sample Court Case, Continued

* * * Durham found that Yeasin's June 28, 2013 conduct and his tweets were "so severe, pervasive and objectively offensive that it interfered with A.W.'s academic performance and equal opportunity to participate in or benefit from University programs or activities." She found that his tweets violated the [university's] **sexual-harassment** policy because they were "unwelcome comments about A.W.'s body." And she found that his conduct "threatened the physical health, safety and welfare of A.W., making the conduct a violation of * * * the [university's Student] Code."

Sexual harassment can consist of language or conduct that is so offensive it creates a hostile environment.

* * * Durham * * * expelled Yeasin from the university and banned him from campus.

* * * *

Yeasin contested his expulsion in a Kansas state court. The court set aside Yeasin's expulsion, reasoning that * * * "KU and Dr. Durham erroneously interpreted the Student Code of Conduct by applying it to off-campus conduct."

* * * *

First Amendment rights include the freedom of speech, which is the right to express oneself without government interference. This right is guaranteed under the First Amendment to the U.S. Constitution.

Yeasin then brought this suit in federal court, claiming that Dr. Durham had violated his **First Amendment rights** by expelling him for * * * off-campus speech. * * * Dr. Durham **moved to dismiss** * * * Yeasin's claim * * * . The * * * court granted the motion after concluding that Dr. Durham hadn't violated Yeasin's clearly established rights.

Moved to dismiss means that a party filed a motion (applied to the court to obtain an order) to dismiss a claim on the ground that it had no basis in law.

To *appeal* is to request an appellate court to review the decision of a lower court.

[Yeasin **appealed** to the U.S. Court of Appeals for the Tenth Circuit.]

The second major section of the opinion responds to the party's appeal.

DISCUSSION

* * * *

Yeasin's case presents interesting questions regarding the tension between some students' free-speech rights and other students' * * * rights to receive an education absent * * * sexual harassment.

An *enclave* is a distinct group within a larger community.

Colleges and universities are not **enclaves** immune from the sweep of the First Amendment. * * * The [courts] permit schools to **circumscribe** students' free-speech rights in certain contexts [particularly in secondary public schools].

To *circumscribe* is to restrict.

* * * *

(*Continues*)

Exhibit 1A–3 A Sample Court Case, Continued

Yeasin argues that [three United States Supreme Court cases—*Papish v. Board of Curators of the University of Missouri*, *Healy v. James*, and *Widmar v. Vincent*] clearly **establish** * * * that universities may not restrict university-student speech in the same way secondary public school officials may restrict secondary-school student speech. * * * Yeasin argues these cases clearly establish his right to tweet about A.W. without the university being able to place restrictions on, or discipline him for, * * * his tweets.

Here, *establish* means to settle firmly.

Judges are obligated to follow the precedents established in prior court decisions. A *precedent* is a decision that stands as authority for deciding a subsequent case involving identical or similar facts. Otherwise, the decision may be persuasive, but it is not controlling.

But **none of the * * * cases present circumstances similar to his own**. *Papish*, *Healy*, and *Widmar* don't concern university-student conduct that interferes with the rights of other students or risks disrupting campus order.

* * * *

* * * In those cases no student had been charged with a crime against another student and followed that up with sexually-harassing comments affecting her ability to feel safe while attending classes. Dr. Durham had a **reasonable belief** based on the June 28, 2013 incident and on Yeasin's tweets that his continued enrollment at the university threatened to disrupt A.W.'s education and interfere with her rights.

A *reasonable belief* exists when there is a reasonable basis to believe that a crime or other violation is being or has been committed.

At the intersection of university speech and social media, First Amendment **doctrine** is unsettled. Compare *Keefe v. Adams* [in which a federal appellate court concluded] that a college's removal of a student from school based on off-campus statements on his social media page didn't violate his First Amendment free-speech rights, with *J.S. v. Blue Mountain School District* [in which a different federal appellate court held] that a school district violated the First Amendment rights of a plaintiff when it suspended her for creating a private social media profile mocking the school principal.

A *doctrine* is a rule, principle, or tenet of the law.

In conclusion, Yeasin can't establish that Dr. Durham violated clearly established law when she expelled him, in part, for his * * * off-campus tweets.

* * * *

In the third major section of the opinion, the court states its decision.

CONCLUSION

To *affirm* a lower court's ruling is to validate the decision and give it legal force.

For the reasons stated, we **AFFIRM** the [lower] court's grant of Dr. Durham's motion to dismiss.

Cases Presented in This Text Note that the cases in this text have already been analyzed and partially briefed by the author. The essential aspects of each case are presented in a convenient format consisting of three basic sections: *Background and Facts*, *In the Words of the Court* (excerpts from the court's opinion), and *Decision and Remedy*.

In addition to this basic format, each case is followed by one or two critical thinking questions regarding some issue raised by the case. We offer these questions as tools to help you develop your critical thinking and legal reasoning skills. Finally, a section entitled *Impact of This Case on Today's Legal Environment* concludes the *Classic Cases* that appear in selected chapters to indicate the significance of the case for today's legal landscape.

Editorial Practice You will note that triple asterisks (* * *) and quadruple asterisks (* * * *) frequently appear in the court's opinion. The triple asterisks indicate that we have deleted a few words or sentences from the opinion for the sake of readability or brevity. Quadruple asterisks mean that an entire paragraph (or more) has been omitted. Additionally, when the opinion cites another case or legal source, the citation to the case or source has been omitted, again for the sake of readability and brevity. These editorial practices are continued in the other court opinions presented in this book. Lastly, whenever we present a court opinion that includes a term or phrase that may not be readily understandable, a bracketed definition or paraphrase has been added.

How to Brief Cases Knowing how to read and understand court opinions and the legal reasoning used by the courts is an essential step in performing legal research. A further step is "briefing," or summarizing, the case. Briefing cases facilitates the development of critical thinking skills that are crucial for businesspersons when evaluating relevant business law.

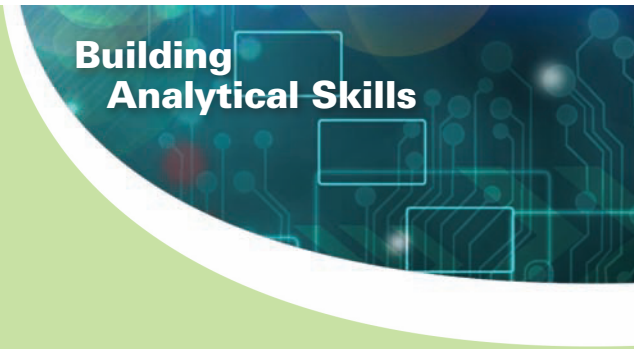
Legal researchers routinely brief cases by reducing the texts of the opinions to their essential elements. Generally, when you brief a case, you first summarize the background and facts of the case, as the authors have done for most of the cases presented in this text. You then indicate the issue (or issues) before the court. An important element in the case brief is, of course, the court's decision on the issue and the legal reasoning used by the court in reaching that decision.

When you "brief" any court case, you will follow a fairly standard procedure. You must first read the case opinion carefully. When you feel you understand the case, you can prepare a brief. Typically, the format of the brief will present the essentials of the case under headings such as the following:

1. ***Citation.*** Give the full citation for the case, including the name of the case, the court that decided it, and the year it was decided.
2. ***Facts.*** Briefly indicate (a) the reasons for the lawsuit, (b) the identity and arguments of the plaintiff(s) and defendant(s), and (c) the lower court's decision, if the decision is from an appellate, or reviewing, court.
3. ***Issue.*** Concisely phrase, in the form of a question, the essential issue before the court. (If more than one issue is involved, you may have two—or even more—questions.)
4. ***Decision.*** Indicate here—with a "yes" or "no," if possible—the court's answer to the question (or questions) in the *Issue* section.
5. ***Reason.*** Summarize as briefly as possible the reasons given by the court for its decision (or decisions) and the case or statutory law relied on by the court in arriving at its decision.

See this chapter's *Building Analytical Skills* feature for a sample case brief and a discussion of how the brief relates to the IRAC method of legal reasoning.

Case Briefing and IRAC Legal Reasoning



Here is a sample case brief of the 2018 opinion shown in Exhibit 1A–3.

1. **Citation**. *Yeasin v. Durham*, United States Court of Appeals for the Tenth Circuit, 719 Fed.Appx. 844 (2018).
2. **Facts**. Navid Yeasin and A.W. were students at the University of Kansas (KU). They dated for about nine months. When A.W. tried to end the relationship, Yeasin restrained her in his car, took her phone, and threatened to make the "campus environment so hostile that she would not attend any university in the state of Kansas." He repeatedly tweeted disparaging comments about her.

   Tammara Durham, KU's vice provost for student affairs, found that Yeasin's conduct and tweets violated the school's student code of conduct and sexual-harassment policy. She expelled him. Yeasin filed a suit in a Kansas state court against Durham, and KU reinstated him. He then filed a suit in a federal district court against Durham, claiming that she had violated his First Amendment rights by expelling him for the content of his off-campus speech. The court dismissed the claim. Yeasin appealed to the U.S. Court of Appeals for the Tenth Circuit.
3. **Issue**. Could KU and Durham expel Yeasin for his tweets?
4. **Decision**. Yes. The U.S. Court of Appeals for the Tenth Circuit affirmed the lower court's dismissal of Yeasin's suit. "Yeasin can't establish that Dr. Durham violated clearly established law when she expelled him."
5. **Reason**. Taken together, court decisions show that "at the intersection of university speech and social media, First Amendment doctrine is unsettled." In some cases, the courts permit schools to circumscribe students' free-speech rights in certain contexts. Yeasin argued, however, that three cases decided by the United States Supreme Court clearly established his right to tweet about A.W. without the university being able to place restrictions on, or discipline him for, his tweets.

   In response, the court here pointed out that those cases did not involve circumstances similar to Yeasin's situation. In those cases, no student had been charged with a crime against another student and then made sexually harassing comments affecting her ability to feel safe while attending classes. And, the court concluded, in this case, Durham could reasonably believe, based on Yeasin's conduct and his tweets, that his presence at KU would disrupt A.W.'s education and interfere with her rights.

Analysis: Notice how the sections in a case brief include the information necessary to perform IRAC legal reasoning. (Recall from the chapter that IRAC stands for *Issue, Rule of Law, Application*, and *Conclusion*.) Step 1 in IRAC reasoning is *Issue*. You need to understand the relevant facts, identify the plaintiff and defendant, and determine the specific issue presented by the case. You will find this information in the first two sections of your brief.

The *Facts* section identifies the plaintiff and the defendant. Navid Yeasin is the plaintiff. Dr. Tammara Durham is the defendant. The *Facts* also describes the events leading up to this suit and the allegations made by the plaintiff in the suit. Because this case is a decision of one of the U.S. courts of appeals, the lower court's ruling, the party appealing, and the appellant's contention on appeal are included here.

It is important to carefully frame the issue so that you can look for the appropriate *Rule of Law* that will guide a decision. In this case, the court considers whether KU, where Yeasin was a student, and Durham, the university's vice provost for student affairs, violated clearly established law when they expelled him.

Result and Reasoning: The *Reason* section includes references to the relevant laws and legal principles that the court applied in coming to the conclusion arrived at in the case. The *Rule of Law* here included court decisions on whether, and in what circumstances, schools can circumscribe students' free-speech rights.

The *Reason* section also explains the court's *Application* of the law to the facts in this case. Because Yeasin was charged with a crime for sexually harassing tweets that caused another student to fear for her safety, the court reasoned that the university had legitimate reasons for disciplining him. Durham could reasonably believe that Yeasin's presence at KU would disrupt A.W.'s education and interfere with her rights. The court arrived at the *Conclusion* that this was one of those contexts in which a court will permit a school to circumscribe students' free-speech rights.


Alina555/E+/Getty Images

Courts and Alternative Dispute Resolution

2

"An eye for an eye will make the whole world blind."

Mahatma Gandhi
1869–1948
(Indian political and spiritual leader)

Every society needs to have an established method for resolving disputes. Without one, as Mahatma Gandhi implied in the chapter-opening quotation, the biblical "eye for an eye" would lead to anarchy. This is particularly true in the business world—almost every businessperson will face a lawsuit at some time in his or her career. For this reason, anyone involved in business needs to have an understanding of court systems in the United States, as well as the various methods of dispute resolution that can be pursued outside the courts.

Assume that Evan Heron is a top executive at Des Moines Semiconductor Manufacturing Company (DSMC) and that DSMC is one of the largest U.S. makers of mobile phone processors. Heron negotiates some of the company's most lucrative contracts, under which DSMC provides companies like Apple, Inc., with the chips they use in smartphones.

A dispute arises between DSMC and one of its customers, a Canadian smartphone company, concerning the price the Canadian company was charged for chips. The Canadian firm threatens litigation, but Heron convinces his colleagues at DSMC to agree to arbitrate, rather than litigate, the dispute. The arbitration panel ends up deciding that DSMC overcharged for the chips and awards the Canadian company $800 million. Heron and DSMC are dissatisfied with the result. Is the panel's decision binding? Can DSMC appeal the arbitration award to a court? These are a few of the concerns discussed in this chapter. (This chapter's *Business Blog* feature deals with an arbitration clause Samsung sought to impose on buyers of its smartphones.)

Learning Objectives

The six Learning Objectives *below are designed to help improve your understanding. After reading this chapter, you should be able to answer the following questions:*

1. What is judicial review? How and when was the power of judicial review established?
2. How are the courts applying traditional jurisdictional concepts to cases involving Internet transactions?
3. What is the difference between a trial court and an appellate court?
4. What is discovery, and how does electronic discovery differ from traditional discovery?
5. What is an electronic court filing system?
6. What are three alternative methods of resolving disputes?

Samsung and Forced Arbitration

Samsung, like other smartphone manufacturers, does not want to go to court for every complaint that a purchaser has. Consequently, in each new smartphone box, it includes a Product Safety & Warranty Information brochure containing the following statement:

> ALL DISPUTES WITH SAMSUNG ARISING IN ANY WAY FROM THIS LIMITED WARRANTY OR THE SALE, CONDITION, OR PERFORMANCE OF THE PRODUCTS SHALL BE RESOLVED EXCLUSIVELY THROUGH FINAL AND BINDING ARBITRATION, AND NOT BY A COURT OR JURY.

In the same 101-page brochure, Samsung explains the procedures for arbitration and notes that purchasers can opt out of the arbitration agreement by calling a toll-free number or sending an e-mail within thirty days of purchase. The lead plaintiff in what became a class-action suit against Samsung did not take any steps to opt out.

The class-action suit alleged that the company misrepresented its smartphone's storage capacity and "rigged the phone to operate at a higher speed when it was being tested." Samsung moved to compel arbitration by invoking the arbitration provision in its Product Safety & Warranty Information brochure. A federal district court denied Samsung's motion to compel arbitration. On appeal, the trial court's reasoning was accepted. There was no evidence that the plaintiff had expressly agreed to submit to arbitration. The mere fact that an arbitration clause was included in the Product Safety & Warranty Information brochure did not create a binding contract between the plaintiff and Samsung. Further, even though the plaintiff had signed a Customer Agreement with the seller of the smartphone (Verizon Wireless), Samsung was not a signatory to that agreement.[a]

Key Point

It is understandable that companies wish to avoid the high cost of going to court for every customer grievance. Binding arbitration offers businesses numerous advantages over litigation. A business must be certain, though, that a binding arbitration requirement is part of an actual contractual agreement between the business and its customers. Placing an arbitration clause—even in all capital letters—in a multi-page document that customers may never read is usually not sufficient.

a. *Norcia v. Samsung Telecommunications America, LLC*, 845 F.3d 1279 (9th Cir. 2017).

2–1 The Judiciary's Role

The body of American law includes the federal and state constitutions, statutes passed by legislative bodies, administrative law, and the case decisions and legal principles that form the common law. These laws would be meaningless, however, without the courts to interpret and apply them. This is the essential role of the judiciary—the courts—in the American governmental system: to interpret and apply the law.

2–1a Judicial Review

Judicial Review The process by which a court decides on the constitutionality of legislative enactments and actions of the executive branch.

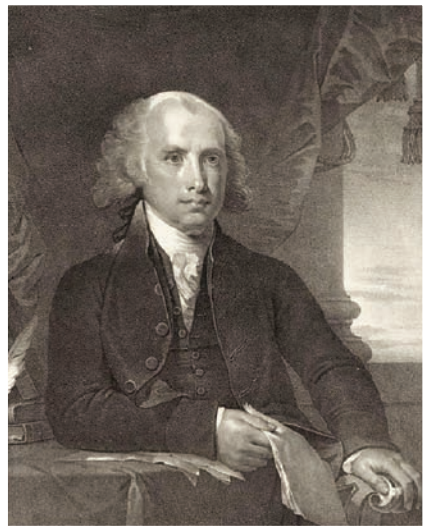
As the branch of government entrusted with interpreting the laws, the judiciary can decide, among other things, whether the laws or actions of the other two branches are constitutional. The process for making such a determination is known as **judicial review.** The power of judicial review enables the judicial branch to act as a check on the other two branches of government, in line with the checks-and-balances system established by the U.S. Constitution. (Today, nearly all nations with constitutional democracies, including Canada, France, and Germany, have some form of judicial review.)

2–1b The Origins of Judicial Review in the United States

Learning Objective 1
What is judicial review? How and when was the power of judicial review established?

The power of judicial review is not mentioned in the U.S. Constitution (although many constitutional scholars believe that the founders intended the judiciary to have this power). The United States Supreme Court explicitly established this power in 1803 in the case *Marbury v. Madison*.[1] In that decision, the Court stated, "It is emphatically the province [authority] and duty of the Judicial Department to say what the law is. . . . If two laws conflict with each other, the courts must decide on the operation of each. . . . [I]f both [a] law and the Constitution apply to a particular case, . . . the Court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty."

Since the *Marbury v. Madison* decision, the power of judicial review has remained unchallenged. Today, this power is exercised by both federal and state courts.



Library of Congress Prints and Photographs Division

In 1803, James Madison was a party in the *Marbury v. Madison* case. What did that case say about judicial duty?

2–2 Basic Judicial Requirements

Before a court can hear a lawsuit, certain requirements must first be met. These requirements relate to jurisdiction, venue, and standing to sue. We examine each of these important concepts here.

2–2a Jurisdiction

In Latin, *juris* means "law," and *diction* means "to speak." Thus, "the power to speak the law" is the literal meaning of the term **jurisdiction**. Before any court can hear a case, it must have jurisdiction over the person (or company) against whom the suit is brought (the defendant) or over the property involved in the suit. The court must also have jurisdiction over the subject matter of the dispute.

Jurisdiction The authority of a court to hear and decide a specific case.

Jurisdiction over Persons or Property Generally, a court can exercise personal jurisdiction (*in personam* jurisdiction) over any person or business that resides in a certain geographic area. A state trial court, for instance, normally has jurisdictional authority over residents (including businesses) in a particular area of the state, such as a county or district. A state's highest court (often called the state supreme court) has jurisdiction over all residents of that state.

A court can also exercise jurisdiction over property that is located within its boundaries. This kind of jurisdiction is known as *in rem* jurisdiction, or "jurisdiction over the thing." **Example 2.1** A dispute arises over the ownership of a boat in dry dock in Fort Lauderdale, Florida. The boat is owned by an Ohio resident, over whom a Florida court normally cannot exercise personal jurisdiction. The other party to the dispute is a resident of Nebraska. In this situation, a lawsuit concerning the boat could be brought in a Florida state court on the basis of the court's *in rem* jurisdiction.

Long Arm Statute A state statute that permits a state to exercise jurisdiction over nonresident defendants.

Long Arm Statutes. Under the authority of a state **long arm statute,** a court can exercise personal jurisdiction over certain out-of-state defendants based on activities that took place within the state. Before exercising long arm jurisdiction over a nonresident, however, the court must be convinced that the defendant had sufficient contacts, or *minimum contacts*, with the state to justify the jurisdiction.[2] Generally, this means that the defendant must have enough of a connection to the state for the judge to conclude that it is fair for the state

1. 5 U.S. (1 Cranch) 137, 2 L.Ed. 60 (1803).
2. The minimum-contacts standard was established in *International Shoe Co. v. State of Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945).

to exercise power over the defendant. If an out-of-state defendant caused an automobile accident or sold defective goods within the state, for instance, a court will usually find that minimum contacts exist to exercise jurisdiction over that defendant.

Spotlight Case Example 2.2 An Xbox game system caught fire in Bonnie Broquet's home in Texas and caused substantial personal injuries. Broquet filed a lawsuit in a Texas court against Ji-Haw Industrial Company, a nonresident company that made the Xbox components. Broquet alleged that Ji-Haw's components were defective and had caused the fire. Ji-Haw argued that the Texas court lacked jurisdiction over it, but a state appellate court held that the Texas long arm statute authorized the exercise of jurisdiction over the out-of-state defendant.[3] Similarly, a state may exercise personal jurisdiction over a nonresident defendant who is sued for breaching a contract that was formed within the state, even when that contract was negotiated over the phone or through correspondence.

Corporate Contacts. Because corporations are considered legal persons, courts use similar principles to determine whether it is fair to exercise jurisdiction over a corporation. A corporation normally is subject to personal jurisdiction in the state in which it is incorporated and has its principal office.

Courts apply the minimum-contacts test to determine if they can exercise jurisdiction over out-of-state corporations. In the past, corporations were normally subject to jurisdiction in states in which they were doing business, such as advertising or selling products. The United States Supreme Court has now clarified that large corporations that do business in many states are not automatically subject to jurisdiction in all of them. A corporation is subject to jurisdiction only in states where it does such substantial business that it is "at home" in that state.[4] To determine minimum contacts, the courts look at the amount of business the corporation does within the state relative to the amount it does elsewhere.

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Is the presence of a railroad company's tracks in one state enough to satisfy the minimum-contacts requirement?

Case Example 2.3 Norfolk Southern Railway Company is a Virginia corporation. Russell Parker, a resident of Indiana and a former employee of Norfolk, filed a lawsuit against the railroad in Missouri. Parker claimed that while working for Norfolk in Indiana he had sustained an injury. Norfolk argued that Missouri courts did not have jurisdiction over the company. The Supreme Court of Missouri agreed. Simply having train tracks running through Missouri was not enough to meet the minimum-contacts requirement. Norfolk also had tracks and operations in twenty-one other states. The plaintiff worked and was allegedly injured in Indiana, not Missouri. Even though Norfolk did register its corporation in Missouri, the amount of business that it did in Missouri was not so substantial that it was "at home" in that state.[5]

Jurisdiction over Subject Matter Jurisdiction over subject matter is a limitation on the types of cases a court can hear. In both the federal and state court systems, there are courts of *general* (unlimited) *jurisdiction* and courts of *limited jurisdiction*.

A court of general jurisdiction can decide cases involving a broad array of issues. An example of a court of general jurisdiction is a state trial court or a federal district court.

Probate Court A state court of limited jurisdiction that conducts proceedings relating to the settlement of a deceased person's estate.

In contrast, a court of limited jurisdiction can hear only specific types of cases. An example of a state court of limited jurisdiction is a probate court. **Probate courts** are state courts that handle only matters relating to the transfer of a person's assets and obligations after

3. *Ji-Haw Industrial Co. v. Broquet*, 2008 WL 441822 (Tex.App.—San Antonio 2008).
4. *Daimler AG v. Bauman*, 571 U.S. 117, 134 S.Ct. 746, 187 L.Ed. 624 (2014).
5. *State ex rel. Norfolk Southern Railway Co. v. Dolan*, 512 S.W.3d 41 (Mo. 2017).