

24TH EDITION

ANDERSON'S

BUSINESS LAW

and the LEGAL ENVIRONMENT

TWOMEY
JENNINGS
GREENE

COMPREHENSIVE VOLUME

24th Edition

ANDERSON'S
BUSINESS LAW
and The Legal Environment
Comprehensive Volume

DAVID P. TWOMEY

Professor of Law
Carroll School of Management
Boston College
Member of the Massachusetts and Florida Bars

MARIANNE MOODY JENNINGS

Emeritus Professor of Legal and Ethical Studies
W.P. Carey School of Business
Arizona State University
Member of the Arizona Bar

STEPHANIE M. GREENE

Chair, Business Law Department
Professor of Business Law
Carroll School of Management
Boston College
Member of the Massachusetts Bar



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**Anderson's Business Law and The
Legal Environment: Comprehensive
Volume, 24th Edition**

**David P. Twomey, Marianne Moody
Jennings, and Stephanie M. Greene**

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Cover Image source: Ventura/Shutterstock.
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Library of Congress Control Number: 2020914178

Student Edition:

ISBN: 978-0-357-36374-4

Loose-leaf Edition:

ISBN: 978-0-357-36384-3

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Printed in the United States of America
Print Number: 01 Print Year: 2020

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Regardless of the day of the week, newspapers and magazines will have stories about law and business together. Uber and Lyft continue to battle with agencies and in court over whether their drivers are employees or independent contractors. Elon Musk made a statement on Twitter that the funding for taking Tesla private was secure. He then settled with the SEC for disseminating corporate information that was at best premature and at worst inaccurate. Sprint and T-Mobile went through a lengthy process with the Justice Department over its antitrust concerns before the two were able to complete their merger. Sears, Neiman Marcus, PayLess Shoes, and David's Bridal all entered some form of bankruptcy. The COVID-19 lockdown resulted in tenants without rent money, landlords with empty properties, and unemployment benefits for almost 40 million workers.

Who is responsible for crimes committed by companies? If a mining company CEO closely tracks production, can he be held criminally liable when the problems at the mine result in an explosion and deaths of the miners? As major corporations have continued to experience major criminal, legal, and ethical difficulties, we can see how important it is for business managers to understand the law and the foundations of ethics. When a manager has a void in knowledge on law and ethics, running a company can be tricky business. Boeing had to navigate regulatory oversight, civil lawsuits, and shareholder demands as it dealt with the engineering problems of its 737MAX and two fatal crashes. In the art world, thieves and forged paintings plagued the largest auction houses. We all come face-to-face with the legal system in day-to-day events. The people of Saginaw, Michigan, took the traffic officers' marking of their tires in limited-time parking slots all the way to the U.S. Supreme Court on the grounds of the Fourth Amendment. And how many times can a collector call your parents about your debts? Those flushable wipes turned out to not be so flushable, so who bears the cost of damages to pipes and city water systems?

When an entrepreneur is struggling with the decision of whether to incorporate or create an LLC, or the shareholders of Disney are grappling with issues about their rights when their CEO makes a bad decision, the law is there. No business or manager can hope to succeed without an understanding of the laws and legal environment of business. Students in business must be prepared with both knowledge of the law and the skill of applying it in the business setting. We learn principles and application through interaction with examples and by working our way through dilemmas, issues, and problems. This 24th edition of *Anderson's Business Law and the Legal Environment* enhances the learning process while still providing a detailed and rigorous case approach.

Features of the Text

The features of this text make the business and law connection easy to understand and offer students clarity for grasping the often challenging complexities of law. The features are summarized in the following sections, which offer an overview of this edition.

Learning Outcomes

Students will better see and understand the relationship between legal concepts and their application in real-life situations by using the chapter Learning Outcomes. These Learning Outcomes are listed at the beginning of the chapter as an overview for focusing and organizing the reading. They are then featured again at the end of each chapter with the cases, "For Examples," and other features listed under each of the Learning Outcomes. Also at the

end of the chapter are a Summary and a list of Key Terms, all bolded and defined throughout the chapter. These learning aids are part of an all-encompassing section at the chapter's finish called "Make the Connection."

Sports and Entertainment Law

Using pop culture, this feature teaches students about law and ethics in a way that is sure to engage them. The college basketball bribery scandal resulted in criminal charges and convictions for agents, an Adidas employee, and several assistant basketball coaches as well as the resignation of their coaches. Can contracts be terminated because of public behavior? Was Heath Ledger's will, one that was drawn up and executed before he had a child, still valid? Edward Hermann, the father and grandfather in *The Gilmore Girls*, thought his accountants had managed his funds well enough to leave his daughter sufficient funds for college. When he died, she found out otherwise and sued the accountants. Can the daughter recover from the father's accountants for malpractice? What happens to the personal property that actor Robin Williams failed to specify a distribution for? Who gets his *Mork & Mindy* suspenders? Can Netflix motion pictures be banished from Oscar competition? Students have the chance to explore the law through these examples of sports figures' and entertainers' brushes with the law.

Clarity

The writing style has been evolving and, once again, we have changed more passages that fell victim to the passive voice. The writing is clear and lively. The examples are student-friendly, and the discussions of law are grounded in the book's strong connection to business. The principles of law are taught in the language and examples of business. Students can relate to the examples, which provide memorable illustrations of complex but critical legal concepts. And beyond writing style, for example, YouTube videos are referenced to enhance student understanding of the reality of new industry standards through blockchain technology for the secure transmission of supply chain documents around the world.

CPA Helps

As always, the text provides coverage for all the legal topics covered on the CPA exam. Several topics have been eliminated from the content for the CPA exam as of June 2020. The exam now focuses on contracts (both common law and UCC), agency, all aspects of debtor-creditor relationships from suretyship to UCC Article 9 to collection to bankruptcy, business structure, securities liability, accountant liability, employment law, and other federal regulation of business. A detailed update on CPA Exam content follows:

Business Law

- A. Agency
 - 1. Formation and termination
 - 2. Authority of agents and principals
 - 3. Duties and liabilities of agents and principals
- B. Contracts
 - 1. Formation
 - 2. Performance
 - 3. Third-party assignments
 - 4. Discharge, breach, and remedies

- C. Uniform Commercial Code
 - 1. Sales contracts
 - 2. Secured transactions
- D. Debtor-Creditor Relationships
 - 1. Rights, duties, and liabilities of debtors, creditors, and guarantors
 - 2. Bankruptcy and insolvency
- E. Government Regulation of Business
 - 1. Federal securities regulation
 - 2. Other federal laws and regulations (employment, including federal contribution programs [FICA, FUTA])
- F. Business Structure (Selection of a Business Entity)
 - 1. Advantages, disadvantages, implications, and constraints
 - 2. Formation, operation, and termination
 - 3. Financial structure, capitalization, profit and loss allocation, and distributions
 - 4. Rights, duties, legal obligations, and authority of owners and management

Business organizations remain a focus of eight chapters with up-to-date coverage of Dodd-Frank and its impact on business forms and disclosures. This edition continues to feature sample CPA exam questions at the end of those chapters that include legal areas covered on the exam. Answers for the odd-numbered CPA exam questions in each of the appropriate chapters are given in the Instructor's Manual along with explanations for the answers. This edition of the book also continues to use a CPA highlight icon to alert students to those areas that are particularly critical in preparing for the law portion of the CPA exam.

Case Summaries

Specially selected case summaries appear in abundance and are still at the core of this text. Most chapters include three to five case summaries, and they have been updated to feature the most current and newsworthy topics. Landmark decisions also appear, including several from the 2019–2020 U.S. Supreme Court term.

e-Commerce and Cyberlaw

This feature covers e-mail privacy, Internet taxes, identity theft, contract formation on the Internet, e-commerce employment rules, electronic signatures, and more. Chapter 7, the criminal law chapter, includes greater detail on the new and evolving computer crimes. Chapter 9, the intellectual property chapter, features the litigation between Google and Oracle over copyright protection of software in smartphones. There are features in chapters throughout the book, such as an example in Chapter 2 about how social media is having an impact on jury selection because of the information lawyers can gather about potential jurors from these sources. The new U.S. Supreme Court case on sales tax and Internet merchants is a case in the Constitutional Law chapter (Chapter 4), and is followed by a feature on how small Internet businesses are dealing with the regulatory challenges of having to submit sales tax in 50 states and thousands of cities. Chapter 5 features a discussion of the antitrust investigation into Google's ad practices.

Thinking Things Through

This feature is designed to help students apply the law they have learned from the chapter and cases to a hypothetical scenario or another case that varies slightly from the examples in the reading. With these problems built into the reading, students have the chance to really think through what they have just read and studied with regard to the law presented in that chapter. This feature can be used to promote classroom discussion or as an assignment for analysis. For example, in Chapter 3, there is a discussion of international corruption. Chapter 4 covers a constitutional issue on state attempts to stop puppy mills and the impact on interstate breeders. Chapter 23 features a dilemma on a stolen car title and who gets the car. Students have the opportunity to walk through a liability question when there are forgeries on a check to determine who ultimately bears the loss on a fraudulent check.

Major Regulatory Reforms: USA Patriot Act, Dodd-Frank, and the JOBS Act

Businesses continue to be dramatically affected not only by laws at the federal level, but also by complex and intricate new federal regulatory schemes. Dodd-Frank has changed many things in many areas of the law from the behavior of analysts to the protection of consumers in mortgage and credit transactions. The provisions of the Affordable Health Care Act have twice been litigated to the level of the U.S. Supreme Court, with the third case now pending. These are cases that cover fundamental questions about our Constitution as well as the balance of state and federal power. The JOBS Act has fundamentally changed access to the capital markets and made it easier for smaller companies to raise money by easing securities regulation requirements.

Ethical Focus

In addition to Chapter 3, which is devoted exclusively to the current issues in business ethics, each chapter continues to provide students with an ethical dilemma related to that particular area of law. The Ethics & the Law feature presents problems in each area of law. Students will be able to analyze ethical issues and problems that are very real and very challenging for anyone in business—for example, the issues involved in check cashing companies that take checks for a fee knowing that there are probably issues with those checks and then seek holder-in-due-course protection. And Chapter 2 presents the ethical issue of the role of corporate counsel in questioning employees of the corporation. Whom is that lawyer representing and should employees be cautious in answering questions?

Critical Thinking

The American Assembly of Collegiate Schools of Business (AACSB) mandate on critical thinking is addressed by this text. The Thinking Things Through feature asks students to analyze a problem that requires application of the law and examination of slight changes in factual patterns from examples in the text and the cases. For example, in Chapter 43 on Securities Regulation, students can look at a chart and determine which type of offering would be best for their business needs. They can then turn to a question and explain the requirements for using that type of offering. Further, they can study an ethical issue on what they need to disclose as part of their SEC requirements. In the Ethics & the Law feature, students must connect ethical thought with law and public policy and walk through the logic of application and results. End-of-chapter problems are, for the most part, real cases that summarize fact patterns and ask the students to find the applicable laws in the chapter and determine applicability and results. The fact patterns in the chapter problems

are detailed and realistic and offer students the chance to test their mastery of the chapter concepts.

For Additional Help in Teaching and Learning

For more detailed information about any of the following ancillaries, contact your local Cengage Learning Consultant or visit the *Anderson's Business Law and the Legal Environment* Web site.

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MindTap™ is a fully online, highly personalized learning experience combining readings, activities, and assessments into a singular Learning Path. *MindTap* guides students through their course with ease and engagement. Instructors can 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.

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- Learn It: Chapter review quizzes help students review the chapter's content and can be completed prior to class so that class time can be spent applying the concepts.
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Each item in the Learning Path is assignable and gradable. This gives instructors the knowledge of class standings and concepts that may be difficult. Additionally, students gain knowledge about where they stand—both individually and compared to the highest performers in class.

To view a demo video and learn more about *MindTap*, please visit **www.cengage.com/mindtap**.

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Acknowledgments

The development and revision of a textbook represents teamwork in its highest form. We thank the innumerable instructors, students, attorneys, and managers who have added to the quality of this textbook through its many editions.

Dean Alexander
Miami-Dade Community College

Robert A. Arnold
Thomas More College

John T. Ballantine
University of Colorado

Todd Barnet
Pace University

Marie F. Benjamin
Valencia Community College

Kenneth V. Bevan
Valencia Community College

Weldon M. Blake, JD
Bethune-Cookman University

Bob Blinderman
WTAMU and Amarillo College

Robert Boeke
Delta College

Billy Carson
Itawamba Community College

Norman Bradshaw
Alvin Community College

Thomas L. Brooks, Jr.
Purdue University

Myra Bruegger
Southeastern Community College

Barry Bunn
Valencia Community College

Jarrold Y. Burch, JD
*Saint Leo University and American
Intercontinental University*

Deborah Carter
Coahoma Community College

Greg Cermigiano
Widener University

David A. Clough
*Naugatuck Valley Community
College*

Anne Cohen
University of Massachusetts

Thomas S. Collins
Loras College

Jason Cooley
Copiah Lincoln Community College

Lawrence J. Danks
Camden County College

Shoshana Dennis
San Diego City College

Darrell Dies
Illinois State University

De Vee E. Dykstra
University of South Dakota

Adam Epstein
University of Tennessee

Phillip Evans
Kutztown University of Pennsylvania

Deborah Lynn Bundy Ferry
Marquette University

Darrel Ford
University of Central Oklahoma

Andrea Foster
John Tyler Community College

Leslie L. Francis
CUNY-York College

Edward J. Gac
University of Colorado

Teresa R. Gillespie
Northwest University

Kimberly Goudy
Central Ohio Technical College

Patrick J. Griffin, CPA, LL.M., JD
Lewis University

David Grigg
Pfeiffer University

Ronald Groeber
Ball State University

Francis A. Hatstat, MBA, JD
Bellevue College

Heidi Helgren
Delta College

Florence Elliot Howard
Stephen F. Austin University

Richard Hurley
Francis Marion University

Lawrence A. Joel
Bergen Community College

David Lewis Jordan
Emmanuel College

Michael A. Katz
Delaware State University

Thomas E. Knothe
Viterbo University

Ruth Kraft
Audrey Cohen College

Claire La Roche
Longwood College

Virginia Edgerton Law, JD
Saint Leo University

Paolo Longo, Jr.
Valencia Community College

Susan D. Looney
Mohave Community College

Linda McCarley
Bevill State Community College

Roy J. Millender, Jr.
Westmont College

Derek Mosley
Meridian Community College

Michael Murphy
Langston University—Tulsa

Steven Murray
Community College of Rhode Island

Ann Olazábal
University of Miami

Neal Orkin
Drexel University

Jeffrey D. Penley, JD
Catawba Valley Community College

Ronald Picker
St. Mary's of the Woods College

Francis Polk
Ocean County College

Robert Prentice
University of Texas at Austin

Linda Reppert
Marymount University

Richard J. Riley
Samford University

Simone I. Rosenberg
Valencia Community College—East Campus

Gary Sambol
Rutgers University School of Business

Samuel L. Schrager
University of Connecticut

Kathy Scott
Western Piedmont Community College

Janet Seggern
Lehigh Carbon Community College

Lester Smith
Eastern New Mexico University

Joseph A. Spadaro
Naugatuck Valley Community College

Michael Sugameli
Oakland University

Cathy L. Taylor
Park University and Webster University

Mike Teel
Samford University

Darrell H. Thompson
Mountain View College

Cathy Trecek
Iowa Western Community College

Bob Vicars
Bluefield State University

Thomas K. Ware
Johnson State College

James Welch
Kentucky Wesleyan College

Lisa Wilhite
Bevill State Community College

We extend our thanks to our families for their support and patience as we work our long hours to ensure that each edition is better than the last.

About the Authors

Professor David Twomey has been a member of the Business Law Department in the Carroll School of Management at Boston College since 1968. As department chair for over a decade, and four-term chair of the school's Education Policy Committee, Professor Twomey served as a spokesperson for a strong legal and ethical component in both the undergraduate and graduate curriculum. He is the author of some 36 editions of textbooks on labor, employment, and business law topics. His articles have appeared in journals such as *Best's Review*, *The American Business Law Journal*, *The Labor Law Journal*, *The Massachusetts Law (Quarterly)*, *The Florida Bar Journal*, and *The Business Law Review*. He has served as arbitrator in over two thousand labor-management disputes throughout the country. His service includes appointments by Presidents Ronald Reagan, George H. W. Bush, William J. Clinton, George W. Bush, and Barack Obama to nine Presidential Emergency Boards, whose recommendations served as the basis for the resolution of major disputes in the rail and airline industries. After service in the U.S. Marine Corps, he graduated from Boston College, earned his MBA at the University of Massachusetts, Amherst, and a JD degree at Boston College Law School. He is a member of the Massachusetts and Florida Bars and a member of the National Academy of Arbitrators.

Professor Marianne M. Jennings, Emeritus Professor of Legal and Ethical Studies, taught at the WP Carey School of Business, Arizona State University, from 1977 through 2016. She has six textbooks and four monographs in circulation in the areas of business ethics, ethical culture, and legal environment. She was director of the Lincoln Center for Applied Ethics from 1995 to 1999. She has worked with government agencies, professional organizations, colleges and universities, and Fortune 100 companies on ethics training and culture. She is a contributing editor of *Corporate Finance Review* and *Real Estate Law Journal*. Two of her books have been named *Library Journal*'s book of the year. Her books have been translated into three languages. Her book, *The Seven Signs of Ethical Collapse*, was published by St Martin's Press and has been used as both an audit tool and a primer by numerous organizations for creating and sustaining an ethical culture.

In 2011, she was named one of the Top 100 Thought Leaders by Trust Across America, and in 2012, she was named one of the 100 most influential people in business ethics by *Ethisphere* magazine.

She served on the board of directors for Arizona Public Service (now Pinnacle West), the owner of the Palo Verde Nuclear Station, from 1987 through 2000. She has served on INPO's advisory council since 2005. In 2015, she was named an affiliated scholar with the Center for the Study of Economic Liberty at Arizona State University. She conducts ethics training and ethical culture assessments for businesses, including Fortune 100 companies, government agencies, professional associations, and nonprofit organizations.

Professor Stephanie M. Greene has been a member of the faculty at the Boston College Carroll School of Management since 1995, where she currently serves as professor and chair of the Business Law Department. She served as editor-in-chief of the *American Business Law Journal* and the *Journal of Legal Studies Education*, both publications of the Academy of Legal Studies in Business. She has published numerous articles on intellectual property law, pharmaceutical regulation, and employment law with publications appearing in the *American Business Law Journal*, the *Northwestern Journal of International Law & Business*, and the *Stanford Journal of Civil Rights and Civil Liberties*. A member of the Massachusetts Bar, Professor Greene earned her undergraduate degree from Princeton University and her JD from Boston College Law School. She is a member of the Massachusetts Bar.



The Legal and Social Environment of Business

- 1 The Nature and Sources of Law
- 2 The Court System and Dispute Resolution
- 3 Business Ethics, Social Forces, and the Law
- 4 The Constitution as the Foundation of the Legal Environment
- 5 Government Regulation of Competition and Prices
- 6 Administrative Agencies
- 7 Crimes
- 8 Torts
- 9 Intellectual Property Rights
- 10 The Legal Environment of International Trade

The Nature and Sources of Law

1-1 Nature of Law and Legal Rights

- 1-1a Legal Rights
- 1-1b Individual Rights
- 1-1c The Right of Privacy
- 1-1d Privacy and Technology

1-2 Sources of Law

- 1-2a Constitutional Law
- 1-2b Statutory Law
- 1-2c Administrative Law
- 1-2d Private Law
- 1-2e Case Law, Statutory Interpretation, and Precedent

- 1-2f Other Forms of Law: Treaties and Executive Orders
- 1-2g Uniform State Laws

1-3 Classifications of Law

- 1-3a Substantive Law vs. Procedural Law
- 1-3b Criminal Law vs. Civil Law
- 1-3c Law vs. Equity

Learning Outcomes <<<

After studying this chapter, you should be able to

- L0.1** Discuss the nature of law and legal rights
- L0.2** List the sources of law
- L0.3** Describe the classifications of law

1-1 Nature of Law and Legal Rights

Why have law? If you have ever been stuck in a traffic jam or jostled in a crowd leaving a stadium, you have observed the need for order to keep those involved moving in an efficient and safe manner. The issues with bloggers' use of others' materials and continuing unauthorized downloading of music and films without compensation to copyright holders illustrate the need for rules and order in this era of new technology. When our interactions are not orderly, whether at our concerts or through our e-mail, all of us and our rights are affected. The order or pattern of rules that society uses to govern the conduct of individuals and their relationships is called **law**. Law keeps society running smoothly and efficiently.

Law consists of the body of principles that govern conduct and that can be enforced in courts or by administrative agencies. The law could also be described as a collection or bundle of rights.

1-1a Legal Rights

A **right** is a legal capacity to require another person to perform or refrain from performing an act. Our rights flow from the U.S. Constitution, state constitutions, federal and state statutes and regulations, and ordinances at the local levels, including cities, counties, and boroughs. Within these sources of rights are also duties. A **duty** is an obligation of law imposed on a person to perform or refrain from performing a certain act.

Duties and rights coexist. No right exists in one person without a corresponding duty resting on some other person or persons. For example, if the terms of a lease provide that the tenant has the right to live comfortably in a place kept in good condition, the landlord has corresponding duties to provide such a dwelling, including things such as heat in the winter and hot and cold running water.

1-1b Individual Rights

The U.S. Constitution gives individuals certain rights. Those rights include the right to freedom of speech; the right to due process, which is the right to have a hearing before any freedom is taken away; and the right to vote. There are also duties that accompany individual rights, such as the duty to speak in a way that does not cause harm to others. For example, individuals are free to express their opinions about the government or its officials, but they would not be permitted to falsely warn "Fire!" in a crowded theater because of the chaos and unnecessary harm to others that would follow. The rights given in the U.S. Constitution are rights that cannot be taken away or violated by any statutes, ordinances, or court decisions. These rights provide a framework for the structure of government and other laws.

1-1c The Right of Privacy

One very important individual legal right is the right of privacy, which has two components. The first is the right to be secure against unreasonable searches and seizures by the government. The Fourth Amendment of the U.S. Constitution guarantees this portion of the **right of privacy**. A police officer, for example, may not search your home unless the officer has a reasonable suspicion (which is generally established through a warrant) that your home contains evidence of a crime, such as illegal drugs. If your home or business is searched unlawfully, any items obtained during that unlawful search could be excluded as evidence in a criminal trial because of the Fourth Amendment's exclusionary rule. **For Example**, in *Riley v. California*, 573 U.S. 373 (2014), David Riley was stopped by a police officer for driving with expired registration tags. The officer discovered that

law—the order or pattern of rules that society establishes to govern the conduct of individuals and the relationships among them.

right—legal capacity to require another person to perform or refrain from an action.

duty—an obligation of law imposed on a person to perform or refrain from performing a certain act.

right of privacy—the right to be free from unreasonable intrusion by others.

Mr. Riley's license had been suspended, so his car was impounded and searched. Officers also found Mr. Riley's smart phone and, in going through the phone, found pictures and information related to a gang shooting, and Mr. Riley was then charged with that earlier shooting. However, the court held that evidence from the smart phone could not be used at trial because there was no warrant and Mr. Riley had a right of privacy in the data on that phone.¹

A second aspect of the right of privacy protects individuals against intrusions by others. Your private life is not subject to public scrutiny when you are a private citizen. This right is provided in many state constitutions and exists through interpretation at the federal level through the landmark case of *Roe v. Wade*,² in which the U.S. Supreme Court established a right of privacy that gives women the right to choose whether to have an abortion.

These two components of the right to privacy have many interpretations. These interpretations are often found in statutes that afford privacy rights with respect to certain types of conduct. **For Example**, a federal statute provides a right of privacy to bank customers that prevents their banks from giving out information about their accounts except to law enforcement agencies conducting investigations. Some laws protect the rights of students. **For Example**, the Family Educational Rights and Privacy Act of 1974 (FERPA, also known as the *Buckley Amendment*) prevents colleges and universities from disclosing students' grades to third parties without the students' permission. From your credit information to your Social Security number, you have great privacy protections.



1-1d Privacy and Technology

Technology creates new situations that may require the application of new rules of law. Technology has changed the way we interact with each other, and new rules of law have developed to protect our rights. We still expect that our communication is private. However, technology also affords others the ability to eavesdrop on conversations and intercept electronic messages. The law has stepped in to reestablish that the right of privacy still exists even in these technologically nonprivate circumstances. We now have evolving laws on curbing access to our open communications. **For Example**, if a warrant is issued for your cell phone communications, does the warrant apply to cell phones wherever they are? One court held no, and the legislature stepped in to give courts broader electronic jurisdiction so that law enforcement could listen under a warrant on your phone no matter where you and your cell phone were in the state.³ The question of a police officer looking at your phone if you receive a text message while you are being questioned is one that courts have addressed. They can see the text because it is your privacy that is the issue, not that of the sender.⁴

We give outsiders a window into our private world through our social media activity. That activity results in interesting questions for the courts when there are civil or criminal actions related to that activity and in providing evidence in those actions. The courts are working to resolve those issues of privacy.

¹There is more to come on this issue in the section Privacy and Technology. Police officers do not need a warrant in order to use the content of an incoming text message on a suspect's phone that is received while they are questioning the suspect because the sender does not have a right of privacy in the suspect's smart phone's content. *State v. Varle*, 337 P.3d 904 (Or. App. 2014). Police also do not need a warrant for placing a GPS tracking device on a suspect's car when the suspect is on parole because parolees give consent for searches of all their property. *U.S. v. Korte*, 918 F.3d 750 (9th Cir. 2019). However, requiring parolees to give a password when the boxes for requiring giving passcodes for electronic devices were not checked on their parole forms is a violation of the Fourth Amendment. *People v. Delrio*, 259 Cal. Rptr. 3d 301 (C.A. Cal. 2020).

²410 U.S. 113 (1973).

³*Luangkhot v. State*, 736 S.E.2d 263 (Ga. 2013). Wiretaps and other electronic surveillance are still subject to jurisdictional limitations. The Georgia legislature then fixed this oversight in the law for cell phone warrants.

⁴*State v. Boyd*, 597 S.W.3d 263. (Mo. App. 2019). No right of privacy in messages sent to your girlfriend, and a search of messages incoming to her does not violate your privacy.

CASE SUMMARY

The Drive-By Shooting Planned on Social Media

FACTS: Jaquan Rice Jr. was killed and his girlfriend, B.K., a minor, was seriously injured in a drive-by shooting at a bus stop in San Francisco. Investigators, through witnesses and video, were able to piece together that Q.H., a 14-year-old, was in the car. Q.H. later confessed that he shot Rice six times because Rice “would have done the same thing to us.” Q.H. also said that his brother, Derrick Hunter, was in the car, which was a rental car furnished to them by Renesha Lee.

Renesha initially lied to the police when asked whether her boyfriend, Lee Sullivan, had borrowed the car because “I’m the one who still has to live on these streets.” After police threatened to charge her with murder, she offered more information. The three young men, including Sullivan, were part of a “cyber bangers” gang. Cyber bangers “disrespect” one another on Facebook and then make plans for shooting revenge by finding out where and when their antagonists will be on the streets. Derrick and Sullivan (defendants) were indicted on charges of murder, attempted murder, and various gang and firearms charges.

The defendants served subpoenas on Twitter for Renesha’s Twitter account (user information, e-mail addresses, activity logs, location data, photographs, videos, private messages, posts, status updates, and comments related to her account). Facebook also received subpoenas for the Facebook accounts of Rice and Renesha, asking for “any and all private and public content.” Instagram received the same type of subpoena.

Lawyers for the defense said that they needed the access for building a defense, for cross-examination of the officers, and for rebutting the online information on gangs that the police had downloaded from the public access areas before the accounts were locked down.

The three companies responded to defendants’ counsel by suggesting that they obtain the information from the account holders themselves. The companies then moved to quash the subpoenas on the grounds that the information belonged to private account holders and

that under the Stored Communications Act (SCA) they could not reveal the information without the account holders’ consent. The trial court denied the motions to quash and the parties appealed to the California Supreme Court.

DECISION: The court noted that the case was one of the first dealing with subpoenas of online social network accounts in a criminal case. In civil cases, the standard established was that a variety of factors must be considered before granting broad access to social media accounts, including privacy settings by the holder of the account, relevancy of the information to the litigation, and protections afforded by the various social media sites. Under the decisions, the parties must first do discovery and then renew the request once more factual information is available for the analysis of these factors. *Fawcett v. Altieri*, 960 N.Y.S.2d 592 (2013).

The court reached a similar conclusion for this criminal case. The first question is whether the account holders had taken steps to make their information private. If postings are in a public area, disclosure is appropriate. The second question is whether the SCA prohibits disclosure (such as the prohibition on disclosing private e-mails sent by the account holder). The third question is whether the requested disclosure is made to a social media user or a social media platform. The platform standard is higher for disclosure. The final question is: How necessary is the information sought to presenting a defense in the case? That need should be based on the other evidence gathered to determine if the social media information is really necessary to protect rights in the trial.

The court sent the matter back to the trial court for a determination of the answers to the questions in order to properly analyze whether the social media companies had to reveal the user information. *Facebook, Inc. v. Superior Court*, 417 P.3d 725 (Cal. App. 2018).



ETHICS & THE LAW

Maybe Too Many Links

LinkedIn, the popular professional connection service, has a tool called “Reference Search.” A premium service, employers and recruiters are using the tool to cull their connections to see who knows job applicants in order to get background on them. Employers are checking with references that the applicants did not list, references that may not have all good things to say about them. The service provides employers with the list of LinkedIn contacts who worked at the same companies as the applicants and at the same time.*

Applicants are worried that employers are basing employment decisions on the information that they receive from these contacts, information that may not be true or verified or verifiable. The applicants do not always know that the employer is checking with other sources or which ones and do not have the opportunity to respond to negative information.

Discuss the ethical issues in the use of this LinkedIn service by employers.

*Natasha Singer, “Funny, They Don’t Look Like My References,” *New York Times Magazine*, November 10, 2014, p. BU4.



E - COMMERCE & CYBERLAW

A University’s Access to Your Computer

Scott Kennedy, a computer system administrator for Qualcomm Corporation in San Diego, California, discovered that somebody had obtained unauthorized access (or “hacked into,” in popular parlance) the company’s computer network. Kennedy contacted the Federal Bureau of Investigation (FBI). Working together, Kennedy and the FBI were able to trace the intrusion to a computer on the University of Wisconsin at Madison network.

They contacted Jeffrey Savoy, the University of Wisconsin computer network investigator, who found evidence that someone using a computer on the university network was in fact hacking into the Qualcomm system and that the user had gained unauthorized access to the university’s system as well. Savoy traced the source of intrusion to a computer located in university housing, the room of Jerome Heckenkamp, a computer science graduate student at the university. Savoy knew that Heckenkamp had been terminated from his job at the university computer help desk two years earlier for similar unauthorized activity.

While Heckenkamp was online and logged into the university’s system, Savoy, along with detectives, went to Heckenkamp’s room. The door was ajar, and nobody was in the room. Savoy entered the room and disconnected the network cord. In order to be sure that the computer was the one that had gained unauthorized access to the university server, Savoy wanted to run some commands on the computer.

Detectives located Heckenkamp, explained the situation, and asked for Heckenkamp’s password, which Heckenkamp voluntarily provided. Savoy then ran tests on the computer and copied the hard drive without a warrant. When Heckenkamp was charged with several federal computer crimes, he challenged the university’s access to his account and Savoy’s steps that night, including the copy of the hard drive, as a breach of his privacy.

Was Heckenkamp correct? Was his privacy breached? [*U.S. v. Heckenkamp*, 482 F.3d 1142 (9th Cir. 2007)]

1-2 Sources of Law

Several layers of law are enacted at different levels of government to provide the framework for business and personal rights and duties. At the base of this framework of laws is constitutional law.

1-2a Constitutional Law

constitution—a body of principles that establishes the structure of a government and the relationship of the government to the people who are governed.

Constitutional law is the branch of law that is based on the constitution for a particular level of government. A **constitution** is a body of principles that establishes the structure of a government and the relationship of that government to the people who are governed. A constitution is generally a combination of the written document and the practices and customs that develop with the passage of time and the emergence of new problems. In each state, two constitutions are in force: the state constitution and the U.S. Constitution.

1-2b Statutory Law

statutory law—legislative acts declaring, commanding, or prohibiting something.

Statutory law includes legislative acts. Both Congress and the state legislatures enact statutory law. Examples of congressional legislative enactments include the Securities Act of 1933 (Chapter 43), the Sherman Antitrust Act (Chapter 5), the bankruptcy laws (Chapter 32), and consumer credit protection provisions (Chapter 30). At the state level, statutes govern the creation of corporations, probate of wills, and the transfer of title to property. In addition to the state legislatures and the U.S. Congress, all cities, counties, and other governmental subdivisions have some power to adopt ordinances within their sphere of operation. Examples of the types of laws found at this level of government include traffic laws, zoning laws, and pet and bicycle licensing laws.

1-2c Administrative Law

administrative regulations—rules made by state and federal administrative agencies.

Administrative regulations are rules promulgated by state and federal administrative agencies, such as the Securities and Exchange Commission (SEC) and the Environmental Protection Agency (EPA). For example, the restrictions on carbon emissions by businesses have all been promulgated by the EPA. These regulations generally have the force of statutes.

1-2d Private Law

private law—the rules and regulations parties agree to as part of their contractual relationships.

Even individuals and businesses create their own laws, or **private law**. Private law consists of the rules and regulations parties agree to as part of their contractual relationships. **For Example**, landlords develop rules for tenants on everything from parking to laundry room use. Employers develop rules for employees on everything from proper computer use to posting pictures and information on bulletin boards located within the company walls. Homeowner associations have rules on everything from your landscaping to the color of your house paint.

1-2e Case Law, Statutory Interpretation, and Precedent

case law—law that is found in judicial decisions.

Law also includes principles that are expressed for the first time in court decisions. This form of law is called **case law**. Case law plays three very important roles. The first is one of clarifying the meaning of statutes, or providing statutory interpretation. **For Example**, John Yates, a commercial fisherman, had a Florida Fish and Game Life officer come on board his *Miss Katie* for a random inspection while he was at sea. The officer found some red groupers on board that were 18–19 inches, which was just below the 20-inch cut-off for legal size. Yates was ordered to keep the fish segregated and was cited for the violation. When Yates pulled into port, the officer came to measure all the fish but could not find any undersized red groupers. A crew member told the officer that he was ordered to toss back undersized fish. Yates was charged with the obstruction

of justice under Sarbanes-Oxley for the destruction of an “intangible object” during an investigation or pending administrative proceeding. Yates challenged his conviction on the grounds that a red grouper fish was not an “intangible object” for purposes of the statute. The court held that the fish were not “intangible objects” for purposes of the Sarbanes-Oxley law because it was a statute passed to preserve information about business financial crimes.⁵

precedent—a decision of a court that stands as the law for a particular problem in the future.

stare decisis—“let the decision stand”; the principle that the decision of a court should serve as a guide or precedent and control the decision of a similar case in the future.

The second role that courts play is in creating precedent. When a court decides a new question or problem, its decision becomes a **precedent**, which stands as the law in future cases that involve that particular problem.

Using precedent and following decisions is also known as the doctrine of **stare decisis**. However, the rule of *stare decisis* is not cast in stone. Judges have some flexibility. When a court finds an earlier decision to be incorrect, it overrules that decision. For example, in *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012) the U.S. Supreme Court held that the Affordable Care Act (Obama Care) was constitutional. However, in 2014, the Court held, based on new issues raised, that a portion of the act violated the First Amendment because it mandated health care coverage of certain types of birth control that were in violation of the religious beliefs of the owners of a corporation. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014). Now, the case is pending before the U.S. Supreme Court for a third time on the issue of the penalty that was originally part of the law but was repealed in the 2017 tax reforms. *Texas v. U.S.*, 945 F.3d 355 (5th Cir. 2019), *cert. granted*, 140 U.S. 1262 (2020).

The third role courts play is in developing a body of law that is not statutory but addresses long-standing issues. Court decisions do not always deal with new problems or make new rules. In many cases, courts apply rules as they have been for many years, even centuries. These time-honored rules of the community are called the **common law**.

For Example, most of law that we still follow today in determining real property rights developed in England, beginning in 1066. Statutes sometimes repeal or redeclare the common law rules. Many statutes depend on the common law for definitions of the terms in the statutes.

common law—the body of unwritten principles originally based upon the usages and customs of the community that were recognized and enforced by the courts.

1-2f Other Forms of Law: Treaties and Executive Orders

Law also includes treaties made by the United States and proclamations and executive orders of the president of the United States or of other public officials. (See Chapter 10 for more information.) President Trump’s executive orders altering immigration policy have been the subject of constitutional challenges to the scope of executive orders.

1-2g Uniform State Laws

To facilitate the national nature of business and transactions, the National Conference of Commissioners on Uniform State Laws (NCCUSL), composed of representatives from every state, has drafted statutes on various subjects for adoption by the states. The best example of such laws is the Uniform Commercial Code (UCC).⁶ (See Chapters 22–31)

⁵*Yates v. U.S.*, 574 U.S. 528 (2015).

⁶The UCC has been adopted in every state, except that Louisiana has not adopted all sections of the UCC 2, Sales. Guam, the Virgin Islands, and the District of Columbia have also adopted the UCC. The United Nations Convention on Contracts for the International Sale of Goods (CISG) has been adopted as the means for achieving uniformity in sale-of-goods contracts on an international level. Provisions of CISG were strongly influenced by Article 2 of the UCC.

The UCC regulates the sale and lease of goods; financial transactions, such as checks; fund transfers; secured transactions in personal property; banking; and letters of credit. Having the same principles of law on contracts for the sale of goods and other commercial transactions in most of the 50 states makes doing business easier and less expensive. Other examples of uniform laws across the states include the Model Business Corporation Act (Chapter 41), the Uniform Partnership Act (Chapter 39), and the Uniform Residential Landlord Tenant Act (Chapter 48). The Uniform Computer Information Transactions Act (UCITA) as well as the Uniform Electronic Transactions Act (UETA) are two uniform laws that have taken contract law from the traditional paper era to the paperless computer age.

1-3 Classifications of Law

1-3a Substantive Law vs. Procedural Law

substantive law—the law that defines rights and liabilities.

procedural law—the law that must be followed in enforcing rights and liabilities.

Substantive law creates, defines, and regulates rights and liabilities. The law that determines when a contract is formed is substantive law. **Procedural law** specifies the steps that must be followed in enforcing those rights and liabilities. For example, once that contract is formed, you have rights to enforce that contract, and the steps you take through the court system to recover your damages for a breach of contract are procedural laws. The laws that prohibit computer theft are substantive laws. The prosecution of someone for computer theft follows procedural law.

1-3b Criminal Law vs. Civil Law

criminal laws—the laws that define wrongs against society.

civil laws—the laws that define the rights of one person against another.

Criminal laws define wrongs against society. **Civil laws** define the rights of one person against another. Criminal law violations carry fines and imprisonment as penalties. Civil laws carry damage remedies for the wronged individual.

For Example, if you run a red light, you have committed a crime and you will be punished with a fine and points on your license. If you run a red light and strike a pedestrian, you will also have committed a civil wrong of injury to another through your carelessness. Civil laws provide that in addition to taking care of your wrong to society, you are responsible for your wrong to the pedestrian and will be liable for damages, such as the cost of her injuries, including medical bills, lost work time, and pain and suffering (see Chapter 8 for more information about recovery of damages for accidents such as this).



SPORTS & ENTERTAINMENT LAW

There is No Law That Prohibits Hiring a Murderer

Bruno Fernandes de Souza, a Brazilian soccer star, was convicted of the grisly murder of his then-girlfriend because she demanded child support for their unborn baby. He chopped her body into parts and fed some parts to the dogs. He was sentenced to 22 years in prison, served six, and was released. Upon being released he was given a two-year contract with

Boa Esporte, a local favorite team. De Souza says that the contract is a means to start his life over. The locals debate the issue over lunch and wonder how the team could ignore the murder. “There is no law that prohibits hiring a murderer,” offered one person. Another said, “He has the right to earn a living.” Evaluate the ethics of the sports team.

equity—the body of principles that originally developed because of the inadequacy of the rules then applied by the common law courts of England.

1-3c Law vs. Equity

Equity is a body of law that provides justice when the law does not offer an adequate remedy or the application of the law would be terribly unfair. Equity courts developed in England as a means of getting to the heart of a dispute and seeing that justice was done. **For Example**, Christian Louboutin shoes have a distinctive red bottom that is their trademark. But competitor Yves Saint Laurent began producing its shoes with a red bottom. Common and statutory law provide for Louboutin to collect damages—the amount the company lost in sales through the copycat efforts of Yves Saint Laurent. However, if the Yves Saint Laurent shoes continue in production, Louboutin is never adequately compensated. Equity provides for an injunction, a court order to stop Yves Saint Laurent from making the red-soled shoes.⁷

At one time, the United States had separate law courts and equity courts, but today these courts have been combined so that one court applies principles of both law and equity. A party may ask for both legal and equitable remedies in a single court. **For Example**, suppose a homeowner contracts to sell his home to a buyer. If the homeowner then refuses to go through with the contract, the buyer has the legal remedy of recovering damages. The rules of equity go further and could require the owner to convey title to the house, an equitable remedy known as *specific performance*. Damages compensate parties for losses, but equitable remedies stop the harm.⁸

Make the Connection

Summary

Law provides rights and imposes duties. One such right is the right of privacy, which affords protection against unreasonable searches of our property and intrusion into or disclosure of our private affairs.

Law consists of the pattern of rules established by society to govern conduct and relationships. These rules can be expressed as constitutional provisions, statutes, administrative regulations, and case decisions. Law can be classified as substantive or procedural, and it can be described in terms

of civil or criminal law. Law provides remedies in equity in addition to damages.

The sources of law include constitutions, federal and state statutes, administrative regulations, ordinances, and uniform laws generally codified by the states in their statutes. The courts are also a source of law through their adherence to case precedent under the doctrine of *stare decisis* and through their development of time-honored principles called the common law.

⁷*Christian Louboutin S.A. v. Yves Saint Laurent America, Inc.*, 778 F. Supp. 2d 445 (S.D.N.Y. 2011). The court eventually held that other companies could not copy the distinctive red sole. They could have colored soles but not the Louboutin trademark red sole.

⁸For example, when Jennifer Lopez and Marc Anthony were married, they filed suit against the manufacturer of a British company that produces baby carriages for using their images on its Web site and in ads without permission; they asked for \$5 million in damages as well as an injunction to stop use of their photos and likenesses in the company's ads. *Lopez v. Silver Cross*, 2009 WL 481386 (C.D. Cal. 2009). The case was settled prior to the dissolution of the Lopez and Anthony marriage. Silver Cross no longer uses the images of Lopez and Anthony in its ads.

Learning Outcomes

After studying this chapter, you should be able to clearly explain:

1-1 Nature of Law and Legal Rights

L0.1 Discuss the nature of law and legal rights

See the *Facebook, Inc. v. Superior Court* case, 1-1d.

See Ethics & the Law for a discussion on the use of LinkedIn for finding more honest references about potential employees, 1-1d.

See E-Commerce & Cyberlaw for a discussion of a university student's privacy rights in using the university's server, 1-1d.

1-2 Sources of Law

L0.2 List the sources of law

See the *For Example* discussion of landlords developing rules for tenants on everything from parking to laundry room use, 1-2d.

See the list and explanation of uniform laws, 1-2g.
See the Sports & Entertainment Law discussion of rights of players and teams when it comes to responding to players' private conduct, 1-3b.

1-3 Classifications of Law

L0.3 Describe the classifications of law

See the discussion of law, equity, procedural, substantive, criminal, and civil, 1-3a–1-3c.

See the Christian Louboutin example on its red-bottomed shoe being copied and footnote 8 with the discussion of the Jennifer Lopez/Marc Anthony suit for the use of their photos with a product, 1-3c.

Key Terms

administrative regulations
case law
civil law
common law
constitution
criminal law

duty
equity
law
precedent
private law
procedural law

right
right of privacy
stare decisis
statutory law
substantive law

Questions and Case Problems

- The Family Educational Rights and Privacy Act (FERPA) protects students' rights to keep their academic records private. What duties are imposed and upon whom because of this protection of rights? Discuss the relationship between rights and duties.
- List the sources of law.
- What is the difference between common law and statutory law?
- Classify the following laws as substantive or procedural:
 - A law that requires public schools to hold a hearing before a student is expelled.
 - A law that establishes a maximum interest rate for credit transactions of 24 percent.
 - A law that provides employee leave for the birth or adoption of a child for up to 12 weeks.
 - A law that requires the county assessor to send four notices of taxes due and owing before a lien can be filed (attached) to the property.
- What do uniform laws accomplish? Why do states adopt them? Give an example of a uniform law.
- Cindy Nathan is a student at West University. While she was at her 9:00 A.M. anthropology class, campus security entered her dorm room and searched all areas, including her closet and drawers. When Cindy returned to her room and discovered what had happened, she complained to the dorm's senior resident. The senior resident said that this was the university's

property and that Cindy had no right of privacy. Do you agree with the senior resident's statement? Is there a right of privacy in a dorm room?

7. Professor Lucas Phelps sent the following e-mail to Professor Marlin Jones: "I recently read the opinion piece you wrote for the *Sacramento Bee* on affirmative action. Your opinion is incorrect, your reasoning and analysis are poor, and I am embarrassed that you are a member of the faculty here at Cal State Yolinda." Professor Jones forwarded the note from Professor Phelps to the provost of the university and asked that Professor Phelps be disciplined for using the university e-mail system for harassment purposes. Professor Phelps objected when the provost contacted him: "He had no right to forward that e-mail to you. That was private correspondence. And you have no right of access to my e-mail. I have privacy rights." Do you agree with Professor Phelps? Was there a breach of privacy?
8. Under what circumstances would a court disregard precedent?
9. What is the difference between a statute and an administrative regulation?
10. The Eminem ad for Chrysler that ran during the Super Bowl in February 2011 was rated as one of the best ads for the game. In May 2011, Audi ran an ad at a German auto show that had the "feel" of the Eminem Chrysler "Lose Yourself" ad. Subsequently, the German auto show ad made its way onto the Internet.

The German ad caught the attention of Eminem and 8 Mile, Eminem's publishing company. They notified Audi that the ad constituted an unauthorized use of their intellectual property. Explain what rights Eminem and 8 Mile have and how the courts can help.

11. Arizona Revised Statute §28-8336 establishes a license tax for "a nonresident whose aircraft is based in this state for more than ninety days but less than two hundred ten days in a calendar year." The Arizona Department of Transportation defined a day (for purposes of taxes and licensing) as any day when the plane's tires are on the ground in Arizona, even

if those tires were there for only part of a day. The taxpayer says that what counts should be whether the plane was on the ground for a full day. What will the court look at to determine the definition of a day? *BSI Holdings, LLC v. Arizona Department of Transportation*, 417 P.3d 782 (Az.).

12. What is the principle of *stare decisis*?
13. Explain how Twitter, Facebook, and LinkedIn have resulted in the development of new laws and precedent.
14. During the 2001 baseball season, San Francisco Giants player Barry Bonds hit 73 home runs, a new record that broke the one set by Mark McGwire in 2000 (72 home runs). When Mr. Bonds hit his record-breaking home run, the ball went into the so-called cheap seats. Alex Popov was sitting in those seats and had brought along his baseball glove for purposes of catching any hits that might come into the stands.

Everyone sitting in the area agreed that Mr. Popov's glove touched Bonds's home-run ball. Videotape also shows Mr. Popov's glove on the ball. However, the ball dropped and, following a melee among the cheap-seat fans, Patrick Hayashi ended up with Bonds's home-run ball.

Mr. Popov filed suit for the ball, claiming it as his property. Such baseballs can be very valuable. The baseball from Mr. McGwire's record-breaking home run in 2000 sold for \$3 million. List those areas of law that will apply as the case is tried and the owner of the baseball is determined.

15. Alma Alvarado has just started her own tax preparation firm. She has leased office space in a building, and she is incorporating her business as a Subchapter S corporation under the Internal Revenue Code. She has purchased desks, chairs, computers, and copiers from Staples through a line of credit they have established for her. Alma is a CPA in the state of Arizona and her license fees and continuing education hours are due within 90 days. Alma will begin with only a clerical person as an employee to serve as receptionist and bookkeeper. List all of the areas of the law that affect Alma in her new business.



The Court System and Dispute Resolution

>>> Learning Outcomes

After studying this chapter,
you should be able to

- L0.1** Explain the federal and state court systems
- L0.2** Describe court procedures
- L0.3** Describe the forms of alternative dispute resolution

2-1 The Court System

- 2-1a The Types of Courts
- 2-1b The Federal Court System
- 2-1c State Court Systems

2-2 Court Procedure

- 2-2a Participants in the Court System
- 2-2b Which Law Applies—Conflicts of Law
- 2-2c Initial Steps in a Lawsuit
- 2-2d The Trial
- 2-2e Post-trial Procedures

2-3 Alternative Dispute Resolution

- 2-3a Arbitration
- 2-3b Mediation
- 2-3c MedArb
- 2-3d Expert Panel
- 2-3e Reference to a Third Person
- 2-3f Association Tribunals
- 2-3g Summary Jury Trial
- 2-3h Rent-a-Judge
- 2-3i Minitrial
- 2-3j Contract Provisions

court—a tribunal established by government to hear and decide matters properly brought to it.

jurisdiction—the power of a court to hear and determine a given class of cases; the power to act over a particular defendant.

subject matter jurisdiction—judicial authority to hear a particular type of case.

original jurisdiction—the authority to hear a controversy when it is first brought to court.

general jurisdiction—the power to hear and decide most controversies involving legal rights and duties.

limited (special) jurisdiction—the authority to hear only particular kinds of cases.

appellate jurisdiction—the power of a court to hear and decide a given class of cases on appeal from another court or administrative agency.

appeal—taking a case to a reviewing court to determine whether the judgment of the lower court or administrative agency was correct. (Parties—appellant, appellee)

2-1 The Court System

Despite carefully negotiated and well-written contracts and high safety standards in the workplace or in product design and production, businesses can end up in a lawsuit. **For Example**, you could hire the brightest and most expensive lawyer in town to prepare a contract with another party and believe the final agreement is “bulletproof.” However, even a bulletproof contract does not guarantee performance by the other party, and you may have to file a suit to collect your damages.

Business disputes can be resolved in court or through alternative dispute resolution. This chapter covers the structure of the court system and the litigation process as well as the forms of alternative dispute resolution.

A **court** is a tribunal established by government to hear evidence, decide cases brought before it, and provide remedies when a wrong has been committed. As discussed in Chapter 1, sometimes courts prevent wrongs by issuing the equitable remedy of an injunction. **For Example**, federal courts have issued injunctions to halt excessive opioid prescriptions being issued by pharmacies until the Drug Enforcement Administration (DEA) can examine the validity of the prescriptions.¹

2-1a The Types of Courts

Each type of court has the authority to decide certain types or classes of cases. The authority of courts to hear cases is called **jurisdiction**. One form of jurisdiction, **subject matter jurisdiction**, covers the type of cases the court has the authority to hear. Courts that have the authority to hear the original proceedings in a case (the trial court) are called courts of **original jurisdiction**. **For Example**, in a court of original jurisdiction, witnesses testify, documents are admitted into evidence, and the jury, in the case of a jury trial, hears all the evidence and then makes a decision.

Other types of subject matter jurisdiction give courts the authority over particular legal topic areas. A court with **general jurisdiction** has broad authority to hear general civil and criminal cases. When a general jurisdiction trial court hears criminal cases, it serves as the trial court for those charged with crimes. When general jurisdiction trial courts hear civil disputes, they are handling cases involving breach of contract and personal injury.

A court with **limited or special jurisdiction** has the authority to hear only particular kinds of cases. **For Example**, many states have courts that can hear only disputes in which the damages are between \$10,000 and \$50,000. Other examples of limited or special jurisdiction courts are juvenile courts, probate courts, and domestic relations courts. States vary in the names they give these courts, but these courts of special or limited jurisdiction have very narrow authority for the types of cases they hear. In the federal court system, limited or special jurisdiction courts include bankruptcy courts and the U.S. Tax Court.

A court with **appellate jurisdiction** reviews the work of a lower court. **For Example**, a trial court may issue a judgment against a defendant in a breach of contract suit for \$500,000 in damages. That defendant could appeal the decision to an appellate court and seek review of the decision itself or even the amount of the damages.² An **appeal** is a

¹*Holiday CVS, LLC. v. Holder*, 839 F. Supp. 2d 145 (D.D.C. 2012). CVS challenged the injunction, but by the time the case was received on appeal, the FDA had pulled the pharmacies’ registration because of problems with the prescriptions. The injunction was no longer needed, and the appeal to stop the injunction was moot. 493 Fed. Appx. 108 (C.A. D.C. 2012).

²For example, in *Thornton v. American Interstate Insurance Company*, 897 N.W.2d 445 (Iowa 2017), a jury found for a worker who was injured on the job in his suit against the workers compensation insurance carrier for bad faith refusal to pay. The central issue in the case was the refusal of American to provide a new wheelchair for Thornton who was paralyzed from the chest down in a work accident. In the first trial, the jury awarded \$25 million, but the trial court reduced the amount of that verdict to \$382,000 in compensatory damages and \$6,750,000 in punitive damages. Those amounts were then again reduced on appeal to \$58,452.42 in compensatory damages and \$500,000 in punitive damages. *Thornton v. American Interstate Insurance Company*, 940 N.W.2d 1 (Iowa 2020)

reversible error—an error or defect in court proceedings of so serious a nature that on appeal the appellate court will set aside the proceedings of the lower court.

review of the trial and decision of the lower court. An appellate court does not hear witnesses or take testimony. An appellate court, usually a panel of three judges, simply reviews the transcript and evidence from the lower court and determines whether there has been **reversible error**. A reversible error is a mistake in applying the law or a mistake in admitting evidence that affected the outcome of the case. An appellate court can **affirm** or reverse a lower court decision or **remand** that decision for another trial or additional hearings.

CASE SUMMARY

Targeting Discarded Syringes in the Parking Lot

Garrison v. Target Corporation, 838 S.E.2d 18 (S.C. App. 2020).

FACTS: Carla Denise Garrison (Denise) and her eight-year-old daughter were in a Target parking lot. As Denise was looking through her coupon book on the hood of her car, her eight-year-old daughter brought her a syringe with a needle, asking, “Mommy, what is this?” Denise swatted the syringe out of daughter’s hand, and in the process punctured her right palm.

Denise went inside the store to wash her hands several times and spoke to the store manager, Shelby Brintnall. They both took photographs of the syringe lying in the parking lot. Brintnall took possession of the syringe and completed a “Guest Incident Report” form. In response to the form’s question, “Was the floor/ground clean and dry,” Brintnall checked the “No” box. Brintnall advised Denise to get medical treatment and give the bill to her. The next day, Denise visited the local hospital emergency room, where a nurse referred Denise to an infectious disease specialist. She was treated by the specialist who prescribed several medications targeted at preventing HIV and hepatitis. The medications put her into a “zombie-like state,” and caused her to have night terrors. Denise was bedridden, her husband took unpaid leave to care for Denise, and her mother-in-law cared for the Garrisons’ four children. Denise had her blood tested every three months for approximately one year.

The jury awarded \$100,000 in compensatory damages and \$3.5 million in punitive damages. Target moved for

a judgment notwithstanding the verdict for reversal of the punitive damages, and the judge granted Target’s motion. Denise appealed.

DECISION: The court found that Target had been negligent in its clean-up of the parking lot. The Garrisons showed that Target’s employees were aware of the importance of inspecting and cleaning the parking lot to keep it safe for customers and of keeping good records of these efforts. Yet, immediately after Denise reported the injury to Target’s manager, the employee assigned to the parking lot could not be located. The Garrisons also established that the parking lot was not cleaned on a regular basis despite Target’s claim. Brintnall and the property maintenance technician (Jonathan Jackson) both testified that a third-party vendor sent a cleaning truck to sweep Target’s parking lot once a week on Thursday night. Brintnall and Jackson also testified that cart attendants regularly checked the lot for debris. However, the inspection logs did not reflect that diligence, or they were not kept accurately. Denise’s husband camped out in Target’s parking lot on a Thursday night, from 11:45 p.m. to 5:30 a.m. and no one came to clean the lot. The court found that there was sufficient evidence of Target’s failure to regularly inspect and clean its parking lot.

The court reversed the decision on punitive damages but remanded the case for lower court proceedings to reduce the amount consistent with the circumstances of the case (This case also appears in Chapter 46 for a discussion of landowner duties.).

2-1b The Federal Court System

The federal court system consists of three levels of courts. Figure 2-1 illustrates federal court structure.

affirm—action taken by an appellate court that approves the decision of the court below.

reverse—the term used when the appellate court sets aside the verdict or judgment of a lower court.

remand—term used when an appellate court sends a case back to trial court for additional hearings or a new trial.

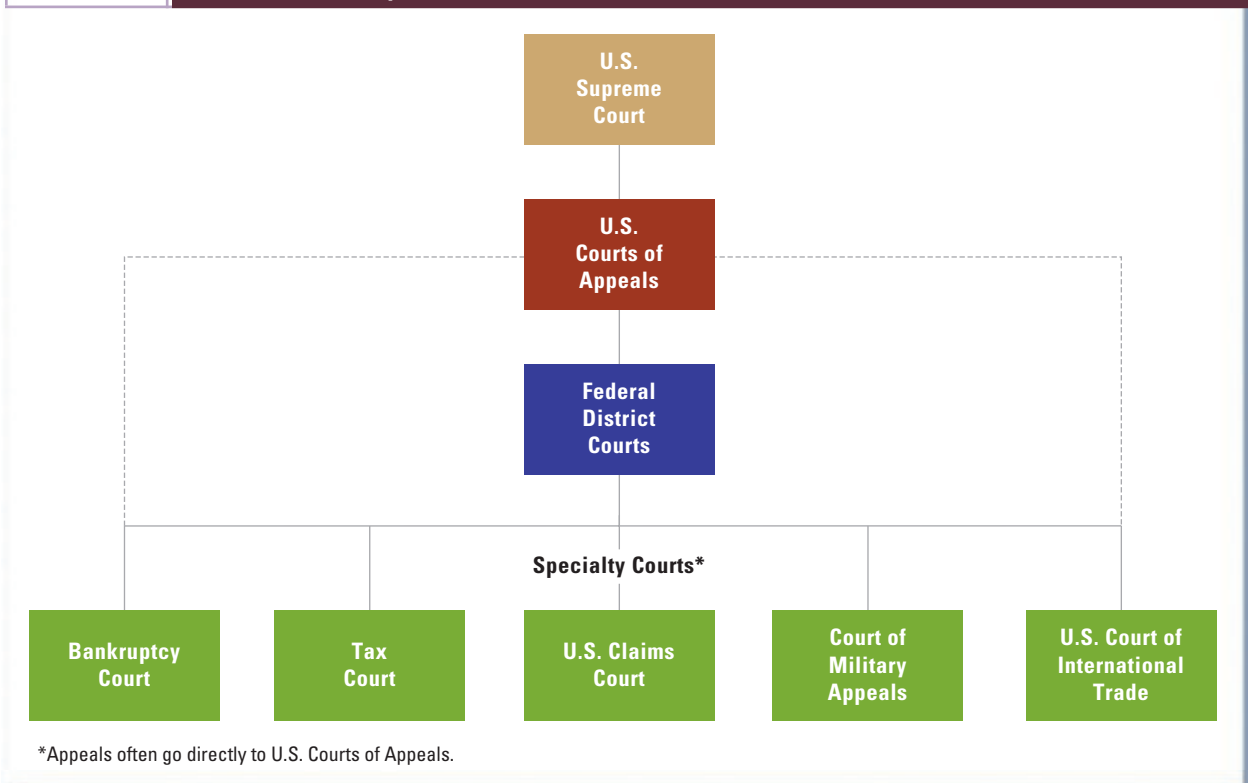
federal district court—a general trial court of the federal system.

Federal District Courts

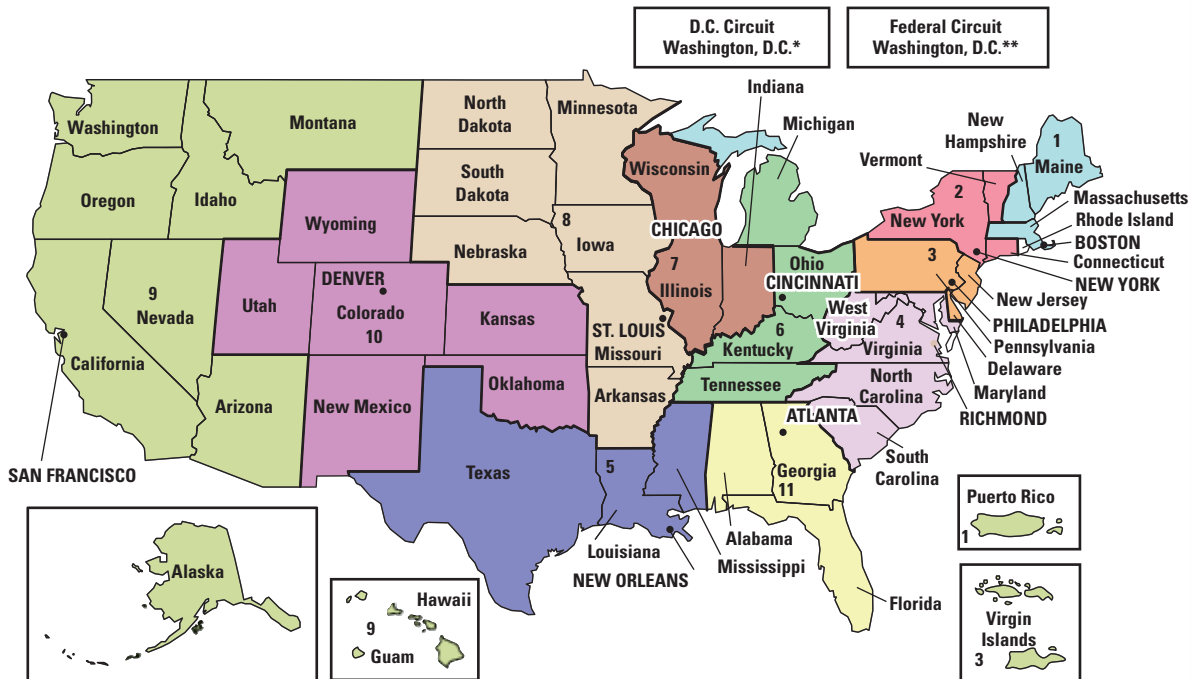
The **federal district courts** are the general trial courts of the federal system. They are courts of original jurisdiction that hear both civil and criminal matters. Criminal cases in federal district courts are those in which the defendant is charged with a violation of federal law (the U.S. Code). In addition to the criminal cases, the types of civil cases that can be brought in federal district courts include (1) civil suits in which the United States is a party, (2) cases between citizens of different states that involve damages of \$75,000 or more, and (3) cases that arise under the U.S. Constitution or federal laws and treaties.

Federal district courts are organized within each of the states. There are 94 federal districts (each state has at least 1 federal district and there are 89 federal districts in the United States, with the remaining courts found in Puerto Rico, Guam, etc.). Judges and courtrooms are assigned according to the caseload in that geographic area of the state.³ Some states, such as New York and California, have several federal districts because of the population base and the resulting caseload. Figure 2-2 shows the geographic structure of the federal court system, including the appellate circuits.

FIGURE 2-1 The Federal Court System



³For complete information about the courts and the number of judgeships, go to 28 U.S.C. §§81-144 and 28 U.S.C. §133.

FIGURE 2-2 The Thirteen Federal Judicial Circuits

*A sizable portion of the caseload of the D.C. Circuit comes from the federal administrative agencies and offices located in Washington, D.C., such as the Securities and Exchange Commission, the National Labor Relations Board, the Federal Trade Commission, the Secretary of the Treasury, and the Labor Department, as well as appeals from the U.S. District Court of the District of Columbia.

**Rather than being defined by geography like the regional courts of appeals, the Federal Circuit is defined by subject matter, having jurisdiction over such matters as patent infringement cases, appeals from the Court of Federal Claims and the Court of International Trade, and appeals from administrative rulings regarding subject matter such as unfair import practices and tariff schedule disputes.

The federal system has additional trial courts with limited jurisdiction, differing from the general jurisdiction of the federal district courts. These courts include, for example, the federal bankruptcy courts, Indian tribal courts, Tax Court, Court of Federal Claims, Court of Veterans Appeals, and Court of International Trade.

U.S. Courts of Appeals

The final decision in a federal district court can be appealed to a court with appellate jurisdiction. In the federal court system, the federal districts are grouped together geographically into 12 judicial circuits, including one for the District of Columbia. Additionally, a thirteenth federal circuit, called the *Federal Circuit*, hears certain types of appeals from all of the circuits, including specialty cases such as patent appeals. Each circuit has an appellate court called the U.S. Court of Appeals, and the judges for these courts review the decisions of the federal district courts. Generally, a panel of three judges reviews the cases. However, some decisions, called *en banc* decisions, are made by the circuit's full panel of judges. **For Example**, the Ninth Circuit heard an appeal on a father's right to challenge the requirement that his daughter recite the Pledge of Allegiance in the public school she attended. The contentious case had so many issues

en banc—the term used when the full panel of judges on the appellate court hears a case.

that the Ninth Circuit issued three opinions and the third opinion was issued after the case was heard *en banc*.⁴

U.S. Supreme Court

The final court in the federal system is the U.S. Supreme Court. The U.S. Supreme Court has appellate jurisdiction over cases that are appealed from the federal courts of appeals as well as from state supreme courts when a constitutional issue is involved in the case or a state court has reversed a federal court ruling. The U.S. Supreme Court does not hear all cases from the federal courts of appeals but has a process called granting a **writ of certiorari**, which is a preliminary review of those cases appealed to decide whether a case will be heard or allowed to stand as ruled on by the lower courts.⁵

writ of certiorari—the U.S. Supreme Court granting a right of review by the court of a lower court decision.

The U.S. Supreme Court is the only court expressly created in the U.S. Constitution. All other courts in the federal system were created by Congress pursuant to its Constitutional power. The Constitution also makes the U.S. Supreme Court a court of original jurisdiction. The U.S. Supreme Court serves as the trial court for cases involving ambassadors, public ministers, or consuls and for cases in which two states are involved in a lawsuit. **For Example**, the U.S. Supreme Court has served for a number of years as the trial court for a Colorado River water rights case in which California, Nevada, and Arizona are parties and another water dispute involving Georgia and other states.

2-1c State Court Systems

General Trial Courts

Most states have trial courts of general jurisdiction that may be called superior courts, circuit courts, district courts, or county courts. These courts of general and original jurisdiction usually hear both criminal and civil cases. Cases that do not meet the jurisdictional requirements for the federal district courts would be tried in these courts. Figure 2-3 illustrates a sample state court system.

Specialty Courts

Most states also have courts with limited jurisdiction, sometimes referred to as *specialty courts*. **For Example**, most states have juvenile courts, or courts with limited jurisdiction over criminal matters that involve defendants who are under the age of 18. Other specialty courts or lesser courts in state systems are probate and family law courts.

City, Municipal, and Justice Courts

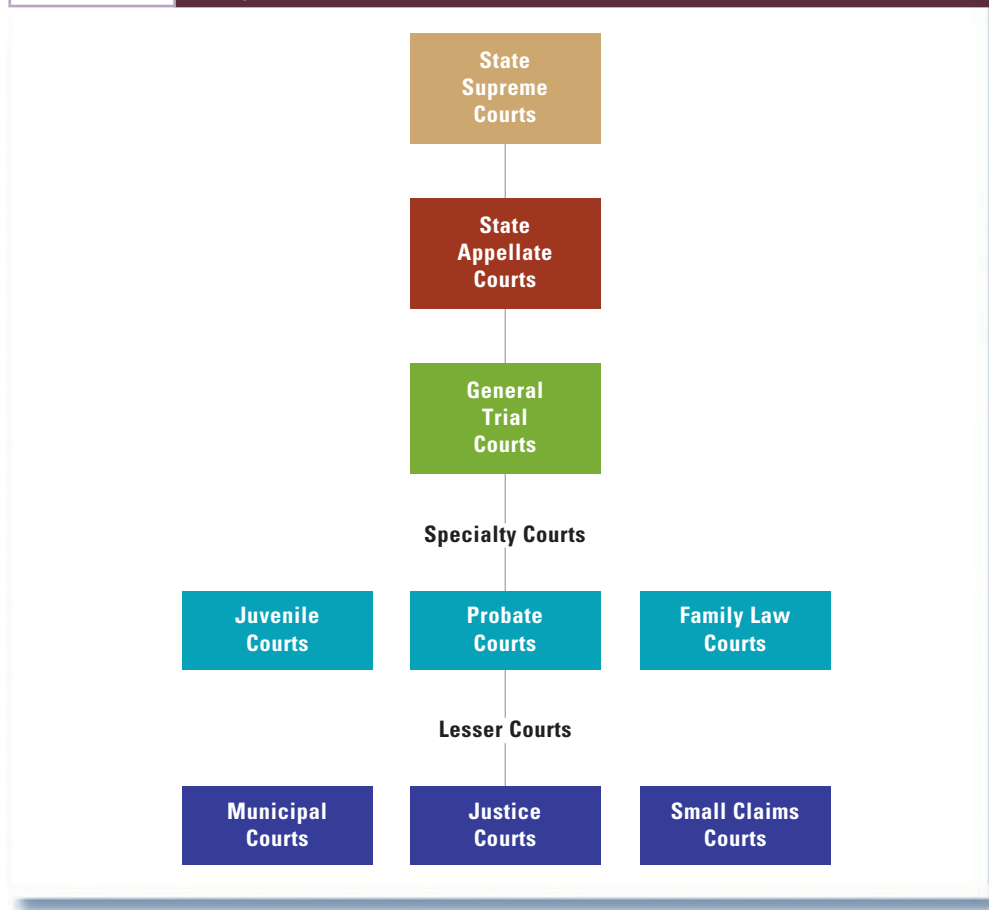
Cities and counties may also have lesser courts with limited jurisdiction, which may be referred to as *municipal courts* or *justice courts*. These courts generally handle civil matters in which the claim made in the suit is an amount below a certain level, such as \$5,000 or \$10,000. These courts may also handle misdemeanor types of offenses, such as traffic violations or violations of noise ordinances, and the trials for them.

⁴*Newdow v. U.S. Congress*, 292 F.3d 597 (9th Cir. 2002) (*Newdow I*); *Newdow v. U.S. Congress*, 313 F.3d 500, 502 (9th Cir. 2002) (*Newdow II*); and *Newdow v. U.S. Congress*, 328 F.3d 466, 468 (9th Cir. 2003) (*Newdow III*). The U.S. Supreme Court eventually heard the case. *Elkgrove Unified School District v. Newdow*, 542 U.S. 1 (2004).

⁵When lower court judges have made a blatant error, the U.S. Supreme Court steps in. For example, in *Yovino v. Rizo*, 139 S.Ct. 706 (2019), the court granted *certiorari* because the Ninth Circuit court of appeals had released a decision that was written by a judge who had died between the time of the deliberations and the release of the opinion. Without the deceased judge's vote, the decision could not have been affirmed. *Rizo v. Yovino*, 887 F.3d 453, 455 (9th Cir. 2019). In reversing the decision, the court noted, "[f]ederal judges are appointed for life, not for eternity."

FIGURE 2-3

Sample State Court System



Small Claims Courts

small claims courts—courts that resolve disputes between parties when those disputes do not exceed a minimal level; no lawyers are permitted; the parties represent themselves.

Most states also have **small claims courts** at the county or city level. These are courts of limited jurisdiction where parties with small amounts in dispute may come to have a third party, such as a justice of the peace or city judge, review their disputes and determine how they should be resolved. A true small claims court is one in which the parties are not permitted to be represented by counsel. Rather, the parties present their cases to the judge in an informal manner without the strict procedural rules that apply in courts of general jurisdiction. Small claims courts provide a faster and inexpensive means for resolving a dispute that does not involve a large amount of claimed damages.

State Appellate Courts

Most states also have intermediate-level courts similar to the federal courts of appeals. They are courts with appellate jurisdiction that review the decisions of lower courts in that state. Decisions of the general trial courts in a state would be appealed to these courts.

State Supreme Courts

The highest court in most states is generally known as the *state supreme court*, but a few states, such as New York, may call their highest court the *court of appeals*; Maine and

Massachusetts, for example, call their highest court the *supreme judicial court*. State supreme courts primarily have appellate jurisdiction, but some states' courts do have original jurisdiction, such as in Arizona, where counties in litigation have their trial at the supreme court level. Most state supreme courts also have a screening process for cases. They are required to hear some cases, such as criminal cases in which the defendant has received the death penalty. A decision of a state supreme court is final except in those circumstances in which a federal law or treaty or the U.S. Constitution is involved. Cases with these federal subject matter issues can then be appealed to the U.S. Supreme Court.

plaintiff—party who initiates a lawsuit.

prosecutor—party who originates a criminal proceeding.

defendant—party charged with a violation of civil or criminal law in a proceeding.

judge—primary officer of the court.

attorney-client privilege—right of individual to have discussions with his/her attorney kept private and confidential.

2-2 Court Procedure

Once a party decides to use the court system for resolution of a dispute, that party enters a world with specific rules, procedures, and terms that must be used to have a case proceed.

2-2a Participants in the Court System

The **plaintiff** is the party that initiates the proceedings in a court of original jurisdiction. In a criminal case in which charges are brought, the party initiating the proceedings would be called the **prosecutor**. The party against whom the civil or criminal proceedings are brought is the **defendant**. A **judge** is the primary officer of the court and is either an elected or an appointed official who presides over the matters brought before the court. Attorneys or lawyers are representatives for the plaintiff and the defendant for purposes of presenting their cases. Lawyers and clients have a privilege of confidentiality known as the **attorney-client privilege**. Lawyers cannot disclose what their clients tell them unless the client is committing, or plans to commit, a crime.



ETHICS & THE LAW

Whom Do Company Lawyers Represent?

Brenda works for Eddy Construction Company in the contracting division. Eddy planned to submit a bid for the construction of a new state office building. As Brenda was preparing the bid, one of Eddy's salespeople came to her and said, "Here's a copy of Roberts Construction's bid. I got it through connections at the state. Don't tell anyone, but just make sure we're competitive." State law prohibits the release of bid information on any state project as well as the use of such information.

Brenda used the Roberts information to build Eddy's bid. Eddy got the contract with the state, and Roberts reported that its bid information had been leaked. Eddy's general counsel came to interview Brenda and told her she could tell him anything because what she told him was privileged. Is the lawyer correct? Does the lawyer have to keep Brenda's statements confidential?

Lawyers must keep client information confidential. However, when there are employers and employees, the question that arises is: Whom does the company lawyer represent?

The company is the lawyer's client, and the employees are not. Most times, the interests of employees and the company are the same. However, in cases such as Eddy's and Brenda, the company did not actually violate the law. The salesperson, Brenda, and the state employee violated the state law. Because the lawyer represents Eddy, divulging what Brenda has told him will help the company. The company can say some rogue employees used the information and it was unaware of the use.

Ethical lawyers would disclose their role to employees before interviewing them so that Brenda could obtain her own legal counsel. However, some lawyers do not and, as the saying goes, under the bus go the employees as the corporation remains innocent.

Assume that Eddy's lawyer said nothing to Brenda. She is then charged with a violation of the state law. Evaluate the ethics of Eddy's lawyer. Did the lawyer take unfair advantage of Brenda?

jury—a body of citizens sworn by a court to determine by verdict the issues of fact submitted to them.

A **jury** is a body of citizens sworn by a court to reach a verdict on the basis of the case presented to them. Jurors are chosen for service based on lists compiled from voter registration and driver's license records.

2-2b Which Law Applies—Conflicts of Law

When a lawsuit is brought, there is not just the question of where a case will be tried but also of what law will be applied in determining the rights of the parties. The principle that determines when a court applies the law of its own state—the law of the forum—or some foreign law is called *conflict of laws*. Because there are 50 state court systems and a federal court system, as well as a high degree of interstate activity, conflicts of law questions arise frequently.

Some general rules apply. For example, the law of the state in which the court is located governs the case on procedural issues and rules of evidence. In contract litigation, the court applies the law of the state in which the contract was made for determining issues of formation. Performance disputes and damages for nonperformance are generally governed by the law of the state where the contract is to be performed. International contracts follow similar rules. **For Example**, a California court will apply Swiss law to a contract made in Switzerland that is to be performed in that country.

However, it is becoming more common for the parties to specify their choice of law in their contract.⁶ In the absence of a law-selecting provision in the contract, there is a growing acceptance of the rule that a contract should be governed by the law of the state that has the most significant contacts with the transaction.

For Example, assume the buyer's place of business and the seller's plant are located in Nebraska, and the buyer is purchasing goods from the seller to resell to Nebraska customers. Many courts will hold that this is a contract governed by the law of Nebraska. In determining which state has the most significant contacts, the court considers the place of contracting, negotiating, and performing; the location of the subject matter of the contract; and the domicile (residence), states of incorporation, and principal place of business of the parties.

2-2c Initial Steps in a Lawsuit

The following steps in a lawsuit generally apply in cases brought in courts of original jurisdiction. Not every step applies in every case, but understanding litigation steps and terms is important for businesspeople.

Commencement of a Lawsuit

complaint—the initial pleading filed by the plaintiff in a lawsuit.

A lawsuit begins with the filing of a **complaint**. The complaint generally contains a description of the wrongful conduct and a request for damages, such as a monetary amount.

For Example, a plaintiff in a contract suit would describe the contract, when it was entered into, and when the defendant stopped performance on the contract. A copy of the contract would be attached to the complaint.

Service of Process

process—paperwork served personally on a defendant in a civil case.

Once the plaintiff has filed the complaint with the proper court, the plaintiff has the responsibility of notifying the defendant that the lawsuit has been filed. The defendant must be served with **process**. Process, often called a *writ*, *notice*, or *summons*, is delivered to the defendant and includes a copy of the complaint and notification that the defendant must appear and respond to the allegations in the complaint.

⁶For example, when tourists from other countries engage in activities there, they sign a combination waiver and contract that provides in the event of an injury that they agree to be governed by the laws of that country in terms of recovery and not those of the United States. *E & H Cruises, Ltd. v. Baker*, 88 So. 3d 291 (Fla. App. 2012).

answer—what a defendant must file to admit or deny facts asserted by the plaintiff.

motion to dismiss—a pleading that may be filed to attack the other party's pleading as not stating a cause of action or a defense.

demurrer—a pleading to dismiss the other party's pleading for not stating a cause of action or a defense.

counterclaim—a claim that the defendant may make against the plaintiff.

pleadings—the papers filed by the parties in an action in order to set forth the facts and frame the issues to be tried.

discovery—procedures for ascertaining facts prior to the time of trial in order to eliminate the element of surprise in litigation.

deposition—the testimony of a witness taken out of court under oath.

impeach—using prior inconsistent evidence to challenge the credibility of a witness.

interrogatories—written questions used as a discovery tool that must be answered under oath.

request for production of documents—discovery tool for uncovering paper evidence in a case.

The Defendant's Response and the Pleadings

After the defendant is served with process in the case, the defendant is required to respond to or **answer** the complaint within the time provided under the court's rules. In answering the plaintiff's complaint, the defendant has several options. For example, the defendant could make a **motion to dismiss**, which is a request to the court to dismiss the lawsuit on the grounds that, even if everything the plaintiff said in the complaint were true, there is still no right of recovery. A motion to dismiss is also called a **demurrer**. **For Example**, in 2018 a federal district judge dismissed a defamation suit brought by Stephanie Clifford, *aka* Stormy Daniels, against President Donald Trump for his Tweet related to her allegations about her alleged affair with Mr. Trump. Ms. Clifford said that she and her daughter were threatened during the presidential election of 2016 after giving *In Touch Magazine* an interview about the affair. Mr. Trump mocked an artist's rendering of the man who allegedly made the threats, and the man looked like her ex-husband. The court dismissed the case because opinions and commentary on Twitter are not defamation. The facts presented in the complaint did not meet the legal requirements for defamation.

A defendant could also respond and deny the allegations. **For Example**, in a contract lawsuit, the defendant-seller could say he did not breach the contract but stopped shipment of the goods because the plaintiff-buyer did not pay for the goods in advance as the contract required. A defendant could also **counterclaim** in the answer, which is asking the court for damages as a result of the underlying dispute. The defendant-seller in the contract lawsuit might ask for damages in the counterclaim for the plaintiff-buyer's failure to pay as the contract required.

All documents filed in this initial phase of the case are referred to as the **pleadings**. The pleadings are a statement of the case and the basis for recovery if all the facts alleged can be proved.

Discovery

The Federal Rules of Civil Procedure and similar rules in all states permit one party to obtain from the adverse party information about all witnesses, documents, and any other items relevant to the case. **Discovery** requires each side to name its potential witnesses and to provide each side the chance to question those witnesses in advance of the trial. Each party also has the opportunity to examine, inspect, and photograph books, records, buildings, and machines. Even examining the physical or mental condition of a party is part of discovery when it has relevance in the case. The scope of discovery is extremely broad because the rules permit any questions that are likely to lead to admissible evidence.

Deposition. A **deposition** is the testimony of a witness taken under oath outside the courtroom; it is transcribed by a court reporter. Each party is permitted to question the witness. If a party or a witness gives testimony at the trial that is inconsistent with her deposition testimony, the prior inconsistent testimony can be used to **impeach** the witness's credibility at trial.

Depositions can be taken either for discovery purposes or to preserve the testimony of a witness who will not be available during the trial. Some states now permit depositions to be videotaped. A videotape is a more effective way of presenting deposition testimony than reading that testimony at trial from a reporter's transcript because jurors can see the witness and the witness's demeanor and hear the words as they were spoken, complete with inflection.

Other Forms of Discovery. Other forms of discovery include medical exams, particularly in cases in which the plaintiff is claiming damages for physical injuries. Written **interrogatories** (questions) and written **requests for production of documents** are discovery requests that can be very time consuming to the answering party and often lead to pretrial legal disputes between the parties and their attorneys as a result of the legal expenses involved.

motion for summary judgment—request that the court decide a case on the basis of law only because there are no material issues of fact.

expert witness—one who has acquired special knowledge in a particular field as through practical experience or study, or both, whose opinion is admissible as an aid to the trier of fact.

voir dire examination—the preliminary examination of a juror or a witness to ascertain fitness to act as such.

peremptory challenge—challenge that is used to strike (remove) a juror for any reason except on discriminatory grounds.

Motion for Summary Judgment

If a case has no material facts in dispute, either party can file a **motion for summary judgment**. Using affidavits or deposition testimony obtained in discovery, the court can find that there are no factual issues and decide the case as a matter of law. **For Example**, suppose that the parties can agree that they entered into a life insurance contract but dispute whether the policy applies when there is a suicide. The facts are not in dispute; the law on payment of insurance proceeds in the event of a suicide is the issue. Such a case is one that is appropriate for summary judgment.

Designation of Expert Witnesses

In some cases, such as those involving product safety, the parties may want to designate an expert witness. An **expert witness** is a witness who has some special expertise, such as an economist who gives expert opinion on the value of future lost income or a scientist who testifies about the safety of a prescription drug. There are rules for naming expert witnesses as well as for admitting into evidence any studies or documents of the expert.⁷ The purpose of these rules is to avoid the problem of what has been called *junk science*, or the admission of experts' testimony and research that has not been properly conducted or reviewed by peers. The court must first qualify the expert and then determine the admissibility of any reports or testimony as evidence. That one of the parties disagrees with the conclusions of the expert is not the standard for admissibility. **For Example**, a certified architect or engineer is qualified to offer a report on whether a homeowner's roof was damaged by a hailstorm and whether the roof needs to be replaced. That the insurer who has denied the claim disagreed with the conclusions is not grounds for excluding the report. The insurer can have its own expert and can question the homeowner's expert to allow the jury to determine who is correct.⁸

2-2d The Trial

Selecting a Jury

Jurors drawn for service are questioned by the judge and lawyers to determine whether they are biased or have any preformed judgments about the parties in the case. Jury selection is called **voir dire examination**. **For Example**, in the trial of Martha Stewart, the multimedia home and garden diva, it took a great deal of time for the lawyers to question the potential jurors about their prior knowledge concerning the case, which had received nationwide attention and much media coverage. Lawyers have the opportunity to remove jurors who know parties in the case or who indicate they have already formed opinions about guilt or innocence. The attorneys question the potential jurors to determine if a juror should be *challenged for cause* (e.g., when the prospective juror states he is employed by the plaintiff's company). Challenges for cause are unlimited, but each side can also exercise six to eight peremptory challenges.⁹ A **peremptory challenge** is a challenge that is used to strike (remove) a juror for any reason except on discriminatory grounds.¹⁰

⁷In *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), the U.S. Supreme Court provided guidance for the standards judges should use in determining whether the studies and testimony of experts and their experiments and analysis should be allowed as evidence. The case has been cited over 153,000 times in cases, journal articles, and reference books.

⁸*Alvarez v. State Farm Lloyds*, 2020 WL 734482 (W.D. Tex. 2020).

⁹The number of peremptory challenges varies from state to state and may also vary within a particular state depending on the type of case. For example, in Arizona, peremptory challenges are unlimited in capital cases.

¹⁰*Felkner v. Jackson*, 562 U.S. 594 (2011); *Granderson v. State*, 595 S.W.3d 892 (Tex. App. 2020) (screening by occupation is a race-neutral *voir dire* screen).



E-COMMERCE & CYBERLAW

Google in the Jury Room

A current problem with jurors is their “Googling” to get information. For example, in a public corruption trial, a juror eventually admitted to the judge that she had googled the following:

1. Whether the jury could have just six members
2. What the penalty was for the crimes charged
3. The definition of bribery

She then shared all of this information with her fellow jurors during their interactions and deliberations.

The court held that the definition of “bribery” was the central focus of the case and ordered a mistrial.

[*State v. Needelman*, 276 So. 3d 444 (C.A. Fla. 2018)]

opening statements—statements by opposing attorneys that tell to the jury what their cases will prove.

admissibility—the quality of the evidence in a case that allows it to be presented to the jury.

Opening Statements

After the jury is chosen, the attorneys for each of the parties make their **opening statements** to the jury. An opening statement, as one lawyer has explained, makes a puzzle frame for the case so jurors can follow the witnesses and place the pieces of the case—the various forms of evidence—within the frame.

The Presentation of Evidence

Following the opening statements, the plaintiff presents his case with witnesses and other evidence. A judge rules on the **admissibility** of evidence. Evidence can consist of



THINKING THINGS THROUGH

Why Do We Require Sworn Testimony?

There is a difference between what people say in conversation (and even what company executives say in speeches and reports) and what they are willing to say under oath. Speaking under oath often means that different information and recollections emerge. The oath is symbolic and carries the penalty of criminal prosecution for perjury if the testimony given is false.

The *Wall Street Journal* has reported that the testimony of executives in the Microsoft antitrust trial and their statements regarding their business relationships outside the courtroom are quite different. For example, the following quotations indicate some discrepancies. Eric Benhamou, the chief executive officer (CEO) of Palm, Inc., said:

We believe that the handheld opportunity remains wide open Unlike the PC industry, there is no monopoly of silicon, there is no monopoly of software.

However, at the Microsoft trial, another officer of Palm, Michael Mace, offered the following testimony:

We believe that there is a very substantial risk that Microsoft could manipulate its products and its standards in order to exclude Palm from the marketplace in the future.

Likewise, Microsoft has taken different positions inside and outside the courtroom. For example, an attorney for Microsoft stated that Microsoft had “zero deployments of its interactive TV middleware products connected to cable systems in the United States.” However, Microsoft’s marketing materials provide as follows:

*Microsoft’s multiple deployments around the world now including Charter-show Microsoft TV is ready to deploy now and set the standard for what TV can be.**

Explain why the executives had differing statements. For more information on the Microsoft antitrust cases, go to <http://www.usdoj.gov> or <http://www.microsoft.com>.

*Rebecca Buckman and Nicholas Kulish, “Microsoft Trial Prompts an Outbreak of Doublespeak,” *Wall Street Journal*, April 15, 2002, B1, B3.

direct examination—examination of a witness by his or her attorney.

cross-examination—the examination made of a witness by the attorney for the adverse party.

redirect examination—questioning after cross-examination, in which the attorney for the witness testifying may ask the same witness other questions to overcome effects of the cross-examination.

recross-examination—an examination by the other side's attorney that follows the redirect examination.

directed verdict—a direction by the trial judge to the jury to return a verdict in favor of a specified party to the action.

summation—the attorney address that follows all the evidence presented in court and sums up a case and recommends a particular verdict be returned by the jury.

mistrial—a court's declaration that because of an error or misconduct that the case must be retried or dismissed.

instruction—summary of the law given to jurors by the judge before deliberation begins.

judgment n.o.v.—or non obstante veredicto (notwithstanding the verdict), a judgment entered after verdict upon the motion of the losing party on the ground that the verdict is so wrong that a judgment should be entered the opposite of the verdict.

documents, testimony, expert testimony, medical information from exams, and even physical evidence.

In the case of testimony, the attorney for the plaintiff conducts **direct examination** of his witnesses during his case, and the defense attorney conducts **cross-examination** of the plaintiff's witnesses. The plaintiff's attorney can then ask questions again of his witnesses in what is called **redirect examination**. Finally, the defense attorney may question the plaintiff's witnesses again in **recross-examination**. The defendant presents her case after the plaintiff's case concludes. During the defendant's case, the lawyer for the defendant conducts direct examination of the defendant's witnesses, and the plaintiff's lawyer can then cross-examine the defendant's witnesses.

Motion for a Directed Verdict

A motion for a **directed verdict** asks the court to grant a verdict because even if all the evidence that has been presented by each side were true, there is either no basis for recovery or no defense to recovery.

For Example, suppose that a plaintiff company presented evidence that an employee who quit working for the company posted on his Facebook page, "I just wasn't happy there." The company might not feel good about the former employee's post, but there is no false statement and no breach of privacy. The evidence is true, but there is no legal right of recovery. The defendant employee would be entitled to a directed verdict. A directed verdict means that the party has not presented enough evidence to show that there is some right of recovery under the law.

Closing Arguments or Summation

After the witnesses for both parties have been examined and all the evidence has been presented, each attorney makes a closing argument. These statements are also called **summations**; they summarize the case and urge the jury to reach a particular verdict.

Motion for Mistrial

During the course of a trial, when necessary to avoid great injustice, the trial court may declare a **mistrial**. A mistrial requires a do-over, a new jury. A mistrial can be declared for jury or attorney misconduct. **For Example**, if a juror were caught fraternizing with one of the lawyers in the case, objectivity would be compromised and the court would most likely declare a mistrial. See also E-Commerce & Cyberlaw (Google's Impact on Trials) for more information on juror misconduct and case dismissals.

Jury Instructions and Verdict

After the summation by the attorneys, the court gives the jurors **instructions** on the appropriate law to apply to the facts presented. The jury then deliberates and renders its verdict. After the jury verdict, the court enters a judgment. If the jury is deadlocked and unable to reach a verdict, known as a hung jury or a mistrial, the case is reset for a new trial at some future date.

Motion for New Trial; Motion for Judgment n.o.v.

A court may grant a **judgment non obstante veredicto** or a **judgment n.o.v.** (notwithstanding the verdict) if the verdict is clearly wrong as a matter of law. The court can set aside the verdict and enter a judgment in favor of the other party. Perhaps one of the most famous judgments n.o.v. occurred in Boston in 1997 when a judge reversed the murder

conviction of nanny Louise Woodward, who was charged with the murder of one of her young charges.

2-2e Post-trial Procedures

Recovery of Costs/Attorney Fees

Generally, the prevailing party is awarded costs. Costs include filing fees, service-of-process fees, witness fees, deposition transcript costs, and jury fees. Costs do not include compensation spent by a party for preparing the case or being present at trial, including the time lost from work because of the case and the fee paid to the attorney, although lost wages from an injury are generally part of damages.

Attorney fees may be recovered by a party who prevails if a statute permits the recovery of attorney fees or if the complaint involves a claim for breach of contract and the contract contains a clause providing for recovery of attorney fees.

execution—the carrying out of a judgment of a court, generally directing that property owned by the defendant be sold and the proceeds first be used to pay the execution or judgment creditor.

garnishment—the name given in some states to attachment proceedings.

Execution of Judgment

After a judgment has been entered or all appeals or appeal rights have ended, the losing party must pay that judgment. The winning party can also take steps to execute, or carry out, the judgment. The **execution** is accomplished by the seizure and sale of the losing party's assets by the sheriff according to a writ of execution or a writ of possession.

Garnishment is a common method of satisfying a judgment. When the judgment debtor is an employee, the appropriate judicial authority in the state garnishes (by written notice to the employer) a portion of the employee's wages on a regular basis until the judgment is paid.



ETHICS & THE LAW

Honesty, Lawyers, and BP Claims

Following the Deepwater Horizon oil spill in the Gulf of Mexico, BP established a \$20 billion recovery fund. The purpose of the fund was to reimburse businesses and individuals who were affected by the spill, such as fishers, resorts, and boating companies that provided tours and other services.

Several lawyers and accountants were assigned to the Claims Administration Office (CAO) with the responsibilities for the receipt, evaluation, and payment of claims. In 2013, the federal judge overseeing the claims process became concerned about the conduct of those who were administering the trust. As a result, the judge appointed Louis Freeh, a former federal judge and director of the FBI, to investigate.

Among the many findings of the cases were conflicts, such as Lionel Sutton and Christine Reitano, husband and wife, two lawyers working at the CAO who had practiced law together in New Orleans as Sutton & Reitano. They referred a client, Casey Thonn, to Glen Lerner of AndryLerner, a law firm representing claimants to the CAO. Ms. Reitano then requested a referral fee from AndryLerner. The referral arrangement was

never disclosed to the client, Casey Thonn, as Louisiana's code of professional ethics requires, nor the CAO office. Mr. Sutton continued his representation of Casey Thonn in a personal injury case but did not disclose that client relationship to anyone at the CAO. Mr. Sutton also did not disclose that he had a business relationship in a reclamation company, Crown LLC, and that he was one of two equity owners of that company, with Glen Lerner, a partner at AndryLerner, being the other owner. AndryLerner had a total of \$7,908,460 in claims before the CAO. Mr. Sutton approved 496 of the claims.

On November 25, 2014, the U.S. Attorney for the Middle District of Florida announced 27 indictments against individuals who are alleged to have submitted fraudulent claims for reimbursement, ranging from \$11,000 to \$122,000, and totaling over \$1,000,000.

BP began running full-page ads in major newspaper around the country with examples of the fraudulent claims. The judge is seeking restitution from many of the claimants.

What should the lawyers have done in their situations? Why did they not do it?