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12th Edition

Roger LeRoy Miller

Business Law Today

Comprehensive Edition:
Text & Cases

BUSINESS LAW TODAY SERIES

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Contents in Brief

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Preface

The study of business law and the legal environment has universal applicability. A student entering any field of business must have at least a passing understanding of business law in order to function in the real world. *Business Law Today: Comprehensive Edition,* provides the information in an interesting and contemporary way. The Twelfth Edition continues its established tradition of being the most up-to-date text on the market.

Instructors have come to rely on the coverage, accuracy, and applicability of *Business Law Today: Comprehensive Edition*. This best-selling text engages your students, solidifies their understanding of legal concepts, and provides the best teaching tools available. I have spent a great deal of effort making this edition more contemporary, exciting, and visually appealing than ever before. Special pedagogical devices within the text focus on legal, ethical, global, and corporate issues, while addressing core curriculum requirements.

The Twelfth Edition incorporates the latest legal developments and United States Supreme Court decisions. It also includes more than fifty new features and sixty new cases, hundreds of new examples and case examples, new exhibits, learning objectives, margin definitions, and case problems.

New and Updated Features

The Twelfth Edition of *Business Law Today: Comprehensive Edition* is filled with exciting new and updated features designed to cover current legal topics of high interest.

1. **Entirely new *Business Web Log*** features underscore the importance of the text material to real-world businesses. Each of these features discusses a major U.S. company that is engaged in a dispute involving a topic covered in the chapter. Some examples include:
   - *Samsung and Forced Arbitration* (Chapter 4)
   - *Amazon Faces Fake Products* (Chapter 7)
   - *Facebook and Google in a World of Antitrust Law* (Chapter 38)
2. **Entirely new *Business Law Analysis*** features appear in numerous chapters of the text. These features are useful tools to help students master the legal analysis skills that they will need to answer questions and case problems in the book, on exams, and in business situations. Subjects include:
   - *Deciding If a Court Would Impose a Quasi Contract* (Chapter 10)
   - *Enforceability of Liquidated Damages Provisions* (Chapter 17)
   - *When Will a Court Order the Dissolution of an LLC?* (Chapter 32)
3. **Entirely new hypotheticals** in many chapter introductions provide a real-world link that generates student interest and highlights specific legal concepts that will be discussed in the chapter. These hypotheticals—often based on real cases or business situations—help to introduce and illustrate legal issues facing managers, companies, and even industries.
4. ***Adapting the Law to the Online Environment*** features examine cutting-edge cyberlaw topics, such as:
   - *Does Everyone Have a Constitutional Right to Use Social Media?* (Chapter 2)
   - *Using Twitter to Cause Seizures—A Crime?* (Chapter 9)
   - *Programs That Predict Employee Misconduct* (Chapter 33)

5. ***Ethical Issue*** features focus on the ethical aspects of a topic being discussed in order to emphasize that ethics is an integral part of a business law course. Examples include:
   - *How Enforceable Are Click-on Agreements to Donate Funds to Charity?* (Chapter 11)
   - *Is It Ethical (and Legal) to Brew "Imported" Beer Brands Domestically?* (Chapter 23)
   - *Is It Fair to Classify Uber and Lyft Drivers as Independent Contractors?* (Chapter 27)
6. ***Beyond Our Borders*** features illustrate how other nations deal with specific legal issues to give students a sense of the global legal environment. Topics include:
   - *Does Cloud Computing Have a Nationality?* (Chapter 33)
   - *Can a River Be a Legal Person?* (Chapter 39)
7. ***Managerial Strategy*** features emphasize the management aspects of business law and the legal environment, such as:
   - *Marriage Equality and the Constitution* (Chapter 2)
   - *The Criminalization of American Business* (Chapter 9)
   - *The SEC's New Pay-Ratio Disclosure Rule* (Chapter 36)
8. ***Landmark in the Law*** features discuss a landmark case, statute, or development that has significantly affected business law. Examples include:
   - *Palsgraf v. Long Island Railroad Co.* (Chapter 5)
   - *The Bankruptcy Abuse Prevention and Consumer Protection Act* (Chapter 26)
   - *Changes to Regulation A: "Reg A+"* (Chapter 36)
9. ***Linking Business Law to [one of the six functional fields of business]*** features appear in select chapters to underscore how the law relates to other fields of business. For instance, Chapter 7 has a feature titled *Linking Business Law to Marketing: Trademarks and Service Marks,* and Chapter 37 has a feature called *Linking Business Law to Corporate Management: Dealing with Administrative Law.*

New Emphasis on Making Ethical Business Decisions—The IDDR Approach

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

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

Students can easily remember the first letter of each step by using the phrase "I Desire to Do Right." A **completely revised Chapter 3 (Ethics in Business)** details the goals of each IDDR step and then provides a sample scenario to show students how to apply this new approach to ethical decision making. In addition to introducing the IDDR approach, I have made Chapter 3 more current and more practical and reduced the amount of theoretical ethical principles it presents. The text now focuses on real-life application of ethical principles.

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

New Cases and Case Problems

The Twelfth Edition of *Business Law Today: Comprehensive Edition* has new cases and case problems from 2018 and 2017 in every chapter. The new cases have been carefully selected to illustrate important points of law and to be of high interest to students and instructors. I have made it a point to find recent cases that enhance learning and are straightforward enough for business law students to understand.

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

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

Many New Highlighted and Numbered Case Examples

Many instructors use cases and examples to illustrate how the law applies to business. This edition of *Business Law Today: Comprehensive Edition* offers hundreds of highlighted and consecutively numbered ***Examples*** and ***Case Examples***. *Examples* illustrate how the law applies in a specific situation, and *Case Examples* present the facts and issues of an actual case and then describe the court's decision and rationale.

New to this edition are ***Spotlight Case Examples,*** which deal with especially high-interest cases, and ***Classic Case Examples,*** which discuss older, landmark decisions. The numbered *Examples* and *Case Examples* features are integrated throughout the text to help students better understand how courts apply legal principles in the real world.

Critical Thinking and Legal Reasoning Elements

For this edition of *Business Law Today: Comprehensive Edition* I have included a discussion of legal reasoning in Chapter 1. The all-new *Business Law Analysis* features that can be found throughout the text emphasize legal reasoning skills as well. Critical thinking questions conclude most of the features and cases in this text. Also, at the end of each chapter, a ***Debate This*** question requires students to think critically about the rationale underlying the law on a particular topic.

The chapter-ending materials also include a separate section of questions that focus on critical thinking and writing. This section always includes a ***Time-Limited Group Assignment*** and may also include a ***Critical Legal Thinking*** question requiring students to think critically about some aspect of the law discussed in the chapter or a ***Business Law Writing*** question requiring students to compose a written response.

Answers to all *critical thinking* questions, as well as to the ***Business Scenarios and Case Problems*** at the end of every chapter, are presented in the Twelfth Edition's *Solutions Manual*. In addition, the answers to one case problem in each chapter, called the ***Business Case Problem with Sample Answer,*** appear in *Appendix E*.

Other Pedagogical Devices within Each Chapter

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

Chapter-Ending Pedagogy

- ***Practice and Review*** (in every chapter).
- ***Debate This*** (a statement or question at the end of *Practice and Review*).
- ***Key Terms*** (with appropriate page references to their margin definitions).
- ***Chapter Summary*** (in table format).
- ***Issue Spotters*** (in every chapter with answers in *Appendix D*).
- ***Business Scenarios and Case Problems*** (including in every chapter, a *Business Case Problem with Sample Answer* that is answered in *Appendix E*; in selected chapters, a *Spotlight Case Problem*; and in every chapter, a new *A Question of Ethics* problem—based on a 2017 case—that applies this Twelfth Edition's ***IDDR approach*** to business ethics).
- ***Critical Thinking and Writing Assignments*** (including a *Time-Limited Group Assignment* in every chapter, and a *Business Law Writing* or a *Critical Legal Thinking* question in selected chapters).

Unit-Ending Pedagogy

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

Supplements

Business Law Today: Comprehensive Edition provides a substantial supplements package designed to make the tasks of teaching and learning more enjoyable and efficient. The following supplements are available for instructors.

MindTap Business Law for *Business Law Today: Comprehensive Edition,* Twelfth Edition

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

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Instructor's Companion Website

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

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

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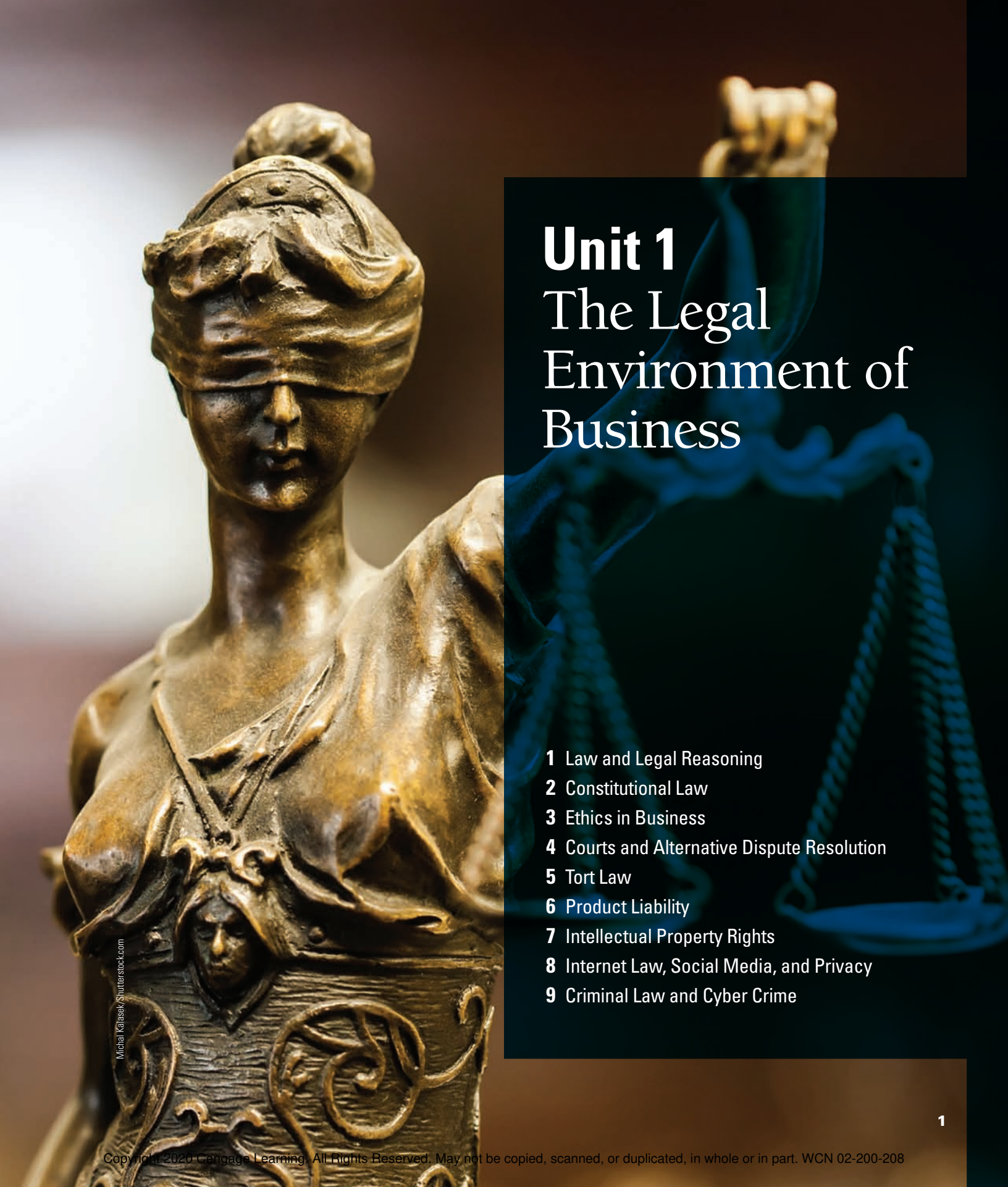
Roger LeRoy Miller

Dedication

To Darlene Young,

The memories will always be there.
The good thoughts from the past, too.
We are all richer because of them.

R.L.M.



Unit 1
The Legal Environment of Business

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1 Law and Legal Reasoning

Learning Objectives

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

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

Law A body of enforceable rules governing relationships among individuals and between individuals and their society.

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

Clarence Darrow
1857–1938
(American lawyer)

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

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

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

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

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

1–1 Business Activities and the Legal Environment

Laws and government regulations affect almost all business activities—from hiring and firing decisions to workplace safety, the manufacturing and marketing of products, business financing, and more. To make good business decisions, businesspersons need to understand the laws and regulations governing these activities.

Realize also that in today's business world, simply being aware of what conduct can lead to legal **liability** is not enough. Businesspersons must develop critical-thinking and legal reasoning skills so that they can evaluate how various laws might apply to a given situation and determine the best course of action. Businesspersons are also pressured to make ethical decisions. Thus, the study of business law necessarily involves an ethical dimension.

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

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

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

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

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

Justin Sullivan/Getty Images

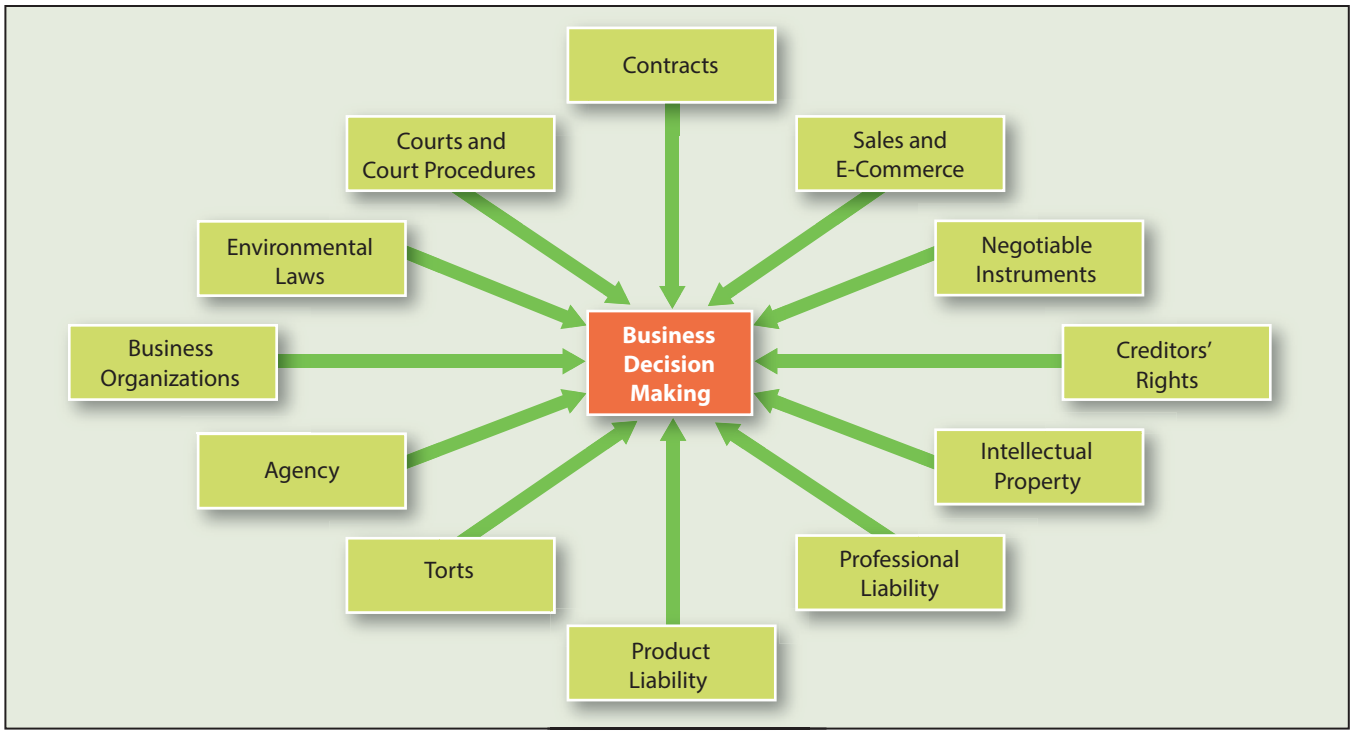
Mark Zuckerberg, founder of Facebook, has faced numerous legal challenges. These include privacy issues and the alleged theft of intellectual property. Can large Internet firms completely avoid such legal problems?

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

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

1. Corporate management.
2. Production and transportation.

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



3. Marketing.
4. Research and development.
5. Accounting and finance.
6. Human resource management.

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

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

Learning Objective 1
What are four primary sources of law in the United States?

1–2 Sources of American Law

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

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

We describe each of these important primary sources of law in the following pages. (See the appendix at the end of this chapter for a discussion of how to find statutes, regulations, and case law.)

Secondary sources of law are books and articles that summarize and clarify the primary sources of law. Legal encyclopedias, compilations (such as *Restatements of the Law*, which summarize court decisions on a particular topic), official comments to statutes, treatises, articles in law reviews published by law schools, and articles in other legal journals are examples of secondary sources of law. Courts often refer to secondary sources of law for guidance in interpreting and applying the primary sources of law discussed here.

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

1–2a Constitutional Law

The federal government and the states have written constitutions that set forth the general organization, powers, and limits of their respective governments. **Constitutional law,** which deals with the fundamental principles by which the government exercises its authority, is the law as expressed in these constitutions.

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

The U.S. Constitution is the basis of all law in the United States. It provides a framework for statutes and regulations, and thus is the supreme law of the land. A law in violation of the U.S. Constitution, if challenged, will be declared unconstitutional and will not be enforced, no matter what its source.

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

1–2b Statutory Law

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

Laws enacted by legislative bodies at any level of government, such as the statutes passed by Congress or by state legislatures, make up the body of law generally referred to as **statutory law.** When a legislature passes a statute, that statute ultimately is included in the federal code of laws or the relevant state code of laws.

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

Whenever a particular statute is mentioned in this text, we usually provide a footnote showing its **citation** (a reference to a publication in which a legal authority—such as a statute or a court decision—or other source can be found). In the appendix following this chapter, we explain how you can use these citations to find statutory law.

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

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

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

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

Michael Dwyer/Alamy

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

contact with undocumented immigrants. Then, immigration officials request the state and local authorities to detain the individual for possible deportation.

But a number of cities across the United States have adopted either local ordinances or explicit policies that do not follow this procedure. Police in these cities often do not ask or report the immigration status of individuals with whom they come into contact. Other places refuse to detain undocumented immigrants who are accused of low-level offenses.

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

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

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

The Uniform Commercial Code (UCC) One of the most important uniform acts is the Uniform Commercial Code (UCC), which was created through the joint efforts of the NCCUSL and the American Law Institute.[1] The UCC was first issued in 1952 and has been adopted in all fifty states,[2] the District of Columbia, and the Virgin Islands.

The UCC facilitates commerce among the states by providing a uniform, yet flexible, set of rules governing commercial transactions. Because of its importance in the area of commercial law, we cite the UCC frequently in this text. From time to time, the NCCUSL revises the articles contained in the UCC and submits the revised versions to the states for adoption.

"Laws and institutions, like clocks, must occasionally be cleaned, wound up, and set to true time."

Henry Ward Beecher
1813–1887
(American clergyman and abolitionist)

1–2c Administrative Law

Another important source of American law is administrative law, which consists of the rules, orders, and decisions of administrative agencies. An administrative agency is a federal, state, or local government agency established to perform a specific function. Rules issued by various administrative agencies now affect almost every aspect of a business's operations, including the firm's capital structure and financing, its hiring and firing procedures, its relations with employees and unions, and the way it manufactures and markets its products. We will discuss administrative law in greater detail in a later chapter.

1–2d Case Law and Common Law Doctrines

The rules of law announced in court decisions constitute another basic source of American law. These rules of law include *interpretations* of constitutional provisions, of statutes enacted by legislatures, and of regulations created by administrative agencies.

Case Law The rules of law announced in court decisions. Case law interprets statutes, regulations, and constitutional provisions, and governs all areas not covered by statutory or administrative law.

Today, this body of judge-made law is referred to as **case law**. Case law—the doctrines and principles announced in cases—governs all areas not covered by statutory law or administrative law and is part of our common law tradition. We look at the origins and characteristics of the common law tradition in some detail in the pages that follow.

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

1–3 The Common Law

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

1–3a Early English Courts

After the Normans conquered England in 1066, William the Conqueror and his successors began the process of unifying the country under their rule. One of the means they used to do this was the establishment of the king's courts, or *curiae regis*. Before the Norman Conquest, disputes had been settled according to the local legal customs and traditions in various regions of the country. The king's courts sought to establish a uniform set of rules for the country as a whole. What evolved in these courts was the beginning of the **common law**—a body of general rules that applied throughout the entire English realm. Eventually, the common law tradition became part of the heritage of all nations that were once British colonies, including the United States.

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

Courts developed the common law rules from the principles underlying judges' decisions in actual legal controversies. Judges attempted to be consistent, and whenever possible, they based their decisions on the principles suggested by earlier cases. They sought to decide similar cases in a similar way and considered new cases with care because they knew that their decisions would make new law. Each interpretation became part of the law on the subject and served as a legal **precedent**—that is, a court decision that furnished an example or authority for deciding subsequent cases involving identical or similar legal principles or facts.

Learning Objective 2
What is a precedent? When might a court depart from precedent?

Precedent A court decision that furnishes an example or authority for deciding subsequent cases involving identical or similar facts.

In the early years of the common law, there was no single place or publication where court opinions, or written decisions, could be found. Beginning in the late thirteenth and early fourteenth centuries, however, portions of significant decisions from each year were gathered together and recorded in *Year Books*. The *Year Books* were useful references for lawyers and judges. In the sixteenth century, the *Year Books* were discontinued, and other reports of cases became available. (See the appendix to this chapter for a discussion of how cases are reported, or published, in the United States today.)

1–3b *Stare Decisis*

The practice of deciding new cases with reference to former decisions, or precedents, eventually became a cornerstone of the English and U.S. judicial systems. The practice forms a doctrine called ***stare decisis*** [3] (a Latin phrase meaning "to stand on decided cases").

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

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

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

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

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

Know This
Courts normally must follow the rules set forth by higher courts in deciding cases with similar fact patterns.

3. Pronounced *stahr*-ee dih-*si*-sis.

Stare Decisis and Legal Stability The doctrine of *stare decisis* helps the courts to be more efficient because if other courts have carefully reasoned through a similar case, their legal reasoning and opinions can serve as guides. *Stare decisis* also makes the law more stable and predictable. If the law on a given subject is well settled, someone bringing a case to court can usually rely on the court to make a decision based on what the law has been.

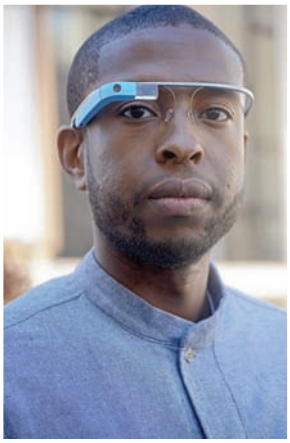
Departures from Precedent Although courts are obligated to follow precedents, sometimes a court will depart from the rule of precedent. If a court decides that a precedent is simply incorrect or that technological or social changes have rendered the precedent inapplicable, the court may rule contrary to the precedent. Cases that overturn precedent often receive a great deal of publicity.

Classic Case Example 1.3 In *Brown v. Board of Education of Topeka*,[4] the United States Supreme Court expressly overturned precedent. The Court concluded that separate educational facilities for whites and blacks, which had previously been upheld as constitutional,[5] were inherently unequal. The Supreme Court's departure from precedent in the *Brown* decision received a tremendous amount of publicity as people began to realize the ramifications of this change in the law.

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

Example 1.4 Google Glass is a Bluetooth-enabled, hands-free, wearable computer. A person using Google Glass can take photos and videos, surf the Internet, and do other things through voice commands. When it was first sold, many people expressed concerns about this wearable technology because it makes it much easier to secretly film or photograph others. Numerous bars and restaurants banned the use of Google Glass to protect their patrons' privacy. Police officers were concerned about driver safety. A California woman was ticketed for wearing Google Glass while driving. But the court dismissed this case of first impression because it was not clear whether the device had been in operation at the time of the offense.

When deciding cases of first impression, courts often look at **persuasive authorities** (legal authorities that a court may consult for guidance but that are not binding on the court). A court may consider precedents from other jurisdictions, for instance, although those precedents are not binding. A court may also consider legal principles and policies underlying previous court decisions or existing statutes. Additionally, a court might look at fairness, social values and customs, and public policy (governmental policy based on widely held societal values). Federal courts can also look at unpublished opinions (those not intended for publication in a printed legal reporter) as sources of persuasive authority.[6]



Ira Berger/Alamy

Under what circumstances could a user of Google Glass be violating the right to privacy of others?

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

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

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

Students of business law and the legal environment also engage in critical thinking and legal reasoning. For instance, you may be asked to provide answers for some of the case problems that appear at the end of every chapter in this text. Each problem describes the

4. 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).
5. See *Plessy v. Ferguson,* 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896).
6. Rule 32.1 of the Federal Rules of Appellate Procedure.

facts of a particular dispute and the legal question at issue. If you are assigned a case problem, you will be asked to determine how a court would answer that question, and why. In other words, you will need to give legal reasons for whatever conclusion you reach.

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

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

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

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

   Plaintiff One who initiates a lawsuit.

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

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

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

   Allege To state, recite, assert, or charge.

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

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

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

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

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

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

1–3c Equitable Remedies and Courts of Equity

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

Learning Objective 3
What is the difference between remedies at law and remedies in equity?

A **remedy** is the means given to a party to enforce a right or to compensate for the violation of a right. **Example 1.5** Elena is injured because of Rowan's wrongdoing. If Elena files a lawsuit and is successful, a court can order Rowan to compensate Elena for the harm by paying her a certain amount. The compensation is Elena's remedy.

The kinds of remedies available in the early king's courts of England were severely restricted. If one person wronged another, the king's courts could award either money or property, including land, as compensation. These courts became known as *courts of law*, and the remedies were called *remedies at law*. Even though this system introduced uniformity in the settling of disputes, when a person wanted a remedy other than property or economic compensation, the courts of law could do nothing, so "no remedy, no right."

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

Know This
Even though courts of law and equity have merged, the principles of equity still apply, and courts will not grant an equitable remedy unless the remedy at law is inadequate.

Plaintiffs (those bringing lawsuits) had to specify whether they were bringing an "action at law" or an "action in equity," and they chose their courts accordingly. A plaintiff might ask a court of equity to order the defendant to perform within the terms of a contract. A court of law could not issue such an order because its remedies were limited to the payment of money or property as compensation for damages.

A court of equity, however, could issue a decree for *specific performance*—an order to perform what was promised. A court of equity could also issue an *injunction*, directing a party to do or refrain from doing a particular act. In certain cases, a court of equity could allow for the *rescission* (cancellation) of the contract, thereby returning the parties to the positions that they held prior to the contract's formation. Equitable remedies will be discussed in greater detail in the chapters covering contracts.

The Merging of Law and Equity Today, in most states, the courts of law and equity have merged, and thus the distinction between the two courts has largely disappeared. A plaintiff may now request both legal and equitable remedies in the same action, and the trial court judge may grant either form—or both forms—of relief.

The distinction between legal and equitable remedies remains significant, however, because a court normally will grant an equitable remedy only when the remedy at law (property or monetary damages) is inadequate. To request the proper remedy, a businessperson (or her or his attorney) must know what remedies are available for the specific kinds of harms suffered. Exhibit 1–2 summarizes the procedural differences (applicable in most states) between an action at law and an action in equity.

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

PROCEDURE	ACTION AT LAW	ACTION IN EQUITY
Initiation of lawsuit	By filing a complaint	By filing a petition
Decision	By jury or judge	By judge (no jury)
Result	Judgment	Decree
Remedy	Monetary damages or property	Injunction, specific performance, or rescission

Equitable Maxims Over time, the courts have developed a number of **equitable maxims** that provide guidance in deciding whether plaintiffs should be granted equitable relief. Because of their importance, both historically and in our judicial system today, these maxims are set forth in this chapter's *Landmark in the Law* feature.

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

Jurisprudence The science or philosophy of law.

1–3d Schools of Legal Thought

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

Science History Images/Alamy Stock Photo

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

The Natural Law School According to the **natural law** theory, a higher, or universal, law exists that applies to all human beings. Each written law should reflect the principles inherent in natural law. If it does not, then it loses its legitimacy and need not be obeyed.

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

The notion that people have "natural rights" stems from the natural law tradition. Those who claim that certain nations, such as China and North Korea, are depriving many of their citizens of their human rights are implicitly appealing to a higher law that has universal applicability.

The question of the universality of basic human rights also comes into play in the context of international business operations. For instance, U.S. companies that have operations abroad often hire foreign workers as employees. Should the same laws that protect U.S. employees apply to these foreign employees? This question is rooted implicitly in a concept of universal rights that has its origins in the natural law tradition.

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

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

According to the positivist school, there is no such thing as "natural rights." Rather, human rights exist solely because of laws. If the laws are not enforced, anarchy will result.

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

Thus, whether a law is morally "bad" or "good" is irrelevant. The law is the law and must be obeyed until it is changed—in an orderly manner through a legitimate lawmaking process.

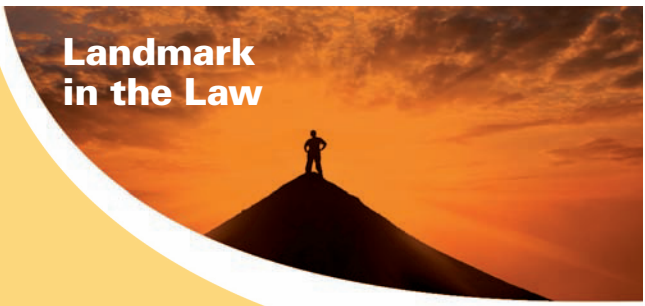
A judge who takes this view will probably be more inclined to defer to an existing law than would a judge who adheres to the natural law tradition.

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

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

Followers of the historical school are more likely than those of other schools to adhere strictly to decisions made in past cases.

Equitable Maxims



In medieval England, courts of equity were expected to use discretion in supplementing the common law. Even today, when the same court can award both legal and equitable remedies, it must exercise discretion.

Students of business law and the legal environment should know that courts often invoke equitable maxims when making their decisions. Here are some of the most significant equitable maxims:

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

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

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

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

For instance, in the contracts materials, you will read about the doctrine of promissory estoppel. Under this doctrine, a person who has reasonably and substantially relied on the promise of another may be able to obtain some measure of recovery, even though no enforceable contract exists. The court will estop (bar) the one making the promise from asserting the lack of a valid contract as a defense. The rationale underlying the doctrine of promissory estoppel is similar to that expressed in the fourth and fifth maxims just listed.

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

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

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

1–4 Classifications of Law

The law may be broken down according to several classification systems. One classification system divides law into **substantive law** (all laws that define, describe, regulate, and create legal rights and obligations) and **procedural law** (all laws that establish the methods of enforcing the rights established by substantive law).

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

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

Example 1.6 A state law that provides employees with the right to workers' compensation benefits for any on-the-job injuries they sustain is a substantive law because it creates legal rights. Procedural laws, in contrast, establish the method by which an employee must notify the employer about an on-the-job injury, prove the injury, and periodically submit additional proof to continue receiving workers' compensation benefits. Note that a law may contain both substantive and procedural provisions.

Other classification systems divide law into federal law and state law, and private law (dealing with relationships between persons) and public law (addressing the relationship between persons and their governments). Frequently, people use the term **cyberlaw** to refer to the emerging body of law that governs transactions conducted via the Internet, but cyberlaw is not really a classification of law. Rather, it is an informal term used to refer to both new laws and modifications of traditional legal principles that relate to the online environment.

Cyberlaw An informal term used to refer to all laws governing electronic communications and transactions, particularly those conducted via the Internet.

1–4a Civil Law and Criminal Law

Learning Objective 4
What are some important differences between civil law and criminal law?

Civil law spells out the rights and duties that exist between persons and between persons and their governments, as well as the relief available when a person's rights are violated. Typically, in a civil case, a private party sues another private party who has failed to comply with a duty. Much of the law that we discuss in this text—including contract law and tort law—is civil law.

Note that *civil law* is not the same as a *civil law system*. As you will read shortly, a **civil law system** is a legal system based on a written code of laws. (See this chapter's *Beyond Our Borders* feature for a discussion of the different legal systems used in other nations.)

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

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

Criminal law has to do with wrongs committed against society for which society demands redress. Criminal acts are proscribed by local, state, or federal government statutes. Thus, criminal defendants are prosecuted by public officials, such as a district attorney (D.A.), on behalf of the state, not by their victims or other private parties.

Whereas in a civil case the object is to obtain a remedy (such as monetary damages) to compensate the injured party, in a criminal case the object is to punish the wrongdoer in an attempt to deter others from similar actions. Penalties for violations of criminal statutes consist of fines and/or imprisonment—and, in some cases, death.

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

National Law Systems

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

Civil Law Systems

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

Common Law and Civil Law Systems Today

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

Islamic Legal Systems

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

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

Critical Thinking

Does the civil law system offer any advantages over the common law system, or vice versa? Explain.

Exhibit 1–3 The Legal Systems of Selected Nations

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

1–4b National and International Law

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

U.S. businesspersons increasingly engage in transactions that extend beyond our national borders. For this reason, those who pursue a career in business today should have an understanding of the global legal environment.

The law of a particular nation, such as Japan or Germany, is **national law.** National law, of course, varies from country to country because each country's law reflects the interests, customs, activities, and values that are unique to that nation's culture. Even though the laws and legal systems of various countries differ substantially, broad similarities do exist.

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

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

International Law Law that governs relations among nations.

The key difference between national law and international law is that government authorities can enforce national law. If a nation violates an international law, however, enforcement is up to other countries or international organizations, which may or may not choose to act. If persuasive tactics fail, the only option is to take coercive actions against the violating nation. Coercive actions range from the severance of diplomatic relations and boycotts to sanctions and, as a last resort, war.

Practice and Review

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

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

Debate This

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

Key Terms

allege 9
binding authority 7
case law 6
case on point 9
citation 5
civil law 13
civil law system 13
common law 7
concurring opinion 25
constitutional law 5
criminal law 13
cyberlaw 13
defendant 9
dissenting opinion 25
equitable maxims 11
historical school 12
international law 15
jurisprudence 11
law 2
legal positivism 11
legal realism 13
legal reasoning 8
liability 3
majority opinion 25
national law 15
natural law 11
ordinance 5
***per curiam* opinion** 25
persuasive authority 8
plaintiff 9
plurality opinion 25
precedent 7
primary source of law 4
procedural law 13
remedy 10
secondary source of law 5
stare decisis 7
statutory law 5
substantive law 13
uniform law 6

Chapter Summary: Law and Legal Reasoning

Sources of American Law

1. *Constitutional law*—The law as expressed in the U.S. Constitution and the various state constitutions. The U.S. Constitution is the supreme law of the land. State constitutions are supreme within state borders to the extent that they do not violate the U.S. Constitution or a federal law.
2. *Statutory law*—Laws or ordinances created by federal, state, and local legislatures. None of these laws can violate the U.S. Constitution, and no state statute or local ordinance can violate the relevant state constitution. Uniform laws, when adopted by a state legislature, become statutory law in that state.
3. *Administrative law*—The rules, orders, and decisions of federal or state government administrative agencies. Federal administrative agencies are created by enabling legislation enacted by the U.S. Congress. Agency functions include rulemaking, investigation and enforcement, and adjudication.
4. *Case law and common law doctrines*—Judge-made law, including interpretations of constitutional provisions, of statutes enacted by legislatures, and of regulations created by administrative agencies. Case law governs all areas not covered by statutory law or administrative law, and is part of our common law tradition.

The Common Law

1. *Common law*—Law that originated in medieval England with the creation of the king's courts, or *curiae regis*, and the development of a body of rules that were common to (or applied in) all regions of the country.
2. *Stare decisis*—A doctrine under which judges "stand on decided cases"—or follow the rule of precedent—in deciding cases. *Stare decisis* is the cornerstone of the common law tradition.
3. *Stare decisis and legal reasoning*—Judges use legal reasoning to harmonize their decisions with those that have been made before, as required by the doctrine of *stare decisis*. The basic steps of legal reasoning form what is often referred to as the *IRAC method* of legal reasoning. IRAC stands for *Issue, Rule, Application,* and *Conclusion*. First, clearly grasp the relevant facts and identify the issue. Second, determine the rule of law that applies to the case. Third, analyze (using *cases on point*) how the rule of law applies to the particular facts of the dispute, and fourth, arrive at a conclusion.
4. *Remedies*—A remedy is the means by which a court enforces a right or compensates for a violation of a right. Courts typically grant legal remedies (monetary damages or property) but may also grant equitable remedies (specific performance, injunction, or rescission) when the legal remedy is inadequate or unavailable.

	5. *Schools of legal thought*—Judges' decision making is influenced by their philosophy of law. The following are four important schools of legal thought, or legal philosophies: **a.** Natural law—One of the oldest and most significant schools of legal thought. Those who believe in natural law hold that there is a universal law applicable to all human beings and that this law is of a higher order than positive, or conventional, law. **b.** Legal positivism—A school of legal thought centered on the assumption that there is no law higher than the laws created by the government. Laws must be obeyed, even if they are unjust, to prevent anarchy. **c.** Historical school—A school of legal thought that stresses the evolutionary nature of law and looks to doctrines that have withstood the passage of time for guidance in shaping present laws. **d.** Legal realism—A school of legal thought that generally advocates a less abstract and more realistic approach to the law. This approach takes into account customary practices and the social and economic circumstances in which transactions take place.
Classifications of Law	The law may be broken down according to several classification systems, such as substantive or procedural law, federal or state law, and private or public law. Two broad classifications are civil and criminal law, and national and international law. Cyberlaw is not really a classification of law but a term that refers to the growing body of case and statutory law that applies to Internet transactions.

Issue Spotters

1. The First Amendment to the U.S. Constitution provides protection for the free exercise of religion. A state legislature enacts a law that outlaws all religions that do not derive from the Judeo-Christian tradition. Is this law valid within that state? Why or why not? (See *Sources of American Law*.)

2. Under what circumstances might a judge rely on case law to determine the intent and purpose of a statute? (See *Sources of American Law*.)

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

Business Scenarios and Case Problems

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

1–2. Sources of Law. This chapter discussed a number of sources of American law. Which source of law takes priority in the following situations, and why? (See *Sources of American Law*.)

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

1–3. Remedies. Arthur Rabe is suing Xavier Sanchez for breaching a contract in which Sanchez promised to sell Rabe a Van Gogh painting for $150,000. (See *The Common Law*.)

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

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

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

1–6. Business Case Problem with Sample Answer—Reading Citations. Assume that you want to read the entire court opinion in the case of *Worldwide TechServices, LLC v. Commissioner of Revenue*, 479 Mass. 20, 91 N.E.3d 650 (2018).

Refer to the appendix to this chapter, and then explain specifically where you would find the court's opinion. (See *Finding Case Law*.)

—For a sample answer to Problem 1–6, go to Appendix E at the end of this text.

1–7. A Question of Ethics—The Doctrine of Precedent. *Sandra White operated a travel agency. To obtain lower airline fares for her nonmilitary clients, she booked military-rate travel by forwarding fake military identification cards to the airlines. The government charged White with identity theft, which requires the "use" of another's identification. The trial court had two cases that represented precedents.*

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

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

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

Critical Thinking and Writing Assignments

1–8. Business Law Writing. John's company is involved in a lawsuit with a customer, Beth. John argues that for fifty years higher courts in that state have decided cases involving circumstances similar to his case in a way that indicates he can expect a ruling in his company's favor. Write at least one paragraph discussing whether this is a valid argument. Write another paragraph discussing whether the judge in this case must rule as those other judges did, and why. (See *The Common Law*.)

1–9. Time-Limited Group Assignment—Court Opinions. Read through the subsection entitled "Decisions and Opinions" in the appendix following this chapter. (See *Reading and Understanding Case Law*.)

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

Appendix to Chapter 1

Finding and Analyzing the Law

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

Finding Statutory and Administrative Law

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

United States Code

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

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

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

State Codes

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

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

Administrative Rules

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

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

Finding Case Law

Before discussing the case reporting system, we need to look briefly at the court system. There are two types of courts in the United States: federal courts and state courts.

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

State Court Decisions

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

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

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

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

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

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

NATIONAL REPORTER SYSTEM MAP

Case Citations After appellate decisions have been published, they are normally referred to (cited) by the name of the case and the volume, name, and page number of the reporter(s) in which the opinion can be found. The citation first lists information from the state's official reporter (if different from the National Reporter System), then the *National Reporter*, and then any other selected reporter. (Citing a reporter by volume number, name, and page number, in that order, is common to all citations.) When more than one reporter is cited for the same case, each reference is called a *parallel citation*.

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

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

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

Federal Court Decisions

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

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

Unpublished Opinions

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

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

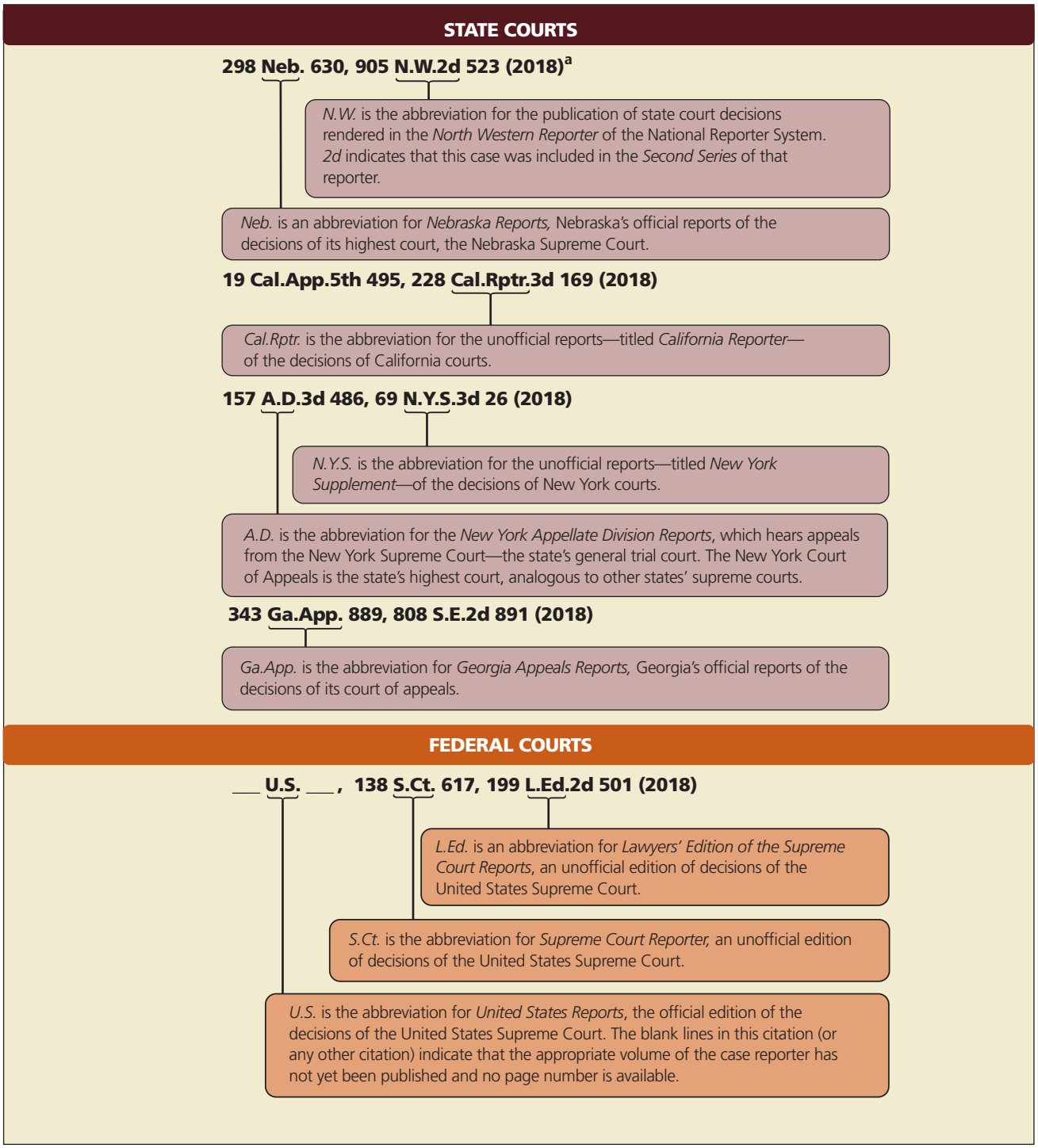
Old Cases

On a few occasions, this text cites opinions from old, *classic cases* dating to the nineteenth century or earlier. Some of these cases are from the English courts. The citations to these cases may not conform to the descriptions given above.

Reading and Understanding Case Law

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

Exhibit 1A–2 How to Read Citations



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

Exhibit 1A–2 How to Read Citations—Continued

FEDERAL COURTS (Continued)

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

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

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

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

WESTLAW® CITATIONS[b]

2018 WL 416255

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

STATUTORY AND OTHER CITATIONS

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

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

UCC 2–206(1)(b)

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

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

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

17 C.F.R. Section 230.505

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

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

Case Titles and Terminology

The title of a case, such as *Adams v. Jones*, indicates the names of the parties to the lawsuit. The *v.* in the case title stands for versus, which means "against." In the trial court, Adams was the plaintiff—the person who filed the suit. Jones was the defendant.

If the case is appealed, however, the appellate court will sometimes place the name of the party appealing the decision first, so the case may be called *Jones v. Adams*. Because some reviewing courts retain the trial court order of names, it is often impossible to distinguish the plaintiff from the defendant in the title of a reported appellate court decision. You must carefully read the facts of each case to identify the parties.

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

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

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

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

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

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

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

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

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

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

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

A Sample Court Case

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

Exhibit 1A–3 A Sample Court Case

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

YEASIN v. DURHAM

United States Court of Appeals, Tenth Circuit,

719 Fed.Appx. 844 (2018).

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

Gregory A. *PHILLIPS*, Circuit Judge.

* * * *

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

BACKGROUND

* * * *

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

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

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

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

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

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

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

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

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

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

A *record* is a written account of proceedings.

Exhibit 1A–3 A Sample Court Case, Continued

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

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

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

* * * *

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

* * * *

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

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

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

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

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

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

DISCUSSION

* * * *

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

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

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

To *circumscribe* is to restrict.

* * * *

(*Continues*)

Exhibit 1A–3 A Sample Court Case, Continued

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

Here, *establish* means to settle firmly.

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

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

* * * *

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

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

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

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

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

* * * *

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

CONCLUSION

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

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

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

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

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

How to Brief Cases

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

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

There is a fairly standard procedure that you follow when you "brief" any court case. You must first read the case opinion carefully. When you feel that you understand the case, you can prepare a brief of it. Although the format of the brief may vary, typically it will present the essentials of the case under headings such as the following:

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

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

Case Briefing and IRAC Legal Reasoning

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

1. **Citation.** *Yeasin v. Durham*, United States Court of Appeals for the Tenth Circuit, 719 Fed.Appx. 844 (2018).
2. **Facts.** Navid Yeasin and A.W. were students at the University of Kansas (KU). They dated for about nine months. When A.W. tried to end the relationship, Yeasin restrained her in his car, took her phone, and threatened to make the "campus environment so hostile that she would not attend any university in the state of Kansas." He repeatedly tweeted disparaging comments about her. Tammara Durham, the university's vice provost for student affairs, found that Yeasin's conduct and tweets violated the school's student code of conduct and sexual-harassment policy. She expelled him. Yeasin filed a suit in a Kansas state court against Durham, and the university reinstated him. He then filed a suit in a federal district court against Durham, claiming that she had violated his First Amendment rights by expelling him for the content of his off-campus speech. The court dismissed the claim. Yeasin appealed to the U.S. Court of Appeals for the Tenth Circuit.
3. **Issue.** Could KU and Dr. Durham expel Yeasin for his tweets?
4. **Decision.** Yes. The U.S. Court of Appeals for the Tenth Circuit affirmed the lower court's dismissal of Yeasin's suit. "Yeasin can't establish that Dr. Durham violated clearly established law when she expelled him."
5. **Reason.** Taken together, court decisions show that "at the intersection of university speech and social media, First Amendment doctrine is unsettled." In some cases, the courts permit schools to circumscribe students' free-speech rights in certain contexts. Yeasin argued, however, that three cases decided by the United States Supreme Court clearly established his right to tweet about A.W. without the university being able to place restrictions on, or discipline him for, his tweets. In response, the court here pointed out that those cases did not involve circumstances similar to Yeasin's situation. In those cases, no student had been charged with a crime against another student and then made sexually harassing comments affecting her ability to feel safe while attending classes. And, the court concluded, in this case Dr. Durham could reasonably believe, based on Yeasin's conduct and his tweets, that his presence at the university would disrupt A.W.'s education and interfere with her rights.

Analysis: Notice how the sections in a case brief include the information necessary to perform IRAC legal reasoning. (Recall from the chapter that IRAC stands for *Issue, Rule of Law, Application*, and *Conclusion*.) Step 1 in IRAC reasoning is *Issue*. You need to understand the relevant facts, identify the plaintiff and defendant, and determine the specific issue presented by the case. You will find this information in the first two sections of your brief. The *Facts* section identifies the plaintiff and the defendant. Yeasin is the plaintiff. Dr. Tammara Durham is the defendant. The *Facts* also describes the events leading up to this suit and the allegations made by the plaintiff in the suit. Because this case is a decision of one of the U.S. courts of appeals, the lower court's ruling, the party appealing, and the appellant's contention on appeal are included here.

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

Result and Reasoning: The *Reason* section includes references to the relevant laws and legal principles that the court applied in coming to the conclusion arrived at in the case. The *Rule of Law* in this case included court decisions on whether, and in what circumstances, schools can circumscribe students' free-speech rights. The *Reason* section also explains the court's *Application* of the law to the facts in this case. Because Yeasin was charged with a crime for sexually harassing tweets that caused another student to fear for her safety, the court reasoned that the university had legitimate reasons for disciplining him. Dr. Durham could reasonably believe that Yeasin's presence at the university would disrupt A.W.'s education and interfere with her rights. The court arrived at the *Conclusion* that this was one of those contexts in which a court will permit a school to circumscribe students' free-speech rights.

Jaap v 235/Shutterstock

2

Constitutional Law

"The United States Constitution has proved itself the most marvelously elastic compilation of rules of government ever written."

Franklin D. Roosevelt
1882–1945
(Thirty-second president of the United States, 1933–1945)

The U.S. Constitution is brief. It contains only about seven thousand words—less than one-third as many as the average state constitution. Its brevity explains, in part, why the Constitution has proved to be so "marvelously elastic," as Franklin Roosevelt described it in the chapter-opening quotation. It might also explain why the U.S. Constitution has survived for more than two hundred years—longer than any other written constitution in the world.

Laws that govern business have their origin in the lawmaking authority granted by the Constitution. Neither Congress nor any state can enact a law that conflicts with the Constitution.

Disputes over constitutional rights frequently come before the courts. Consider Norman's, Inc., a family-owned pharmacy in Olympia, Washington. The owners of Norman's have religious objections to the use of Plan B emergency contraception ("the morning-after pill"). Nevertheless, Washington state requires every pharmacy to stock an assortment of drugs approved by the Food and Drug Administration (FDA). In addition, Washington state has enacted new administrative rules that effectively prevent pharmacies from refusing to provide FDA-approved devices or drugs (such as Plan B contraception) to patients for religious reasons.

Norman's owners believe that these state administrative rules violate their constitutional rights to freedom of religion and equal protection, and file a suit against Washington State Department of Health. Do these rules violate the free exercise clause? Do they violate the equal protection clause? In this chapter, we examine these and other constitutional issues that businesses and courts must deal with in today's world.

Learning Objectives

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

1. What constitutional clause gives the federal government the power to regulate commercial activities among the states?
2. What is the Bill of Rights? What freedoms does the First Amendment guarantee?
3. Where in the Constitution can the due process clause be found?
4. Which constitutional amendments have been interpreted as implying a right to privacy?

2–1 The Constitutional Powers of Government

Following the Revolutionary War, the United States created a *confederal* form of government in which the states had the authority to govern themselves and the national government could exercise only limited powers. When problems arose because the nation was facing an economic crisis and state laws interfered with the free flow of commerce, a national convention was called. The delegates drafted the U.S. Constitution. This document, after its ratification by the states in 1789, became the basis for an entirely new form of government.

Federal Form of Government A system of government in which the states form a union and the sovereign power is divided between the central government and the member states.

Sovereignty The power of a state to do what is necessary to govern itself. Individual state sovereignty is determined by the U.S. Constitution.

Police Powers Powers possessed by the states as part of their inherent sovereignty. These powers may be exercised to protect or promote the public order, health, safety, morals, and general welfare.

2–1a A Federal Form of Government

The new government created by the Constitution reflected a series of compromises made by the convention delegates on various issues. Some delegates wanted sovereign power to remain with the states, whereas others wanted the national government alone to exercise sovereign power. The end result was a compromise—a **federal form of government** in which the national government and the states *share* sovereign power.

Federal Powers The Constitution sets forth specific powers that can be exercised by the national government. It also provides that the national government has the implied power to undertake actions necessary to carry out its expressly designated powers. All other powers are "reserved" to the states.

elenaleonova/iStock/Getty Images

Because the Constitution reserves to the states all powers not delegated to the national government, the states can and do regulate many types of commercial activities within their borders. So, too, do municipalities. One of these powers is the imposition of building codes. What is the general term that applies to such powers?

Regulatory Powers of the States As part of their inherent **sovereignty** (power to govern themselves), state governments have the authority to regulate certain affairs within their borders. This authority stems, in part, from the Tenth Amendment, which reserves all powers not delegated to the national government to the states or to the people.

State regulatory powers are often referred to as **police powers.** The term encompasses more than just the enforcement of criminal laws. Police powers also give a state government broad rights to regulate private activities to protect or promote the public order, health, safety, morals, and general welfare. Fire and building codes, antidiscrimination laws, parking regulations, zoning restrictions, licensing requirements, and thousands of other state statutes have been enacted pursuant to states' police powers. Local governments, such as cities, also exercise police powers.

2–1b Relations among the States

The U.S. Constitution also includes provisions concerning relations among the states in our federal system. Particularly important are the *privileges and immunities clause* and the *full faith and credit clause*.

Privileges and Immunities Clause Article IV, Section 2, of the U.S. Constitution requires states not to discriminate against one another's citizens. A resident of one state, when in another state, cannot be denied the privileges and immunities of that state.

The Privileges and Immunities Clause Article IV, Section 2, of the Constitution provides that the "Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." This clause is often referred to as the interstate **privileges and immunities clause.** It prevents a state from imposing unreasonable burdens on citizens of another state—particularly with regard to means of livelihood or doing business.

When a citizen of one state engages in basic and essential activities in another state (the "foreign state"), the foreign state must have a *substantial reason* for treating the nonresident differently than its own residents. Basic activities include transferring property, seeking