

TWELFTH EDITION

# BUSINESS

Its Legal, Ethical, and Global Environment



MARIANNE M. JENNINGS

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Its Legal, Ethical, and Global Environment



**Marianne Moody Jennings**

Arizona State University



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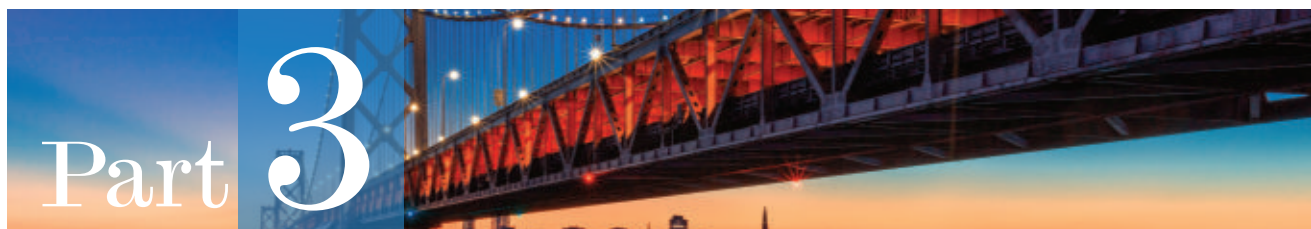
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## A Different World, but the Same Issues

The editions of this book seem to always come as the business world is going through a crisis. The seventh edition of this book was published amid the fallout from the legal, ethical, and, too often, financial collapses of Enron, WorldCom, Adelphia, HealthSouth, Parmalat, Arthur Andersen, Kmart, and others. With Sarbanes–Oxley on the books and new regulatory demands on corporations, it seemed that business had undertaken a compliance turnaround. But the eighth edition was published as Wall Street and the economy were reeling from the fallout of a subprime mortgage market operating under regulatory radar without a great deal of disclosure on portfolio risk. When the ninth edition was published, the SEC had just settled a civil suit it brought against Goldman Sachs for allegedly selling securities to clients it was betting against as a short-seller in a scheme that saw its profits reach double-digit billions. Goldman paid a fine of \$550 million. In late 2009, Goldman’s CEO, Lloyd Blankfein, uttered the same words that Jeffrey Skilling did in 2000: “We are doing God’s work.” At press time of the 10th edition, there were questions about the fairness of the scrutiny of taxpayers by an administrative agency, the Internal Revenue Service, and the Justice Department’s tapping of phones of news corporations. Apple and book publishers signed antitrust consent decrees for agreeing to fix prices in order to compete with Amazon. A factory in Bangladesh, that produced clothing for U.S. retailers, collapsed, killing more than 600 employees, a collapse that was caused by noncompliance with safety and code standards. As the 11th edition was published the EPA had tightened regulations so much that two major coal companies had gone out of business. The Veterans Administration was trying to recover from a program that was designed to reduce queue times for patients but resulted in patients dying. A pharmaceutical company raised its prices on one prescription drug by 5,000%. The raisin farmers had a major victory in the U.S. Supreme Court that will change forever government price and supplies controls on crops. And insider trading, something that was a focus in the news at the time of the first and ninth editions, had a new twist. From both the convictions and the reversals of those convictions lawyers and courts were slogging through example after example and asking, “When exactly does insider trading occur?”

The patterns of business behavior that push the envelope of law and ethics continue. As the 12th edition goes to print, we have the same issues with fraud in IPOs and are reeling from an economic crisis that resulted from a worldwide shutdown due to COVID-19. WeWork could not go public because of questions about the accuracy of its financial reports, and Uber and Lyft are still trying to determine if their drivers are employees or independent contractors. During the past three years, a regulatory rollback has seen the growth of fracking, the revitalization of the coal industry, and new emissions standards. A college admissions cheating scandal that involved payments for admission and higher ACT test scores resulted in the arrests and guilty pleas of dozens of parents. The issues of law and ethics are still at the forefront of business, sports, and government. It has become a tall order just to keep up with all the events!

These companies and organizations and their employees and executives certainly could have benefited from understanding and keeping at the forefront of their decision processes the basics of law and ethics! The legal and ethical environments of business are center stage. Several editions ago, Congress made massive regulatory reform a reality with the passage of the Sarbanes–Oxley legislation on corporate governance, accounting regulation, and criminal penalties. But the SEC missed some large market schemes, so Congress passed Dodd–Frank with new directives to the SEC on financial reports, disclosures, and primary offerings. The continuing reliance on new credit mechanisms resulted in a central agency, the Consumer Protection Bureau, handling all forms of consumer credit. Business is even more international, and changes such as Brexit (Great Britain’s decision to withdraw from the EU) mean trade, regulation, and tariffs are all changing. FCPA cases have expanded and there is increasing cooperation among countries to address money-laundering schemes and the problems of world leaders hiding funds in accounts around the world.

The world and business continue to change and grow, but law and ethics have retained their role and importance. In fact, now more than ever, we need to understand the legal and ethical issues that affect our businesses and our lives. The knowledge base and even the questions in law and ethics remain the same, but the underlying facts have changed. For example, we still debate the social responsibility role of business. Now we raise that issue in the context of whether companies should move their production facilities out of China as the human rights issues there increase. We still have the question of when a contract is formed, but now, instead of grouping faxes or texts together to find if a contract was formed, we face the question of whether we really did “point and click” and sign. We continue to be concerned about our privacy as consumers, but now we wonder who really has access to our online presence in everything—from what we post to what we buy. We still wonder about the extent of copyright law. The file-sharing programs have never quite gone away, and the film industry now litigates the downloading of copyrighted films. The world is different, but law and ethics form the constant framework into which we fit the issues of the day. In the materials that follow, you have the chance to understand the marvelous stability of this framework and the ease with which you can apply it to this very different world. Be sure to look for descriptions of the new structure as well as the continuing features in the book, such as the “Consider” tutorials, the ethics issues, and the Business Strategy application exercises.

## Building the Bridge: Applying Legal and Ethical Reasoning to Business Analysis

I presented a case study—a review of WeWork (now just “We”) and its various business issues, including conflicts of interests among its officers and family members, issues in leases, and problems with going public. Those participating were experienced businesspeople, many with master’s degree studies. They have been trained in college or on the job in economics, marketing, management, and finance. But as they completed their analysis of this fast-growing darling of a company, they had an epiphany. A company can look great and even attract the support of JPMorgan Chase as a potential underwriter, have the right brand appeal, a dynamic workforce, and even enjoy continuous growth. However, they also saw

the company's value drop and were witnesses to a mighty collapse because of legal issues. What if the numbers released to the SEC for gearing up to an IPO with earnings reports are overly optimistic? What if something goes wrong in the real estate market? What happens to all the commercial leases? While this discussion preceded the COVID-19 economic collapse, one of the hardest hit sectors was commercial real estate. Does insurance cover that? Do tenants have a way out because of an act of God? Does WeWork have a way out of a building purchase for the same reason? What about international expansion? How do leases get enforced across country borders? They were very capable *business* leaders. However, they did not realize until this discussion how much of business turns on anticipating the legal issues and getting them resolved correctly. And they also realized that ethics and social responsibility had a role in doing business. TANSTAAFL—"there ain't no such thing as a free lunch" when it comes to international business. There are costs associated with tapping into a seemingly boundless market. And those costs come from legal issues, which, if handled poorly, can affect a company's value and tarnish its brand name.

Why hadn't they seen the interconnection and critical roles of law and ethics in business before this discussion? It was not for lack of exposure to the law. Many of them had law degrees. However, I was taken back to many similar experiences during my days in the classroom. I once taught my course "by the book," so to speak. Students could recite the components of a valid contract, rattle off the requirements for bankruptcy, and recall from memory the antitrust statutes. Yet, I realized that rote knowledge of law was not enough. One of my best former students, who had gone on to medical school, came to me perplexed about her office lease. She said that the complex in which she wanted to open her practice had a "no advertising" policy. In fact, she said that when she toured the premises with a leasing agent, the leasing agent turned to her and said, "You're not one of those doctors who advertises, are you? Because if you are, we can't lease to you. We have a policy against it." One of my best students, who knew the antitrust statutes well, could not apply them to her everyday business. Worse, perhaps, she could not *recognize* when to apply these statutes: She did not see the antitrust implications of the agent's statements nor the problems with the physicians in the complex taking such an approach to screening tenants.

I reached the conclusion that there have always been shortcomings in the standard approach to teaching business students law and ethics. My experience with the WeWork discussion was evidence that many businesspeople have yet to grasp the integration of law and ethics into behaviors and strategic choices. Both students and businesspeople were not ignorant of the law; rather, they simply lacked the necessary skills to recognize legal and ethical issues and to apply their knowledge of law and ethics to business decision making. As instructors, we have not been integrating legal and ethical reasoning with business analysis.

From before the first edition of *Business: Its Legal, Ethical, and Global Environment*, the goal was to develop my own materials for classroom use that helped with this integration. Those materials led to the publication of the first edition of this book. Now in its 12th edition, *Business: Its Legal, Ethical, and Global Environment* brings to the classroom the most integrated approach to learning law and ethics available in the market today. Throughout every chapter and in every feature, students and instructors are continually reminded of how various legal and ethical principles apply in business contexts.

For all areas of law and ethics, this book answers the question: How does this concept affect a business? This book builds a bridge for the student between knowledge of law and ethics and application of both in business. My 44 years of teaching law and ethics finally brought this realization: Business ethics is not easily grasped nor practiced in business because we depersonalize ethical issues. If we just allow the company or organization to make the decision, our ethics are not in question; the companies' are. The ethical issues in the book require students to bring ethical issues into their lives, their circumstances, their world. This feature also forces them to answer this question in a wide variety of contexts: "If it were you, and you were faced with the dilemma and required to make a decision, what would you do?"

## Strengthening the Bridge: New Content, Business Applications, and Learning Aids

For the 12th edition, *Business: Its Legal, Ethical, and Global Environment* has undergone major changes because the law has changed in so many areas, and the types and numbers of ethical issues have grown. New content including statutes, cases, and examples makes this edition much more than a routine update. There are new segments of material and chapter restructuring to integrate all the changes.

### New Content

The 12th edition of *Business: Its Legal, Ethical, and Global Environment* continues to meet its goal of helping students with their understanding of how law and ethics apply to the business world. The organizational structure, based on feedback from those who use the text, continues with its four parts structured around business functions. Part 1 offers an overview of the legal, ethical, and judicial environments of business. Part 2 covers the regulatory environments of business, including environmental regulation and sustainability. Part 3 covers all aspects of sales, contracts, and competition. Part 4 covers business management and corporate governance, and this section covers all issues related to employees, boards, agents, and how to keep all of these groups coordinated while taking legal and ethical actions. Cyberlaw is integrated into every chapter so that it can be covered in contracts (formation), employment (right of employee privacy in e-mails), and criminal law (everything from industrial espionage to spamming). An icon calls attention to the cyberlaw issues.

### Ethics

Business Ethics and Social Responsibility (Chapter 2) offers new examples and insights on the application of ethics to business decision making. Chapter 2 is chock full of the examples the last two years have netted—including Wells Fargo's 3.5 million fake accounts, the Houston Astros and their cheating scandal, and the fate of so many parents in securing college admissions for their children through a web of deceit. The strategic issues are covered along with the ethical issues in the phenomenal fall of Boeing as a result of problems with its industry workhorse plane, the 737 MAX. Ethics coverage is also integrated throughout all chapters with the "Ethical Issues" feature.



## Business Applications

### Biography

Each chapter contains a biography. Biographies provide students with business history through the study of individuals and companies involved with the area of law and ethics covered in the chapter. For example, Chapter 3 has a new biography on a judge whose opinion was issued after he had died and the eventual resolution of that issue by the U.S. Supreme Court. Chapter 5 has a new biography on the ongoing battles between the U.S. Supreme Court and the last two presidents over case decisions. Chapter 7, International Law, has a new biography on the NBA in China. Chapter 15 gives a new biography on the Eagles and their battle to protect their “Hotel California” song from use by a Hotel California. Chapter 19 provides the story of the death of an orca whale trainer at Sea World and the resulting investigations and backlash that Sea World experienced.

### For the Manager’s Desk

Each chapter also contains at least one “For the Manager’s Desk” feature. These readings provide students the opportunity to see how business interrelates with ethics and law. The readings feature topics tackled by publications such as *Wall Street Journal*, *Harvard Business Review*, *Corporate Finance Review*, and the *American Business Law Journal*. This feature offers the latest best practices as well as data from academic studies and insights from that research. For example, the Chapter 10 “For the Manager’s Desk” features the length of time and costs for approval when Environmental Impact Statements are involved in construction projects. Chapter 18’s feature deals with the failure of the WeWork IPO and what went wrong. Chapter 20 has a new “For the Manager’s Desk” on Harvey Weinstein and the #MeToo movement.

## Learning Aids

### . . . & the Law

Some chapters contain a popular feature to further integrate law and ethics with the other “silos” of business. The “. . . & the Law” feature puts law and ethics in the context of economics, human resources, public policy, strategy, finance, and other areas to illustrate the ways knowledge of the where and how for the fit of law and ethics can help make better managers and better decisions. For example, Chapter 12 has a discussion of government oversight of student recruiting. Chapter 19’s “Economics & the Law” discusses the complexity of labor conditions in foreign factories.

### Case Headlines

Every court case has a case headline that summarizes what issues are involved in the case. Chapter 1 has a new case on the liability of community colleges for the injuries to a baseball player during a game, and the headline is “Beating the Batter in a Community College Game: Is the School Liable?” Chapter 15 has a new case on the copyright infringement suit against Led Zeppelin for its song, “Stairway to Heaven”; the headline is “A Long Climb on the Stairway of Copyright Litigation.”

The vivid one-line description and colorful facts of the case, a common thread throughout the case choices in the text, help students internalize the rules and lessons of those cases.

### Chapter Openings and the “Consider . . .” Feature

Chapters begin with an opening problem, titled “Consider . . .”, which presents a legal dilemma relevant to the chapter’s discussion and similar to those business managers need to handle. These are revisited and answered in the body of the chapter. For example, Chapter 20 has a new chapter opening “Consider . . .” about a UPS employee whose doctor told her not to lift more than 10–20 pounds over the course of her pregnancy. When she asked for an accommodation, UPS explained that she would just have to take leave until after she had the baby. The answer comes later in the chapter with the U.S. Supreme Court decision in *Young v United Parcel Service*. The chapter opening “Considers . . .” are an unforgettable introduction that whets the appetite for the readings.

### Chapter Summary

Each chapter concludes with a summary that reinforces the major concepts of the chapter. Each summary is constructed around the key questions introduced at the start of the chapter and key terms presented throughout the chapter.

### Business Strategy Applications

The chapters integrate business strategy through special boxed features in some chapters and through specific questions in cases, Considers, and Ethical Issues features. The Business Strategy features are designed to help students understand where law and ethics fit in developing effective business strategies. For example, Chapter 5 has a strategy feature that discusses who gives money in politics, how much, and why. Chapter 8’s strategy feature discusses the components of an effective compliance program. The Chapter 12 strategy deals with how restaurants are coping with no-shows in their reservations and their contract rights when someone makes a reservation but never shows up.

## Organization and Features: A Structure to Guide Students to Reasoning and Analysis

The classic features have been updated and strengthened. The organization has been retained to continue to meet student needs in the classroom.

### Organization

The four parts in the book serve to organize the materials around four basic areas: (1) understanding the legal environment; (2) understanding the regulatory environment; (3) dealing with sales, contracts, and competition; and (4) management and governance. Every chapter integrates international and ethical topics.

#### Part 1

In four chapters, Part 1 offers an introduction to law, an introduction to business ethics and the judicial system, and a discussion of litigation and alternative dispute resolution. Part 1 provides students with a foundation in law and ethics as well

as legal and ethical reasoning, necessary for the areas of law in the chapters that follow. By being brief (four chapters), Part 1 offers instructors an early and logical break for exams.

## **Part 2**

In six chapters, Part 2 covers the regulatory environment of business, including the following topics: constitutional law, administrative and international law, business crimes and business torts, and environmental regulation. At the completion of Parts 1 and 2, students have a grasp of the legal system, ethical boundaries, and the laws that affect business operational decisions.

## **Part 3**

The five chapters in Part 3 present students with the legal and ethical issues surrounding contracts, sales, and competition. Part 3 includes the following topics: contract formation and performance (including coverage of consumer issues); product liability; intellectual property; trade restraints; and business competition and antitrust. From the negotiation of price to the collection of accounts, this segment of the book covers all aspects of selling business products and services. This section is structured so that the contracts discussion precedes the complexities of property and competition.

## **Part 4**

The five chapters in Part 4 discuss business management and governance. Topics include the management of employees, from agency law to employment regulation to employee rights to issues in discrimination. Part 4 also includes the governance issues of business structure and management, including financing and securities law issues. This section covers the issues of running, managing, and financing a business.

Woven throughout all the chapters are cyber law issues, as marked by margin icons, and featuring discussions of everything from e-mail privacy to the problems of hacking.

## **Features**

### **Court Cases**

Edited court language cases provide in-depth points of law, and many cases include dissenting and concurring opinions. Case questions follow to help students understand the points of law in the case and think critically about the decision. The courts have been active since the last edition, and many 2018–2020 case decisions are presented throughout the book. What happens when an employee tests positive for marijuana as part of her treatment at the hospital following an accident that resulted in the loss of the tip of one of her fingers? What rights do employees have as a result of provisions in the employer’s handbook? What happens when a farmer sells rotten hay? Can a company avoid Foreign Corrupt Practices Act violations when it has its agent appointed a government official in another country? What happens when a young man saves his Pepsi points to claim a Harrier Jet that he sees in a Pepsi spoof ad for “Pepsi stuff”? Does he get his jet?

### **Consider . . .**

“Consider . . .” problems, along with “Ethical Issues” and “Business Planning Tips,” have been a part of every chapter since the first edition. The “Consider . . .” features, often based on real court cases, ask students to evaluate and analyze

the legal and ethical issues discussed in the preceding text. Because these issues are integrated into the text, students must address and think critically about these issues as they encounter them. Through interactive problems, students learn to judge case facts and determine the consequences. Moreover, answers to all of the opening “Consider . . .” features are referenced in the text and clearly marked. There are more “Consider . . .” features throughout each chapter. Chapter 3 has a “Consider . . .” on whether Katy Perry could be sued in Missouri for her alleged infringement of a Missouri songwriter’s song. Chapter 10 has a new consider on whether the BLM can have a valid EIS without addressing climate change. “Consider . . .” brings the most current topics into the book and the classroom.

### **Ethical Issues**

The “Ethical Issues” feature appears in every chapter and presents real-world ethical problems for students to grapple with. “Ethical Issues” help integrate coverage of ethics into every chapter. The Ethical Issues also include personal and real-life examples that help students relate to the pervasive nature of ethical dilemmas that they do and will continue to face. Chapter 6 includes the U.S. Supreme Court case reversing the bribery conviction of former Virginia governor Bob McDonnell and his wife, followed by an Ethical Issues that asks students to review whether their taking of vacations, a Rolex, clothing, and help with a wedding from a donor crossed ethical lines. Chapter 7 includes an Ethical Issues on the fallout from companies that did inversions in order to avoid high U.S. tax rates and their eventual fate. Chapter 12 includes an Ethical Issues that asks for a discussion of the ethics of students who accept an employment offer and then renege because a better one came along.

### **Business Planning Tips**

Students are given sound business and legal advice through “Business Planning Tips.” With these tips, students not only know the law but also know how to anticipate issues and ensure compliance. For example, advice is offered on how to make your property safer, how to deal with delays in Internet sales, how to conduct an interview without violating the Americans with Disabilities Act, and how to train employees to preserve documents and potential evidence if customers make claims.

### **Cyberlaw**

Cyberlaw has been integrated throughout the book. Most chapters also include a segment on cyberlaw. These chapter-by-chapter materials, marked by an icon, give students the chance to see how new technology fits into the existing legal framework.

### **Exhibits**

Exhibits include charts, figures, and business and legal documents that help highlight or summarize legal and ethical issues from the chapter. With the credit and financial market reforms, securities law reforms on stock offerings, and the changes in criminal penalties, many of the charts are either new or updated.

### **End-of-Chapter Problems**

Many end-of-chapter problems have been updated and now focus more on actual cases. There are new chapter problems throughout the book of varied lengths for different instructor needs.



## The Informed Manager: Who Should Use This Book?

With its comprehensive treatment of the law, integrated business applications, and full-color design, *Business: Its Legal, Ethical, and Global Environment* is well suited for both undergraduate and MBA students. The book is used extensively in undergraduate education programs around the country. In addition, this edition has been class-tested with MBA students, and it is appropriate for MBA and executive education programs.

### A Note on AACSB Standards

The strong presence of ethics, social responsibility, international law and issues, and the integration of other business disciplines make the book an ideal fit for meeting AACSB standards and curriculum requirements. The AACSB standards emphasize the need for students to have an understanding of ethical and global issues. The 12th edition continues with its separate chapter on ethics as well as ethical issues and dilemmas for student discussion and resolution in every chapter. The separate chapter on international law continues its expanded coverage from the last edition, and each chapter has a segment devoted to international law issues. The 12th edition includes readings on expanded international law enforcement cooperation, the challenges of ethics and law in international business, the role of lawyers in other countries, and attitudes outside the United States on insider trading and antitrust laws.

This edition presents students with the legal foundation necessary for business operations and sales but also affords the students the opportunities to analyze critically the social and political environments in which the laws are made and in which businesses must operate. An examination of the lists of companies and individuals covered in the biographies, and of the publications from which the “For the Manager’s Desk” readings are based on, demonstrates the depth of background the 12th edition offers in those areas noted as critical by the AACSB. The materials provide a balanced look at regulation, free enterprise, and the new global economy.

## Supplements

*Business: Its Legal, Ethical, and Global Environment* offers a comprehensive and well-crafted supplements package for both students and instructors.

### MindTap

*MindTap*<sup>™</sup> is a fully online, highly personalized learning experience combining readings, activities, and assessments into a singular Learning Path. Instructors can personalize the Learning Path by customizing Cengage resources and adding their own content via apps that integrate into the *MindTap* framework seamlessly with Learning Management Systems.

Our *MindTap* product provides a four-step Learning Path designed to meet critical needs while also allowing instructors to measure skills and outcomes with ease.

- **Read It:** The students can prepare for class with interactive guided reading. MindTap comes standard with the ability to highlight and take notes within the chapter's content.
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- Enjoy over 1,500 cases at your fingertips. All new edition omitted cases will be added every year, allowing the archive to continually grow.

Mix and match cases from all textbooks, whether you are currently using it in class or not. This allows you to provide longer cases with more information from other resources, which is especially helpful if your text didn't show the court's decision.

## Weekly Ethics and Law Updates

Available at [mariannejennings.com](http://mariannejennings.com), the weekly updates contributed by the author offer current events each month for discussion and analysis. The update features new decisions, new statutes, new regulations, new ethical dilemmas, and a host of examples and cites to current periodicals. The 12th edition includes references to these updates in the text.

## Instructor's Companion Website

This complimentary site includes free materials the instructor can access to minimize preparation time and maximize student engagement.

**Instructor's Manual**

The *Instructor's Manual*, written by the author, provides the following for each chapter: a detailed outline, briefs of all cases, summaries of key features, supplemental readings, and interactive/cooperative learning exercises. New to the manual are a listing of the key terms and Learning Objectives and a What's New section, detailing the changes for the 12th edition.

**Solution and Answer Guide**

The *Solution and Answer Guide* provides answers to "Consider . . .", "Ethical Issues," case problems, and the end-of-chapter Questions and Problems.

**PowerPoint® Lecture Review Slides**

Developed by the author, these PowerPoint slides consist of lecture outlines and select tables and figures used in the book. The slides are available for use by students as an aid to note taking and by instructors for enhancing their lectures. This edition's PowerPoint slides are all new and accessible.

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**MindTap Educator's Guide**

All new to this edition, the MindTap Educator's Guide replaces what was formerly called the MindTap Integrated Syllabus. This guide provides a description of each asset and why it matters, as well as an estimated seat time. Additionally, the table of contents for the MindTap lives here so the instructor can see what assets each chapter contains.

# About the Author

**Professor Marianne Jennings** is an emeritus professor of legal and ethical studies in business from the W.P. Carey School of Business at Arizona State University. She was named professor of the year in the College of Business in 1981, 1987, 2000, and 2010 and was the recipient of a Burlington Northern teaching excellence award in 1985. She served as director of the Joan and David Lincoln Center for Applied Ethics at ASU from 1995 to 1999. From 2006 to 2007, she served as the faculty director for the MBA Executive Program. She took emeritus status in 2015 but continues to teach graduate courses in business ethics and ethical culture at ASU and other colleges around the country. She is an instructor and mentor for Wiley's CPAExcel review course.

Professor Jennings has authored hundreds of articles in academic, professional, and trade journals. She was given best article awards by the Institute of Internal Auditors and the Association of Government Accountants in 2001 and 2004. In 2006, her article, "Ethics and Investment Management: True Reform," was selected by the United Kingdom's *Emerald Management Review* from 15,000 articles in 400 journals as one of the top 50 articles in 2005. She was named one of the Top 100 Thought Leaders by Trust Across America in 2010. In 2012 she was named one of the 100 Most Influential People in Business Ethics by Ethisphere magazine.

She served on the board of directors for Arizona Public Service (now Pinnacle West Capital Corporation), the owner of the Palo Verde Nuclear Station, from 1987 through 2000. She served on the boards of Zealous Capital Corporation from 1996 to 1998 and the Center for Children with Chronic Illness and Disability at the University of Minnesota. She served as chair of the Bonneville International Advisory Board for KHTC/KIDR from 1994 to 1996. She was appointed to the board of advisors for the Institute of Nuclear Power Operators in 2004. From 2015 to 2019, she was an affiliated scholar with the Center for the Study of Economic Liberty at Arizona State University.

Currently she has six textbooks and monographs in circulation. The ninth edition of her textbook, *Case Studies in Business Ethics*, and the 11th edition of her textbook, *Business: Its Legal, Ethical, and Global Environment* were published in January 2017. New editions of both books will be published in 2022. Her first textbook, *Real Estate Law*, had its 11th edition published in January 2017, and its 12th edition will be published in 2022. Her text *Anderson's Business and the Legal Environment* had its 23rd edition published in January 2016, and its 24th edition will be published in 2022.

Her book, *Business Strategy for the Political Arena*, was selected in 1985 by Library Journal as one of its recommended books in business/government relations. *A Business Tale: A Story of Ethics, Choices, Success, and a Very Large Rabbit*, a fable about business ethics, was chosen by Library Journal in 2004 as its business book of the year. *A Business Tale* was also a finalist for two other literary awards for 2004. In 2000, her book on corporate governance was published by the New York Times MBA Pocket Series. Professor Jennings's book on long-term success, *Building a Business through Good Times and Bad: Lessons from Fifteen Companies, Each with a Century of Dividends*, was published in October 2002 and has been used by Booz, Allen, Hamilton for its work on business longevity. Her book *The Seven Signs*

of *Ethical Collapse* is used by auditors for advance detection of fraud and is a primer on corporate culture, including analysis of board efficacy. Her books have been translated into five languages.

She is a contributing editor for the *Real Estate Law Journal*, *Ethikos*, and *New Perspectives*. She served on the Board of Editors for the *Financial Analysts Journal* from 2007 to 2012. She served as editor-in-chief of the *Journal of Legal Studies Education* during 2003–2004. During 1984–1985, she served as then-governor Bruce Babbitt's appointee to the Arizona Corporation Commission. In 1999 she was appointed by then-governor Jane Dee Hull to the Arizona Commission on Character.

Her columns have been syndicated around the country, and her work has appeared in the *Wall Street Journal*, the *Chicago Tribune*, the *New York Times*, *Washington Post*, and *Reader's Digest*. A collection of her essays, *Nobody Fixes Real Carrot Sticks Anymore*, first published in 1994, is still being published. She was given an Arizona Press Club award in 1994 for her work as a feature columnist. She has been a commentator on business issues on *All Things Considered* for National Public Radio. She has appeared on CNBC, CBS This Morning, the Today Show, and CBS Evening News.

Professor Jennings earned her undergraduate degree in finance and her J.D. from Brigham Young University. She has done consulting work for law firms, government agencies, businesses, and professional groups including AES, AICPA, Allstate, Amgen, AstraZeneca, Bell Helicopter, Blue Cross Blue Shield, Boeing, Bristol-Myers Squibb, Certified Financial Analysts Institute, CoBank, Coca-Cola, Department of Energy, Department of Interior, Dial Corporation, DuPont, Hy-Vee Foods, IBM, Institute of Internal Auditors, Mattel, Motorola, Southern California Edison, Pfizer, Sutter Health, Raytheon, Tenet, Toyota, U.S. Navy, Veterans Administration, and VIAD.

Personal: Married since 1976 to Terry H. Jennings, Maricopa County Attorney's Office Deputy County Attorney; five children: Sarah, Sam, and John, and the late Claire and Hannah Jennings.



# Acknowledgments

By its 12th edition, a book has evolved to a point of trademark characteristics. This book is known for its hands-on examples and readings for business managers. That trademark evolves because of the efforts of many.

Any edition of a book bears the mark of the editors who work to design, refine, market, and produce it. Ten editions ago, Rob Dewey saw potential for a second edition of the book and applied his enthusiasm and market insights to mold a somewhat ugly duckling into a four-color swan. The book also carries the imprimatur of Steve Silverstein, who confronted me with a profound question: “Why can’t those in business see these ethical dilemmas when they are in the midst of them?” His question forced me back to the drawing board and resulted in the more personal ethical dilemmas. I remain grateful to Vicky True for her efforts over the years and for the smooth transition to Abbie Schultheis, who now has the thankless task of managing me. She stays on top of the smallest of issues and voiced concerns with graciousness. Kim Kusnerak, new as the editor for this edition, came into the work with little lead time and picked up the baton and ran with me as we worked through a tight schedule. She exudes patience, always willing to step in and help. Kris Tabor has been with me since the first edition, helping with word processing, IMs, test banks, and venting. We mark 34 years of a terrific partnership with this edition.

This book also carries the unmistakable liveliness of an author who shares her life with helpful and delightful children and one tolerant husband. Since the first edition of this book, I have added four children to our first, witnessed three graduate from college, one from law school, grieved over the loss of two, and seen the others grow up all too quickly in a household in which these words, “Mom, the UPS guy is here with page proofs,” made up their first sentences. They now simply witness me hovering over my computer from dawn’s light until I fall asleep on the keyboard. My children and my husband, collectively my family, are the most charming people I know. They have brought me stories, pop culture, and good sense with their, “Uh-oh, here we go!” when their mother finds outrage in yet another ethical lapse in business. Even from their now–globally dispersed positions, they call and ask, “How many chapters left?” Their vibrancy is found in the color and charm of these pages. I am grateful for their unanimous and unwavering support for my work. Finally, I am grateful to my parents who taught me through their words and examples of the importance and rewards of ethics and hard work.

*Marianne Moody Jennings*



# Part 1

## Business: Its Legal, Ethical, and Judicial Environment

Simply stated, you cannot run a successful business without knowing the law. What is legal? Where can I find the laws I need to know? How do I make decisions about legal conduct that is ethically troublesome to me? What if I have a disagreement with a customer, employee, or shareholder? How and where can I resolve our differences?

This portion of the book explains what law is, where it can be found, how it is applied, and how legal disputes are resolved. But beyond the legal environment of a business, there are the ethical issues. Just because what you are doing is legal does not mean it is ethical. And why should a manager make ethical choices and behave honorably in business? Law and ethics are inextricably intertwined. A commitment to both is part of a sustainable business model.

# Introduction to Law

Most people understand the law through personal experiences. Some are exposed to law through traffic tickets. Others encounter the law when a problem arises with a landlord or lease. Many wonder about their rights when search engines and other Internet companies gather information about them without their realizing such efforts were ongoing. Facing income reductions in tough economic times, many wonder what their rights are when collectors call or file suit. Their understanding of the law may be limited by the anger they feel about an annoying collection agent, their e-mail being scanned, or a traffic ticket. However, without traffic laws, the roads would be a study in survival of the fittest. The law is your source of assurance that you have rights when it comes to collection agency actions. Each day businesses find and face legal and ethical issues in everything from privacy rights on Facebook to proper payment of overtime wages.

The types of laws and the penalties for violating them vary from state to state and from city to city, but, however much they vary, laws exist everywhere and at every level of government. Indeed, law is a universal, necessary foundation of an orderly society. Law helps maintain order, imposing on us certain minimum standards of conduct. When we fall short of those standards, we risk penalties. Law is made up of rules that control people's conduct and their interrelationships. Traffic laws control not only our conduct when we are driving but also our relationships with other drivers using the roads. Traffic laws give other drivers a right-of-way, and civil laws hold us liable to them for any injuries we cause by not following traffic laws.

This chapter offers an introduction to law. How is law defined? What types of laws are there? What are the purposes and characteristics of law? Where are laws found, and who enacts them?



**UPDATE**



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*This country's planted thick with  
laws from coast to coast . . .  
and if you cut them down . . .  
d'you really think you could  
stand upright in the winds that  
would blow then?*

A MAN FOR ALL SEASONS, ACT I

## Consider . . .

1.1

Jose Luis Avila, a student at Rio Hondo Community College, played baseball for the Rio Hondo Roadrunners. During one of the Roadrunners' games, the pitcher for the Roadrunners hit a Citrus Community college batter with a pitch. When Jose came to bat in the top of the next inning, the Citrus Community College pitcher hit Jose in the head with a pitch, cracking his batting helmet.

Jose was dizzy and felt pain and numbness. Jose left the game and was treated for serious injuries. Jose filed suit against the helmet manufacturer, Citrus Community College, and the community college district. The lower court held that the community colleges were not liable under an immunity statute as a government entity. Jose appealed the decision. What should the court do?

1-1

## Definition of Law

**Learning Objective 1**  
Define *law*.

Philosophers and scholars throughout history have offered definitions of law. Aristotle, the early Greek philosopher, wrote that "the law is reason unaffected by desire" and "law is a form of order, and good law must necessarily mean good order." Sir William Blackstone, the English philosopher and legal scholar, observed that law was "that rule of action which is prescribed by some superior and which the inferior is bound to obey." *Black's Law Dictionary* defines law as "a body of rules of action or conduct prescribed by the controlling authority, and having legal binding force."<sup>1</sup> Law has been defined at least once by every philosopher, statesman, and police officer.

Law is simply the body of rules governing individuals and their relationships. Most of these rules become law through a recognized governmental authority. Laws give us basic freedoms, rights, and protections. Law also offers a model of conduct for members of society in their business and personal lives and gives them certainty of expectation. Plans, businesses, contracts, and property ownership are based on the expectation that the law will provide consistent protection of rights. Without such constancy in legal boundaries, society would be a mass of chaos and confusion.

1-2

## Classifications of Law

**Learning Objective 2**  
List and describe the classifications of laws.

### 1-2a Public versus Private Law

**Public law** includes those laws enacted by some authorized governmental body. State and federal constitutions and statutes are all examples of public laws, as are the state incorporation and partnership procedures, county taxation statutes, and local zoning laws.



**Private law**, on the other hand, is developed between two individuals. For example, landlords usually have regulations for their tenants, and these regulations are private laws. Homeowners' associations have developed an important body of private law that regulates everything from whether homeowners can erect basketball hoops in their driveways to allowing owners to list their properties on services such as Airbnb. The terms of a contract are a form of private law for the contracting parties. Although the requirements for forming and the means for enforcing that contract may be a matter of public law, the terms for performance are the private law the parties agree to for governing their relationships. Employer rules in businesses are also examples of private law; as long as those rules do not infringe any public rights or violate any statutory or constitutional protections, those rules define a private law relationship between employer and employee. For example, most companies now have Twitter and Facebook policies that limit the type of information and comments employees can post about their employers in social media outlets. Interestingly, both state legislatures and the U.S. Congress have proposed legislation that would control employer restrictions on employees' posts. Public law is being changed to reflect technological areas that are not yet addressed in employment law.

### 1-2b Criminal versus Civil Law

A violation of a **criminal law** is a wrong against society. A violation of a **civil law** is a wrong against another person or persons. Criminal violations have penalties such as fines and imprisonment. When you run a red light, you have committed a criminal violation and owe society a penalty, such as a fine or imprisonment. Violations of civil laws, on the other hand, require restitution: someone who violates a civil law must compensate the harmed party. If you do run a red light and strike and injure a pedestrian, your criminal case is society's remedy. The civil wrong in the same action requires you to pay damages to that pedestrian.

If you drive while intoxicated, you are breaking a criminal law and are subject to a fine, jail term, or license suspension. If you have an accident while driving intoxicated, you commit a civil wrong against anyone you injure. People who are injured as a result of your driving while intoxicated can file a civil suit against you to recover for injuries to their persons and property (cars).

Other differences also distinguish civil laws from criminal laws and their enforcement. For example, different rights and procedures are used in the trials of criminal cases (see Chapter 8 for more details).

### 1-2c Substantive versus Procedural Law

**Substantive laws** are those that give rights and responsibilities. **Procedural laws** provide the means for enforcing substantive rights. For example, if Zeta Corporation has breached its contract to buy 300 cell phones from Yerba Corporation, Yerba has the substantive right to expect performance and may be able to collect damages for breach of contract by bringing suit. The laws governing how Yerba's suit is brought and the trial process are procedural laws. Procedural laws are also used in criminal cases, such as grand jury proceedings or arraignments and pleas (see Chapter 8 for more information).

### 1-2d Common versus Statutory Law

The term **common law** has been in existence since 1066, when the Normans conquered England and William the Conqueror sought one common set of laws for



governing a then-divided England. The various customs of each locality were conglomered so that all fiefdoms could operate under a “common” system of law. The common law came about as judges in different areas settled disputes in similar ways by consulting their fellow judges on their previous decisions before issuing new decisions. This principle of following other decisions is referred to as *stare decisis*, meaning “let the decision stand.” This process of legal reasoning is still followed today. The courts use the judicial decisions of the past in making their judgments in order to provide the consistency and constancy of the law.

As much of an improvement as it was, the common law was still just uncoded law. Because of increased trade, population, and complexities, the common law needed to be supplemented. As a result, **statutory law**, which is passed by some governmental body and written in some form, was created.

Today, in the United States, we have common law and statutory law. Some of our common law still consists of principles from the original English common law. For example, how we own and pass title to real property are areas largely developed from English common law. The body of common law continues to grow. In addition, judicial decisions interpreting statutes are also part of the process of *stare decisis*. Courts throughout the country look to other courts’ decisions when confronted with similar cases.

Statutory law exists at all levels of government—federal, state, county, city, borough, and town. Our statutory law varies throughout our nation because of the cultural heritages of various regions. For example, the southwestern states have marital property rights statutes—often referred to as community property laws—that were influenced by the Spanish legal system implemented in Mexico. The northeastern states have different marital property laws that were influenced by English laws on property ownership. Louisiana’s contract laws are based on French principles because of the early French settlements there.

## 1-2e Law versus Equity

**Equity** is a body of law that attempts to do justice when the law does not provide a remedy, when the remedy is inadequate, or when the application of the law is terribly unfair. Equity, which originated in England, came into being because the technicalities of the common law often resulted in unresolved disputes or unfair resolutions. The monarchy allowed its chancellor to hear those cases that could not be resolved in the common law courts; eventually, a separate set of equity courts developed that were not bound by rigid common law rules. These courts could get more easily to the heart of a dispute. Over time, they developed remedies not available under common law. Common law, for example, usually permitted only the recovery of monetary damages. Courts of equity, on the other hand, could issue orders, known as **injunctions**, prohibiting certain conduct or ordering certain acts. The equitable remedies available in the **courts of chancery** were gradually combined with the legal remedies of the common law courts so that now parties can have their legal and equitable remedies determined by the same court. You can seek an injunction and damages in the same court.

For example, copyright infringement cases brought by the recording and motion picture industries seek injunctions against the individuals and companies that provided the technological means for making unauthorized individual copies of movies and songs. The record companies, the movie producers, and the artists could never be adequately compensated with money for these forms of infringement because the continued activity would cause the loss of their exclusive copyrights.

The remedy given by the courts is an injunction that can order a halt to the sites and programs that facilitated the unauthorized downloading of copyrighted materials.

**Learning Objective 3**  
Explain the purposes of law.

## **1-3** Purposes of Law

### **1-3a Keeping Order**

Laws carry some form of penalty for their violation. Violations of securities laws carry a fine, imprisonment, or banishment from the securities industry or all of these penalties. Violations of civil laws also provide for sanctions. If an employer discriminates against you by refusing to give you a raise or promotion because of your age, gender, or race, your employer could be required to pay the wages due from the raise plus interest or the compensation lost because of an unlawfully denied higher-paying position. A driver who injures another while driving intoxicated can be prosecuted but must also pay for the damages and the costs of the injuries the other person experiences. These civil and criminal penalties for violations of laws prevent feuds and the use of primitive methods for settling disputes, such as force.

During the past five years, a number of U.S. cities have imposed curfews or limited demonstrations to certain areas because of increasing protests on a number of issues. These cities imposed curfews in order to bring quiet to the city streets and curb damages to and looting of businesses. Curfew laws help to bring order to those cities.

### **1-3b Influencing Conduct**

Laws also influence conduct in a society. For example, securities laws require companies to make certain disclosures about those securities before they can be sold to the public. The antitrust laws make price fixing among competitors illegal and require government approval for certain mergers, such as those among the major cell phone services (see Chapter 14). These types of laws continue to change the way businesses operate. For example, Southwest Airlines changed its record-keeping system under Federal Aviation Administration (FAA) regulations so that required inspections and maintenance on its planes could be tracked more accurately.

### **1-3c Honoring Expectations**

Businesses commit resources, people, and time to ventures, expansion, and product development with the expectation that the contracts for those commitments will be honored and enforced according to existing law. Zoning laws and permits allow businesses to construct facilities. When zoning laws are changed, those businesses are given the protection of grandfather clauses so that their plans and locations are not disrupted when they acted lawfully at the time of their construction. Laws allow prior planning based on the protections inherent in the law.

### **1-3d Promoting Equality**

Laws have been used to achieve equality in those aspects of life in which equality is not a reality. For example, the equal-right-to-employment acts (see Chapter 20) were passed to bring greater equality to the job market. The social welfare programs of state and federal governments were created to further the cause of economic justice. The antitrust laws attempt to level the playing field for the free enterprise system to operate efficiently.

### 1-3e Law as the Great Compromiser

A final and important purpose of law is to act as the great compromiser. Few people, groups, or businesses agree philosophically on how society, business, or government should be run. Law serves to mesh different views into one united view so that all parties are at least partially satisfied. When disputes occur, the courts apply the law to the parties' situation in an attempt to strike a compromise between two opposing views. The U.S. Supreme Court has provided compromises for the rights of businesses to be involved in the political process and make donations to candidates (see Chapter 5). In the relationship between freedom of speech and advertising regulation, the law serves as the mediator.

## 1-4 Characteristics of Law

### 1-4a Flexibility

As society changes, the law must change with it. When the United States was an agricultural nation, the issues of antitrust, employment discrimination, and securities fraud rarely arose. However, as the United States became an industrialized nation, those areas of law expanded, and they continue to expand today. As the United States further evolves into a technological and information-based society, still more areas of law will be created and developed. Computer fraud and identity theft, for example, were unknown issues 35 years ago; today, both state and federal laws address these issues through criminal statutes (see Chapter 8). The introduction of document attachments and electronic signature programs required the courts to re-examine how offers and acceptances of contracts are made, with electronic signatures now legislatively sanctioned as having the same force and effect as signatures on paper (see Chapter 11).

Circumstances change through technology, sociology, and even biology. The law must address those changes. What are the rights of property owners who experience noise and physical damages when short-term tenants use property in their neighborhoods? E-commerce has made finding a vacation place more easy and at a cheaper price. However, the courts are just now addressing the issue of property owners in this era of short-term leases involving many parties that are facilitated by online rental listing services.

### 1-4b Consistency

Although the law must be flexible, it still must be predictable. Laws cannot change so suddenly that outcomes are different depending on who is involved. In countries that are not governed by what is called the rule of law, those who are powerful or wealthy escape fines and imprisonment, while others must face enforcement action. The adage "No one is above the law" means that enforcement is consistent regardless of what parties are involved.

### 1-4c Pervasiveness

The law must be pervasive and cover all necessary areas, but at the same time, it cannot infringe on individual freedoms or become so complex that it is difficult to enforce. For example, in California, there has been a three-decades-long battle between farmers and environmentalists over the protection of the delta smelt, a finger-sized fish that is protected under federal law. However, the biological opinions

**Learning Objective 4**  
List the characteristics of law and give an example for each.

#### CYBERLAW



on the delta smelt's survival are at odds, and while all of that information is sorted out in court proceedings, farmers are unable to plant their crops for lack of water and argue that there is a taking of their land by regulation without compensation. As a result there is a confluence of laws, regulations, administrative processes, and constitutional rights that has resulted in parched farmland lying fallow. There are issues of rights caught up in complex science and no clear path out of the jumble of regulations. (See Chapter 10 for more information on these types of environmental issues.)

In the following case, the California Supreme Court dealt with an issue of whether a community college should be held liable for a baseball player being "beaned" by the pitcher during an intercollegiate baseball game. The opinion illustrates the struggle courts face as they try to honor the law's characteristic of consistency even as they struggle to honor the purpose of influencing conduct. Case 1.1 is briefed in Exhibit 1.1. A **brief** is a tool used by lawyers, law students, and judges to help them summarize a case and focus on its facts and the key points of the decision by the court.

## CASE 1.1

*Avila v Citrus Community College District*  
38 Cal. 4th 148 (2006)

### Beaning the Batter in a Community College Game: Is the School Liable?

#### FACTS

Jose Luis Avila, a student at Rio Hondo Community College, played baseball for the Rio Hondo Roadrunners. During one of the Roadrunners' games at Citrus Community College, the pitcher for the Roadrunners hit a Citrus Community college batter with a pitch. When Jose came to bat in the top of the next inning, the Citrus Community College pitcher hit Jose in the head with a pitch, cracking his batting helmet.

Jose was dizzy and told the Hondo manager, but the manager told him to go to first base and to stay in the game. When Jose got to second base he felt pain, numbness, and more dizziness. Another Hondo player yelled to the dugout for a pinch runner, and Jose left the game and was treated for serious injuries. Jose filed suit against the helmet manufacturer, the Citrus Community College, and the community college district (community colleges). The lower court held that the community college defendants were not liable under an immunity statute as a government entity. Jose appealed. The Court of Appeal reversed, finding that the community colleges were not immune from liability, that they owed a duty to Jose, and that the duty was breached. The community colleges appealed.

#### JUDICIAL OPINION

WERDEGAR, Justice  
I. Section 831.7 Immunity

Government Code Section 831.7 provides:

"Neither a public entity nor a public employee is liable to any person who participates in a hazardous recreational activity . . . for any damage or injury to property or persons arising out of that hazardous recreational activity."

In turn, a "hazardous recreational activity" is defined as "a recreational activity conducted on property of a public entity which creates a substantial (as distinguished from a minor, trivial, or insignificant) risk of injury to a participant or a spectator." "Hazardous recreational activity" is further defined by a nonexclusive list of activities that qualify, including such activities as diving, skiing, hang gliding, rock climbing, and body contact sports.

The text is ambiguous. The statute does not specifically define "recreational activity," but instead includes a definition for "hazardous recreational activity." That definition defines and illustrates what is meant by the term "hazardous," while merely reusing the phrase "recreational activity."

Pitching in an adult amateur softball game would qualify as recreational; pitching for the Oakland Athletics or San Francisco Giants professional baseball teams would not. What of playing in a high school or

CONTINUED

intercollegiate baseball game, which falls somewhere between these extremes? Does it matter if one is a scholarship athlete, and thus receiving some form of reward for one's continued performance, or if one's participation in a sporting activity is compulsory because of state laws governing physical education instruction? The text alone cannot answer these questions.

This ambiguity is reflected in the disparate conclusions the Courts of Appeal have reached when applying the statutory language to negligence claims against schools and universities. [I]n *Acosta v. Los Angeles Unified School Dist.*, 31 Cal.App.4th 471, 37 Cal.Rptr.2d 171 (1995), a high school gymnast was practicing at his high school during the offseason under the supervision of an assistant gymnastics coach. He fell during a difficult maneuver, landed on his neck, and was rendered a quadriplegic. The Court of Appeal ruled that section 831.7 did not immunize the school district from liability for negligent supervision. While the court acknowledged that gymnastics was a hazardous activity, it concluded that school districts have a well-established duty to provide reasonable supervision of school-sponsored extracurricular sports programs.

Government Code section 831.7 was adopted as a premises liability measure, and designed to limit liability based on a public entity's failure either to maintain public property or to warn of dangerous conditions on public property. Nothing in the history of the measure indicates the statute was intended to limit a public entity's liability arising from other duties, such as any duty owed to supervise participation in particular activities.

Separate and apart from the body of law governing premises liability claims, another body of law establishes that public schools and universities owe certain non-property-based duties to their students. Public schools have a duty to supervise students.

In interscholastic and intercollegiate competition, the host school is not a disinterested, uninvolved party vis-à-vis the athletes it invites to compete on its grounds. Without a visiting team, there can be no competition. We hold that in interscholastic and intercollegiate competition, the host school and its agents owe a duty to home and visiting players alike, to, at a minimum, not increase the risk inherent in a sport.

## II. The Duty of Care Owed College Athletes

Being hit by a pitch is an inherent risk of baseball. The dangers of being hit by a pitch, often thrown at speeds approaching 100 miles per hour, are apparent and well known: being hit can result in serious injury or, on rare tragic occasions, death.

Being intentionally hit is likewise an inherent risk of the sport, so accepted by custom that a pitch intentionally thrown at a batter has its own terminology:

"brushback," "beanball," "chin music." In turn, those pitchers notorious for throwing at hitters are "head-hunters." Pitchers intentionally throw at batters to disrupt a batter's timing or back him away from home plate, to retaliate after a teammate has been hit, or to punish a batter for having hit a home run. Some of the most respected baseball managers and pitchers have openly discussed the fundamental place throwing at batters has in their sport. In George Will's study of the game, *Men at Work*, one-time Oakland Athletics and current St. Louis Cardinals manager Tony La Russa details the strategic importance of ordering selective intentional throwing at opposing batters, principally to retaliate for one's own players being hit.

For better or worse, being intentionally thrown at is a fundamental part and inherent risk of the sport of baseball. It is not the function of tort law to police such conduct.

In some circumstances, the common law imposes a duty on those who injure others to mitigate the resulting harm. The complaint establishes that Avila was able to make it to first and then second base under his own power, and was able to alert his own first base coach to his condition. These allegations cast serious doubt on whether Avila was sufficiently helpless so as to warrant imposing a duty on the District.

Avila alerted his own first base coach to how he was feeling, and when he arrived at second base, a Citrus College player, recognizing Avila was injured, alerted the Rio Hondo bench, at which point Rio Hondo removed Avila from the game. If the District had a duty, it satisfied that duty. In the possibly apocryphal words of New York Yankees catcher Yogi Berra, "It ain't over till it's over," but this means that for Avila's complaint against Citrus College, it's over.


We reverse the judgment of the Court of Appeal.

## CASE QUESTIONS

1. Outline the case history—what each of the courts decided in the case.
2. Explain the standard now for the liability of government entities.
3. What interests is the court balancing?
4. Does the court change the previous standard for liability of government entities? Why or why not? What effect will the decision have on government entities?
5. Why was there no breach of duty by the community colleges?
6. Does it matter that "beating" a batter violates the rules of the game?



Exhibit 1.1 Sample Case Brief	
	<i>Avila v Citrus Community College District</i> 38 Cal. 4th 148 (2006)
Facts	<p>Jose Luis Avila, a student at Rio Hondo Community College, played baseball for the Rio Hondo Roadrunners. During one of the Roadrunners' games at Citrus Community College, Jose came to bat and the Citrus Community College pitcher hit Jose in the head with a pitch, cracking his batting helmet.</p> <p>Jose was dizzy and eventually left the game with injuries. He was seriously injured and filed suit against the helmet manufacturer, the Citrus Community College, and the community college district.</p>
Decisions	The lower court held that the community college defendants were not liable under an immunity statute as a government entity. Jose appealed. The Court of Appeal reversed, finding that the community colleges were not immune from liability, that they owed a duty to Jose, and that the duty was breached.
Issue on appeal	<ol style="list-style-type: none"> <li>1. Were the community colleges immune from liability for the injuries experienced during an intercollegiate baseball game?</li> <li>2. If they are not immune, did they breach their duty to the player?</li> </ol>
Decision	The California Supreme Court held that the community colleges were not immune from liability because although the statute protected government entities from liability for recreational activity risks, the statute did not immunize them for breach of duty. The court found that although "beating" a batter may be a violation of the rules of the game, it was nothing that the colleges knew about or could control. The court also held that it did not breach its duty to Jose because he did continue in the game and did get the attention he needed from his fellow players and coaches.



**ETHICAL ISSUES**

Discuss the ethics of the pitcher's deliberate "beating" of Jose. Are the standards of ethics different in sporting competitions? If an action cannot penalize what happens in the game, what are the effects on players' behaviors during the game?

## Consider . . .

After he enrolled in the University of California at Los Angeles (UCLA), Damon Thompson experienced auditory hallucinations. He believed other students in the classroom and dormitory were criticizing him. School administrators eventually learned of Thompson's delusions and attempted to provide mental health treatment. However, one morning Thompson stabbed fellow student Katherine Rosen during a chemistry lab. Rosen sued the university and several of

its employees for negligence, arguing they failed to protect her from Thompson's foreseeable violent conduct.

UCLA is a state educational institution. Based on the decision in the *Avila* case, what should the court decide? Consider whether UCLA has a duty to protect students from injury on the campus and, if so, what types of injuries. Be sure to consider what is different in this factual pattern from the facts in *Avila*. What will the impact be

1.2

CONTINUED

on students, faculty, and administrators depending on which way the court decides on the issues of liability and duty? Be sure to consider the purposes and characteristics

of law in evaluating the claim Ms. Rosen for injuries. [*Regents of the University of California v Superior Court*, 413 P.3d 656 (Cal, 2018)]

## 1-5

## The Theory of Law: Jurisprudence

Law is the compromise of conflicting ideas. Not only do people differ in their thinking on the types of specific laws, they also differ on the theory behind the law or the values a legal system should try to advance or encourage. Many can agree on the definition of law and its purposes but still differ on how those purposes are best accomplished. The incorporation of theories or values into the legal process is, perhaps, what makes each society's laws different and causes law to change as society changes its values. These different theories or value bases for law are found in an area of legal study called **jurisprudence**, a Latin term meaning "wisdom of the law." In many cases, how the law should work is unclear. Conflicting philosophical views often come together in litigation. Judges and lawmakers must struggle to do the best good for the most members of society.

**Learning Objective 5**  
Define *jurisprudence* and discuss the theories of law.

### 1-5a The Theory of Law: Positive Law

There are some who see law as simply written orders that we must keep. Known as the positive law school of thought, those who subscribe to it believe that the critical part of the law is obedience so that we can have an orderly society.

## For the Manager's Desk

The decisions in the *Avila* and *UCLA* cases are part of a nationwide trend that has expanded liability and imposed additional duties on those who own and run facilities where the public is present. The scope of that duty requires, at least in most cases, that business owners and public entities take appropriate steps to ensure safety once they become aware of the danger. That duty is difficult for universities that are working with students such as the one in the *UCLA* case or employees who have become aggressive in the workplace.

In both situations, administrators are trying to balance the rights of the student or employees with the need to protect other students and employees in the situation. Both students and employees have rights to be at school or work. If those rights are to be taken away, the administrators must build a record to establish the need for their removal. The rights issues are covered in Chapter 5, the duty issues are covered in more detail in Chapter 9, and the employee rights issues are covered in Chapters 16, 19, and 20.

**1-5b The Theory of Law: Natural Law**

Another theory of jurisprudence is that of natural law, a theory that holds that we have certain rights that cannot be taken away by law. The United States of America's form of government was grounded in the natural law theorists' views that we have certain unalienable rights that cannot be taken away by any law. Any law that purports to take away those rights is invalid and must be challenged, either through the courts or through civil disobedience. An example would be slavery. While slavery was legal in the United States and other countries for centuries, it was constantly met with dissent, disobedience, and eventually civil war. Natural law trumped the positive law, and slavery was eliminated because it was a violation of natural law, and laws were changed to make it illegal.

**1-5c The Theory of Law: The Protection of Individuals and Relationships**

Justice Oliver Wendell Holmes, in "Natural Law," his famous essay written in 1918 at the height of World War I, rejected the notion of natural law. His essay began with the famous phrase, "The life of the law has not been logic; it has been experience." Holmes's opinion is that our interactions with each other constitute the foundation of law.

*If I do live with others they tell me what I must do if I wish to remain alive. If I do live with others they tell me what I must do and abstain from doing various things or they will put the screws to me.<sup>2</sup>*

In other words, the law is what keeps the peace among us, and should we choose to ignore it, those around us will take control and bring us into compliance.

**1-5d The Theory of Law: The Social Contract**

Roscoe Pound, another legal philosopher and dean of Harvard Law School for 20 years, had a different view of jurisprudence from Justice Holmes. His view was that law exists as the result of those who happen to be in power, that there is a type of social contract that we mutually honor. In 1941, Pound wrote his famous credo, called "My Philosophy of Law."

*I think of law as in one sense a highly specialized form of social control in a developed politically organized society—a social control through the systematic and orderly application of the force of such a society. Moreover, it operates through a judicial process and an administrative process, which also go by the name of law. . . .<sup>3</sup>*

**Consider . . .****1.3**

Every state, county, and city has laws that regulate the maximum speed for their roadways. Yet, surveys indicate that nearly 100% of us admit to driving above the speed limit. What philosophy of law do we follow when

we decide which laws to obey, how closely we follow those laws, and when we will follow them? Is there a risk to society when we make our own decisions about following the law?

## 1-6 Sources of Law

Laws exist in different forms at every level of government. As discussed earlier, law exists not only in statutory form but also in its common law form through judicial decisions. Statutory law exists at all levels of government. Statutes are written laws enacted by some governmental body with the proper authority—legislatures, city governments, and counties—and published and made available for public use and knowledge. The following sections discuss these written statutes, sometimes referred to as codified law, and their sources, as well as their foundations in constitutions.

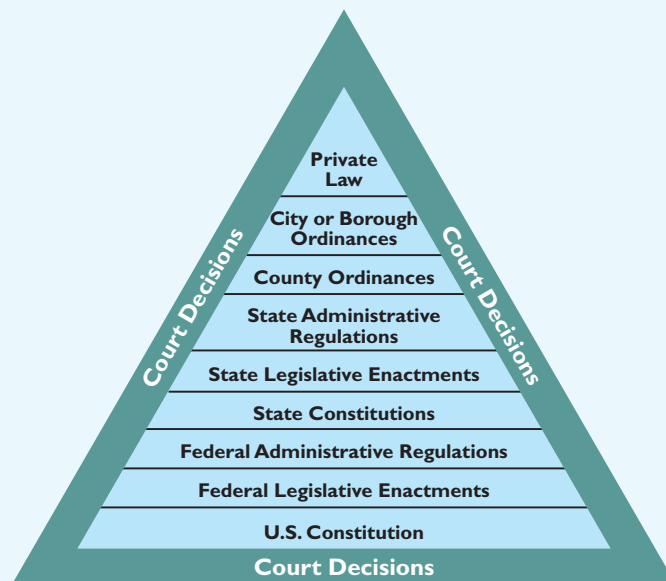
**Learning Objective 6**  
Diagram the sources of law and explain the types of laws at each level.

### 1-6a Constitutional Law

The U.S. Constitution and the constitutions of the various states are unique forms of law. **Constitutions** are not statutes because they cannot be added to, amended, or repealed with the same ease as can statutes. Constitutions are the law of the people and are changed only by lengthier and more demanding procedures than those used to repeal statutes.

Constitutions tend to protect general rights, such as speech, religion, and property (see Chapter 5 for a more complete discussion). They also provide a framework for all other forms of laws. The basic rights and protections afforded in them cannot be abridged or denied by the other sources of law. In other words, statutory boundaries are formed by constitutionally protected rights. Exhibit 1.2 is an illustration of the sources of law; constitutional law is at the base of the pyramid diagram because of its inviolate status.

**Exhibit 1.2 Sources of Law**



## 1-6b Statutory Law at the Federal Level

### Congressional Law

Congress is responsible for statutory law at the federal level. The laws passed by Congress become part of the **United States Code** (U.S.C.). Examples of such laws are the 1933 and 1934 Securities Acts (see Chapter 18), the Sherman Act and other antitrust laws (see Chapter 14), the Equal Employment Opportunity Act (see Chapter 20), the National Labor Relations Act (see Chapter 19), the Truth-in-Lending Act (see Chapter 11), the USA Patriot Act (see Chapters 8 and 18), and the Internal Revenue Code (see Chapter 19).

Statutes from the U.S.C. are referenced or *cited* by a standard form of legal shorthand, often referred to as a **cite** or **citation**. The number of the title is put in front of “U.S.C.” to tell which volume of the Code to go to. For example, “15 U.S.C.” refers to Title 15 of the U.S. Code (Title 15 happens to cover securities). There may be more than one volume that is numbered “15,” however. To enable you to find the volume you need, the reference or cite has a section (§) number following it. This section number is the particular statute referenced, and you must look for the volume of Title 15 that contains that section. For example, the first volume of Title 15 contains §§ 1–11. A full reference or cite to a United States Code statute looks like this: 15 U.S.C. §77. When a U.S.C. cite is given, the law cited will be a federal law passed by Congress.

### Executive Orders

**Executive orders** are laws of the executive branch of the federal government and deal with those matters under the direct control of that branch. For example, on his second day in office, President Barack Obama issued an executive order prohibiting the use of waterboarding in questioning military combatants who are in U.S. custody. In 2015, President Obama issued an executive order that increased background checks on private gun sales, including those sales at gun shows. In 2019, President Trump issued 44 executive orders that included actions to combat anti-Semitism, improve the transparency of regulatory agency processes, and initiate economic sanctions against Iran, Russia, and Venezuela.

### Federal Administrative Regulations

The federal government has administrative agencies that serve the functions of promulgation of rules (called regulations) for developing specifics such as forms and time requirements for carrying out the legislative enactments of Congress, in addition to enforcing both the laws and regulations (see Chapter 6 for more details). Examples of federal agencies include the Environmental Protection Agency (EPA), the Equal Employment Opportunity Commission (EEOC), and the Securities and Exchange Commission (SEC).

Federal regulations are found in the Code of Federal Regulations (CFR), a set of paperback volumes that is published once each year. A citation from the CFR has a structure similar to that of a U.S.C. cite. For example, 12 C.F.R. §226 is volume 12 of the CFR, and §226 is a section that deals with credit disclosure rights.

## 1-6c Statutory Law at the State Level

As noted in section 1-6a, each state has its own constitution. State constitutions cannot circumvent or cancel any of the rights afforded under the U.S. Constitution. These state constitutions provide the authority for the state statutory law structure.



## Legislative Law and State Codes

Each state has its own code containing the laws passed by its legislature. **State codes** contain the states' criminal laws, laws for incorporation, laws governing partnerships, and contract laws. Much of the law that affects business is found in these state codes. Some of the laws passed by the states are **uniform laws**, which are drafted by groups of businesspeople, scholars, and lawyers in an effort to make interstate business less complicated. For example, the **Uniform Commercial Code (UCC)**, which has been adopted in all states in some form, governs contracts for the sale of goods, commercial paper, security interests, and other types of commercial transactions. Having this uniform law in the various states gives businesses the opportunity to deal across state lines with some certainty. Other uniform acts passed by many state legislatures include the Uniform Partnership Act (Revised), the Uniform Residential Landlord and Tenant Act,<sup>4</sup> the Model Business Corporation Act, and the Uniform Probate Code.

## State Administrative Law

Just as at the federal level, state governments have administrative agencies with the power to pass regulations dealing with the statutes and powers given by the state legislatures. For example, most states have an agency to handle incorporations and the status of corporations in the state. Most states also have a tax agency to handle income or sales taxes in the state. State agencies control professional licensing for physicians, real estate agents, cosmetologists, etc.

### 1-6d Local Laws of Cities, Counties, and Townships

In addition to federal and state statutes, local governments can pass **ordinances** or statutes within their areas of power or control. For example, cities and counties have the authority to handle zoning issues, and the municipal code outlines the zoning system and whatever means of enforcement and specified penalties apply. These local laws govern lesser issues, such as dog licensing, curfews, and loitering. However, local governments are often responsible for national legal trends. For example, city and county bans on Styrofoam containers have resulted in the transformation of the fast-food industry by the use of new types of containers. City ordinances often affect national companies, and the companies make changes nationwide to comply with local ordinances.

### 1-6e Private Laws

**Private laws** are a final source of written law and are found, for example, in contracts and landlord regulations. These private laws are enforceable provided they are not inconsistent with rights and protections afforded under the other sources of law (see Chapters 3 and 4).

### 1-6f Court Decisions

Looking at Exhibit 1.2, you can see that all of the sources of law just covered are surrounded in the pyramid by the term "Court Decisions." Often the language in a statute is unclear, or perhaps whether the statute or ordinance applies in a particular situation is unclear. When these ambiguities or omissions occur in the statutory language, courts provide interpretation or clarification of the law when disputing parties bring suit. These court decisions are then read along with the statutory language in order to give a complete analysis of the scope and intent of the statute. The *Avila* case is a discussion of how laws are interpreted and applied as factual twists arise.

## Business Strategy

### COVID-19 Lockouts and Business Civil Disobedience



Because of the rapid spread of the coronavirus (COVID-19), the governors in a majority of the states imposed lockdowns on business operations. Those businesses that provided essential services could continue operating, but nonessential businesses could not continue operations unless employees were able to work from their homes. The economic impact, particularly on employees and small businesses, was devastating. A handful of business operators in the lockdown states felt that they could operate their businesses safely without risking infection to their customers. For example, Shelley Luther, the owner of Salon A La Mode in Houston, Texas, defied the executive order of Governor Greg Abbott that did not permit hair salons to open. She was cited for violation of the governor's order, received multiple cease-and-desist orders from a state court, and refused to shut down. She explained, "I'll go to jail to prove what they're doing is unconstitutional."<sup>5</sup>

Ms. Luther was arrested, and when she came before the judge, he told her that if she would apologize, he would not send her to jail. Ms. Luther refused to apologize and explained, with all due respect given to Judge Eric Moyé, that she and her hairdressers were just trying to work to feed

their children. Judge Moyé labeled Ms. Luther "selfish" and sentenced her to one week in jail and a fine of \$7,000.

Lt. Governor Dan Patrick paid Ms. Luther's fine himself. Attorney General Ken Paxton asked the Texas Supreme Court to intervene. The court ordered Ms. Luther released from jail because of the lack of authority to enforce executive orders by criminal punishment. Governor Abbott issued a follow-up executive order that prohibited jail time for those who violate the lockdown order. Senator Ted Cruz of Texas was Ms. Luther's first customer when she returned to her salon.

The American Board of Trial Advocates issued a statement supporting Judge Moyé's actions: "As Judge Moyé rightly noted, if any citizen or business could violate those orders or, for that matter, any law as they saw fit, then no rule of law would exist and anarchy would prevail. Businesses might feel free to ignore health codes. . . . This must never be the case."<sup>6</sup>

Discuss the risks of using civil disobedience as a business strategy. Apply what you have learned in this chapter to all of the events in this case. Think about jurisprudence, executive orders, civil versus criminal law, and the role of the courts.

**Learning Objective 7**  
Define *international law*.

1-7

## Introduction to International Law

Business is global. Companies headquartered in Japan have factories in the United States, and U.S. firms have manufacturing plants in South America and subcontractors and suppliers in China. Trade and political barriers to economic development no longer exist. Businesses must be adept at trading across country boundaries, and such trade requires an understanding of international law.

International law is not a neat body of law like contract law or the UCC. Rather, it is a combination of the laws of various countries, treaties, international trade customs, and international agreements. The sources of international law are covered in detail in Chapter 7.

## The Story of Antiquated Laws

## Biography

Virginia has had a law on its books since December 26, 1792, against “profane swearing” in public. The fine at the law’s original passage was 83 cents. The crime had drifted upwards to a Class 4 misdemeanor and the penalty inflated to \$250. There was no list of words included in the original statute:

That, if any person or persons shall profanely swear or curse, or shall be drunk, he, she, be they so offending, for such offence, being thereof convicted by the oath of one or more witnesses which oath any justice of the peace is hereby empower and required to administer or by confession before one or more justice or justices of the peace in the county or corporation where such offence shall be committed, shall forfeit and pay the sum of eighty-three cents for every such offence; or, if the offence or offences be committed in the presence and hearing of one or more justice or justices of the peace, or in any court of record in this Commonwealth, the same shall be a sufficient conviction without any further evidence, and the said offender shall, forfeit and pay the sum of eighty-three cents for every such offense; and if any person or persons shall refuse to make present payment, or give sufficient security for the payment of the same in reasonable time, not exceeding six months, then the said fines and penalties shall be levied upon the goods of such person or persons by warrant or precept from any justice of the peace.

There was a two-month statute of limitations to bring charges under the statute. Pastors and ministers were exempt from the statute because ministers had to

use the terms “Hell” and “damned” in a religious context in their sermons. However, they were only exempt within the confines of their churches. They were still subject to the prohibition on swearing when in public. If members of the congregation swore in church they were to be jailed immediately.

Signs, such as those in Virginia Beach, reminded Virginians of the longstanding ban. However, cultural changes made enforcement lax. Enforcement data was difficult to obtain, but records indicated that there were three people charged in Arlington County, Virginia, over the past two years.

A member of the Virginia House of Delegates, Michael J. Weibert, sponsored the bill to repeal the anti-swearing law noting, “When you’re working [with] cows and a 1,400-pound animal doesn’t do what you want it to, or steps on your feet, every once in a while something colorful comes out of your mouth.”<sup>7</sup>

On February 13, 2020, the statute was repealed, and Virginians can now let loose in public. Governor Ralph Northam signed the bill with a statement, “It’s past time we swore off the antiquated policies of the past.” Pun intended.

Antiquated laws exist at every level of government. You can find the statute as well as others that targeted “Sabbath breakers” and other rogue behavior bans at <https://www.businessinsider.com/weird-state-laws-across-america-2018-1> and <https://people.howstuffworks.com/10-archaic-laws.htm>. Some, like the anti-swearing law, are repealed. Some have constitutionality issues. For example, according to the Virginia law on Sabbath-breakers, those found working on the Sabbath were fined \$1.67. The separation of church and state issues felled many of these types of laws. Other laws show shifting morals. For example, in 1732, Virginia’s adultery crime carried a penalty of \$20. But the fines from this crime were limited to being used to help the poor.



## SUMMARY

### How is law defined?

- Law is a form of order. Law is the body of rules of society governing individuals and their relationships.

### What types of laws are there?

- Public law—codified law; statutes; law by government body
- Private law—rules created by individuals for their contracts, tenancy, and employment
- Civil law—laws regulating harms and carrying damage remedies
- Criminal law—laws regulating wrongful conduct and carrying sentences and fines
- Statutory law—codified law
- Common law—law developed historically and by judicial precedent
- Substantive laws—laws giving rights and responsibilities
- Procedural laws—laws that provide enforcement rights

### What are the purposes of law?

- Keep order; influence conduct; honor expectations; promote equality; offer compromises

### What are the characteristics of law?

- Flexibility; consistency; pervasiveness
- Jurisprudence—theory of law

### Where are laws found and who enacts them?

- Constitution—document that establishes structure and authority of a government
- Federal statutes—laws passed by Congress: the U.S. Code
- State statutes—laws passed by state legislatures, including uniform laws on contracts and business organizations
- Ordinances—local laws passed by cities, counties, and townships

### Define international law.

## QUESTIONS AND PROBLEMS

1. Bryant Gunderson is a sole proprietor with a successful bungee-jumping business. He is considering incorporating his business. What levels and sources of law would affect and govern the process of incorporation?

2. Jeffrey Stalwart has just been arrested for ticket scalping outside the Great Western Forum in Los Angeles. Jeffrey sold a ticket to a Korn concert to an intense fan for \$1,200; the face value of the ticket was \$48. Ticket scalping in Los Angeles is a misdemeanor. Will Jeffrey's court proceedings be civil or criminal?

3. The U.S. Golf Association put a new rule in 2016 that prohibits players from anchoring their putters to their chests. Tim Clark, a golfer from South Africa, who has won 10 championships, anchors his putter to his chest and reacted, "We are not going to roll over and just accept this. We have been

put in a position where we have to fight for our livelihoods."<sup>8</sup> Explain what source of law is involved. How can the rule be challenged? Where would the golfers go to court?

4. Define and contrast the following:

- Civil law and criminal law
- Substantive law and procedural law
- Common law and statutory law
- Private law and public law

5. During the 2001 baseball season, Barry Bonds, a player with the San Francisco Giants, hit 73 home runs in one season, a new record that went beyond the 72 set by Mark McGwire in 2000. Mr. Bonds made his record-breaking home run in San Francisco. When he hit the home run, the ball went into the cheap seats. All agree that Alex Popov had his glove on the home-run ball. However, Patrick Hayashi ended up with the ball.

Mr. Popov filed suit alleging that Mr. Hayashi assaulted Mr. Popov in order to get the ball. A substantial amount of videotape shows Mr. Popov's "gloving" of the ball. Mr. Popov says the ball belongs to him because he held that ball in a "Sno-cone position" and others wrested it from his control.

Mark McGwire's ball from his record-breaking home run sold for \$3 million. The battle for the Bonds home-run ball carries high financial stakes. What areas of law will be involved in the judge's determination of who gets the baseball? (Peter Page, "Ownership of Historic Baseball Is in Extra Innings," *National Law Journal*, November 12, 2001.)

6. They call them "floating bacchanals." Offshore from Florida and California cities, sunseekers take their rafts and boats and tie them together as they share adult beverages, music, swimming, and the sun. However, after a day of floating, many involved in the floating community are so drunk that they cannot get their rafts and boats back to shore. In addition, safety patrols have difficulties gaining access to take action when there are arguments. What level of law could be directed to control these types of activities? Where would those laws be promulgated?

7. Around 5:00 a.m. on January 1, 2004, Matthew Schmucker, who was 18 at the time, was traveling alone in a horse and buggy near the intersection of Indiana State Road 37 and Notestine Road in Harlan, Indiana. He was intoxicated at the time and failed to stop at an intersection, thereby colliding with the side of a 2003 Dodge Stratus carrying David Candon and Monica Young, who is now paralyzed from the neck down as a result of the accident. Schmucker was charged with being a minor in possession of alcohol and failing to stop at a throughway. Candon, Young, and their children, who were in the car at the time of the auto/buggy collision, brought suit against Schmucker. Schmucker declared bankruptcy and asked to be discharged from his obligations to Candon and Young. Candon and Young argued that the injury was a "willful and malicious injury by a vessel" under the bankruptcy code and was thus a nondischargeable debt. Schmucker said a horse and buggy is not a vessel. Discuss the role of the court in this case. What would the court look to in

making its decision? What is the impact of the court's decision on the ability of the family to recover for injuries? [*Young v Schmucker*, 409 B.R. 477 (N.D. Ind. 2008)]

8. Ms. Paris Hilton, a well-known celebrity with a ubiquitous presence on television and in *People* magazine, had her driver's license suspended by the state of California because of driving under the influence (DUI) or while intoxicated (DWI). She was then pulled over by officers for DUI while driving with a suspended license. Following a hearing on the second traffic stop, a judge sentenced Ms. Hilton to 45 days in jail for failure to honor the terms of her DUI probation, including driving while intoxicated.

List all the types of laws that apply to Ms. Hilton in her situation and also where the specific California laws would appear on the pyramid of the sources of law. If Ms. Hilton asked for a pardon or commutation of her sentence by the governor of California, would the law allow it?

9. Classify the following subject matters as substantive or procedural laws:

- a. Traffic law on speeding
- b. Small claims court rules
- c. Evidence
- d. Labor law
- e. Securities

10. Juul has been the leader in the development of vaping products. Its flavored products have been popular with high school students. As illnesses and deaths tied to the use of vaping products grew, cities and states began passing laws that restricted sales by age, required ID, or limited sales locations. Local retailers objected to the laws because the products were legal under federal law. The Food and Drug Administration began holding discussions on bans of vaping products or bans of flavored vaping products. Juul noted the research that concluded that its products help people to stop smoking cigarettes. Juul also pulled its ads targeting young people and stopped selling flavored products to teens. Discuss all the levels of the pyramid of laws involved in this controversial product. Be sure to consider whether a federal ban would stop all sales or if the states could still allow the sale of vaping products. Explain why Juul took voluntary actions.



## Economics, Ethics, & the Law

### The Cost of Corporate Wrongdoing

Read and analyze “Paying the Piper: An Empirical Examination of Longer-Term Financial Consequences of Illegal Corporate Behavior,” 40 *Academy of Management Journal* 129 (1997), by Melissa S. Baucus and David A. Baucus. Then answer the following questions.

- a. What financial impact does illegal corporate behavior have on a company?
- b. How long does a company feel the impact of illegal behavior?
- c. How does the market react to illegal corporate behavior?
- d. What are the financial costs of violating the law?

## NOTES

1. Reprinted with permission of Thomson Reuters.
2. Oliver Wendell Holmes, “Natural Law,” 32 *Harvard Law Review* 40 (1918). Copyright © 1918 by The Harvard Law Review Association.
3. From *My Philosophy of Law* by Roscoe Pound. © 1941 West Publishing Corporation. Reprinted with permission of West Group.
4. In 2015, a Revised Uniform Residential Landlord Tenant Act was approved, and adoption of all or some of its provisions is pending around the country.
5. Marlene Lenthag, “I’ll go to jail to prove what they’re doing is unconstitutional,” *Daily Mail*, April 29, 2020. <https://www.dailymail.co.uk/news/article-8270945/Texas-hair-salon-owner-hit-restraining-order-refusing-close-down.html>.
6. Robert T. Garrett and LeVendrick Smith, “Salon Owner Released on Orders of Texas Supreme Court After Gov. Gregg Abbott Forbids Putting Coronavirus Scofflaws in Jail,” *Dallas Morning News*, May 7, 2020, <https://www.dallasnews.com/news/public-health/2020/05/07/texas-gov-greg-abbott-forbids-putting-hair-salon-operators-other-coronavirus-scofflaws-in-jail/>.
7. Laura Vozella, “It’s a crime in Virginia to swear in public. A lawmaker says that’s #@#ing nuts,” *Washington Post*, December 15, 2019.
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# Business Ethics and Social Responsibility

If we were to make a list of the headlines of the past 20 years, we would realize that we have been through two stock market and economic collapses and sports scandals that involved underinflated footballs, trash-can pounding as signals for batters, payoffs to the parents of athletes by athletic agents and athletic-wear company representatives, and performance-enhancing drugs in too many sports to list. Auto manufacturers falsified car emissions through software programs, a national bank had 3.5 million fake or unauthorized customer accounts, and physicians and pharmaceuticals worked together to create record levels of opioid addiction. Parents paid millions to have their children's ACT scores inflated or get them placed on university athletic teams without even playing a single sport. Bernie Madoff brought us the largest Ponzi scheme in the history of the world. FIFA, the world soccer organization, was engaged in bribery and corruption all over the world. There is even a book, *Cheaters Always Prosper*, with helpful tips. Need new tires? Rent your model of car and just switch your tires to the rental and *voilà!* You have new tires.

What happened to ethics? Is doing business just a matter of lying and getting away with it? Does anybody really care about ethics in business now? Has society drifted, and is business conduct just a reflection of changing ethical norms? What does it mean to be ethical in our lives and in business? This chapter discusses these questions and answers several others: What is ethics? How does ethics affect me? What is business ethics? Why is business ethics important? What ethical standards should a business adopt? How do employees recognize ethical dilemmas? How are ethical dilemmas resolved? How does a business create an ethical atmosphere?

**UPDATE**

For up-to-date news on ethical issues, go to  
[mariannejennings.com](http://mariannejennings.com)

$P = f(x)$   
*The probability of an ethical outcome is a direct function of the amount of money involved; the more money, the less likely the ethical outcome.*

CFA MEMBER SAYING

*To be honest, I'm not worried about the moral issue here. I'm worried about the, if she's caught doing that, you know, she's finished.*

GORDON CAPLAN, A PRIVATE EQUITY LAWYER AND FORMER CO-CHAIRMAN OF WILKIE FARR & GALLAGHER LLP, IN AN E-MAIL TO RICK SINGER, A COLLEGE ADMISSIONS CONSULTANT. MR. CAPLAN ENTERED A GUILTY PLEA TO PAYING \$75,000 TO SINGER TO HAVE HIS DAUGHTER'S ACT RAISED BY A PROCTOR FROM 22 TO 32.

*I look to the future knowing that I have in one lifetime walked two starkly opposite paths: one defined by integrity and compassion, the other marred by deception and unfairness. With a new and deeper understanding of my fallibility, I resolve never again to let aspiration and emotion overcome my moral grounding.*

DOUG HODGE, FORMER CEO OF PIMCO, AFTER PLEADING GUILTY AND BEING SENTENCED TO 9 MONTHS IN PRISON FOR PAYING RICK SINGER \$850,000 TO GET HIS FOUR CHILDREN INTO GEORGETOWN AND USC AS ATHLETIC RECRUITS<sup>1</sup>

## Consider . . .

2.1

Desmond just started working at an office supply store. He earns an hourly wage, but he also earns commission for every extended warranty/service plan that he sells to customers when they purchase electronic or equipment products in the store. Desmond often has retired customers come in looking to buy a computer and printer. Desmond explains, "I have to tell them about the warranties and service plans that we offer, but I know they

are just using their computers for Facetime and Facebook. They don't need that extra coverage. But, they are nervous—they don't know computers and so they will do anything I tell them to do. My boss has a minimum three-warranty-sale per week for every employee. We all have to sell at least three. I've seen people fired for not meeting their quota, and I need this job. I'm not sure what to do."

The opening quotes are from two parents charged with bribery in the "Operation Varsity Blue" federal investigation into parents paying coaches, test proctors, and other university staff to get their children admitted to prestigious schools. The first quote is from an e-mail of a parent obtained by federal investigators in reviewing e-mails and phone calls of that parent who was negotiating to purchase an increased test score. The second quote is from a parent writing a *Wall Street Journal* opinion editorial after being sentenced. Their perspectives and views are starkly different. The purpose of this chapter is to understand ethics and, perhaps more importantly, our thinking and decision processes when we face ethically challenging decisions.

The opening Consider... problem brings us Desmond's ethical dilemma. He would break no law by selling additional coverage to the retired customers, but it bothers him to upsell. Is there a path that takes us from upselling to bribery? Or can we just worry about the bigger ethical issues and ignore the smaller ones?

Keeping ethics with us daily, in life and in business, can help us avoid the kinds of mistakes that so many bright and capable businesspeople have made. But, we wonder, what are ethics? How do we know when we have them? How do we keep them when we face pressures, whether on an important exam or in meeting the quarterly numbers or our sales quota at work? This chapter answers these questions.

**Learning Objective 1**  
Define ethics and give examples of ethical dilemmas.

## 2-1 What Is Ethics?

When we learn that employees and administrators in the Veterans Administration were falsifying the length of patient queues for medical care in order to ensure their bonuses and good performance evaluations, we label that conduct “unethical.” When we read about underinflated footballs in the NFL, we use the term *unethical*. When we discover the young CEO of a company has raised the price on a life-saving drug 5,000%, we feel that something is just not right. Uber charges a \$10 cancellation fee if you do not cancel within five minutes after the driver accepts. But 15 minutes after you have accepted, the Uber driver is not there, so you take a cab because you do not want to be late. Uber drivers could be deliberately late and make money from cancellations. Or the Uber driver cancels, and you have to make a last-minute reservation, something that ups your fare. Again, drivers could game this policy to make money. “This is not fair” is our response.

### 2-1a “It’s Just Not Right!”

We read about these types of situations in the newspaper each day. From politics to journalism to business to our favorite sports and Hollywood icons, references to ethics run through the stories. But we also face ethical dilemmas ourselves. Two students purchase tickets at a theater to see *The Joker*, and when they emerge from the theater, they realize they are in an open area with access to other theaters. If they wanted to, they could slip into *Ford v. Ferrari* or another movie without paying for another ticket. “Who’s to know?” they might think. “Hollywood makes too much money anyway.” “It doesn’t really hurt anyone.” These thoughts are similar to those that may have run through the minds of the VA administrators, the quarterback, and the CEO who did not analyze the risk factors in their conduct. Although we may believe we are different from business executives and others involved in scandals, we all face ethical dilemmas each day. Do I tell the clerk that he gave me too much change? Do I tell the lender on my loan application that my salary was just cut 25%? Do I go back to pay for the laundry detergent that slipped through check-out on the bottom of my cart? Do I do what my boss says when he tells me to write a fake review online for our company’s services? Do I tell a potential buyer of my car about the hairline crack in the engine block? Do I tell my clients that I am selling off the investments I am trying to get them to buy?

The fact patterns change slightly. The parties’ names and the subject matters vary, but the ethical issues are the same. Some conduct is more harmful, such as those situations in which a criminal statute is violated. Still, regardless of the law, we look at the conduct of VA employees, the quarterback, the students in the theater, the company employee writing reviews, and the seller of the car, and we conclude, “It’s just not right!” We probably agree that they all behaved unethically. We may not be able to zero in on what bothers us about their conduct, but we know an ethics violation, or an ethical breach, when we see one.

### 2-1b Normative Standards: How We Behave to Keep Order

But what do we mean when we say that someone has acted unethically? Ethical standards are not the standards of the law. In fact, they are a higher standard. Sometimes referred to as *normative standards* in philosophy, ethical standards are the generally accepted rules of conduct that govern society. Ethical rules are both standards and expectations for behavior, and we have developed them for nearly



all aspects of life. For example, no statute in any state makes it a crime for someone to cut in line in order to save the waiting time involved by going to the end of the line.<sup>2</sup> But we all view those who “take cuts in line” with disdain. We sneer at those cars that sneak along the side of the road to get around a line of traffic as we sit and wait our turn. We resent those who tromp up to the cash register in front of us, ignoring the fact that we were there first and that our time is valuable too.

### 2-1c Line-Cutting and Ethics

If you have ever resented a line-cutter, you understand ethics and have applied ethical standards in life. Waiting your turn in line is a societal expectation. “Waiting your turn” is not an ordinance, a statute, or even a federal regulation. “Waiting your turn” is an age-old principle developed because it was fair to proceed with first in time, first to be served. “Waiting your turn” exists because large groups wait for the same road, theater tickets, or fast food at noon in a busy downtown area. We recognize that lines ensure order and that waiting your turn is the just way to allocate the limited space and time allotted for the traffic, the tickets, or the food. “Waiting your turn” is an expected but unwritten behavior that plays a critical role in an orderly society.

So it is with ethics. Ethics consists of those unwritten rules we have developed for our interactions with each other. These unwritten rules govern us when we share resources or honor contracts. “Waiting your turn” is a higher standard than the laws passed to maintain order. Those laws apply when individuals use physical force or threats to push to the front of the line. Assault, battery, and threats are forms of criminal conduct for which the offenders can be prosecuted. But the law does not apply to the stealthy line-cutter who simply sneaks to the front, perhaps using a friend and a conversation as a decoy. No laws are broken, but the notions of fairness and justice are offended by individuals putting themselves above others and taking advantage of others’ time and position.

Because line-cutters violate the basic procedures and unwritten rules for line formation and order, they commit an ethical breach. We don’t put line-cutters in jail, but we do refer to them as unethical. Other examples of unethical behavior also carry no legal penalty. A married person who commits adultery does not commit the type of crime that lands you in jail but does create a breach of trust with that person’s spouse.<sup>3</sup> We do label their conduct with adjectives such as *unfaithful* and even use a lay term to describe adultery: *cheating*.

Speaking of cheating, looking at someone else’s paper during an exam is not a criminal violation. If you cheat on a test, your professor may sanction you and your college may impose penalties, but the county attorney will not prosecute you for cheating. Your conduct is unethical because you did not earn your standing and grade under the same set of rules applied to the other students. Just like the line-cutter, your conduct is not fair to those who spent their time studying. Your cheating is unjust because you are getting ahead using someone else’s work.

These examples of cutting in line, committing adultery, and cheating on exams bring certain common adjectives to our minds: “That’s not *fair*!” “That was *dishonest*!” “That was *unjust*!” You have just defined ethics for yourself. Ethics is more than common, or normative, standards of behavior. Ethics is honesty, fairness, and justice. The principles of ethics, when honored, ensure that the playing field is level and that we earn our achievements by using our own work and ideas. Being ethical means being honest and fair in our interactions with each other, whether personally or in business.