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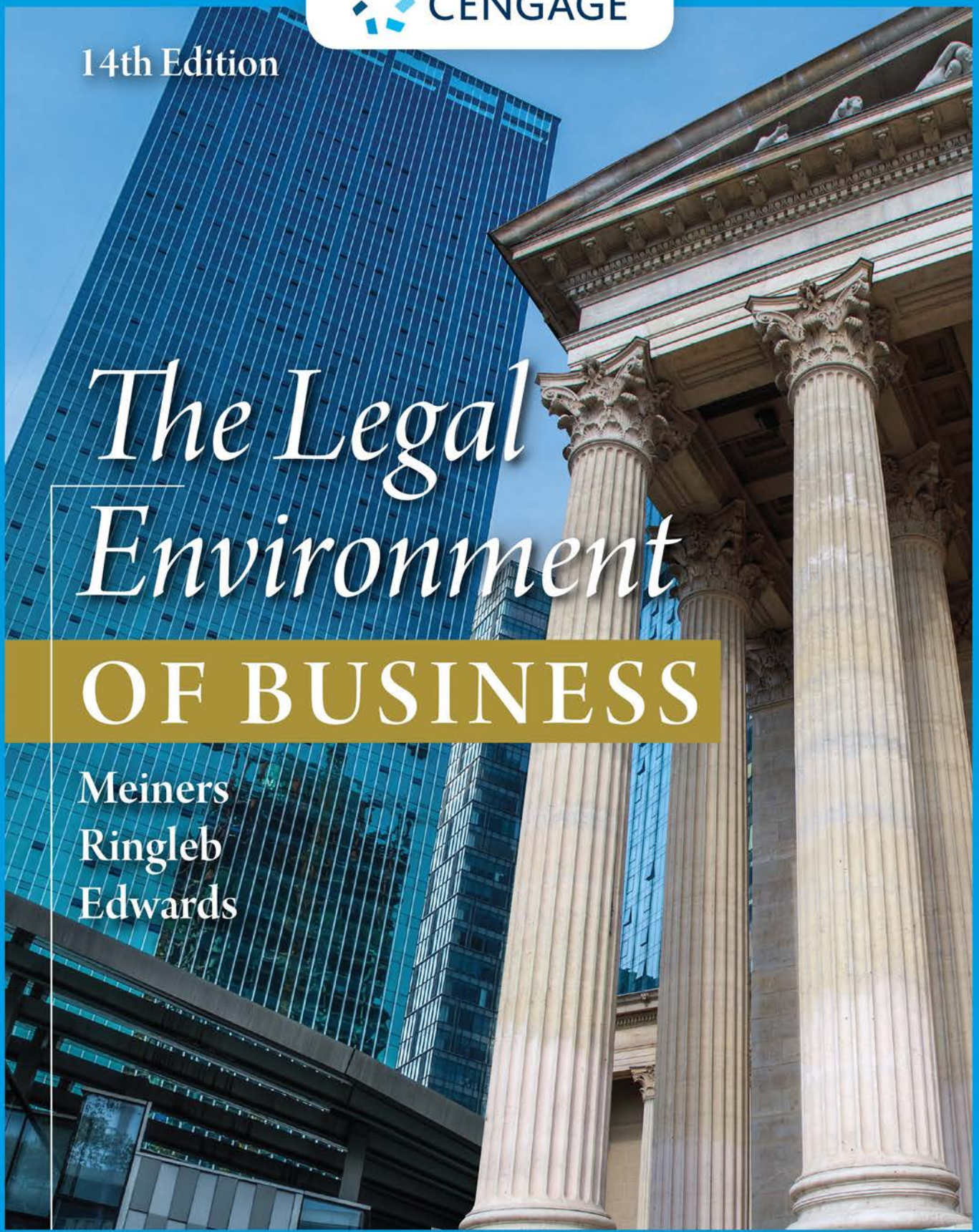

The Legal Environment OF BUSINESS

Meiners
Ringleb
Edwards

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14th Edition

Roger E. Meiners
University of Texas at Arlington

Al. H. Ringleb
Consortium International MBA

Frances L. Edwards
Clemson University

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Fourteenth Edition
Roger E. Meiners
Al. H. Ringleb
Frances L. Edwards

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Cover Image Source: hallojulie/Shutterstock .comGilmanshin/Shutterstock.com

Interior image Source:
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Library of Congress Control Number: 2021913573

ISBN: 978-0-3574-5172-4

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200 Pier 4 Boulevard
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Printed in the United States of America
Print Number: 01 Print Year: 2021

Dedicated to Callie, Billy, Joe, and Molly.
The ones who matter most.

Roger Meiners

Brief Contents

Contents

Preface

This textbook presents the legal environment as relevant to professionals who are not lawyers. Only a few students who take this course will become lawyers, although some students will take additional classes that cover specific legal areas. This course provides the opportunity for people with various interests to learn key points of the law from the standpoint of a working professional.

Over the years, we have received excellent feedback from faculty who have used the 13 previous editions of this book and have pointed out shortcomings and strong points and given good advice for improvements. We have taken these comments into account in preparing this edition to make the book even more helpful and practical as we study the complex legal environment that business professionals face.

Our reviewers agree that this text focuses on practical aspects of the law. As we update the text, we try to keep to a minimum the legal minutia, such as uncommon exceptions or rules peculiar to only a few states. We focus on primary rules and issues that arise most often. We use business situations and examples to highlight legal principles in practice. In selecting cases that appear in the text, the focus is on practical situations in business that students can best relate to and are realistic in a business career. The holdings are straightforward applications of the law to the facts. However, some major cases are included so students can get a sense of how courts announce major rules and the evolution of law can be discussed.

Essential Organization

In the legal environment of business course, there is the problem of many possible topics to cover but not enough time. There is agreement that the key elements of the legal system must be covered. This is done in Chapters 1–5. Chapters 6–13 focus on the major areas of the common law that apply to business and some statutory law oriented at business functions. Chapters 14–16 address a part of the business environment that applies to everyone, the ever-growing area of employment law, ranging from traditional agency to discrimination and social media issues. Chapters 17–22 cover the major regulatory laws that managers of a variety of firms may face and finishes with key points of international business law.

New to This Edition

The new edition is about five percent shorter than the previous edition. This encourages more students to finish assigned reading by focusing on the most important matters and striking material not as critical to understanding the legal environment. As more students read the text online, we take into consideration the differences in how information is absorbed online compared to traditional print reading.

More dated text material has been deleted and more information on issues that arise more commonly now, such as mass torts, money laundering, and cryptocurrencies, has been added.

Many new cases freshen the 14th edition. As before, many cases arise from normal business operations that students can relate to. For example:

- Chapter 6 (Torts), *Schuemann v. Menard* concerns a customer who injures his back at a store trying to load a heavy box into his pickup.
- Chapter 6 (Torts), *Schwarz v. St. Jude Medical* concerns a dismissed employee who claims defamation when negative information about her job performance is shared within the employing organization.
- Chapter 10 (Contracts), *Jones v. Four Corners Rod & Gun* concerns an employee paid less than minimum wage because he was provided free housing.
- Chapter 12 (Business Organization), *Norris v. Besel* concerns a spouse being sued as a partner in her spouse's business because she provided assistance on posting company matters on the Internet.
- Chapter 15 (Employment), *Marshall v. Montaplast of North America* concerns an employee dismissed for revealing to other employees true information about a supervisor being a convicted sex offender.
- Chapter 19 (Consumer Protection), *KS Trade v. International Gemological Institute* concerns a small diamond trading company suing the IGI for deceptive business practices by falsely rating diamonds higher than is justified so as to promote higher retail prices.

Some cases are at a "higher" level of business operations but present new guidance to managers. For example:

- Chapter 8 (Property), *Four B Properties v. Nature Conservancy* shows how courts apply traditional rules enforcing easements in cases of conservation easements.
- Chapter 11 (UCC), *Erie Insurance v. Amazon* concerns a defective product bought from Amazon that caused a house fire. The court explains why Amazon's arrangement with sellers under the UCC shields the company from liability.
- Chapter 16 (Employment Discrimination), *Bostock v. Clayton County*, where the Supreme Court simplified the definition of sex discrimination to include discrimination arising from homosexuality or transgender status.
- Chapter 19 (Consumer Protection), *FTC v. Consumer Defense,* where the court explains why scam operators can be enjoined relatively quickly, under a lower standard of evidence and simpler proceedings than would be required otherwise.
- Chapter 22 (International Business), *U.S. v. Chi Ping Patrick Ho* illustrates how the Foreign Corrupt Practices Act can be applied to citizens of other countries who pay bribes to foreign officials.

Supplementary and Support Materials

Cengage Infuse

Cengage Infuse for The Legal Environment of Business is the first-of-its-kind digital learning solution that uses your Learning Management System (LMS) functionality so you can enjoy simple course set-up and intuitive management tools. Offering just the right amount of auto-graded content, you'll be ready to go online at the drop of a hat.

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Access award-winning support 24/7, or take advantage of on-demand resources including user guides and more.

Instructor Resources

Additional instructor resources for this product are available online. Instructor assets include an Instructor's Manual, Educator's Guide, PowerPoint® slides, and a test bank powered by Cognero®. Sign up or sign in at www.cengage.com to search for and access this product and its online resources. for the MindTap lives here so the instructor can see what assets each chapter contains.

Case Collection

Now, within MindTap, instructors can search **Case Collection**—a library of cases from previous editions of different Cengage textbooks—by relevant criteria and then incorporate those cases in the Learning Path for students.

This exciting repository allows instructors to personalize their course and truly engage students, helping them to reach higher levels of critical thinking.

- Easily search by topic, and then refine the search by subtopic, to find case examples of a specific legal concept.
- Search by court or state to bring a local flavor or interest to the classroom.
- Enjoy over 1,200 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.

Key Features

Edited Cases

A primary way to learn law is to read real cases that the courts had to resolve. Each major case presented in the text has the background facts and legal proceedings summarized by the authors under the heading **Case Background**. Then the court's holding, legal reasoning, and explanation of the law as it applies to the facts at hand are presented from the published opinion in the words of the judge in the **Case Decision**. Since most decisions are long, we present only the key portions of the holding. When there is a long deletion of material from a holding, you see asterisks (***). When there is a deletion of a smaller part of a decision there are ellipses (…). Finally, a **Question for Analysis** is offered for the reader to consider or for class discussion. (Answers are provided in the *Instructor's Manual*.)

Issue Spotter

More than 50 Issue Spotter features are scattered throughout the text. Each briefly presents a business situation that requires application of legal elements just covered in the text. These challenges are a way for students to self-test their retention and ability to reason as they apply newly learned principles to practice. They also remind readers that the material learned in this course is practical to everyday issues in business. (Discussion points to these features are provided in the *Instructor's Manual*.)

Lighter Side of the Law

These highlights add a light touch to the topic at hand by discussing an unusual legal situation. While law and business are serious, odd things happen that remind us that trouble can come from unexpected places, that the results of the legal process can be surprising, that scoundrels are among us, and that truth can be stranger than fiction.

Summary

The text of each chapter is summarized in bullet format that provides a quick review of the major points of law and rules covered and serves as a self-test of points that will be covered in examinations.

Terms to Know

After the Summary, there is a list of key terms from the chapter. The reader should know what the terms mean because they are an important part of the vocabulary and substance of the concepts covered in the chapter. Besides being explained in the chapter, each term is also defined in the Glossary in the back of the book.

Discussion Question

Every chapter has a question for general discussion that picks up on major ideas from the chapter. The purpose is to make sure the student understands the concepts of the chapter well enough to be able to discuss a topic that was covered and should be expanded upon.

Case Questions

Most problems are solved out of court, but some end up in court where judges decide the resolution based on legal principles. Real case problems are summarized in each case question. Using the knowledge from the chapter, and perhaps some instinct about how a court is likely to resolve a dispute, try to decide which party to a dispute is likely to prevail and why.

Ethics and Social Question

Each chapter ends with an ethics question that poses a problem related to the legal area covered in the chapter. Remember that ethical issues are different than legal issues, so we go beyond legal reasoning in considering the problem.

Pulling It Together

At intervals throughout the text, case questions are posed that bring together more than one legal issue covered in more than one chapter. Many situations involve more than one legal issue, so the cases here serve as a refresher to go back to earlier chapters and pull in the concepts and legal principles covered in these chapters.

Glossary

At the back of the book is a list of about a thousand key terms covered in the text. While they are covered in the text when they first appeared in substantive use, the terms are defined here too to help give a clear understanding of a legal concept that has a specific application in law.

Appendices

Appendix A, *Online Legal Research,* gives readers a guide to legal research sources. It reviews premier sites that provide many resources including cases. Increasingly, students have access to Lexis or West-Law, which greatly simplifies search assignments. Appendix B covers *Case Analysis and Legal Sources*. It explains the structure of court opinions and how they are often briefed by law students and lawyers to give a short summary of a complex matter. The case reporter system and other major legal resources are also reviewed. Appendix C is the full text of the United States Constitution. Appendices that follow give key portions of major statutes, including the National Labor Relations Act, Title VII of the Civil Right Act of 1964, the Americans with Disabilities Act, the Antitrust Statutes, and Securities Statutes.

Acknowledgments

The authors extend thanks to the professionals in business, law, and government who assisted in making this textbook as up-to-date and accurate as possible.

Finally, we thank the editors and staff of Cengage. In particular, we thank the sales representatives who continually give us valuable information on the day-to-day perceptions of the textbook—information provided by the instructors and students who are using it.

We welcome and encourage comments from the users of this textbook—both students and instructors. By incorporating your comments and suggestions, we can make this text an even better one in the future.

Roger E. Meiners

Al H. Ringleb

Frances L. Edwards

Chapter 1

Today's Business Environment: Law and Ethics

Job recruiters may puff up the qualities of a position. A job billed as "character-building" may be one of unending stress. One claiming to have a "teamwork environment" may just mean people jammed in cubicles. One person reported that, when being recruited, she was shown a nice office and met a supervisor she liked. When she started work two weeks later, she was stuck in a tiny back room, the supervisor was replaced by someone less agreeable, and worst of all, the assignments she was given were not of the quality discussed.

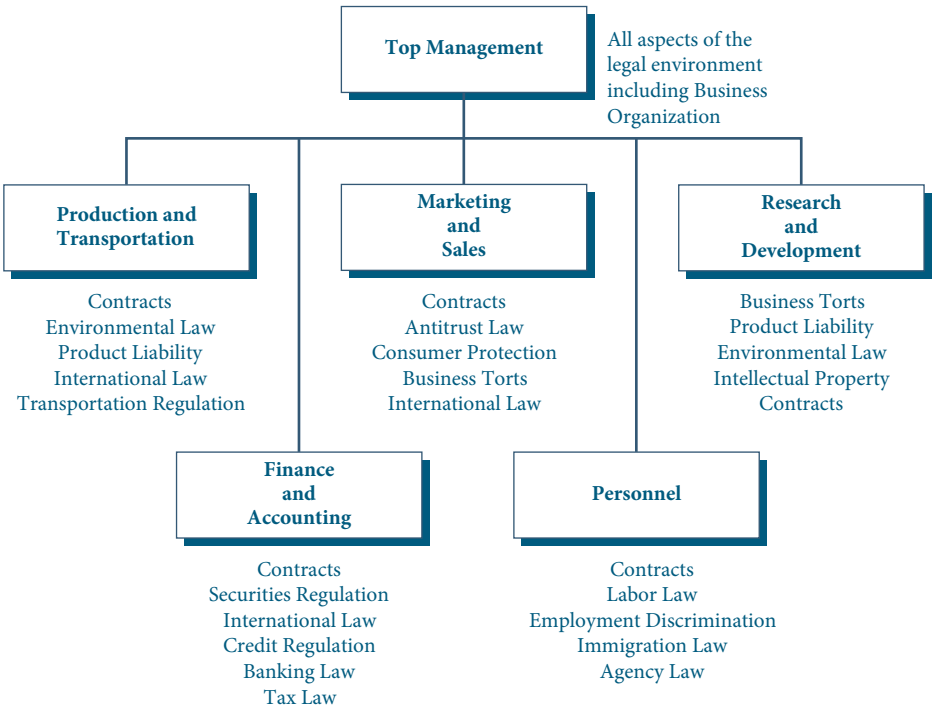
Suppose that happens to you. Can you sue the recruiter who brought you to the employer? Can you sue the company that hired you? Do you have the right to demand a better office? What is your legal status? We will explore some of these legal issues.

In the situation just posed, the new employee probably has little choice but to take the job as is or leave. The employer is unlikely to have violated any legal obligation. What about the ethical obligation to be honest with potential employees? Overstating the quality of a position may be unethical but not a violation of the law.

Business is complex. Ethical, legal, social, political, and international issues can impact company operations. As Exhibit 1.1 indicates, whether your field is human resources, sales, banking, advertising, or software development, you must be familiar with a wide range of subjects to have the skills needed to be aware of possible problems and opportunities that someone with a limited view may miss. The topics covered in this book help to fit one large piece into the complicated puzzle called the business world.

The study of the legal environment of business begins with an overview of the nature of law and the legal system. Composed of law that comes from different sources, the legal environment is influenced by the needs and demands of the business community, consumers, and government. This chapter helps us understand the functions of law in society, the sources of U.S. law, and the classifications of law. It then considers some major ethical issues that play a role in the business environment.

Exhibit 1.1 **Overview of a Business's Legal Environment**



1-1 Law and the Key Functions of the Legal System

There is no best definition of **law**. It refers to the rules, standards, and principles that define the behavioral boundaries for people and business activities. Law can be thought of in abstract terms. According to *Justinian's Institutes*, a summary of Roman law published in 533 in Constantinople, "The commandments of the law are these: live honorably; harm nobody; give everyone his due."

A bit more specific, a century ago Oliver Wendell Holmes, a Supreme Court justice, offered the following definition:

> *Law is a statement of the circumstances, in which the public force is brought to bear . . . through the courts.*

In his 1934 book, *Growth of Law*, the famed jurist Benjamin N. Cardozo defined law this way:

> *A principle or rule of conduct so established as to justify a prediction with reasonable certainty that it will be enforced by the courts if its authority is challenged.*

Also consider these two modern definitions from Black's Law Dictionary, the authoritative legal dictionary:

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

In sum, law may be viewed as a collection of rules or principles intended to limit and direct human behavior. Enforcement of the rules provides greater predictability and uniformity to the boundaries of acceptable conduct in a society. Nations have both formal rules, that are

commonly called laws, and informal rules that come from history, customs, commercial practices, and ethics.

Law and the legal system serve several key roles in society. The most important functions include: (1) influencing the behavior of the members of a society, (2) resolving disputes within society, (3) maintaining important social values, and (4) providing a method for assisting social change.

1-1a Improving Social Stability by Influencing Behavior

The legal system helps to define acceptable social behavior. The law limits activities that damage the public interest. It restricts business practices held to be outside the ethical and social norms of a society. The law also requires business practices that further social or political goals.

The laws in different jurisdictions reflect social norms. The business of raising and selling marijuana in Amsterdam (Holland) has long been legal because the government decided that legalizing marijuana would reduce crime in the drug trade and make it less likely that people would use more harmful drugs. In the United States, growing and selling marijuana is illegal under federal law and can be punished by long prison terms. Several states have legalized marijuana production and use, in conflict with federal law.

Similarly, the production and sale of alcoholic beverages to adults is legal in most of the country although it was illegal nationwide from 1919 to 1933. In Saudi Arabia, people have been executed for being involved in the alcohol business, as alcohol violates Sharia law. Some countries have few restrictions on its sale, even to minors. This illustrates how the law reflects different social norms.

1-1b Conflict Resolution

A critical function of the law is dispute resolution. Disagreements are inevitable. Karl Llewellyn, a famous legal theorist, stated the following:

> *What, then, is this law business about? It is about the fact that our society is honeycombed with disputes. Disputes actual and potential, disputes to be settled and disputes to be prevented; both appealing to law, both making up the business of law. . . . This doing of something about disputes, this doing of it reasonably, is the business of law.*

Though most disputes are settled informally, a formal mechanism for dispute resolution is the court system that invokes rules of law. It is used for private disputes between members of society and for public disputes between individuals and the government. Our court system is intended to provide a fair mechanism for resolving these disputes. As we will see in Chapter 3, businesses are increasingly turning to formal private settlement techniques by alternate dispute resolution outside of the courts, often because the courts are expensive and slow.

1-1c Social Stability and Change

Every society is shaped by its values and customs. Law plays a role in maintaining the social environment. Integrity is reflected in the enforceability of contracts, respect for other people and their property is reflected in tort and property law, and some measures of acceptable behavior are reflected in criminal laws.

Over time, social attitudes change. Not many years ago, same-sex partners could be subject to criminal prosecution for a personal, voluntary relationship. Now, traditional marriage is available for same-sex partners, a change that seemed impossible a couple decades ago.

The legal system provides a way to bring about changes in "acceptable" behavior. For example, in the past, some states required businesses to discriminate against Black employees and customers. After a long struggle, those laws gradually disappeared. Grossly discriminatory behavior that was the social and legal norm is no longer acceptable. Next, we turn to the sources of law and how law is created.

1-2 Sources of Law in the United States

The U.S. Constitution and state constitutions created three branches of government—each of which has the ability to make law. Congress—the legislative branch of government—passes statutes. The executive branch—the president and administrative agencies—issues regulations under those statutes. The courts also create legal precedents through their decisions and by ruling on the constitutionality of actions of Congress or the executive branch.

1-2a Constitutions

A **constitution** is the fundamental law of a nation. It establishes and limits the powers of government. Other laws are created through a constitution. The U.S. Constitution (see Appendix C) allocates the powers of government between the states and the federal government. Powers not granted to the federal government are retained by states or are left to the people. A constitution need not be a written document—the United Kingdom's is not. In some countries, the constitution is just for show. A document that looks much like the U.S. Constitution may exist but means little in practice under a dictatorship.

The U.S. Constitution

The U.S. Constitution is the oldest written constitution in force in the world. Although it contains some clear rules, such as the president must be at least age 35, it also has many general principles. It sets forth the organizational framework, powers, and limits of the federal government. Specifically, the Constitution creates the legislative, executive, and judicial branches as the primary framework of the U.S. government.

This division of governmental power is referred to as the separation of powers. It arose out of the founders' fear that too much power concentrated in one governmental branch would produce tyranny. The separation of powers means each branch of government has functions to perform that can be checked by the other branches. The government structure that has developed is illustrated in Exhibit 1.2.

As the highest legal authority, the U.S. Constitution overrides any state or federal laws that go beyond what the Constitution permits, as in Article VI:

> *This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.*

State Constitutions

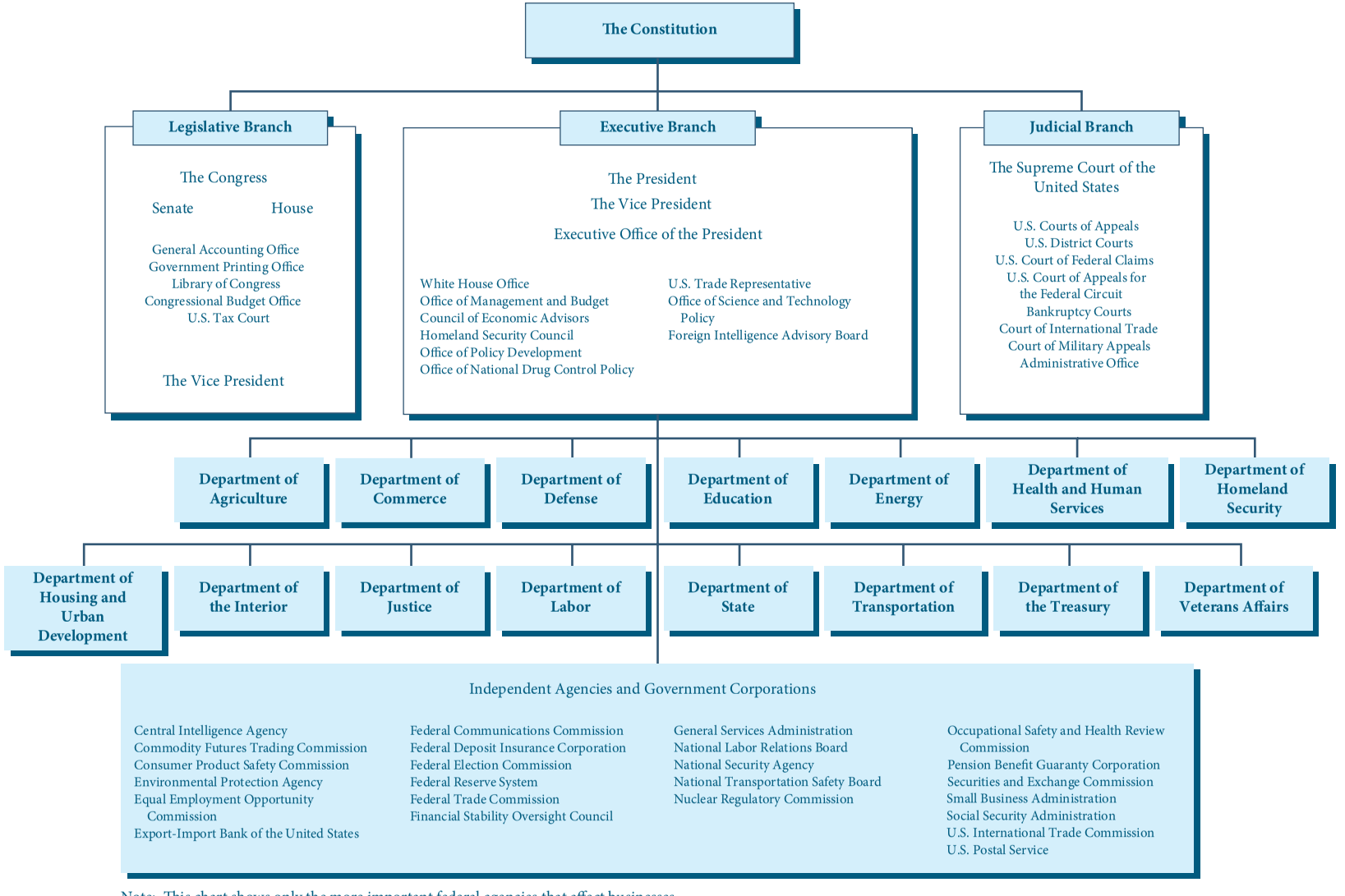
The powers and structures of state governments are also based on written constitutions. Like the federal government, state governments are divided into legislative, judicial, and executive branches. Their constitutions specify how state officials are chosen and removed, how laws are passed, how the court systems run, and, in general terms, how finances and revenues are paid and collected.

On matters of state law, each state's constitution is the highest form of law for that state although the federal Constitution can override the state constitutions. Some state constitutions, unlike the U.S. Constitution, are long and detailed because amending state constitutions is often easier than changing the U.S. Constitution.

1-2b Legislatures and Statutes

Congress and state legislatures are the sources of statutory law. Statutes created by legislation make up much of the law that affects business behavior. For example, Congress enacted the

Exhibit 1.2 The Government of the United States



Note: This chart shows only the more important federal agencies that affect businesses.

Clean Water Act in 1972. It sets standards for water quality for the nation and grants the Environmental Protection Agency (EPA) the authority to adopt regulations that make the goals of the statute effective. Similarly, at the state level, every legislature has passed statutes to regulate the insurance industry. The intent of the legislation is fulfilled, in part, through state insurance commissions created for that role.

Federal courts may review statutes passed by Congress to ensure they do not violate the U.S. Constitution. State courts may review statutes passed by their legislatures to ensure they do not violate the constitution of the state or of the United States. If a state legislature enacts a statute that violates the U.S. Constitution and a state court does not strike down the statute, it may be stricken by a federal court.

United States Congress

Article I, Section 1 of the U.S. Constitution provides that all power to make laws for the federal government is given to Congress, a legislature consisting of the Senate and the House of Representatives. Of the thousands of pieces of legislation proposed in each session of Congress, about 200 to 300 (many of which are minor) pass the House and Senate and go to the president for his signature.

State Legislatures

Every state has lawmaking bodies similar to Congress in their functions and procedures. With the exception of Nebraska, all states have a two-part legislature containing a House of Representatives (sometimes called a House of Delegates or an Assembly) and a Senate. Dividing power between two houses is intended to serve as an added check on government power. The lawmaking process in state legislatures is similar to the procedure followed by the Congress. However, in some states voters may directly enact legislation through the voting process in referendums or initiatives.

The National Conference of Commissioners on Uniform State Laws works with lawyers, law professors, the business community, and judges. For over a century, it has drafted proposed laws for consideration by state legislatures. Some are ignored, but others have been widely adopted, such as the Uniform Commercial Code (UCC). The UCC, discussed in Chapters 11 and 13, is designed to ease the legal relationship among parties in commercial transactions by making laws uniform among the states. Another important uniform law adopted by most state legislatures is the Uniform Partnership Act, covered in Chapter 12.

1-2c Administrative Agencies and Regulations

An administrative agency is created by a delegation of legislative power to the executive branch. Congress or the state legislature enacts a law that directs the agency to issue regulations, bring lawsuits, and otherwise act to fulfill the law's goals. For example, after President Nixon created the EPA by executive order, Congress gave the EPA authority to enact regulations to implement the goals of environmental statutes and to be the primary enforcer of those laws. Similarly, all states have created state environmental agencies to design and enforce state environmental regulation.

Within the boundaries set by the legislature, administrative agencies exercise their powers to enact regulations, supervise compliance with those regulations, and adjudicate violations of regulations. Regulations issued by administrative agencies are among the important sources of law affecting the legal environment of business today. Agency procedures are discussed in Chapter 17.

1-2d The Judiciary and Common Law

The **common law**—a law made and applied by judges as they resolve disputes among private parties—is a major part of the legal environment of business as it is the foundation of agency (employment), contract, property, and tort law. In addition to applying the common law, the judiciary interprets and enforces laws enacted by legislatures. As we will see, some statutes, such as the antitrust laws, are written in broad terms and require significant court interpretation to be understood. The judiciary also reviews actions taken by the executive branch and administrative agencies to make sure they comply with the Constitution.

The oldest source of law in the United States, the common law dates to colonial times when English common law governed most internal legal matters. Starting in the eleventh century in England, judges created a common law by drawing on customs across the country. As Matt Ridley, a member of the House of Lords, explains, the common law is a code written by nobody and everybody. It evolves through precedent and adversarial argument. To maintain social order and to encourage commerce, the colonists retained English common law when the United States became an independent nation.

LIGHTER? SIDE OF THE LAW

Creative Claim

An 18-year-old high school student in California "earned" over $1 million in a stock scam. When the federal authorities busted his operation, charged him with securities fraud, and made him repay his earnings, he was also booted off his high school baseball team.

He then sued his high school for $50 million. The basis of his suit was that he planned to be a major league baseball player but, now that he could not play on his high school team, he could not perform in front of baseball scouts who would draft him into the pros. He lost.

Source: True Stella Awards

Case Law

Under the common law, a dispute comes to court in the form of a **case**. A case is a dispute between two or more parties resolved through the legal process. In common law cases, the judge follows the rules of civil procedure (covered in Chapters 2 and 3) and, to determine the outcome of a particular case, follows earlier judicial decisions that resolved similar disputes. For hundreds of years now, the decisions written by judges, often in the courts of appeals, to explain the rulings in important cases, and many not-so-newsworthy cases, have been published in books called **case reporters**. The reporters are the official publication of case decisions and are public information (unofficial case reporters are frequently also used). To settle cases similar to past disputes, judges look for guidance by studying decisions from earlier recorded cases. This is referred to as **precedent** that is applied to the facts of the new cases under consideration and helps to guide the decision.

To settle unique or novel disputes, judges create new common law. Even in such cases, their rulings are based on the principles suggested by previously reported decisions. Because common law is state law, some differences exist across the states in the interpretation of common law principles. However, judges in a state can look to cases from other states to help resolve disputes if no precedent exists in their own state.

Doctrine of *Stare Decisis*

The deciding of new cases by referencing previous decisions is the foundation of the Anglo-American judicial process used in varying degrees in Australia, Britain, Canada, New Zealand, India, South Africa, and other former British colonies, including the United States. The use of precedent in deciding current cases is a doctrine called ***stare decisis***, meaning "to stand on decided cases." Under this doctrine, judges are expected to stand by established rules of law. According to Judge Richard Posner:

> *Judge-made rules are the outcome of the practice of decision according to precedent* (stare decisis). *When a case is decided, the decision is thereafter a precedent, i.e., a reason for deciding a similar case the same way. While a single precedent is a fragile thing . . . an accumulation of precedents dealing with the same question will create a rule of law having virtually the force of an explicit statutory rule.*

Value of Precedent

Stare decisis has several benefits. First, consistency in the legal system improves the ability to plan business decisions. Second, as a rule is applied in many disputes involving similar facts, people become increasingly confident the rule will be followed in the resolution of future disputes and order business and personal affairs given the rules of law. Third, the doctrine creates a legal system that neutralizes the prejudices of individual judges. If judges use precedent as the basis for decisions, they are less likely to make decisions based on their personal biases.

As the Supreme Court of Tennessee explains,

> *We are required . . . to uphold our prior precedents to promote consistency in the law and to promote confidence in this Court's decisions . . . unless there is an error in the precedent, when the precedent is obsolete, when adhering to the precedent would cause greater harm to the community than disregarding* stare decisis*, or when the prior precedent conflicts with a constitutional provision.* [*Cooper* v. *Logistics Insight,* 395 S.W.3d 632, 639 (2013)].

That is, when times change, the common law will adapt and adopt a new rule. We see an example of this in the case *Davis* v. *Baugh Industrial Contractors* that follows. The Washington high court determined that an old rule no longer made sense and changed the common law.

Reporting Court Cases

Like all cases presented in this book, the *Davis* v. *Baugh Industrial Contractors* case begins with its legal citation. There were several parties to the case on both sides, but the citation only refers to the lead plaintiff (Davis), who brought the suit, and the first defendant (Baugh) named in the suit.

Then we see what court the decision comes from and the reporter citation that tells us where it can be found. The decision was issued by the Washington state Supreme Court in 2007. It is published in volume 159 of the state of Washington official reporter, in its second series, beginning on page 413. It is also published in volume 150 of the *Pacific Reporter* (P), which is in its third series, and the case begins on page 545. The *Pacific Reporter* is a multi-state reporter produced by Westlaw. (See Appendix B for more discussion of case reporting.)

We follow the citation with a description of the facts determined at trial (Case Background), a summary by the textbook authors. These background facts are given by the court at the start of a published decision but are usually too long to quote in full, so the key points are explained.

Then we move to the Case Decision issued by the court. It is an explanation of the law, backed by legal reasoning, as applied to the facts of the case established at trial. The judge who authored the decision for the court is named. The material that follows is quoted from the decision itself. Many decisions are long, so we only quote the most important points of law. After the decision, we provide a Question for Analysis.

DAVIS v. BAUGH INDUSTRIAL CONTRACTORS

Supreme Court of Washington 159 Wn.2d 413, 150 P. 3d 545 (2007)

Case Background *Glacier Northwest hired Baugh Industrial Contractors to build a processing facility that included a system of underground pipes. Three years later, Glacier suspected a leak in an underground pipe. It assigned an employee, Alan Davis, to uncover the leak. When he was down in a hole dug to get to the pipes, a concrete wall collapsed, killing him. Though the pipes were supposed to last 100 years, it is likely they had been damaged when installed, resulting in a leak. Tami Davis, Alan's daughter, sued Baugh, contending that negligent construction practices were the cause of Alan's death.*

The trial court (called the superior court) held for Baugh and dismissed the suit. Under the traditional common law rule in Washington, the contractor was not liable for such an accident, so the risk of liability was on the property owner, Glacier. This decision was appealed to the Washington state high court that issued this decision.

Case Decision *Chambers, Justice*

* * *

Under the completion and acceptance doctrine, once an independent contractor finishes work on a project, and the work has been accepted by the owner, the contractor is no longer liable for injuries to third parties, even if the work was negligently performed. Historically, after completion and acceptance, the risk of liability for the project belonged solely to the property owner. This court has not addressed this doctrine in over 40 years, and, in the meantime, 37 states have rejected it. Under the modern . . . approach, a builder or construction contractor is liable for injury or damage to a third person as a result of negligent work even after completion and acceptance of that work, when it was reasonably foreseeable that a third person would be injured due to that negligence.

We join the vast majority of our sister states and abandon the ancient Completion and Acceptance Doctrine. We find it does not accord with currently accepted principles of liability. . . .

The Completion and Acceptance Doctrine is also grounded in the assumption that if owners of land inspect and accept the work, the owner should be responsible for any defects in that accepted work. While this assumption may have been well founded in the mists of history, it can no longer be justified. Today, wood and metal have been replaced with laminates, composites, and aggregates. Glue has been replaced with molecularly altered adhesives. Wiring, plumbing, and other mechanical components are increasingly concealed in conduits or buried under the earth. In short, construction has become highly scientific and complex. Landowners increasingly hire contractors for their expertise and a non-expert landowner is often incapable of recognizing substandard performance. . . .

We conclude that the Doctrine of Completion and Acceptance is outmoded, incorrect, and harmful and join the modern majority of states that have abandoned it in favor of the [modern] approach [holding a builder or contractor liable for injury due to negligent work]. We reverse the superior court order . . . and remand for further proceedings in keeping with this holding.

Question for Analysis

The court rejected the old common law rule concerning completion and acceptance of a construction job that was in effect prior to this decision and ordered a new trial. What was the key reason for that decision? How does the new rule affect liability?

Secondary Sources

Reported cases are called "primary sources" because they *are* the law. But, when trying to understand an area of law, it is common to rely upon "secondary sources" that explain the law. When secondary sources are respected they may be referred to by judges when issuing decisions in cases.

For example, the *Restatement of Torts* is an authoritative source on the law of torts. It is one of the many *Restatements of the Law* published on all major areas of common law by the American Law Institute (ALI; see www.ali.org). The ALI describes itself as "the leading independent organization in the United States producing scholarly work to clarify, modernize, and otherwise improve the law." It appoints "reporters" to contribute to *Restatements* according to their area of expertise. The reporters are lawyers, judges, and law professors who contribute to an ongoing review of the law. Every several decades, there may have been enough change in an area of law for reporters to believe that a new *Restatement* should be published. For instance, the *Restatement (Third) of Torts* is now published alongside the older *Restatement (Second) of Torts*. This does not mean that the older *Restatement* is not a good source on the law; indeed it still dominates. However, courts are beginning to refer to the *Restatement (Third) of Torts* as we will see in future chapters.

1-2e The Executive

In addition to being the one who signs (or vetoes) bills passed by the legislature, the president or governor is another source of law. They create law by issuing **executive orders**, requiring agencies to do certain things within the executive's scope of authority, such as an order to give preference to buying recycled products or to restrict financial transactions by suspected terrorist organizations.

The chief executive can also influence the duties and responsibilities of administrative agencies. One administration, for example, may not pursue environmental, antitrust, or international trade regulation as strongly as another administration. Thus, some industries or companies may face a more hostile legal environment under one administration than under another.

1-2f International Sources of Law

Firms and people doing business in another country are subject to its laws and are subject to the laws of their home country. International law affecting business also includes treaties, which are international agreements, including trade agreements among countries. There are also rules enacted by multinational regional or global entities, such as the United States-Mexico-Canada Agreement (USMCA) and the World Trade Organization (WTO). The decisions of international tribunals can also affect firms.

Article II, Section 2 of the Constitution requires approval by two-thirds of the Senate before a treaty agreed to by the president becomes binding on the United States. Treaties of significance to business include the United Nations Convention on Contracts for the International Sale of Goods, which can govern the sale of goods between parties from different countries (discussed in Chapter 11), and the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which assists in the enforcement of arbitration clauses in international business contracts. Treaties and laws important in the international legal environment are discussed in Chapter 22 and at various points in other chapters.

1-3 Classifications of Law

The organization of law can be thought of in several ways, such as whether it originated from a constitution, a legislative body, or the judiciary. It is common to classify law on the following three bases: (1) public or private, (2) civil or criminal, or (3) procedural or substantive. Laws usually fall into more than one classification. For example, the sale of car insurance is affected by private law (a contract between the company and the buyer) and public law (state regulation of insurance). A violation of law could result in civil law penalties or criminal law penalties imposed by the state on an insurance seller (or buyer). A violation of a contract could result in a civil suit by the wronged party.

Exhibit 1.3 **Major Areas of Public and Private Law**

Public law	Private law
Administrative Law	Agency Law
Antitrust Law	Contract Law
Bankruptcy Law	Corporation Law
Constitutional Law	Partnership Law
Criminal Law	Personal Property Law
Environmental Law	Real Property Law
Labor Law	Tort Law
Securities Regulation	Trusts and Estate Law

1-3a Public and Private Law

Examples of public and private law are provided in Exhibit 1.3. **Public law** concerns the legal relationship between members of society—businesses and individuals—and the government. Public law includes statutes enacted by Congress and state legislatures and regulations issued by administrative agencies.

Private law sets forth rules governing the legal relationships among members of society. It helps to resolve disputes and to provide a way for the values and customs of society to influence law. Private law is primarily common law and is enforced mostly through the state court systems. Unlike public law, which at times makes major changes in legal rules, private law tends to be stable and changes slowly.

1-3b Civil and Criminal Law

When a legislative body enacts a statute, it decides whether the law is to be civil, criminal, or both. That is, when Congress or a state legislature passes a statute that contains sanctions for violations, it will state what punishment may be imposed. Many laws, an estimated 3,000 at the federal level, have the possibility of a criminal charge in case of violation. Most criminal law statutes may, in case of a claimed violation, have a lesser civil charge brought that would result in perhaps a fine rather than a criminal charge. Unless a statute is expressly designated as criminal, it is considered to be civil law. Examples of civil and criminal law are provided in Exhibit 1.4.

Criminal law concerns legal wrongs or crimes committed against the state. As determined by federal or state statute, a crime is classified as a **felony** or a **misdemeanor**. A person found guilty of a criminal offense may be fined, imprisoned, or both. To find a person guilty of a crime, the trial court must find that the evidence presented showed beyond a **reasonable doubt** the person committed the crime. The severity of punishment depends in part on whether the offense was a felony or a misdemeanor. Offenses punishable by imprisonment for more than a year are classified as felonies. Misdemeanors are less serious crimes, punishable by a fine and/or imprisonment for less than a year. We discuss criminal law with respect to business in Chapter 5.

Civil law is concerned with the rights and responsibilities that exist among members of society or between individuals and the government in noncriminal matters. A person or business found liable for a *civil wrong* may be required to pay money damages to the injured party, to do or refrain from doing a specific act, or both. In finding the wrongdoer liable, the jury (or the judge in a nonjury trial) must find that the **preponderance of the evidence** favors the injured party, a lower standard of proof than is required in criminal cases.

Exhibit 1.4 **Examples of Civil and Criminal Law**

Civil law	Criminal law
Contract Law:	**Misdemeanor Offenses:**
Auto Repairs	Simple Assault
Buying Airline Tickets	Disturbing the Peace
Forming a Business	Larceny (Petit)
Sale of Clothing	Public Intoxication
House Insurance	Trespass
Tort Law:	**Felony Offenses:**
Battery	Burglary
Defamation	Homicide
Invasion of Privacy	Larceny (Grand)
Medical Malpractice	Manslaughter
Trespass	Robbery

Most countries do not have common law, only civil law systems. Their laws are all in codes written by panels of experts and approved by the national legislature. Judges must pay close attention to the codes and do not create new law as common law judges do in the United States.

1-3c Substantive and Procedural Law

Substantive law includes common law and statutory law that define and establish legal rights and regulate behavior. **Procedural law** determines how substantive law is enforced through the courts by determining how a lawsuit begins, what documents need to be filed, which court can hear the case, how the trial proceeds, and so on.

A criminal trial follows criminal procedural law that sets deadlines, determines how evidence is introduced, and other steps required in the process. Appellate procedure must be followed when a lower court decision is appealed to a higher court for review. Similarly, agencies enforcing administrative laws and regulations must follow appropriate procedures. Though most of our focus will be on substantive law, keep in mind that all participants in the formal legal system must follow proper procedure. Examples of categories of substantive and procedural law are provided in Exhibit 1.5.

Exhibit 1.5 **Examples of Substantive and Procedural Law**

Substantive law	Procedural law
Antitrust Law	Administrative Procedure
Contract Law	Appellate Procedure
Criminal Law	Civil Procedure
Environmental Law	Criminal Procedure
Labor Law	Discovery Rules
Securities Law	Evidence Rules

1-4 Business Ethics and Social Responsibility

Public confidence in many major institutions is low. Surveys indicate the least trusted institutions are law firms, Wall Street, Congress, big companies, labor unions, and the media. Most trusted are often the military, medical personnel, and small businesses. This must be taken with a grain of salt. Despite not trusting Congress, most people like their representatives, and reelection rates are high. Despite claiming to mistrust big companies or Wall Street, most people buy products and services from big companies and keep their money in Wall Street firms. Nevertheless, when a firm suffers a scandal, the loss of reputation means lost sales and a decline in the value of the company. Trust is critical in business relationships, so building and maintaining a reputation for ethical standards is valuable.

1-4a Ethics, Integrity, Morality, and the Law

The concepts of ethics, integrity, morality, and the law are related but are different. **Ethics**, in the context of business practitioners, has to do with rules or standards governing the conduct of members of a profession and how standards are put into action within an organization. **Integrity** means living by a moral code and standards of ethics. **Morality** concerns conformity to rules of correct conduct within the context of a society, religion, or other institution.

The law is often distinct from those concepts because ethics, integrity, and morality are voluntarily adopted standards of conduct. The law contains rules that may not be moral or ethical but are imposed upon people. Slavery was legal until the 1860s, and even after it was abolished, laws existed for another century mandating race discrimination, making it difficult for African-Americans to own property, receive a decent education, or compete in the labor market. During the days of legal segregation, though subverting the law was illegal, such acts were not immoral or unethical. Indeed, people who intentionally defied the law, such as Martin Luther King, Jr., are regarded as having great integrity.

Business Ethics

Peter Drucker, one of the most noted management consultants of all time, said that one should not make a distinction between business ethics and personal ethics. We should put into practice what we believe and not compromise based on moral relativism or business necessity of the time or place.

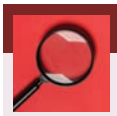
Consider this situation: The company Lockheed was in a struggle for survival in the 1970s because its commercial aircraft were not selling well. To obtain a large order from All Nippon Airways in Japan, the company had to bribe members of the Japanese government. Paying the bribes, and getting the order for new aircraft, did not put money in the pockets of the Lockheed executives, but it saved thousands of jobs at Lockheed. When the bribes became known, the Lockheed executives were ousted. Forgetting that the bribes were illegal under U.S. law, was the bribe ethical because it saved many jobs?

Drucker said no; a bribe is a bribe. If business is not worth doing on a competitive basis, it should be abandoned. Lockheed should have gotten out of the commercial aircraft business (which it soon did) and look for something more profitable to pursue; it should not have relied on bribes to stay in a market. A firm that must do that to survive cannot survive on its merits. Once business leaders go down the path of justifying various acts, even if not for personal profit, ethics have been lost.

Political Reality

Payoffs and favoritism do not just occur in other countries. In the United States many "pay to play" cases have come to light. That is, firms have had to pay bribes, directly or indirectly, to city, state, or federal government officials to have a chance to receive lucrative contracts. If uncovered, criminal charges may be involved; but even if you are sure the payments would go undiscovered, you must ask yourself if the business is worth getting in any case.

Campaign contributions by businesses and business leaders are a part of the political economy in which we operate. Many forms of contributions are legal, but the suspicion of influence peddling is always present. If you do not contribute, maybe your firm will get passed by in consideration for contracts awarded each year under the direction of political leaders. To get along, you have to go along, so most companies do, but the public regards the practice with great suspicion.



ISSUE SPOTTER

OK to Grease Palms?

You are hired as a construction supervisor by a firm specializing in multi-story offices. Such construction requires visits by city building inspectors, who must sign off on certain work completed before a permit is issued to begin the next stage. Without the permit, work stops. Other supervisors let you know the inspectors are used to being slipped $100 to $500, depending on the kind of permit being issued. A petty cash fund largely for this purpose is used to repay you. What are your options?

Bribes are illegal and unethical. The hard ethical questions arise when something is not illegal but ethics are in question. In many jurisdictions, discrimination against people on the basis of sexual orientation is not illegal. Assuming it is not illegal, is it ethical to allow such discrimination within a business? These difficult questions are more properly addressed in a class on business ethics. Here we are only touching on the interface between law and ethics.

1-4b Perceptions of Ethics and Responses

In response to public image and real internal problems, most corporations have written codes of ethics. Making these more than window dressing can be difficult. That is, building ethical standards into business operations—so it is more than just slogans—is a complex task. Compliance with legal requirements is one part of that task.

LIGHTER? SIDE OF THE LAW

Legal Ethics?

An Ohio attorney pulled in more than $200,000 working for indigent defendants as a court-appointed attorney paid by the state. He worked on 848 cases, far more than any attorney, but he also worked hard. Some days, he billed for as much as 29 hours of work.

The bar association decided this was not grounds to revoke his law license and suggested discipline. After all, his attorney noted, he failed to keep track of his time, so his errors were careless. The Ohio Supreme Court suspended his license for a year and required he repay a quarter of the money received.

Source: Dayton Daily News

1-4c Ethics Codes and Compliance Programs

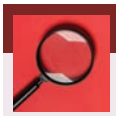
Ethics codes matter little unless a serious effort ensures compliance within an organization. Ethics and legal requirements may be blended in compliance codes. To be effective, such codes require diligent enforcement by management. According to the Department of Justice (DOJ), the existence of an effective corporate **compliance program** is a key factor in the agency's decision whether to prosecute an organization or to recommend leniency to a court when a legal problem arises. This will be discussed more in Chapter 5.

The U.S. Sentencing Guidelines, which list punishment recommendations for various crimes, state that a company found guilty of violating a law may have its fines reduced by as much as 95 percent if it is found to have an effective, strong compliance program in place. A good ethics compliance program can result in a civil proceeding rather than a criminal prosecution of legal violations. Compliance programs are internal management tools for avoiding legal problems or reducing possible punishment when problems arise. Ethics training at work has been rising over time, which is evidence of intent to instill good practices that go beyond legal requirements.

Many companies have employees take online legal and ethics training. It is a cost-effective way to ensure employees are informed about employment discrimination, payoffs, conflicts of interest, and other matters that can spell big trouble for businesses. Employees may also be tested online regarding their knowledge of law and ethics. Many employers find online training more effective than gathering people in auditoriums for instruction, where "participants" may tune out the information being presented.

1-4d Ethics and Corporate Social Responsibility

Peter Drucker, the "Father of Modern Management," discussed the ethics of social responsibility. Sometimes, this is called **corporate social responsibility**. Drucker asserted that the social responsibility ethic applied to those in leadership positions. The first responsibility of a business leader is to ensure the corporate mission is fulfilled. That is why a person is put in a position of leadership: to help make effective use of resources entrusted to a company by investors. To earn a profit is an ethical social responsibility. Part of that responsibility is minimizing errors that impose damage. That conforms to the old norm, "first, do no harm."



ISSUE SPOTTER

Effective Ethics Codes

Google's former ethics motto was "Don't be evil." Every time something bad happened involving the company, the slogan would be ridiculed by the public. More recently, Google, a part of Alphabet, has changed to "Do the right thing." It is short but gets the point across.

Some firms have long codes of ethics that cover a host of topics, such as antitrust, that are not relevant to most employees and are likely tuned out.

An effective ethics code is difficult to establish as many employees see these codes as window dressing. They are dubious of assertions that they can raise difficult questions without fear of retaliation. Even if a code is simple, making it effective is not easy.

A commitment to a code of ethics, which takes a firm beyond its legal obligations, is generally not binding on a company. Violations that are ignored may cause bad press for a company and bad morale for employees; however, as the *Lamson* v. *Crater Lake Motors* case makes clear, ethical business practices and the law are distinct matters.

LAMSON v. CRATER LAKE MOTORS

Court of Appeals of Oregon 216 Ore.App. 366, 173 P. 3d 1242 (2007)

Case Background *For 15 years, Kevin Lamson was a sales manager for a car dealership. He liked the company's philosophy that "customers come first." The dealership was respected for not having aggressive sales tactics.*

When sales were lagging, Crater Lakes Motors hired a sales firm, RPM, to run a five-day sales promotion. Lamson observed "a number of activities he considered to be unethical, unlawful, or both." RPM produced a video that said that "all vehicles" would be cut in price. In fact, only the vehicles in the video were on sale. RPM also tried to "pack the payments" by providing customers life insurance and service contracts in purchase agreements without the customers' knowledge. When Lamson complained to the general manager (GM), he was told to go home.

After the sale, relations worsened. The GM told Lamson that another sales manager was making an extra $600 profit per sale. Lamson checked the records and found it was $100 per sale. The GM hired RPM to run another sale. He and Lamson argued. The GM told Lamson to cooperate with RPM. Lamson sent the company owner a letter complaining of RPM's tactics, saying it violated company rules regarding sales ethics. He did not want to see "the values, ethics, morals, and honorable dealings" of the company lost. He asked him to rethink the "profit at any cost mentality."

The owner said that the company would still be "treating customers with the highest ethical standards" and that RPM promised "no misrepresentations or illegal statements." When Lamson did not cooperate with RPM during the next sale, he was fired. He sued for wrongful discharge, contending that he was fired for complaining about sales tactics that may have been illegal and that violated the company's code of ethics. The jury held for Lamson. The company appealed, contending that Lamson had no cause of action.

Case Decision *Edmonds, Presiding Judge*

* * *

Nor can we conclude . . . that plaintiff's internal complaints of unlawful sales practices are of the same public importance as the reports of health and safety violations in our earlier case law. Here, plaintiff did not report or threaten to report RPM's activities to anyone *outside of defendant*, and there is no evidence that defendant intended to "silence" him in a manner that would conceal illegal activities. On these facts, we cannot conclude that plaintiff's internal complaints about defendant's use of a sales firm serves a societal duty. . . . Thus, we conclude that plaintiff's internal complaints, standing alone, did not serve an important societal obligation for purposes of a common-law wrongful discharge claim.

* * *

In sum, the evidence, viewed in the light most favorable to plaintiff, does not establish a legally cognizable basis for a claim for wrongful discharge. The employment relationship between plaintiff and defendant was an at-will employment relationship, which meant that plaintiff could be discharged for any reason, unless the discharge was for exercising a job-related right reflecting an important public policy or for fulfilling an important public duty. . . . Even if defendant's actions, viewed together as plaintiff posits, were pretextual because defendant no longer desired to employ plaintiff. . . . Plaintiff was not discharged for fulfilling what the law would recognize as an important *public* duty. . . .

For all of the reasons stated above, the trial court should have granted defendant's motion for a directed verdict. Reversed. This decision was affirmed by the Oregon Supreme Court.

Question for Analysis

Suppose some of the sales tactics used by RPM violated Oregon law. What could Lamson do about it? Unless he suffered the effects of an illegal practice by making a purchase based on such practice, he had no complaint at law. Who would know more about such practices: those involved in putting them in place or a customer? Do you think other car dealers would want to hire Lamson?

Summary

- The modern environment of business means that managers in firms of all sizes face various ethical, legal, social, political, and international issues that make business increasingly complex.
- Law is a collection of principles and rules that establish, guide, and alter the behavior of members of society. Rules include the formal rules (law) of society and the informal rules as dictated by customs, traditions, and social ethics.
- Law helps to define acceptable behavior. To ensure order, the legal system provides a formal means through which disputes can be resolved. The law maintains the important values of a society. Finally, the legal system provides a way to encourage changes in social consciousness.
- Sources of law include the U.S. Constitution and state constitutions, Congress and the state legislatures, the judiciary branch, the executive branch (the president and governors), state and federal administrative agencies, and multiple sources that form the international legal environment of business.
- Judge-made or common law is the original source of law in this country. This system encourages judges to use prior decisions, or precedents, for guidance in deciding new disputes. The doctrine of *stare decisis*, standing on precedent, gives consistency to case law.
- Law can be classified on the basis of whether it is public or private, civil or criminal, or substantive or procedural.
- The public image of big business and of other major institutions is low. Dishonesty is believed to be common. To overcome problems, many companies use codes of ethics, and firms are enforcing compliance programs to help reduce severity of punishment by regulators in case of law violations.
- Business ethics involve standards and obligations that persons and firms may uphold in business that go beyond the requirements of the law. Some firms have active corporate social responsibility programs that engage the company in activities not required by law.

Terms to Know

You should be able to define the following terms:

law
constitution
common law
case
case reporters
precedent
stare decisis
executive orders
public law
private law
criminal law
felony
misdemeanor
reasonable doubt
civil law
preponderance of the evidence
substantive law
procedural law
ethics
integrity
morality
compliance program
corporate social responsibility

Discussion Question

Should the common law maxim "Ignorance of the law is no excuse" apply to an immigrant who speaks little English and was not educated in the United States? How about for a tourist who does not speak English? Everyone knows criminal acts are prohibited, but what about subtler rules that differ across countries and so may be misunderstood by foreigners?

Case Questions

1. Facts from an English judge's decision in 1884: "The crew of an English yacht . . . were cast away in a storm on the high seas . . . and were compelled to put into an open boat. . . . They had no supply of water and no supply of food. . . . That on the eighteenth day . . . they . . . suggested that one should be sacrificed to save the rest. . . . That next day . . . they . . . went to the boy . . . put a knife

into his throat and killed him . . . the three men fed upon the body . . . of the boy for four days; [then] the boat was picked up by a passing vessel, and [they] were rescued. . . . and committed for trial. . . . if the men had not fed upon the body of the boy they would probably not have survived to be so picked up and rescued, but would . . . have died of famine. The boy, being in a much weaker condition, was likely to have died before them. . . . The real question in this case [is] whether killing under the conditions set forth . . . be or be not murder." Do you consider the acts to be immoral? [*Regina* v. *Dudley and Stephens,* 14 Queens Bench Division 273 (1884)]

2. Smoking is a serious health hazard. Cigarettes are legal. Should cigarette manufacturers be liable for the serious illnesses and untimely deaths caused by their unavoidably dangerous products, even though they post a warning on the package and consumers voluntarily assume the health risks by smoking? [*Cipollone* v. *Liggett Group, Inc.*, 505 U.S. 504 (1992)]
3. Two eight-year-old boys were seriously injured when riding Honda mini-trail bikes. The boys were riding on public streets, ran a stop sign, and were hit by a truck. The bikes had clear warning labels on the front stating they were only for off-road use. The manual stated the bikes were not to be used on public streets. The parents sued Honda. The supreme court of Washington said one basic issue existed: "Is a manufacturer liable when children are injured while riding one of its mini-trail bikes on a public road in violation of manufacturer and parental warnings?" Is it unethical to make products like mini-trail bikes children will use when we know accidents like this will happen? [*Baughn* v. *Honda Motor Co.*, 727 P.2d 655 Sup. Ct, Wash., (1986)]
4. Johnson Controls adopted a "fetal protection policy" that women of childbearing age could not work in the battery-making division of the company. Exposure to lead in the battery operation could cause harm to unborn babies. The company was concerned about possible legal liability for injury suffered by babies of mothers who had worked in the battery division. The Supreme Court held the company policy was illegal. It was an "excuse for denying women equal employment opportunities." Is the Court forcing the company to be unethical by allowing pregnant women who ignore the warnings to expose their babies to the lead? [*United Auto Workers* v. *Johnson Controls*, 499 U.S. 187 (1991)]
5. McGrory worked for Applied Signal Technology in a supervisory position. He was accused of violating the company's policies on sexual harassment. An internal investigation determined he did not violate the policy but that he was evasive and violated the company's personal ethics code. He was fired and sued for wrongful termination, contending that if he did not violate sexual harassment rules he should not have been subject to termination. Do standards of law and ethics need to be the same for an employer? [*McGrory* v. *Applied Signal Technology*, 152 Cal.Rptr.3d 154 (2013)]
6. Baker works as a document clerk for the Minnesota Supreme Court. After she had worked there for 13 years the Minnesota judicial branch adopted a policy concerning proper Internet use and stated that employees must adhere to the highest ethical standards when using the Internet. Eleven years later, she was fired for excessive surfing on the Internet during working hours. She contended she did not know about the policy. Is that an adequate defense for her? [*Baker* v. *Minnesota Supreme Court*, 2016 WL 102513 (2016)]

Social and Ethics Questions

1. The federal tax code is riddled with special-interest loopholes. Most of these exist because firms and trade associations lobby Congress and provide campaign support to members of Congress to gain special favors to individual firms or industries. Is it ethical for firms to seek special privilege?
2. "Fair trade" goods have become popular, as some people are willing to pay more to know the goods come from workers paid a decent price for their efforts. However, some retailers who sell fair trade goods mark them up substantially more than non-fair trade goods. One study showed that coffee growers got an average of 44 cents a pound more for fair trade coffee, but the coffee at retail was marked up an additional $3.46 per pound. At one supermarket chain, fair trade bananas that cost an extra

3.6 cents per pound were marked up four times the price of non-fair trade bananas. Fair trade goods are claimed to be a form of social responsibility. Is that true if it just means higher profit margins?

3. A chemical company located a new plant in a depressed area with high unemployment in West Virginia. It built a state-of-the-art plant that had the latest pollution control technology meeting all EPA requirements. It created 2,500 jobs. The company was attacked for polluting a previously pristine area. Had the plant been built in an industrial area, such as the coast near Houston, no one would have been likely to complain. Was the company socially irresponsible for building the plant in such an area?
4. Discussion of ethics issues focuses on company examples. What personal ethics matter? Surveys indicate that many students have cheated in classes one way or another, pad their resumes when seeking jobs, and have improperly downloaded copyrighted music. Does ethics "begin at home"?

Chapter 2

The Court Systems

Billy Bones' Longboards of Oregon advertises and sells its products in western states. Its custom boards are mostly made in Oregon, but some are imported from China. If a customer in Arizona buys a Billy Bones' board on the Bones' website and is injured when the board breaks when boarding, can the customer bring the lawsuit in the Arizona state court? Must the dispute be decided in an Oregon state court because the business is located in that state? Or would such a dispute be decided in the federal court system? If a defective board was made in China, would the case go there? Which substantive law concerning product liability applies? Which court procedure governs the matter? In any dispute, parties must understand and resolve these questions before they can use our court system.

This chapter reviews the American court system and discusses how a party who has suffered a legal wrong can seek relief in the courts. Businesses may face disputes with competitors, suppliers, customers, shareholders, and government agencies. Many problems are resolved directly by the parties with no serious disruption in business relationships or activities. Other problems require resolution in the court system through civil litigation.

A business that has a civil dispute that may go to litigation must first determine, with an attorney's guidance, which court has the authority to decide a case. That is, which court has the jurisdiction to take the case for resolution? Today, many businesses operate in multiple states and often in several countries. As a consequence, the choice of the appropriate court may be unclear, or the parties may be in a position to choose between more than one court.

2-1 The Court Systems

The federal court system was created in response to the following provision of the United States Constitution:

> *The judicial Power of the United States shall be vested in one supreme Court and in such inferior Courts [courts subordinate to the Supreme Court] as the Congress may from time to time ordain and establish.*

The federal court system developed into a three-level system consisting of the U.S. district courts, the U.S. courts of appeals, and the U.S. Supreme Court. There are also specialized courts, such as the bankruptcy courts. Because the 13 original states had courts before the federal system was created, they have the oldest court systems. The state and federal court systems have many similarities, but important differences exist.

2-1a Federal Judges

Federal judges are nominated by the president and confirmed by a majority vote in the U.S. Senate. The Constitution guarantees federal judges the right to serve "during good behavior," so they enjoy a lifetime appointment. Judges below the Supreme Court level retire at age 70, but may remain on "senior status," still hear cases, and are paid. There are about 1,200 federal judges. Under the U.S. Constitution, federal judges may be removed from office only if Congress impeaches them for treason, bribery, or other crimes. Impeachment means the actual impeachment (indictment) by the House of Representatives, followed by a trial before the Senate. If at least two-thirds of the senators vote for removal, the judge is removed. This happens rarely; only a handful of federal judges in history have been removed.

Though Congress may change the structure of the federal court system, it may not reduce a judge's salary or term of office once an appointment has been made. The writers of the U.S. Constitution gave federal judges job security because they wanted judges to be free from the pressure of politics.

2-1b State Judges

In contrast to the position enjoyed by federal judges, most state judges serve for a fixed term, whether appointed or elected. Terms range from as short as one year for some judges in Missouri to a fourteen-year term for judges in New York. Only Rhode Island provides a lifetime term.

State judges are chosen by different methods, as Exhibit 2.1 shows. They are elected, appointed, or chosen by a method that mixes the election and appointment processes. In several states with the mixed system, the state bar association recommends candidates and the governor appoints a judge from its list. The judge selected serves until the next election, at which time the public is asked to vote to retain or reject.

The evidence about judicial performance for elected and appointed judges is mixed. Some observers claim that appointed judges are of higher average quality than elected judges. Others counter that elected judges work harder than appointed judges. Evidence shows that in states with elected judges, the average awards in tort cases are larger and out-of-state companies are treated worse than in states with appointed judges.

2-1c Judicial Immunity

Under the **doctrine of judicial immunity**, a judge is absolutely immune from suit for damages for judicial acts. Without this rule, judges could fear being sued by parties unhappy with judicial decisions. Then, judges could lose their ability to be independent decision makers. Judicial immunity aims to keep judges unconcerned about personal abuse by parties who appear in court. Immunity extends to parties who perform services that are related to the performance of judicial functions. As the *Martin* case explains, this immunity extends to others involved in the judicial process.

Exhibit 2.1 **Selection Methods for Appeals Court and Trial Court Judges**

Merit selection by nominating commission and governor	Governor (G) or legislature (L) appointment	Elections by party	Non-partisan elections	Combined merit selection and other methods
Alaska	California (G)	Alabama	Arkansas	Arizona
Colorado	Maine (G)	Illinois	Georgia	Florida
Connecticut	New Jersey (G)	Louisiana	Idaho	Indiana
Delaware	New Hampshire (G)	Michigan	Kentucky	Kansas
Hawaii		Ohio	Minnesota	New York
Iowa	Virginia (L)	Pennsylvania	Mississippi	Oklahoma
Maryland		Texas	Montana	South Carolina
Massachusetts		West Virginia	Nevada	South Dakota
Missouri			North Carolina	Tennessee
Nebraska			North Dakota	
New Mexico			Oregon	
Rhode Island			Washington	
Utah			Wisconsin	
Vermont				
Wyoming				

Source: American Judicature Society

MARTIN v. SMITH

Supreme Court of Arkansas 2019 Ark. 232, 576 S.W.3d 32 (2019)

Case Background *McFadden was given conditional release in 2004 from a charge of battery, due to mental disease—schizophrenia. He was remanded to the care of an organization called Gain, which monitored his treatment regimen. Its medical director was Dr. Smith, a psychiatrist.*

In 2011, McFadden murdered Virgil Brown. His daughter sued Dr. Smith, contending that his inadequate treatment of McFadden rendered him liable for Brown's death. Smith asserted he could not be sued under the doctrine of absolute quasi-judicial immunity. The trial court agreed, holding that Smith treated McFadden under court order. It dismissed the suit. Brown appealed.

Case Decision ***Womack, Justice***

* * *

Quasi-judicial immunity, as its name suggests, evolved out of the settled doctrine of judicial immunity. The rationale behind judicial immunity is to maintain an independent and impartial judiciary by ensuring that judges may carry out judicial functions without

harassment or intimidation. Judges are accordingly entitled to absolute immunity from suit for actions taken in the execution and within the scope of their judicial duties.

The fair administration of justice does not rely exclusively on judges, however, and certain nonjudicial actors are often indispensable to achieving that goal. For that reason, quasi-judicial immunity has been extended to nonjudicial actors who perform certain functions intimately related to the judicial process. …

The decisive question is whether Dr. Smith was serving an integral part of the judicial process by carrying out and acting within the scope of McFadden's conditional release order. This is especially true where, as here, the court orders an agency to carry out the terms of the order rather than a specific individual. Because those functions must naturally be carried out by an individual, quasi-judicial immunity may extend to the individual under some circumstances. …

Given the absolute nature of quasi-judicial immunity, we emphasize that it only applies to actors who serve an *integral* function to the judicial process and only for actions within the scope of a court's order. … Without the protections of immunity, these experts may be reluctant to accept the risk of liability. This is especially true in cases involving the diagnosis and treatment of mental illness and the prediction of future behavior. In this case, Dr. Smith clearly served an integral role to the judicial process and we accordingly hold that he is entitled quasi-judicial immunity.

Affirmed.

Question for Analysis

Dr. Smith was not an employee of the state, as is a judge, but a private party. Why would immunity extend to him?

2-1d Organization of the Court Systems

State and federal court systems have lower courts of **original jurisdiction**, where disputes are first brought and tried, and courts of **appellate jurisdiction**, where the decisions of a lower court may be taken for review. In the federal and state systems, courts of original jurisdiction are trial courts. One judge presides. The courts' principal function is to determine the facts in the dispute and to apply the appropriate law to those facts in making a decision or judgment. As we discuss in the next chapter, the jury is responsible for deciding the facts in a case; if there is no jury, the judge decides the facts.

Appellate courts are concerned with correcting errors in the application of the law and making sure proper procedure was followed in the trial court proceeding. Normally, three judges review decisions at the intermediate appeals court level. The state supreme courts (which have different names in some states) provide review with participation of all members. The number of judges on the highest appellate court varies across the states from five to nine. The basic structure of the American court system is illustrated in Exhibit 2.2. Though we focus more on federal courts here, as it serves as a general model, the majority of litigation occurs in state courts.

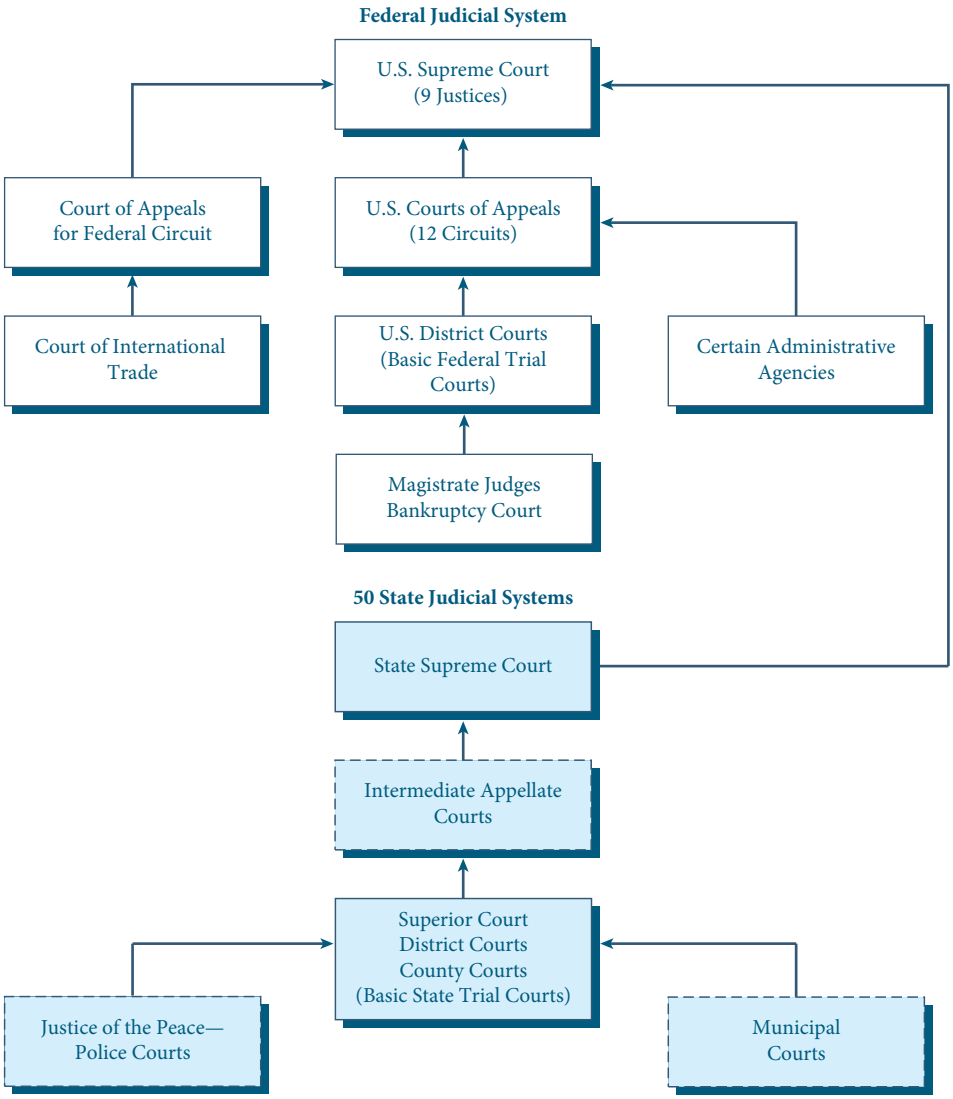
2-2 The Federal Courts

The U.S. Constitution intends for the judiciary to have significant independence from the other branches of government as part of the system of checks and balances. This is unlike most countries, where judges are civil servants who have less independence than judges in the United States. Even though some state judges are in political positions, federal judges, once on the bench, are independent.

2-2a Federal District Courts

As the trial courts of the federal system, U.S. district courts are the courts of original jurisdiction. District courts are the only federal courts that use juries. Most cases involving questions of federal law originate in these courts. The boundary of a district court's jurisdiction does not cross

Exhibit 2.2 **The Court Systems**



state lines. There are a total of 94 federal districts in the court system. Each state has at least one federal district court; the more populated states are divided into two, three, or—as in California, New York, and Texas—four districts. In addition, federal district courts exist in the District of Columbia, Puerto Rico, Guam, and the Virgin Islands. There are 670 federal district judges, so many districts have multiple judges.

District courts also use judicial officers called **magistrates**. In each district in which the Judicial Conference of the United States has so authorized, the district judges may jointly appoint one or more magistrates for eight-year terms. The judges send various matters to the magistrate to be heard, such as discovery disputes, habeas corpus petitions, or civil rights claims filed by prisoners, with the magistrate making a recommendation to the judge. Cases may be tried before a magistrate instead of a judge if parties to the case agree. This may happen when

courts have a backlog and the parties want a quicker trial than is available before the district judge. Because magistrates are not appointed under Article III of the U.S. Constitution, they cannot try cases in the place of a district judge without the parties' consent.

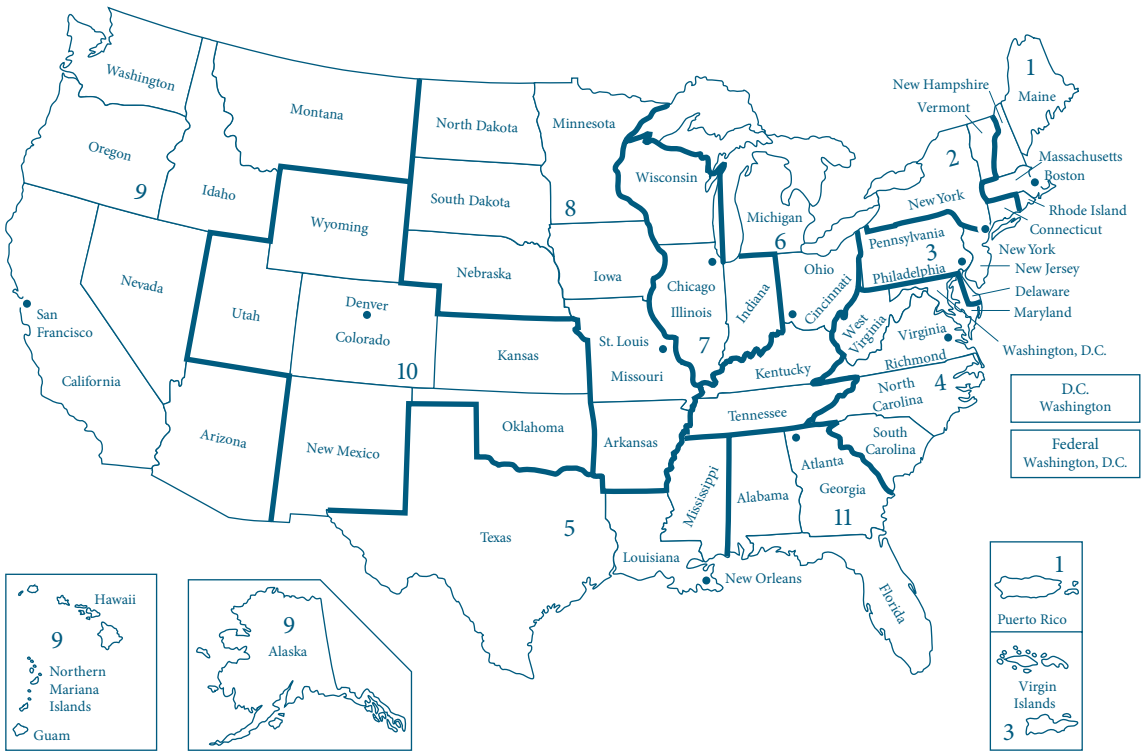
2-2b Federal Appellate Courts

U.S. courts of appeals may review federal district court decisions. Established in 1891, the U.S. courts of appeals are the intermediate-level appellate courts in the federal system. There are 12 geographically based courts of appeals, one for each of the 11 circuits into which the United States is divided, and one for the District of Columbia that hears many cases involving federal regulations. The division of the states into circuits and the location of the U.S. courts of appeals are seen in Exhibit 2.3.

The U.S. courts of appeals exercise only appellate jurisdiction. If either party to litigation is dissatisfied with a federal district court's decision, it has the right to appeal to the court of appeals for the circuit in which that district court is located. The Fourth Circuit U.S. Court of Appeals headquartered in Richmond, Virginia, for example, will hear appeals only from the federal district courts in the states of Maryland, North Carolina, South Carolina, Virginia, and West Virginia.

Although they have many judges, the U.S. courts of appeals assign three-judge panels to review most district courts decisions appealed within their circuits. Occasionally, all the active judges in a circuit will hear a case in what is known as an ***en banc*** **proceeding**. As a practical matter, because it is so difficult to obtain review by the U.S. Supreme Court, the courts of appeals make the final decision in most cases.

Exhibit 2.3 The Federal Judicial Circuits



2-2c Specialized Federal Courts

Although the U.S. Supreme Court, courts of appeals, and district courts are the most visible, there are also courts with limited or special jurisdiction within the federal court system. These courts are defined by subject matter. U.S. bankruptcy courts exist alongside the district courts and are under the supervision of district courts, but in practice they are accorded great deference. About 350 such judges, of course, handle cases under federal bankruptcy law. They are appointed by the judges of the courts of appeals and serve 14-year terms.

The U.S. Court of Federal Claims, located in Washington, D.C., has 16 judges who serve 15-year terms. They hear cases involving money claims against the federal government. The U.S. Court of International Trade, which sits in New York City, has nine judges. They hear cases involving international customs matters, such as tariff classifications and trade disputes. The U.S. Tax Court consists of 19 judges appointed for 15-year terms. The court primarily hears tax disputes involving the Internal Revenue Service (IRS). The court is not a part of the federal judiciary; it is a part of the legislative branch of government.

The Court of Appeals for the Federal Circuit has 12 judges who sit in Washington, D.C. Although its jurisdiction is nationwide, its subject-matter jurisdiction is limited to appeals from the district courts in patent, trademark, and copyright cases; in cases where the United States is a defendant; appeals from the Court of Federal Claims and from the Court of International Trade; and the review of administrative rulings of the U.S. Patent and Trademark Office. Because these matters are technical, Congress established the Federal Circuit so that judges who have expertise in these areas could hear appeals.

2-2d U.S. Supreme Court

The U.S. Supreme Court is the highest court in the country as we see in Exhibit 2.2. Created by the Constitution, the Supreme Court is primarily an appellate review court. Cases reaching the Court are usually heard by nine justices, one of whom is the Chief Justice. The term of the Court begins, by law, on the first Monday in October and continues as long as the business of the Court requires. It also has a session that begins each March. The Court sits in Washington, D.C.

As an appellate court, the Supreme Court may review appeals from the U.S. district courts, the U.S. courts of appeals, and the highest courts of the states when federal and constitutional issues are at stake. In rare instances, such as in a dispute between two state governments, the Court has original and exclusive jurisdiction.

Appellate review is normally obtained by petitioning the court for a **writ of certiorari**. Such appeals to the Court are heard only at its discretion. At least four justices must agree to review a case. If that does not happen, the decision of the lower court becomes final. Although it receives thousands of such petitions each term, the Court accepts and then issues opinions in about 70 to 80 appeals per term. In contrast, most state high courts issue more opinions, such as the Montana Supreme Court, which issues more than 350 per year. Most petitions granted by the U.S. Supreme Court involve an issue of constitutional importance or a conflict between the decisions of two or more U.S. courts of appeals.

2-3 The State Courts

Although the names and organization differ somewhat from state to state, the state court systems are similar in general framework and jurisdictional authorities. Many are three-level systems, and many states have local courts of special or limited jurisdiction.

2-3a State Courts of Original Jurisdiction

Each state court system has courts of original jurisdiction, or trial courts, where disputes are initially brought and tried. There are often courts of **general jurisdiction** and several courts

of **limited or special jurisdiction**. The courts of general jurisdiction have authority to decide almost any kind of dispute and are able to grant nearly every type of relief. In most states, the amount in controversy, however, must exceed a specific amount, often $2,000 to $5,000.

State courts of general jurisdiction, or trial courts, are organized into districts, often on the county level. These district courts have different names in different states. In some states, the courts of general jurisdiction are called Superior Courts. The equivalent courts in Pennsylvania and Ohio are called the Courts of Common Pleas, and in Florida and Oregon, the Circuit Courts. In Kansas, Louisiana, Maine, and other states, the courts of general jurisdiction are called District Courts. Oddly, in New York, they are called Supreme Courts.

Courts of limited or special jurisdiction include municipal courts, justice of the peace courts, and other more specialized courts (such as probate courts, which handle matters related to wills and trusts). The jurisdiction of the municipal courts is similar to that of the district courts except that municipal courts typically hear claims that involve less money. Litigants not satisfied with the decision of the limited jurisdiction court may appeal to the court of general jurisdiction. On appeal, the parties will get a new trial or, in legal terminology, a **trial *de novo***.

Many states provide small claims courts that have limited jurisdiction. The amount in controversy in many small claims courts may not exceed $5,000 ($10,000 in California). Subject matter includes debts, contract disputes, warranty claims, personal injuries, and security deposits. Small claims courts are particularly good for collecting small debts because procedure is much less formal, and representation by an attorney is unnecessary and often not permitted. Small claims courts are a faster and less expensive forum than are district courts. Most state courts have websites to guide you through the procedure.

2-3b State Courts of Appellate Jurisdiction

Every judicial system allows the review of trial court decisions by a court with **appellate jurisdiction**. In general, a party has the right to appeal a trial court judgment to at least one higher court. When a court system contains two levels of appellate courts, as is true in about half the states, appeal usually is a matter of right at the first level and at the discretion of the court at the second. In states with no appellate courts, appeals go from the trial court to the state supreme court.

Appellate courts have different names in different states, such as District Courts of Appeal in Florida and Appellate Division Courts in New York. Review from such courts of appeal would go to the state supreme court. The most common issues reaching the highest court in a state may involve the validity of a state law or a state constitutional issue. A party seeking further review from the state supreme court may seek review from the U.S. Supreme Court, but that is rare.

LIGHTER? SIDE OF THE LAW

In-the-Courtroom Training

Although the failure rate is high, people commonly represent themselves in court (called *pro se* litigation). The judges are sympathetic to self-representation in some cases.

Paul Baldwin appeared in court in Portsmouth, New Hampshire, after being arrested for stealing beer. The judge asked if he wanted to have a lawyer appointed to represent him. Baldwin said, "I don't need a lawyer. I've been in the court more than you have." After 152 previous arrests, that could be true. The judge was not amused and ordered him held on $10,000 bail.

Source: Portsmouth Herald

2-3c Rules of Civil Procedure

From the moment the **plaintiff**—the party who claims to have suffered an injury that the law can remedy—brings an action, a lawsuit is governed by detailed procedural rules. These force the parties to define the issues in the dispute. The rules also control how the parties to the dispute—the plaintiff and the **defendant** (the party who allegedly inflicted legal injury on the plaintiff)—present evidence and arguments in support of their positions.

Although the states are free to develop their own procedural rules, most have adopted the *Federal Rules of Civil Procedure (Federal Rules)* or rules similar to them. The *Federal Rules*, which have been modified over the years, were developed by an advisory committee appointed by the U.S. Supreme Court and took effect in 1938. The *Federal Rules* govern the procedure of the litigation process, including the pleadings, discovery, trial procedures, and relevant motions. These rules govern only civil litigation; different procedures are used in criminal and administrative litigation.

The *Federal Rules* are in the United States Code, Title 28. In addition to establishing trial procedural rules, Title 28 establishes the organization of the federal courts, judicial agencies, and rules governing jurisdiction and venue. This chapter concentrates on jurisdiction and the organization of the court system. Chapter 3 examines trial procedures and processes.

2-4 Jurisdiction

The literal meaning of the term **jurisdiction** is "the power to speak of the law." A court's jurisdiction defines the limits within which it may declare, administer, or apply the law. The limitations imposed upon a court by a constitution, and the statutes that created it, determine what kinds of disputes it may resolve, depending on the parties to a case.

When filing a lawsuit, the plaintiff must choose the correct court to resolve the dispute. The plaintiff must select a court that has both:

1. Subject-matter jurisdiction
2. Personal jurisdiction over (a) the person of the defendant or (b) the property of the defendant

If a court should rule in a particular case and jurisdiction was lacking, the judgment of that court will be declared null and void upon appeal. Without jurisdiction a court cannot exercise authority to determine the outcome of a legal dispute.

2-4a Subject-Matter Jurisdiction

Subject-matter jurisdiction is created by a constitution or a statute regarding the types of disputes a court can accept to resolve. It often includes requirements on the amount in controversy

LIGHTER? SIDE OF THE LAW

Do as I Say, Not as I Do

A Texas judge tried a criminal case that attracted media attention. She instructed the jury not to discuss the case, which includes not saying anything about the case on social media. Then she posted comments about the case on her Facebook page.

The State Commission on Judicial Conduct ordered the judge to complete four hours of instruction on "proper and ethical use of social media by judges." She appealed saying she did nothing wrong and a three-judge panel agreed with her that the rules about the use of social media are "murky."

Source: Houston Chronicle

and the areas of the law the court may cover. For example, state law might restrict disputes in district (trial) courts to civil cases involving more than $2,000, or they might require that all cases involving wills be heard by a probate court. That is, the state legislature places limitations on the subject-matter jurisdiction of various courts.

Subject-Matter Jurisdiction in the Federal Courts

Under the U.S. Constitution, the federal courts may only hear cases within the judicial power of the United States. That is, federal courts have the judicial power to hear cases involving a **federal question**:

> *The judicial Power shall extend to all Cases … arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . …*
>
> *This includes cases based on the relationship of the parties involved: [The judicial Power shall extend] to all Cases affecting … Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States … and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.*

When federal jurisdiction is based on the parties involved, most litigation is generated by cases (1) in which the United States is a party to the suit or (2) involving citizens of different jurisdictions. The purpose for allowing federal jurisdiction when a dispute arises between citizens of different states—referred to as **diversity-of-citizenship** or **diversity jurisdiction**—is to provide a neutral forum for handling such disputes.

The writers of the Constitution worried that state courts might be biased in favor of their own citizens and against "strangers" from other states or countries. To obtain diversity jurisdiction, there must be total diversity of citizenship among the parties. That is, all parties on one side of the lawsuit must have state or national citizenship different from all the parties on the other side of the lawsuit. To establish federal jurisdiction in a diversity case, the parties must also show two things: (1) they are from different states and (2) the **amount in controversy** (the sum the plaintiff is suing the defendant for) is more than $75,000. In cases involving questions of federal law, no dollar amount requirement exists.

2-4b Personal Jurisdiction

Once it is established that the court has subject-matter jurisdiction, the plaintiff must meet the **personal jurisdiction** requirements. A court's jurisdictional authority is generally limited to the boundaries of the state in which it is located. Territorial jurisdiction is not an issue unless the defendant is not a resident of the state in which the plaintiff wishes to bring the lawsuit. In such a case, the plaintiff must determine how to bring the defendant—or the defendant's property—before the court.

A court's power over the person ("person" may be a business) of the defendant is referred to as ***in personam* jurisdiction**. The defendant is served with a **summons**, a notice of the lawsuit (see Exhibit 2.4). That is, after selecting the appropriate court, the plaintiff must properly notify the defendant of the action filed by **service of process**. The summons directs the defendant to appear before the court to defend against the plaintiff's allegations. The court will issue a **default judgment** against a defendant who fails to appear.

Service of process is usually achieved by **personal service**. The plaintiff, the plaintiff's attorney, a public official, such as a sheriff or a U.S. marshal, or a private process server delivers the summons to the defendant. The rules vary greatly from state to state. In civil litigation, a private process server usually serves process. If the defendant cannot be located, courts allow the use of substituted service, such as publication of the pending lawsuit in a newspaper. The Supreme Court has emphasized that substituted service must be calculated to alert the defendant of the action. Although television shows sometimes show clever tricks being used to serve process on a defendant attempting to dodge a suit, most business cases involve direct service on a business's registered agent. There is little drama involved.