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STANDARD EDITION

BUSINESS LAW *AND THE LEGAL ENVIRONMENT*

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BUSINESS LAW

AND THE LEGAL ENVIRONMENT

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NOTE FROM THE AUTHORS

Enhanced Digital Content—*MindTap*™

Our goal—and yours—is for your students to learn the material. With that singular goal in mind, Cengage has created an extremely useful tool for both instructors and students. *MindTap*™ is a fully online, highly personalized learning experience combining readings, multimedia, activities, and assessments into a singular Learning Path. It integrates seamlessly with Learning Management Systems. *MindTap* guides students through their course with ease and engagement. Instructors can personalize the Learning Path by customizing Cengage resources and adding their own content via apps that integrate with *MindTap*.

In our experience, students who use *MindTap* are better prepared for, and earn better grades on, our exams. Business law instructors want to help students **Prepare** for class, **Engage** with the course concepts to reinforce learning, **Apply** these concepts in real-world scenarios, use legal reasoning and critical thinking to **Analyze** business law content, and **Evaluate** real business scenarios and their legal implications.

Accordingly, our *MindTap* product provides a five-step Learning Path designed to meet these critical needs while also allowing instructors to measure skills and outcomes with ease.

- **Prepare**—Interactive worksheets are designed to prepare students for classroom discussion by ensuring that they have read and understood the reading.
- **Engage**—Real-world videos with related questions help engage students by displaying the relevance of business law in everyday life.
- **Apply**—Brief hypothetical case scenarios help students practice spotting issues and applying the law in the context of short factual scenarios.
- **Analyze**—Case-problem analysis promotes deeper critical thinking and legal reasoning by building on acquired knowledge. These exercises guide students step by step through a case problem and then add in a critical thinking section based on "What If the Facts Were Different?" In a **new third section**, a writing component requires students to demonstrate their ability to forecast the legal implications of real-world business scenarios.
- **Evaluate**—New **business case** activities develop students' *skills* to apply critical thinking and legal reasoning through relevant real-world business scenarios. These exercises give students the opportunity to advocate, evaluate, and make a decision through a variety of flexible assessment options including Discussion Questions, Multiple-Choice Questions, Short-Answer Essays, Group Work, and Ethical Dilemmas. Whether you have a large class or a small class, teach online or in a traditional classroom setting, promote group work or individual assignments, the *MindTap* Business Cases offer a variety of activity types to complement and enhance how YOU teach.

Each and every item in the Learning Path is assignable and gradable. Thus, instructors have up-to-the-minute information on the class' general understanding of concepts as well as data on the performance of each individual student. Students also know where they stand—both individually and compared to the highest performers in the class. Thus, both faculty and students are less likely to face unpleasant surprises on exams.

The Beatty/Samuelson/Sánchez Abril Difference

Our goal in writing this book was to capture the passion and excitement, the sheer enjoyment, of the law. Business law is notoriously complex and, as authors, we are obsessed with accuracy. Yet this intriguing subject also abounds with human conflict and hard-earned wisdom, forces that we wanted to use to make this book sparkle. Look, for example, at Chapters 33–35 on corporations. A robust discussion of corporate governance is enlivened by court cases featuring intense personal conflict.

Once we have the students' attention, our goal is to provide the information they will need as business people and as informed citizens. Of course, we present the *theory* of how laws work, but we also explain when *reality* is different. To take some examples, traditionally business law textbooks have simply taught students that shareholders elect the directors of public companies. Even Executive MBA students rarely understand the reality of corporate elections. But our book explains the complexity of corporate power. The practical contracts chapter focuses not on the theory of contract law but on the real-life issues involved in making an agreement: Do I need a lawyer? Should the contract be in writing? What happens if the contract has an unclear provision or an important typo? What does all that boilerplate mean anyway?

Nobel Laureate Paul Samuelson famously said, "Let those who will write the nation's laws, if I can write its textbooks." As authors, we never forget the privilege—and responsibility—of educating a generation of business law students. Our goal is to write a business law text like no other—a book that is authoritative, realistic, and yet a pleasure to read.

Strong Narrative. The law is full of great stories, and we use them. It is easier to teach students when they come to class curious and excited. Every chapter begins with a story that is based in fact, to illustrate important issues. We also include stories in the body of the chapters. Look at Chapter 3 on dispute resolution. No tedious list of next steps in litigation, this chapter teaches the subject by tracking a double-indemnity lawsuit. An executive is dead. Did he drown accidentally, obligating the insurance company to pay? Or did the businessman commit suicide, voiding the policy? Students follow the action from the discovery of the body, through each step of the lawsuit, to the final appeal. One student commented, "Chapter 3 . . . is a page-turner! Love that it is posed as a story you can really follow and think about, even after finishing the chapter."

Context. Most of our students were not yet born when George W. Bush was elected president. They come to college with varying levels of preparation; many arrive from other countries. We have found that to teach business law most effectively we must provide its context. In the chapter on employment discrimination, we provide a historical perspective to help students understand how the laws developed. In the chapter on securities laws, we discuss the impact of the Depression on the major statutes. Only with this background do students grasp the importance and impact of our laws.

Student Reaction. Students have responded enthusiastically to our approach. One professor asked a student to compare our book with the one that the class was then using. This was the student's reaction: "I really enjoy reading the [Beatty] textbook, and I have decided that I will give you this memo ASAP, but I am keeping the book until Wednesday so that I may continue reading. Thanks! :-)"

This text has been used in courses for undergraduates, MBAs, and Executive MBAs, with students ranging in age from 18 to 65. This book works, as some unsolicited comments indicate:

From verified purchasers on Amazon:

- "If you have this textbook for your business law class, then you are in luck! This is one of the best and most helpful textbooks that I have ever had the pleasure of using. (I mostly just use my textbooks as a pillow.) I actually did enjoy reading this and learning the material. The author breaks down the concepts so they are easy to understand. Even if you hate law, if you put forth the effort to learn this, you should have no trouble at all learning and understanding the concepts."

- "I enjoyed this book so much that I will not be selling it back to the bookstore (or anyone) because I know that I will use the book for years."

From undergraduates:

- "This is the best textbook I have had in college, on any subject."
- "The textbook is awesome. A lot of the time I read more than what is assigned—I just don't want to stop."
- "I had no idea business law could be so interesting."
- A student who had used this book as an undergraduate in California 11 years ago recently emailed the authors to say that she sometimes re-read the book because it is the "BEST textbook I've ever read."

From MBA students:

- "Actually enjoyed reading the textbook, which is a rarity for me."
- "The law textbook was excellent through and through."

From a Fortune 500 vice president, enrolled in an Executive MBA program:

- "I really liked the chapters. They were crisp, organized, and current. The information was easy to understand and enjoyable."

From business law professors:

- "The clarity of presentation is superlative. I have never seen the complexity of contract law made this readable."
- "Until I read your book I never really understood UCC 2-207."
- "With your book, we have great class discussions."

From a state supreme court justice:

- "This book is a valuable blend of rich scholarship and easy readability. Students and professors should rejoice with this publication."

Current. This 9th edition contains more than 25 new cases. Most were reported within the last two or three years, and many within the last 12 months. The law evolves continually, and our willingness to toss out old cases and add important new ones ensures that this book—and its readers—remain on the frontier of legal developments.

Authoritative. We insist, as you do, on a law book that is indisputably accurate. To highlight the most important rules, we use bold print, and then follow with vivid examples written in clear, forceful English. We cheerfully venture into contentious areas, relying on very recent decisions. Can a Delaware court order the sale of a successful business? Is discrimination based on attractiveness or sexual orientation legal? Is the list of names in a LinkedIn group a trade secret? What are the limits to free speech on social media? Is revenge porn protected by the First Amendment? Has the National Football League violated antitrust laws? Where there is doubt about the current (or future) status of a doctrine, we say so. In areas of particularly heated debate, we footnote our work. We want you to have absolute trust in this book.

Humor. Throughout the text we use humor—judiciously—to lighten and enlighten. We revere the law for its ancient traditions, its dazzling intricacy, and its relentless, though imperfect, attempt to give order and decency to our world. But because we are confident of our respect for the law, we are not afraid to employ some levity, for the simple reason that humor helps retention. Research shows that the funnier or more original the example, the

longer students will remember it. They are more likely to recall an intellectual property rule involving the copyrightability of yoga than a plain-vanilla example about a common widget.

Features

Each feature in this book is designed to meet an essential pedagogical goal. Here are some of those goals and the matching feature.

Exam Strategy

GOAL: To help students learn more effectively and to prepare for exams. In developing this feature, we asked ourselves: What do students want? The short answer is—a good grade in the course. How many times a semester does a student ask you, "What can I do to study for the exam?" We are happy to help them study and earn a good grade because that means that they will also be learning.

About six times per chapter, we stop the action and give students a two-minute quiz. In the body of the text, again in the end-of-chapter review, and also in the Instructor's Manual, we present a typical exam question. Here lies the innovation: We guide the student in analyzing the issue. We teach the reader—over and over—how to approach a question: to start with the overarching principle, examine the fine point raised in the question, apply the analysis that courts use, and deduce the right answer. This skill is second nature to lawyers and teachers, but not to students. Without practice, too many students panic, jumping at a convenient answer and leaving aside the tools they have spent the course acquiring. Let's change that. Students love the Exam Strategy feature.

You Be the Judge Cases

GOAL: Get them thinking independently. When reading case opinions, students tend to accept the court's "answer." But we strive to challenge them beyond that. We want students to think through problems and reach their own answers guided by sound logic and legal knowledge. The You Be the Judge features are cases that provide the facts of the case and conflicting appellate arguments. But the court's decision appears only in the Instructor's Manual. Because students do not know the result, class discussions are more complex and lively.

Ethics

GOAL: Make ethics real. We include the latest research on ethical decision making, such as ethics traps (why people make decisions they know to be wrong). We have also introduced the Giving Voice to Values curriculum, which focuses on the effective implementation of an ethics decision.

End-of-Chapter Exam Review and Questions

GOAL: Encourage students to practice! At the end of the chapters, we provide a list of review points and several additional Exam Strategy exercises. We also challenge the students with 15 or more problems—Multiple-Choice Questions, Case Questions, and Discussion Questions. The questions include the following:

- *You Be the Judge Writing Problem*. Students are given appellate arguments on both sides of the question and then must prepare a written opinion.
- *Ethics*. This question highlights the ethics issues of a dispute and calls upon the student to formulate a specific, reasoned response.
- *CPA Questions*. For topics covered by the CPA exam, administered by the American Institute of Certified Public Accountants, the Exam Review includes questions from previous CPA exams.

Answers to the odd-numbered Multiple-Choice Questions and Case Questions are available in Appendix C of the book.

Cases

GOAL: Let the judges speak. Each case begins with a summary of the facts and a statement of the issue. Next comes a tightly edited version of the decision, in the court's own language, so that students "hear" the law developing in the voices of our judges. In the principal cases in each chapter, we provide the state or federal citation, unless it is not available, in which case we use the LEXIS and Westlaw citations. We also give students a brief description of the court.

TEACHING MATERIALS

For more information about any of these ancillaries, contact your Cengage Consultant, or visit the Beatty/Samuelson/Sánchez Abril Business Law website at **www.cengagebrain.com**.

MindTap. *MindTap* is a fully online, highly personalized learning experience combining readings, multimedia, activities, and assessments into a singular Learning Path. Instructors can personalize the Learning Path by customizing Cengage resources and adding their own content via apps that integrate into the *MindTap* framework seamlessly with Learning Management Systems. To view a demo video and learn more about *MindTap*, please visit **www.cengage.com/mindtap**.

MindTap Table of Contents

Why Does [Topic] Matter to Me? Immediately engage students with new activities that connect the upcoming chapter to an authentic, real-world scenario designed to pique engagement and emphasize relevance. Use these activities to ensure students read material before class and to trigger lively in-class discussion.

Chapter-Level Ebook. Immediately engage students with a dynamic eBook that brings the value, concepts, and applications of the printed text to life. Students open an active learning experience as each chapter provides opportunities to interact with content using the approach that's best for the individual learner.

Learn It Activities. Easily add multimedia instruction to your course to supplement textbook learning. Mind Tap's Learn It activities offer small sections of instruction in the form of narrative, images, and/or Quick Lesson Videos that highlight the most important concepts in each chapter. Learn It activities reinforce the text's instruction and even approach concepts in a different way to promote student choice and autonomy with personalizing learning. You can assign Learn It activities to ensure that students have read and understand key concepts before class.

Check Your Understanding—Chapter Quizzes. Use MindTap's Check Your Understanding quizzes to assess student performance and immediately identify class-wide learning needs.

Apply It Activities. Assign any of MindTap's carefully designed, practically focused application activities to ensure your students know how to make business decisions through the lens of the law.

- Case Problem Analyses offer a multi-step activity that asks students to identify the facts in a scenario through a series of questions that promote a critical thinking process so that students can arrive at the decision of the court. In the second part, the facts are changed, and students apply the same critical thinking process on their own.
- Brief Hypotheticals help students spot the issue and apply the law in the context of a short, fictional scenario.

Additional Resources (found at the part level).

- Business Cases develop students' skills to apply critical-thinking and legal reasoning through relevant real-world business scenarios.
- Quick Lesson Videos highlight the most important concepts in each chapter.
- PowerPoint Slides edited for student use offer visual outlines of each chapter.

Cengage Testing Powered by Cognero. Cognero is a flexible online system that allows you to author, edit, and manage test bank content from multiple Cengage solutions; create multiple test versions in an instant; and deliver tests from your LMS, your classroom, or wherever you want.

Instructor Companion Website. The Instructor's Companion Website is an all-in-one resource for class preparation, presentation, and testing. Accessible through www.cengage.com/login with your faculty account, you will find available for download:

- Instructor's Manual. Includes activities and assessments for each chapter and their correlation to specific learning objectives, an outline, key terms with definitions, a chapter summary, and several ideas for engaging students with discussion questions, ice breakers, case studies, and social learning activities that may be conducted in an on-ground, hybrid, or online modality.
- Answers Manual. Provides answers to all questions presented in the text, including the Focus Questions, the questions in each case and feature, the Issue Spotters, the Business Scenarios and Case Problems, Critical Thinking and Writing Assignments, and the unit-ending Task-Based Simulation features.
- Test Bank. A comprehensive test bank, offered in Blackboard, Moodle, Desire2Learn, and Canvas formats, contains learning objective–specific true–false, multiple-choice, and essay questions for each chapter. Import the test bank into your LMS to edit and manage questions and to create tests.
- PowerPoint Slides. Presentations are closely tied to the Instructor Manual, providing ample opportunities for generating classroom discussion and interaction. They offer ready-to-use, visual outlines of each chapter, which may be easily customized for your lectures.
- Guide to Teaching Online. Presents technological and pedagogical considerations and suggestions for teaching the Business Law course when you can't be in the same room with your students.
- Educator's Guide. Walks you through what the unique activities are in MindTap, where you'll find them, and how they're built for easier curriculum integration.
- Transition Guide. Highlights all of the changes in the text and in the digital offerings from the previous edition to this edition.

Interaction with the Authors. This is our standard: Every professor who adopts this book must have a superior experience. We are available to help in any way we can. Adopters of this text often call or email us to ask questions, offer suggestions, share pedagogical concerns, or inquire about ancillaries. One of the pleasures of writing this book has been this link to so many colleagues around the country. We value those connections, are eager to respond, and would be happy to hear from you.

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Susan S. Samuelson is a Professor of Business Law Emerita at the Boston University Questrom School of Business. After earning her A.B. at Harvard University and her J.D. at Harvard Law School, Professor Samuelson practiced with the firm of Choate, Hall and Stewart. She has written many articles on legal issues for scholarly and popular journals, including the *American Business Law Journal*, *Ohio State Law Journal*, *Boston University Law Review*, *Harvard Journal on Legislation*, *National Law Journal*, *Sloan Management Review*, *Inc. Magazine*, and *Boston Magazine*. At Boston University she won the Broderick Prize for excellence in teaching.

Patricia Sánchez Abril is a Professor of Business Law at the University of Miami Herbert Business School. After graduating from Duke University and Harvard Law School, she practiced international corporate law and served in a business and legal affairs capacity at a major entertainment company. Professor Abril's research has appeared in the *American Business Law Journal*, *Harvard Journal of Law & Technology*, *Florida Law Review*, *Houston Law Review*, *Wake Forest Law Review*, and *Columbia Business Law Journal*, among other journals. Professor Abril has won multiple awards for teaching business law, including the 2018 University of Miami Faculty Senate Outstanding Teaching Award.

To w.f.s., "*the fountain from the which my current runs*"
s.s.s.

To a.f.a., *with gratitude and love*
p.s.a.

The Legal Environment

UNIT

1

CHAPTER 1

INTRODUCTION TO LAW

The Pagans were a motorcycle gang with a reputation for violence. Two of its rougher members, Rhino and Backdraft, entered a tavern called the Pub Zone, shoving their way past the bouncer. The pair wore gang insignia, in violation of the bar's rules. For a while, all was quiet, as the two sipped drinks at the bar. Then they followed an innocent patron toward the men's room, and things happened fast.

"Wait a moment," you may be thinking. "Are we reading a chapter on business law or one about biker crimes in a roadside tavern?" Both.

Law is powerful, essential, and fascinating. We hope this book persuades you of all three ideas. Law can also be surprising. Later in the chapter, we return to the Pub Zone (with armed guards) and follow Rhino and Backdraft to the back of the pub. Yes, the pair engaged in street crime, which is hardly a focus of this text. However, their criminal acts will enable us to explore one of the law's basic principles—negligence. Should a pub owner pay money damages to the victim of gang violence? The owner herself did nothing aggressive. Should she have prevented the harm? Does her failure to stop the assault make her liable?

Should a pub owner pay money damages to the victim of gang violence?

We place great demands on our courts, asking them to make our large, complex, and sometimes violent society into a safer, fairer, more orderly place. The *Pub Zone* case is a good example of how judges reason their way through the convoluted issues involved. What began as a gang incident ends up as a matter of commercial liability. We traipse after Rhino and Backdraft because they have a lesson to teach anyone who enters the world of business.

1-1 EXPLORING THE LAW

1-1a The Role of Law in Society

The strong reach of the law touches nearly everything we do, especially at work. Consider a mid-level manager at Sublime Corp., which manufactures and distributes video games.

During the course of a day's work, she might negotiate a deal with a game developer (contract law). Before signing any deals, she might research whether similar games already exist, which might diminish her ability to market the proposed new game (intellectual property law). One of her subordinates might complain about being harassed by a coworker (employment law). Another worker may complain about being required to work long hours (administrative law). And she may consider investing her own money in her company's stock, but she may wonder whether she will get into trouble if she invests based on inside information (securities law).

It is not only as a corporate manager that you will confront the law. As a voter, investor, juror, entrepreneur, and community member, you will influence and be affected by the law. Whenever you take a stance about a legal issue, whether in the corporate office, in the voting booth, or as part of local community groups, you help to create the fabric of our nation. Your views are vital. This book offers you knowledge and ideas from which to form and continually reassess your legal opinions and values.

Law is also essential. *Every* society of which we have any historical record has had some system of laws. For example, consider the Visigoths, a nomadic European people who overran much of present-day France and Spain during the fifth and sixth centuries A.D. Their code admirably required judges to be "quick of perception, clear in judgment, and lenient in the infliction of penalties." It detailed dozens of crimes.

Our legal system is largely based on the English model, but many societies contributed ideas. The Iroquois Native Americans, for example, played a role in the creation of our own government. Five major nations made up the Iroquois group: the Mohawk, Cayuga, Oneida, Onondaga, and Seneca. Each nation governed its own domestic issues. But each nation also elected "sachems" to a League of the Iroquois. The league had authority over any matters that were common to all, such as relations with outsiders. Thus, by the fifteenth century, the Iroquois had solved the problem of *federalism*: how to have two levels of government, each with specified powers. Their system impressed Benjamin Franklin and others and influenced the drafting of our Constitution, with its powers divided between state and federal governments.[1]

In 1835, the young French aristocrat Alexis de Tocqueville traveled through the United States, observing the newly democratic people and the qualities that made them unique. One of the things that struck de Tocqueville most forcefully was the American tendency to file suit: "Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question."[2] De Tocqueville got it right: For better or worse, we do expect courts to resolve many problems.

Not only do Americans litigate—they watch each other do it. Every television season offers at least one new courtroom drama to a national audience breathless for more cross-examination. Almost all of the states permit live television coverage of real trials. The most

[1] Jack Weatherford, *Indian Givers* (New York: Fawcett Columbine, 1988), pp. 133–150.

[2] Alexis de Tocqueville, *Democracy in America* (1835), Vol. 1, Ch. 16.

heavily viewed event in the history of television was the O. J. Simpson murder trial, in which a famous football star was accused of killing his wife and her friend. In most nations, coverage of judicial proceedings is not allowed.[3]

The law is a big part of our lives, and it is wise to know something about it. Within a few weeks, you will probably find yourself following legal events in the news with keener interest and deeper understanding. In this chapter, we develop the background for our study. We look at where law comes from: its history and its present-day institutions. In the section on jurisprudence, we examine different theories about what "law" really means. And finally we see how courts—and students—analyze a case.

1-1b Origins of Our Law

It would be nice if we could look up "the law" in one book, memorize it, and then apply it. But the law is not that simple, and *cannot* be that simple, because it reflects the complexity of contemporary life. In truth, there is no such thing as "the law." Principles and rules of law actually come from *many different* sources. This is so, in part, because we inherited a complex structure of laws from England.

Additionally, ours is a nation born in revolution, and created, in large part, to protect the rights of its people from the government. The Founding Fathers created a national government but insisted that the individual states maintain control in many areas. As a result, each state has its own government with exclusive power over many important areas of our lives. To top it off, the Founders guaranteed many rights to the people alone, ordering national *and* state governments to keep clear. This has worked, but it has caused a multi-layered system, with 50 state governments and one federal government all creating and enforcing law.

English Roots

England in the tenth century was a rustic agricultural community with a tiny population and very little law or order. Vikings invaded repeatedly, terrorizing the Anglo-Saxon peoples. Criminals were hard to catch in the heavily forested, sparsely settled nation. The king used a primitive legal system to maintain a tenuous control over his people.

England was divided into shires, and daily administration was carried out by a "shire reeve," later called a sheriff. The shire reeve collected taxes and did what he could to keep peace, apprehending criminals and acting as mediator between feuding families. Two or three times a year, a shire court met; lower courts met more frequently. Today, this method of resolving disputes lives on as mediation, which we discuss in Chapter 3.

Because there were so few officers to keep the peace, Anglo-Saxon society created an interesting method of ensuring public order. Every freeman belonged to a group of ten freemen known as a "tithing," headed by a "tithingman." If anyone injured a person outside his tithing or interfered with the king's property, all ten men of the tithing could be forced to pay. Today, we still use this idea of collective responsibility in business partnerships. All partners are personally responsible for the debts of the partnership. They could potentially lose their homes and all assets because of the irresponsible conduct of one partner. That liability has helped create new forms of business organization, including limited liability companies.

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[3]Regardless of whether we allow cameras, it is an undeniable benefit of the electronic age that we can obtain information quickly. From time to time, we mention websites of interest. Some of these are for nonprofit groups, while others are commercial sites. We do not endorse or advocate on behalf of any group or company; we simply wish to alert you to what is available.

When cases did come before an Anglo-Saxon court, the parties would often be represented by a clergyman, by a nobleman, or by themselves. There were few professional lawyers. Each party produced "oath helpers," usually 12 men, who would swear that one version of events was correct. The Anglo-Saxon oath helpers were forerunners of our modern jury of 12 persons.

In 1066, the Normans conquered England. William the Conqueror made a claim never before made in England: that he owned all of the land. The king then granted sections of his lands to his favorite noblemen, as his tenants in chief, creating the system of feudalism. These tenants in chief then granted parts of their land to *tenants in demesne*, who actually occupied a particular estate. Each tenant in demesne owed fidelity to his lord (hence, "landlord"). So what? Just this: Land became the most valuable commodity in all of England, and our law still reflects that. One thousand years later, American law still regards land as special. The Statute of Frauds, which we study in the section on contracts, demands that contracts for the sale or lease of property be in writing. And landlord–tenant law, vital to students and many others, still reflects its ancient roots. Some of a landlord's rights are based on the 1,000-year-old tradition that land is uniquely valuable.

In 1250, Henry de Bracton (d. 1268) wrote a legal treatise that still influences us. *De Legibus et Consuetudinibus Angliae* (*On the Laws and Customs of England*), written in Latin, summarized many of the legal rulings in cases since the Norman Conquest. De Bracton was teaching judges to rule based on previous cases. He was helping to establish the idea of **precedent**. **The doctrine of precedent, which developed gradually over centuries, requires that judges decide current cases based on previous rulings.** This vital principle is the heart of American common law. Precedent ensures predictability. Suppose a 17-year-old student promises to lease an apartment from a landlord, but then changes her mind. The landlord sues to enforce the lease. The student claims that she cannot be held to the agreement because she is a minor. The judge will look for precedent, that is, older cases dealing with the same issue, and he will find many holding that a contract generally may not be enforced against a minor. That precedent is binding on this case, and the student wins. **The accumulation of precedent, based on case after case, makes up the common law.**

Precedent
The tendency to decide current cases based on previous rulings

Common law
Judge-made law

Today's society is dramatically different from that of medieval English society. But interestingly, legal disputes from hundreds of years ago are often quite recognizable today. Some things have changed but others never do.

Here is an actual case from more than six centuries ago, in the court's own language. The plaintiff claims that he asked the defendant to heal his eye with "herbs and other medicines." He says the defendant did it so badly that he blinded the plaintiff in that eye.

This case from 1329 is an ancient medical malpractice action. Attorney Launde does not deny that his client blinded the plaintiff. He claims that the plaintiff has brought the wrong kind of lawsuit. Launde argues that the plaintiff should have brought a case of "covenant"; that is, a lawsuit about a contract.

Judge Denum decides the case on a different principle. He gives judgment to the defendant because the plaintiff voluntarily sought medical care. He implies that the defendant would lose only if he had attacked the plaintiff. As we will see when we study negligence law, this case might have a different outcome today. Note also the informality of the judge's ruling. He rather casually mentions that he came across a related case once before and that he would stand by that outcome. The idea of precedent is just beginning to take hold.

North Wind Picture Archives/Alamy Stock Photo

Medieval tenants in demesne harrowing, plowing, and seeding a field.

The Oculist's Case (1329)

LI MS. Hale 137 (1), fo. 150, Nottingham[4]

Attorney Launde [for defendant]: Sir, you plainly see how [the plaintiff claims] that he had submitted himself to [the defendant's] medicines and his care; and after that he can assign no trespass in his person, inasmuch as he submitted himself to his care: But this action, if he has any, sounds naturally in breach of covenant. We demand [that the case be dismissed].

Excerpts from Judge Denum's Decision: I saw a Newcastle man arraigned before my fellow justice and me for the death of a man. I asked the reason for the indictment, and it was said that he had slain a man under his care, who died within four days afterwards. And because I saw that he was a [doctor] and that he had not done the thing feloniously but [accidentally] I ordered him to be discharged. And suppose a blacksmith, who is a man of skill, injures your horse with a nail, whereby you lose your horse: You shall never have recovery against him. No more shall you here.

Afterwards the plaintiff did not wish to pursue his case any more.

Law in the United States

The colonists brought with them a basic knowledge of English law, some of which they were content to adopt as their own. Other parts, such as religious restrictions, were abhorrent to them. Many had made the dangerous trip to America precisely to escape persecution, and they were not interested in recreating their difficulties in a new land. Finally, some laws were simply irrelevant or unworkable in a world that was socially and geographically so different. American law ever since has been a blend of the ancient principles of English common law and a zeal and determination for change.

During the nineteenth century, the United States changed from a weak, rural nation into one of vast size and potential power. Cities grew, factories appeared, and sweeping movements of social migration changed the population. Changing conditions raised new legal questions. Did workers have a right to form industrial unions? To what extent should a manufacturer be liable if its product injured someone? Could a state government invalidate an employment contract that required 16-hour workdays? Should one company be permitted to dominate an entire industry?

In the twentieth century, the rate of social and technological change increased, creating new legal puzzles. Were some products, such as automobiles, so inherently dangerous that the seller should be responsible for injuries even if no mistakes were made in manufacturing? Who should clean up toxic waste if the company that had caused the pollution no longer existed? If a consumer signed a contract with a billion-dollar corporation, should the agreement be enforced even if the consumer never understood it? New and startling questions arise with great regularity. Before we can begin to examine the answers, we need to understand the sources of contemporary law.

1-2 SOURCES OF CONTEMPORARY LAW

Throughout the text, we examine countless legal ideas. But binding rules come from many different places. This section describes the significant categories of laws in the United States.

[4]J. Baker and S. Milsom, *Sources of English Legal History* (London: Butterworth & Co., 1986).

1-2a United States Constitution

America's greatest legal achievement was the writing of the United States Constitution in 1787. It is the supreme law of the land.[5] Any law that conflicts with it is void. This federal Constitution does three basic things. First, it establishes the national government of the United States, with its three branches. Second, it creates a system of checks and balances among the branches. And third, the Constitution guarantees many basic rights to the American people.

Branches of Government

The Founding Fathers sought a division of government power. They did not want all power centralized in a king or in anyone else. And so, the Constitution divides legal authority into three pieces: legislative, executive, and judicial power.

Legislative power gives the ability to create new laws. In Article I, the Constitution gives this power to the Congress, which is comprised of two chambers—a Senate and a House of Representatives. Voters in all 50 states elect representatives who go to Washington, D.C., to serve in the Congress and debate new legal ideas.

The House of Representatives has 435 voting members. A state's voting power is based on its population. States with large populations (Texas, California, Florida) send dozens of representatives to the House, while sparsely populated states (Wyoming, North Dakota, Delaware) send only one. The Senate has 100 voting members—two from each state.

Executive power is the authority to enforce laws. Article II of the Constitution establishes the president as commander in chief of the armed forces and the head of the executive branch of the federal government.

Judicial power gives the right to interpret laws and determine their validity. Article III places the Supreme Court at the head of the judicial branch of the federal government. Interpretive power is often underrated, but it is often every bit as important as the ability to create laws in the first place. For instance, in *Roe v. Wade*, the Supreme Court ruled that privacy provisions of the Constitution protect a woman's right to abortion, although neither the word *privacy* nor *abortion* appears in the text of the Constitution.[6]

At times, courts void laws altogether. For example, in 2016, the Supreme Court struck down a Texas law regulating abortion clinics and the doctors who worked in them. The Court found that those rules created an undue burden for Texas women by causing many clinics to close and making abortions unreasonably difficult to obtain.[7]

Checks and Balances

The authors of the Constitution were not content merely to divide government power three ways. They also wanted to give each part of the government some power over the other two branches. Many people complain about "gridlock" in Washington, but the government is slow and sluggish by design. The Founding Fathers wanted to create a system that, without broad agreement, would tend toward inaction.

The president can veto Congressional legislation. Congress can impeach the president. The Supreme Court can void laws passed by Congress. The president appoints judges to the federal courts, including the Supreme Court, but these nominees do not serve unless approved by the Senate. Congress (with help from the 50 states) can override the

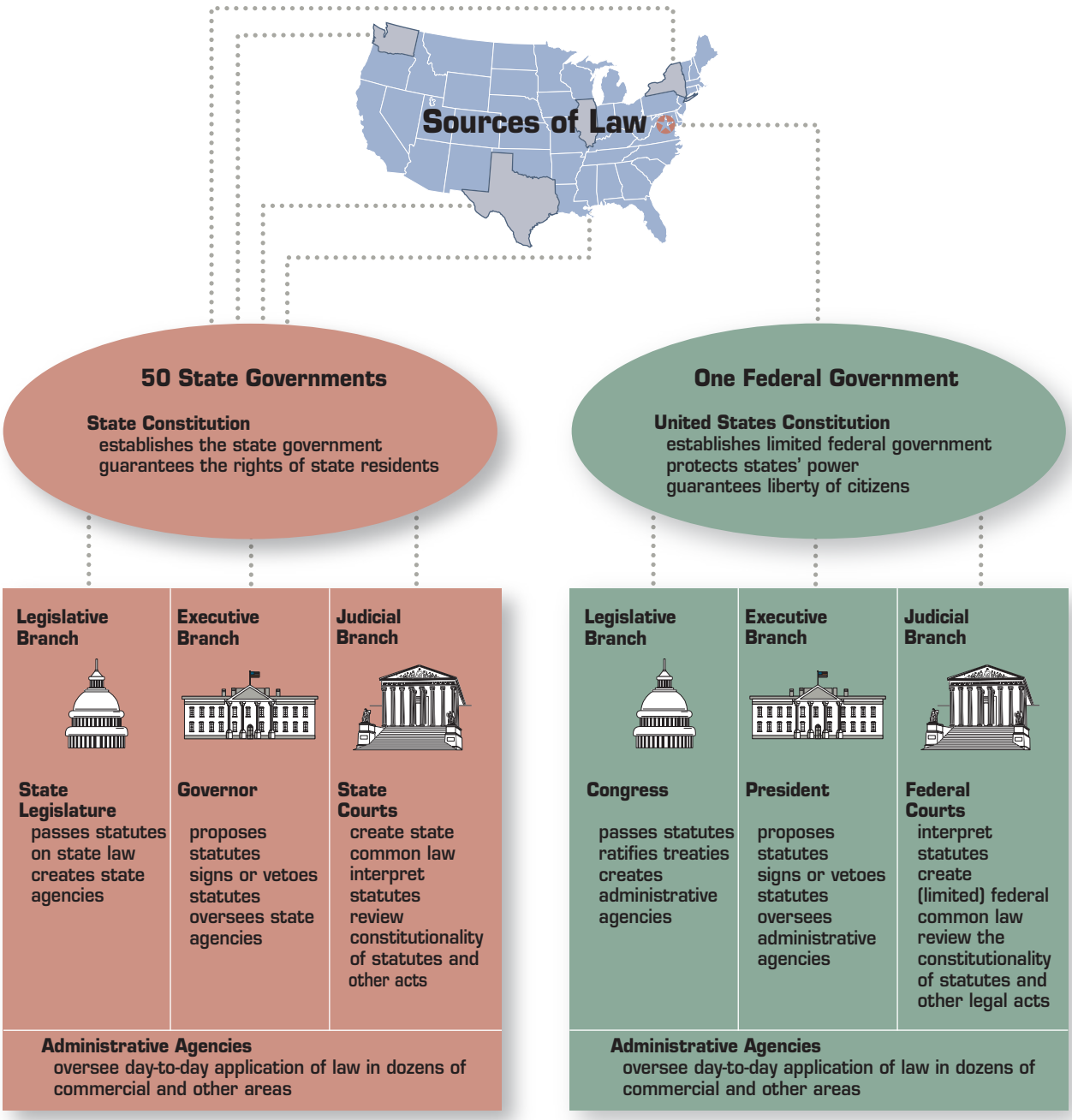
[5]The Constitution took effect in 1788, when 9 of 13 colonies ratified it. Two more colonies ratified it that year, and the last of the 13 did so in 1789, after the government was already in operation. The complete text of the Constitution appears in Appendix A.

[6]Roe v. Wade, 410 U.S. 113 (1973).

[7]Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292 (2016).

Supreme Court by amending the Constitution. The president and the Congress influence the Supreme Court by controlling who is placed on the court in the first place.

Many of these checks and balances are examined in more detail later in this book, starting in Chapter 4.



Federal Form of Government. Principles and rules of law come from many sources. The government in Washington creates and enforces law throughout the nation. But 50 state governments exercise great power in local affairs. And citizens enjoy constitutional protection from both state and federal governments. The Founding Fathers wanted this balance of power and rights, but the overlapping authority creates legal complexity.

Fundamental Rights

The Constitution also grants many of our most basic liberties. For the most part, those liberties are found in the amendments to the Constitution. The First Amendment guarantees the rights of free speech, free press, and the free exercise of religion. The Fourth, Fifth, and Sixth Amendments protect the rights of any person accused of a crime. Other amendments ensure that the government treats all people equally and that it pays for any property it takes from a citizen.

By creating a limited government of three branches, and guaranteeing basic liberties to all citizens, the Constitution became one of the most important documents ever written.

1-2b Statutes

The second important source of law is statutory law. The Constitution gave to the U.S. Congress the power to pass laws on various subjects. These laws are called **statutes**, and they can cover absolutely any topic, so long as they do not violate the Constitution.

Statute
A law created by a legislature

Almost all statutes are created by the same method. An idea for a new law—on taxes, health care, texting while driving, or any other topic, big or small—is first proposed in the Congress. This idea is called a *bill*. The House and Senate then independently vote on the bill. To pass Congress, the bill must win a simple majority vote in each of these chambers.

If Congress passes a bill, it goes to the White House for the president's approval. If the president signs it, a new statute is created. It is no longer a mere idea; it is the law of the land. If the president refuses to approve, or *vetoes*, a bill, it does not become a statute unless Congress overrides the veto. To do that, both the House and the Senate must approve the bill by a two-thirds majority. If this happens, it becomes a statute without the president's signature.

1-2c Common Law

Binding legal ideas often come from the courts. Judges generally follow *precedent*. When courts decide a case, they tend to apply the legal rules that other courts have used in similar cases.

The principle that precedent is binding on later cases is called *stare decisis*, which means "let the decision stand." *Stare decisis* makes the law predictable and this, in turn, enables businesses and private citizens to plan intelligently.

It is important to note that precedent is binding only on *lower* courts. For example, if the Supreme Court decided a case in one way in 1965, it is under no obligation to follow precedent if the same issue arises in 2020.

Sometimes, this is quite beneficial. In 1896, the Supreme Court decided (unbelievably) that segregation—separating people by race in schools, hotels, public transportation, and other public services—was legal under certain conditions.[8] In 1954, on the exact same issue, the court changed its mind.[9]

In other circumstances, it is more difficult to see the value in breaking with an established rule.

1-2d Court Orders

Judges have the authority to issue court orders that place binding obligations on specific people or businesses. A court can both compel a party to and prohibit it from doing something. An injunction is an example of a court order. Injunctions can require people to do things, like

[8]Plessy v. Ferguson, 163 U.S. 537 (1896).

[9]Brown v. Board of Education of Topeka, 347 U.S. 483 (1954).

perform on a contract or remove a nuisance. A judge might also issue an injunction to stop a salesperson from using his former company's client list or prevent a counterfeiter from selling fake goods. Courts have the authority to imprison or fine those who violate their orders.

1-2e Administrative Law

In a society as large and diverse as ours, the executive and legislative branches of government cannot oversee all aspects of commerce. Congress passes statutes about air safety, but U.S. senators do not stand around air traffic towers, serving coffee to keep everyone awake. The executive branch establishes rules concerning how foreign nationals enter the United States, but presidents are reluctant to sit on the dock of the bay, watching the ships come in. Administrative agencies do this day-to-day work.

U.S. senators do not stand around air traffic towers, serving coffee to keep everyone awake.

Most government agencies are created by Congress. Familiar examples are the Environmental Protection Agency (EPA), the Securities and Exchange Commission (SEC), and the Internal Revenue Service (IRS), whose feelings are hurt if it does not hear from you every April 15. Agencies have the power to create laws called *regulations*.

1-2f Treaties

A treaty is an agreement between two or more sovereign countries. Treaties range in topics from human rights and peace, to commerce and intellectual property. The Constitution authorizes the president to make treaties, but these pacts must also be approved by the U.S. Senate by a two-thirds vote. Once ratified, treaties are binding and have the force of federal law. In 1994, the Senate ratified the North American Free Trade Agreement (NAFTA), which aimed to reduce trade barriers between the United States, Mexico, and Canada. NAFTA was controversial then and remains so today—but it is the law of the land.

1-3 CLASSIFICATIONS

We have seen where law originated. Now we need to classify the various types of laws. First, we distinguish between criminal and civil law. Then, we take a look at the intersection between law and morality.

1-3a Criminal and Civil Law

Criminal law
Law that prohibits certain behavior for the benefit of society

It is a crime to embezzle money from a bank, to steal a car, and to sell cocaine. **Criminal law concerns behavior so threatening that society outlaws it altogether.** Most criminal laws are statutes, passed by Congress or a state legislature. The government itself prosecutes the wrongdoer, regardless of what the bank president or car owner wants. A district attorney, paid by the government, brings the case to court. The victim is not in charge of the case, although she may appear as a witness. The government will seek to punish the defendant with a prison sentence, a fine, or both. If there is a fine, the money goes to the state, not to the injured party.

Civil law
Law that regulates the rights and duties between parties

Civil law is different, and most of this book is about civil law. **The civil law regulates the rights and duties between parties.** Tracy agrees in writing to lease you a 30,000-square-foot store in her shopping mall. She now has a *legal duty* to make the space available. But then another tenant offers her more money, and she refuses to let you move in. Tracy has violated her duty, but she has not committed a crime. The government will not prosecute the case. It is up to you to file a civil lawsuit. Your case will be based on the common law of contract. You

will also seek equitable relief, namely, an injunction ordering Tracy not to lease to anyone else. You should win the suit, and you will get your injunction and some monetary damages. But Tracy will not go to jail.

Some conduct involves both civil and criminal law. Suppose Tracy is so upset over losing the court case that she becomes drunk and causes a serious car accident. She has committed the crime of driving while intoxicated, and the state will prosecute. Tracy may be fined or imprisoned. She has also committed negligence, and the injured party will file a lawsuit against her, seeking money. We see civil and criminal law joined together again in the *Pub Zone* case, later in the chapter.

1-3b Law and Morality

Law is different from morality, yet the two are obviously linked. There are many instances when the law duplicates what all of us would regard as a moral position. It is negligent to text while driving, and few would dispute the moral value of seeking to limit harm to others. And the same holds with contract law: If the owner of land agrees in writing to sell property to a buyer at a stated price, both the buyer and the seller must go through with the deal, and the legal outcome matches our moral expectations.

On the other hand, we have had laws that we now clearly regard as immoral. At the turn of the century, a factory owner could typically fire a worker for any reason at all—including, for example, his religious or political views. It is immoral to fire a worker because she is Jewish—and today the law prohibits it.

Finally, there are legal issues where the morality is less clear. You are walking down a country lane and notice a three-year-old child playing with matches near a barn filled with hay. Are you obligated to intervene? No, says the law, though many think that is preposterous. (See Chapter 4, on common law, for more about this topic.) A company buys property and then discovers, buried under the ground, toxic waste that will cost $300,000 to clean up. The original owner has gone bankrupt. Should the new owner be forced to pay for the cleanup? If the new owner fails to pay for the job, who will? (See Chapter 40, on environmental law, for more discussion on this issue.)

Chapter 2 further examines the bond between law and morality, but our ethics discussion does not end there. Throughout the text, you will find ethics questions and features, like the one that follows, that ask you to grapple with the moral dimensions of legal questions.

Guillermo LEGARIA/AFP/Getty Images

Would you break the law to help an employee?

Ethics

The season between Valentine's Day and Mother's Day is big business for the Colombian flower industry. The country supplies 75 percent of all cut flowers sold in the United States during these months.

Leo owns a flower production facility near Bogotá, Colombia, where he employs hundreds of workers. He pays his workers less than $1 per hour, a rate consistent with Colombian minimum-wage laws. Colombian law does not allow employees to work more

than 56 hours per week, with various daily breaks. Employers must give minimum-wage employees one rest day per week or face penalties.

Leo's employees anxiously await the high season's production increase and the chance for overtime pay, which is 25 percent over the base rate. Many count on this extra money for survival. Iris is one of Leo's most loyal and efficient employees. This year, Iris has a serious problem: Her daughter needs a complicated surgery that will cost more than $300, which is more than Iris's monthly salary. If she does not pay for the surgery in advance, the girl will likely die. To raise this large amount of money, Iris asks that Leo allow her to work 140 hours a week during high season—that is, 20-hour days, 7 days a week. She is willing to work through her breaks and give up her rest day, working through her exhaustion.

What are Leo's legal and moral obligations? What would you do?

1-4 JURISPRUDENCE

Jurisprudence
The philosophy of law

We have had a glimpse of legal history and a summary of the present-day sources of American law. But what *is* law? That question is the basis of a field known as **jurisprudence**. What is the real nature of law? Can there be such a thing as an "illegal" law?

1-4a Legal Positivism

Sovereign
The recognized political power, whom citizens obey

This philosophy can be simply stated: Law is what the sovereign says it is. The **sovereign** is the recognized political power whom citizens obey, so in the United States, both state and federal governments are sovereign. A legal positivist holds that whatever the sovereign declares to be the law *is* the law, whether it is right or wrong.

The primary criticism of legal positivism is that it seems to leave no room for questions of morality. A law permitting a factory owner to fire a worker because she is Catholic is surely different from a law prohibiting arson. Do citizens in a democracy have a duty to consider such differences? Consider the following example.

Most states allow citizens to pass laws directly at the ballot box, a process called *voter referendum*. California voters often do this, and during the 1990s, they passed one of the state's most controversial laws. Proposition 187 was designed to curb illegal immigration into the state by eliminating social spending for undocumented aliens. Citizens debated the measure fiercely but passed it by a large margin. One section of the new law forbade public schools from educating illegal immigrants. The law obligated a principal to inquire into the immigration status of all children enrolled in the school and to report undocumented students to immigration authorities. Several San Diego school principals rejected the new rules, stating that they would neither inquire into immigration status nor report undocumented aliens. Their statements produced a heated response. Some San Diego residents castigated the school officials as lawbreakers, claiming that:

- A school officer who knowingly disobeyed a law was setting a terrible example for students, who would assume they were free to do the same;
- The principals were advocating permanent residence and a free education for anyone able to evade our immigration laws; and
- The officials were scorning grassroots democracy by disregarding a law passed by popular referendum.

Others applauded the principals' position, asserting that:

- The referendum's rules would transform school officials from educators into border police, forcing them to cross-examine young children and their parents;
- The new law was foolish because it punished innocent children for violations committed by their parents; and
- Our nation has long respected civil disobedience based on humanitarian ideals, and these officials were providing moral leadership to the whole community.

Ultimately, no one had to decide whether to obey Proposition 187. A federal court ruled that only Congress had the power to regulate immigration and that California's attempt was unconstitutional and void. The debate over immigration reform—and ethics—did not end, however. It continues to be a thorny issue.

1-4b Natural Law

St. Thomas Aquinas (1225–74) answered the legal positivists even before they had spoken. In his *Summa Theologica*, he argued that an unjust law is no law at all and need not be obeyed. It is not enough that a sovereign makes a command. The law must have a moral basis.

Where do we find the moral basis that would justify a law? Aquinas says that "good is that which all things seek after." Therefore, the fundamental rule of all laws is that "good is to be done and promoted, and evil is to be avoided." This sounds appealing, but also vague. Exactly which laws promote good and which do not? Is it better to have a huge corporation dominate a market or many smaller companies competing? Did the huge company get that way by being better than its competitors? If Walmart moves into a rural area, establishes a mammoth store, and sells inexpensive products, is that "good"? Yes, if you are a consumer who cares only about prices. No, if you are the owner of a Main Street store driven into bankruptcy. Maybe, if you are a resident who values small-town life but wants lower prices.

1-4c Legal Realism

Legal realists take a very different tack. They claim it does not matter what is written as law. What counts is who enforces that law and by what process it is enforced. All of us are biased by issues such as income, education, family background, race, religion, and many other factors. These personal characteristics, they say, determine which contracts will be enforced and which ignored, why some criminals receive harsh sentences while others get off lightly, and so on.

Judge Jones hears a multimillion-dollar lawsuit involving an airplane crash. Was the airline negligent? The law is the same everywhere, but legal realists say that Jones's background will determine the outcome. If she spent 20 years representing insurance companies, she will tend to favor the airline. If her law practice consisted of helping the "little guy," she will favor the plaintiff.

Other legal realists argue, more aggressively, that those in power use the machinery of the law to perpetuate their control. The outcome of a given case will be determined by the needs of those with money and political clout. A court puts "window dressing" on a decision, they say, so that society thinks there are principles behind the law. A problem with legal realism, however, is its denial that any lawmaker can overcome personal bias. Yet clearly some do act unselfishly.

Summary of Jurisprudence

Legal positivism	Law is what the sovereign says.
Natural law	An unjust law is no law at all.
Legal realism	Who enforces the law counts more than what is in writing.

No one school of jurisprudence is likely to seem perfect. We urge you to keep the different theories in mind as you read cases in this book. Ask yourself which school of thought is the best fit for you.

1-5 WORKING WITH THE BOOK'S FEATURES

In this section, we introduce a few of the book's features and discuss how you can use them effectively. We start with *cases*.

1-5a Analyzing a Case

A law case is the decision a court has made in a civil lawsuit or criminal prosecution. Cases are the heart of the law and an important part of this book. Reading them effectively takes practice. This chapter's opening scenario is fictional, but the following real case involves a similar situation. Who can be held liable for the assault? Let's see.

Kuehn v. Pub Zone

364 N. J. Super. 301
Superior Court of New Jersey, 2003

Facts: Maria Kerkoulas owned the Pub Zone bar. She knew that several motorcycle gangs frequented the tavern. From her own experience tending bar and conversations with city police, she knew that some of the gangs, including the Pagans, were dangerous and prone to attack customers for no reason. Kerkoulas posted a sign prohibiting any motorcycle gangs from entering the bar while wearing "colors," that is, insignia of their gangs. She believed that gangs without their colors were less prone to violence, and experience proved her right.

Rhino, Backdraft, and several other Pagans, all wearing colors, pushed their way past the tavern's bouncer and approached the bar. Although Kerkoulas saw their colors, she allowed them to stay for one drink. They later moved toward the back of the pub, and Kerkoulas believed they were departing. In fact, they followed a customer named Karl Kuehn to the men's room, where, without any provocation, they savagely beat him. Kuehn was knocked unconscious and suffered brain hemorrhaging, disc herniation, and numerous fractures of facial bones. He was forced to undergo various surgeries, including eye reconstruction.

Although the government prosecuted Rhino and Backdraft for their vicious assault, our case does not concern that prosecution. Kuehn sued the Pub Zone, and that is the case we will read. The jury awarded him $300,000 in damages. However, the trial court judge overruled the jury's verdict. He granted a judgment for the Pub Zone, meaning that the tavern owed nothing. The judge ruled that the pub's owner could not have foreseen the attack on Kuehn and had no duty to protect him from an outlaw motorcycle gang. Kuehn appealed, and the appeals court's decision follows:

Issue: ***Did the Pub Zone have a duty to protect Kuehn from the Pagans' attack?***

Excerpts from Judge Payne's Decision: Whether a duty exists depends upon an evaluation of a number of factors including the nature of the underlying risk of harm, that is, its foreseeability and severity, the opportunity and ability to exercise care to prevent the harm, the comparative interests of and the relationships between or among the parties, and, ultimately, based on considerations of public policy and fairness, the societal interest in the proposed solution.

Since the possessor [of a business] is not an insurer of the visitor's safety, he is ordinarily under no duty to exercise any care until he knows or has reason to know that the acts of the third person are occurring, or are about to occur. He may, however, know or have reason to know, from past experience, that there is a likelihood of conduct on the part of third persons in general which is likely to endanger the safety of the visitor, even though he has no reason to expect it on the part of any particular individual.

We find the totality of the circumstances presented in this case give rise to a duty on the part of the Pub Zone to have taken reasonable precautions against the danger posed by the Pagans as a group. In this case, there was no reason to suspect any particular Pagan of violent conduct. However, the gang was collectively known to Kerkoulas to engage in random violence. Thus, Kerkoulas had knowledge as the result of past experience and from other sources that there was a likelihood of conduct on the part of third persons in general that was likely to endanger the safety of a patron at some unspecified future time. A duty to take precautions against the endangering conduct thus arose.

We do not regard our recognition of a duty in this case to give rise to either strict or absolute liability on the part of the Pub Zone. To fulfill its duty in this context, the Pub Zone was merely required to employ "reasonable" safety precautions. It already had in place a prohibition against bikers who were wearing their colors, and that prohibition, together with the practice of calling the police when a breach occurred, had been effective in greatly diminishing the occurrence of biker incidents on the premises. The evidence establishes that the prohibition was not enforced on the night at issue, that three Pagans were permitted entry while wearing their colors, and the police were not called. Once entry was achieved, the Pub Zone remained under a duty to exercise reasonable precautions against an attack.

The jury's verdict must therefore be reinstated.

Analysis

Let's take it from the top. The case is called *Kuehn v. Pub Zone*. Karl Kuehn is the **plaintiff**, the person who is suing. The Pub Zone is being sued and is called the **defendant**. In this example, the plaintiff's name happens to appear first, but that is not always true. When a defendant loses a trial and files an appeal, *some* courts reverse the names of the parties. *Del Lago Partners v. Smith*, a case discussed later in this chapter, is an example of this reversal. In that case, the injured plaintiff Smith won at the lower court and the defendant Del Lago appealed. Read the case closely to understand who is suing whom.

Plaintiff
The party who is suing

Defendant
The party being sued

The next line gives the legal citation, which indicates where to find the case in a law library. We explain in the footnote how to locate a book if you plan to do research.[10]

The *Facts* section provides a background to the lawsuit, written by the authors of this text. The court's own explanation of the facts is often many pages long and may involve

[10]If you want to do legal research, you need to know where to find particular legal decisions. A citation is the case's "address," which guides you to the official book in which it is published. Look, for example, at *Kuehn v. Pub Zone*, which has this citation: 364 N. J. Super. 301, Superior Court of New Jersey, 2003. The string of numbers identifies the volume and page of the official court reporter for the state of New Jersey (N. J. Super) in which you can find the full text of this decision. New Jersey, like most states, reports its law cases in a series of numbered volumes. This case appears in volume 364 of the New Jersey Superior Court reporters. If you go to a law library and find that book, you can then turn to page 301 and—*voila*!—you have the case. Because some of the cases in this text are so new, the official books that will eventually contain them have not yet been published, so their citations will be incomplete. In this event, we also give you an alternate "address" where you can find the full case. Most cases are now available online. Your professor or librarian can show you how to find them electronically.

complex matters irrelevant to the subject covered in this book, so we relate only what is necessary. This section usually includes some mention of what happened at the trial court. Lawsuits always begin in a trial court. The losing party often appeals to a court of appeals, and it is usually an appeals court decision that we are reading. The trial judge ruled in favor of Pub Zone, but later, in the decision we are reading, Kuehn wins.

The *Issue* section is very important. It tells you what the court had to decide—and also why you are reading the case. In giving its decision, a court may digress. If you keep in mind the issue and relate the court's discussion to it, you will not get lost.

Excerpts from Judge Payne's Decision begins the court's discussion. This is called the *holding*, meaning a statement of who wins and who loses. The holding also includes the court's *rationale*, which is the reasoning behind the decision.

The holding that we provide is an edited version of the court's own language. Some judges write clear, forceful prose; others do not. Either way, their words give you an authentic feel for how judges think and rule, so we bring it to you in the original. Occasionally we use brackets ([ ]) to substitute our language for that of the court, either to condense or to clarify. Notice the brackets in the second paragraph of the *Pub Zone* decision. Judge Payne explains the point at much greater length, so we have condensed some of his writing into the phrase "of a business."

We omit a great deal. A court's opinion may be 3 pages long, or it may be 75. We do not use ellipses (…) to indicate these deletions because there is more taken out than kept in, and we want the text to be clean. When a court quotes an earlier decision verbatim but clearly adopts those words as its own, we generally delete the quotation marks, as well as the citation to the earlier case. If you are curious about the full holding, you can always look it up.

Let us look at a few of Judge Payne's points. The holding begins with a discussion of *duty*. The court explains that whether one person (or bar) owes a duty to protect another depends on several factors, including whether the harm could be foreseen, how serious the injury could be, and whether there was an opportunity to prevent it.

Judge Payne then points out that the owner of a business is not an insurer of a visitor's safety. Typically, the owner has a duty to a visitor *only* if he has a reason to know that some harm is likely to occur. How would a merchant know that? Based on the character of the business, suggests the judge, or the owner's experience with particular people.

The judge then applies this general rule to the facts of this case. He concludes that the Pub Zone did, in fact, have a duty to protect Kuehn from the Pagans' attack. Based on Kerkoulas's experience, and warnings received from the police, she knew that the gang was dangerous and should have foreseen that admitting them in their "colors" greatly increased the chance of an attack.

Next, the court points out that it is not requiring the Pub Zone to *guarantee* everyone's safety. The bar was merely obligated to do a *reasonable* job. The prohibition on colors was a good idea, and calling the police had also proven effective. The problem, of course, was that in this case Kerkoulas ignored her own rule about gang insignia and failed to call the police.

Based on all the evidence, the jury's finding of liability was reasonable, and its verdict must be reinstated. In other words, Kuehn, who lost at the trial, wins on appeal. What the court has done is to *reverse* the lower court's decision, meaning to turn the loser into the winner. In other cases, we will see an appellate court *remand* the case, meaning it sends the case back down to the lower court for additional steps. Or the appellate court could *affirm* the lower court's decision, meaning it leaves the case unchanged.

1-5b Exam Strategy

This feature gives you practice analyzing cases the way lawyers do—and the way *you* must on tests. Law exams are different from most others because you must determine the issue from the facts provided. Too frequently, students faced with a law exam forget that the questions relate to the issues in the text and those discussed in class. Understandably, students new to law may focus on the wrong information in the problem or rely on material learned elsewhere. Exam Strategy features teach you to figure out exactly what issue is at stake, and then guide your analysis in a logical, consistent manner. Here is an example relating to the element of "duty," which the court discussed in the *Pub Zone* case.

EXAMStrategy

Question: The Big Red Traveling (BRT) Carnival is in town. Tony arrives at 8:00 p.m., parks in the lot—and is robbed at gunpoint by a man who beats him and escapes with his money. There are several police officers on the carnival grounds, but no officer is in the parking lot at the time of the robbery. Tony sues, claiming that brighter lighting and more police in the lot would have prevented the robbery. There has never before been any violent crime—robbery, beating, or otherwise—at any BRT Carnival. BRT claims it had no duty to protect Tony from this harm. Who is likely to win?

Strategy: Begin by isolating the legal issue. What are the parties disputing? They are debating whether BRT had a duty to protect Tony from an armed robbery committed by a stranger. Now ask yourself: How do courts decide whether a business has a duty to prevent this kind of harm? The *Pub Zone* case provides our answer. A business owner is not an ensurer of the visitor's safety. The owner generally has no duty to protect a customer from the criminal act of a third party unless the owner knows the harm is occurring or could foresee it is about to happen. (In *Pub Zone*, the business owner knew of the gang's violent history and could have foreseen the assault.) Now apply that rule to the facts of this case.

Result: There has never been a violent attack of any kind at a BRT Carnival. BRT cannot foresee this robbery and has no duty to protect against it. The carnival wins.

1-5c You Be the Judge

Many cases involve difficult decisions for juries and judges. Often both parties have legitimate, opposing arguments. Most chapters in this book have a feature called "You Be the Judge," in which we present the facts of a case but not the court's holding.

We offer you two opposing arguments based on the kinds of claims the lawyers made in court. We leave it up to you to debate and decide which position is stronger or to add your own arguments to those given.

The following case is another negligence lawsuit, with issues that overlap those of the *Pub Zone* case. This time the court confronts a fight in a hotel bar that caused a young man permanent brain damage. The victim sued the owner of the hotel, claiming that its employees were partly responsible for the injuries—even though they did not participate in the brawl. Could the hotel be held legally responsible? You be the judge.

You Be the Judge

Del Lago Partners, Inc. v. Smith

307 S.W. 3D 762
Supreme Court of Texas, 2010

Facts: It was late night at the Del Lago hotel bar. Bradley Smith and 40 of his closest fraternity brothers had been partying there for hours. Around midnight, guests from a wedding party made a rowdy entrance. One of Smith's friends brashly hit on a young woman in the wedding party, infuriating her date. Verbal confrontations ensued. For the next 90 minutes, the fraternity members and the wedding party exchanged escalating curses and threats, while the bartender looked on and served drinks. Until … the inevitable occurred. Punches were thrown. Before Smith knew it, someone placed him in a headlock and threw him against a wall.

As dozens fought, the bar manager fumbled to call hotel security, but realized he did not even have the phone number. When security eventually arrived, the free-for-all had ended … and Smith had suffered a fractured skull, among other serious injuries.

Smith sued Del Lago for negligence. He argued that the hotel was liable because it knew that the brawl was imminent and could have easily prevented it by calling security or ejecting the angry drunks. The lower court agreed. The hotel appealed.

You Be the Judge: ***Did the hotel have a duty to protect Smith from imminent assault?***

Argument for the Plaintiff-Appellant (Hotel): Your honors, my client did nothing wrong. The Del Lago staff did not create the danger. Smith was a grown man who drank voluntarily and joined the fight knowing that he was at risk for injury. The hotel did not owe a duty to someone who engages in such reckless behavior. And let's face it: Accidents happen, especially at a bar late at night. Moreover, a bar owner cannot possibly monitor the words exchanged between patrons that may lead to a fight.

The law has developed sensibly. People are left to decide for themselves whether to jump into a dangerous situation. Smith made his decision, and Del Lago should not be held accountable for his poor choices.

Argument for the Defendant-Appellee (Smith): Your honors, Del Lago had a moral and legal duty to protect its guests from this obvious and imminent assault. When a business has knowledge of something that poses an unreasonable risk of harm to its patrons, it has a duty to take reasonable action to reduce or eliminate that risk. The hotel knew that a fight was going to break out and should have taken the proper precautions to protect guests from that foreseeable danger.

During the 90 minutes of escalating tensions, the bar staff continued to serve alcohol, ignored the blatant risks, and did not even call security. When the bar staff finally decided to call for help, they did not even have the number. It was too little, too late. The establishment had already breached its duty of care to protect its guests from foreseeable harm.

CHAPTER CONCLUSION

We depend on the law to give us a stable nation and economy, a fair society, a safe place to live and work. These worthy goals have occupied ancient kings and twenty-first-century lawmakers alike. But while law is a vital tool for crafting the society we want, there are no easy answers about how to create it. In a democracy, we all participate in the crafting. Legal rules control us, yet *we* create *them*. A working knowledge of the law can help build a successful career—and a solid democracy.

EXAM REVIEW

1. **THE FEDERAL SYSTEM** Our federal system of government means that law comes from a national government in Washington, D.C., and from 50 state governments.

2. **LEGAL HISTORY** The history of law foreshadows many current legal issues, including mediation, partnership liability, the jury system, the role of witnesses, the special value placed on land, and the idea of precedent.

3. **PRIMARY SOURCES OF LAW** The primary sources of contemporary law are:
   - United States Constitution and state constitutions;
   - Statutes, which are drafted by legislatures;
   - Common law, which is the body of cases decided by judges as they follow earlier cases, known as precedent;
   - Court orders, which place obligations on specific people or companies;
   - Administrative law, which are the rules and decisions made by federal and state administrative agencies; and
   - Treaties and agreements between the United States and foreign nations.

EXAMStrategy

Question: The stock market crash of 1929 and the Great Depression that followed were caused, in part, because so many investors blindly put their money into stocks they knew nothing about. During the 1920s, it was often impossible for an investor to find out what a corporation was planning to do with its money, who was running the corporation, and many other vital things. Congress responded by passing the Securities Act of 1933, which required a corporation to divulge more information about itself before it could seek money for a new stock issue. What kind of law did Congress create?

Strategy: What is the question seeking? The question asks you which *type* of law Congress created when it passed the 1933 Securities Act. What are the primary kinds of law? Administrative law consists of rules passed by agencies. Congress is not a federal agency. Common law is the body of cases decided by judges. Congress is not a judge. Statutes are laws passed by legislatures. Congress is a legislature. (See the "Result"at the end of this Exam Review section.)

4. **CRIMINAL AND CIVIL LAW** Criminal law concerns behavior so threatening to society that it is outlawed altogether. Civil law deals with duties and disputes between parties, not with outlawed behavior.

EXAMStrategy

Question: Bill and Diane are hiking in the woods. Diane walks down a hill to fetch fresh water. Bill meets a stranger who introduces herself as Katrina. Bill sells a kilo of cocaine to Katrina who then flashes a badge and mentions how much she enjoys her job at the Drug Enforcement Agency. Diane, heading back to camp with the water, meets Freddy, a motorist whose car has overheated. Freddy is late for a meeting where he expects to make a $30 million profit; he's desperate for water for his car. He promises to pay Diane $500 tomorrow if she will give him the pail of water, which she does. The next day, Bill is in jail and Freddy refuses to pay for Diane's water. Explain the criminal law/civil law distinction and what it means to Bill and Diane. Who will do what to whom, with what results?

Strategy: You are asked to distinguish between criminal and civil law. What is the difference? The criminal law concerns behavior that threatens society and is therefore outlawed. The government prosecutes the defendant. Civil law deals with the rights and duties between parties. One party files a suit against the other. Apply those different standards to these facts. (See the "Result" at the end of this Exam Review section.)

5. **JURISPRUDENCE** Jurisprudence is concerned with the basic nature of law. Three theories of jurisprudence are:
   - Legal positivism: The law is what the sovereign says it is.
   - Natural law: An unjust law is no law at all.
   - Legal realism: Who enforces the law is more important than what the law says.

RESULTS

3. Result: The Securities Act of 1933 is a statute.

4. Result: The government will prosecute Bill for dealing in drugs. If convicted, he will go to prison. The government will take no interest in Diane's dispute. However, if she chooses, she may sue Freddy for $500, the amount he promised her for the water. In that civil lawsuit, a court will decide whether Freddy must pay what he promised; however, even if Freddy loses, he will not go to jail.

MULTIPLE-CHOICE QUESTIONS

1. The United States Constitution is among the finest legal accomplishments in the history of the world. Which of the following influenced Ben Franklin, Thomas Jefferson, and the rest of the Founding Fathers?
   I. English common-law principles
   II. The Iroquois' system of federalism
   (a) Only I
   (b) Only II
   (c) Both I and II
   (d) Neither I nor II

2. Which of the following parts of the modern legal system are "borrowed" from medieval England?
   (a) Jury trials
   (b) Special rules for selling land
   (c) Following precedent
   (d) All of these

3. Union organizers at a hospital wanted to distribute leaflets to potential union members, but hospital rules prohibited leafleting in areas of patient care, hallways, cafeterias, and any areas open to the public. The National Labor Relations Board (NLRB), a government agency, ruled that these restrictions violated the law and ordered the hospital to permit the activities in the cafeteria and coffee shop. What kind of law was NLRB creating?
   (a) A statute
   (b) Common law
   (c) A constitutional amendment
   (d) Administrative regulation

4. For a statute to become law, Congress must pass it by a:
   I. Majority vote in the House
   II. Majority vote in the Senate
   III. Two-thirds vote in the House, but only if the president has first vetoed it
   IV. Two-thirds vote in the Senate, but only if the president has first vetoed it
   (a) Just I and II
   (b) Just III and IV
   (c) All of these
   (d) None of these

5. Dr. Martin Luther King, Jr., wrote "An unjust law is no law at all." As such, "One has … a moral responsibility to disobey unjust laws." Dr. King's view is an example of:
   (a) legal realism.
   (b) jurisprudence.
   (c) legal positivism.
   (d) natural law.

CASE QUESTIONS

1. Lance, who is a hacker, stole 15,000 credit card numbers and sold them on the black market, making millions. Police caught Lance, and two legal actions followed, one civil and one criminal. Who will be responsible for bringing the civil case? What will be the outcome if the jury believes that Lance was responsible for identity thefts? Who will be responsible for bringing the criminal case? What will be the outcome if the jury believes that Lance stole the numbers?

2. As *The Oculist's Case* indicates, the medical profession has faced a large number of lawsuits for centuries. In Texas, a law provides that, so long as a doctor was not reckless and did not intentionally harm a patient, recovery for "pain and suffering" is limited to $750,000. In many other states, no such limit exists. If a patient will suffer a lifetime of pain after a botched operation, for example, he might recover millions in compensation. Which rule seems more sensible to you—the "Texas" rule or the alternative?

3. ***YOU BE THE JUDGE* WRITING PROBLEM** Should trials be televised? Here are a few arguments on both sides of the issue. You be the judge. **Arguments against live television coverage:** We have tried this experiment and it has failed. Trials fall into two categories: those that create great public interest and those that do not. No one watches dull trials, so we do not need to broadcast them. The few trials that are interesting have all become circuses. Judges and lawyers have shown that they cannot resist the temptation to play to the camera. Trials are supposed to be about justice, not entertainment. If a citizen seriously wants to follow a case, she can do it by reading the daily newspaper. **Arguments for live television coverage:** It is true that some televised trials have been unseemly affairs, but that is the fault of the presiding judges, not the media. Indeed, one of the virtues of television coverage is that millions of people now understand that we have a lot of incompetent people running our courtrooms. The proper response is to train judges to run a tight trial by prohibiting grandstanding by lawyers. Access to accurate information is the foundation on which a democracy is built, and we must not eliminate a source of valuable data just because some judges are ill-trained or otherwise incompetent.

4. Leslie Bergh and his two brothers, Milton and Raymond, formed a partnership to help build a fancy saloon and dance hall in Evanston, Wyoming. Later, Leslie met with his friend and drinking buddy, John Mills, and tricked Mills into investing in the saloon. Leslie did not tell Mills that no one else was investing cash or that the entire enterprise was already bankrupt. Mills remortgaged his home and invested $150,000 in the saloon—and lost every penny of it. Mills sued all three partners for fraud. Milton and Raymond defended on the grounds that they did not commit the fraud; only Leslie did. The defendants lost. Was that fair? By holding them liable, what general idea did the court rely on? What Anglo-Saxon legal custom did the ruling resemble?

5. The father of an American woman killed in the Paris terrorist attacks sued Twitter, Facebook, and YouTube, alleging the sites knowingly allowed ISIS terrorists to recruit members, raise money, and spread extremist propaganda. The sites defended themselves by saying that their policies prohibit terrorist recruitment and that, when alerted to it, they quickly remove offending videos. What type of lawsuit is this—criminal or civil? What responsibilities, if any, should social media sites have for the spread of terrorism?

DISCUSSION QUESTIONS

1. In the 1980s, the Supreme Court ruled that it is legal for protesters to burn the American flag. This activity counts as free speech under the Constitution. If the Court hears a new flag-burning case in this decade, should it consider changing its ruling or should it follow precedent? Is following past precedent something that seems sensible to you: always, usually, sometimes, rarely, or never?

2. When should a business be held legally responsible for customer safety? Consider the following statements, and consider the degree to which you agree or disagree.
   - A business should keep customers safe from its own employees.
   - A business should keep customers safe from other customers.
   - A business should keep customers safe from themselves. (Example: By refusing to serve alcohol to a visibly intoxicated customer.)
   - A business should keep people outside its own establishment safe if it is reasonable to do so.

3. In his most famous novel, *The Red and the Black*, French author Stendhal (1783–1842) wrote: "There is no such thing as 'natural law': This expression is nothing but old nonsense. Prior to laws, what is natural is only the strength of the lion, or the need of the creature suffering from hunger or cold, in short, need." What do you think? Does legal positivism or legal realism seem more sensible to you?

4. Before becoming a Supreme Court justice, Sonia Sotomayor stated in a speech to students: "I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life." During her Senate confirmation proceedings, this statement was heavily probed and criticized. One senator said that the focus of the hearings was to determine whether Judge Sotomayor would "decide cases based only on the law as made by the people and their elected representatives, not on personal feelings or politics." (Sotomayor convinced many of her critics because the Senate confirmed her by a vote of 68–31.) Should judges ignore their life experiences and feelings when making judicial decisions?

5. The late Supreme Court Justice Antonin Scalia argued that because courts are not elected representative bodies, they have no business determining certain critical social issues. He wrote:

   > Judges are selected precisely for their skill as lawyers; whether they reflect the policy views of a particular constituency is not (or should not be) relevant. Not surprisingly then, the Federal Judiciary is hardly a cross-section of America. Take, for example, this Court, which consists of only nine men and women, all of them successful lawyers who studied at Harvard or Yale Law School. Four of the nine are natives of New York City. Eight of them grew up in east- and west-coast States. Only one hails from the vast expanse in-between. Not a single Southwesterner or even, to tell the truth, a genuine Westerner (California does not count). Not a single evangelical Christian (a group that comprises about one quarter of Americans), or even a Protestant of any denomination. To allow [an important social issue] to be considered and resolved by a select, patrician, highly unrepresentative panel of nine is to violate a principle even more fundamental than no taxation without representation: no social transformation without representation.

   Do you agree?

CHAPTER 2

ETHICS AND CORPORATE SOCIAL RESPONSIBILITY

Eating is one of life's most fundamental needs and greatest pleasures. Yet all around the world many people go to bed hungry. Food companies have played an important role in reducing hunger by producing vast quantities of food cheaply. So much food, so cheaply that, in America, one in three adults and one in five children are obese. Some critics argue that food companies bear responsibility for this overeating because they make their products *too* alluring. Many processed food products are harmful calorie bombs of fat, sugar, and salt, which, in excess, are linked to heart disease, diabetes, and cancer. What obligation do food producers and restaurants have to their customers? After all, no one is forcing anyone to eat. Do any of the following examples cross the line into unethical behavior?

Many processed food products are harmful calorie bombs.

1. **Increasing addiction.** Food with high levels of fat, sugar, and salt not only tastes better, but it is also more addictive.[1] Food producers hire neuroscientists who perform MRIs on consumers to gauge the precise level of these ingredients that will create the most powerful cravings, the so-called "bliss point." For example, in some Prego tomato sauces, sugar is the second most important ingredient after tomatoes, with two heaping teaspoons of sugar in a small serving.[2]
2. **Increasing size and calories.** Over the last 30 years, the portion size and number of calories served at fast-food restaurants has increased substantially.[3] Uno Chicago

[1]Researchers report that rats find Oreo cookies as addictive as cocaine. And they like the creamy middle best too. Valerie Strauss, "Rats Find Oreos as Addictive as Cocaine," *Washington Post*, October 18, 2013.

[2]To find nutritional information on this or other products, search the internet for the name of the product with the word "nutrition."

[3]The size of entrees has increased by 25 percent, and the number of calories by 12 percent. For desserts, size is up by 37 percent and calories by 46 percent. Although the portion size of sides has declined slightly (8%), the number of calories has gone up (21%). Megan A. McCrory, Allen G. Harbaugh, Sarah Appeadu, and Susan B. Roberts. "Fast-Food Offerings in the United States in 1986, 1991, and 2016 Show Large Increases in Food Variety, Portion Size, Dietary Energy, and Selected Micronutrients," *Journal of the Academy of Nutrition and Dietetics*, June 2019, vol. 119, issue 6: 923–933.

Grill serves a macaroni and cheese dish that, by itself, provides more than two-thirds of the calories that a moderately active man should eat in one day and almost three times the amount of saturated fat. But this dish is at least *food*. Dunkin' Donuts offers a Frozen Caramel Coffee Coolatta with more than one-third the calories that an adult male should have in a day and 50 percent more saturated fat. Of course, these items are even worse choices for women and children.

3. **Targeting children.** For decades, tobacco companies took what they had learned selling cigarettes to children and used it to market sugary drinks such as Kool-Aid, Hawaiian Punch, and Capri Sun to this vulnerable market. Hawaiian Punch was originally a cocktail mixer for adults but after RJ Reynolds purchased the drink, the company conducted extensive research to find out which colors and flavors appealed most to children. The company also featured a cartoon character, Punchy, because it was "the best salesman the beverage has ever had."[4] Although these drinks are now owned by food corporations, they are still marketed with campaigns designed to reach very young children.[5]
4. **Packaging products to look healthier.** Drinks that contain no fruit juice are sold in packages splashed with pictures of fruit. Containers are tall because customers perceive that taller packages have fewer calories than wider ones and, therefore, they eat more of the product.[6] Candy bars are given a green calorie label because food with green labels is perceived to be healthier than those labeled in red.[7]
5. **Funding dubious science.** Both the soft drink and sugar industries generously fund scientific research. Is that good news? Studies they have financed are much more likely to find that there is no connection between sodas and weight gain.[8] Similarly, a nonprofit founded and funded by Coca-Cola supports scientists who argue

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[4]Andrew Jacobs, "How Big Tobacco Hooked Children on Sugary Drinks," *New York Times*, March 14, 2019.

[5]Kim H. Nguyen, Stanton A. Glantz, Casey N. Palmer, Laura A. Schmidt. "Tobacco Industry Involvement in Children's Sugary Drinks Market," *British Medical Journal*, March 2019, vol. 364: l736.

[6]Jieun Koo and Kwanho Suk, "The Effect of Package Shape on Calorie Estimation," *International Journal of Research in Marketing*, December 2016, vol. 33, issue 4: 856–867.

[7]Jonathon P. Schuldt, "Does Green Mean Healthy?: Nutrition Label Color Affects Perceptions of Healthfulness," *Health Communication*, 2013, vol. 28, issue 8: 814–821.

[8]Maira Bes-Rastrollo, Matthias B. Schulze, Miguel Ruiz-Canela, and Miguel A. Martinez-Gonzalez, "Financial Conflicts of Interest and Reporting Bias Regarding the Association between Sugar-Sweetened Beverages and Weight Gain: A Systematic Review of Systematic Reviews," *PLOS Medicine*, December 31, 2013, vol. 10, issue 12: e1001578. http://dx.doi.org/10.1371/journal.pmed.1001578.

that exercise is more important than calorie-cutting in losing weight. They make this argument despite evidence that eating less is much more effective in weight loss than exercising more. On average, Americans exercise only 17 minutes a day. How likely is it that everyone who drinks a Coke will go out and walk the three miles it would take to burn off those calories?[9]

6. **Targeting poorer countries.** Because of health concerns, consumption of sweetened soft drinks in the United States is declining. In response, soda companies have dramatically increased their marketing budgets in lower-income countries, such as Brazil and China.[10] Indeed, the research institute funded by Coca-Cola now operates in 17 countries. In China, it shares space and staff with the government agency that is charged with combatting obesity.

2-1 WHY STUDY ETHICS?

Ethics
How people should behave

Ethics decision
Any choice about how a person should behave that is based on a sense of right and wrong

This text, for the most part, covers legal ideas. The law dictates how a person *must* behave. This chapter examines **ethics**, or how people *should* behave. Any choice about how a person should behave that is based on a sense of right and wrong is an **ethics decision**. This chapter explores ethics dilemmas that commonly arise in workplaces and presents tools for making decisions when the law does not require or prohibit any particular choice.

If a person is intent on lying, cheating, and stealing his way through a career, then he is unlikely to be dissuaded by anything in this or any other course. But for the majority of people who want to do the right thing, it is useful to study new ways of recognizing and dealing with difficult problems.

Laws represent society's view of basic ethics rules. And most people agree that certain activities such as murder, assault, and fraud are wrong. **However, laws may permit behavior that some feel is wrong, and it may criminalize acts that others feel are right.** For example, assisted suicide is legal in some states. While some people believe it is wrong under all circumstances, others think it is the right thing to do for someone suffering horribly from a terminal illness. Likewise, some people feel it is ethical to hire undocumented immigrants, even when doing so is a violation of federal law.

In this chapter, the usual legal cases are replaced by ethics cases with discussion questions. In some of these cases, reasonable people may disagree about the right thing to do. In others, the right answer is obvious, but actually doing it is difficult. These cases give you the opportunity to practice applying your values to the types of ethics issues you will face in your life. It is also important during class discussions for you to hear different points of view. In your career, you will work with and manage a variety of people, so it is useful to have insight into different perspectives on ethics.

Life Principles
The rules by which you live your life

We also hope that hearing these various points of view will help you develop your own **Life Principles**. These principles are the rules by which you live your life. As we will see, **research shows that people who think about the right rules for living are less likely to do wrong**.

[9]Anahad O'Connor, "Coca-Cola Funds Scientists Who Shift Blame for Obesity Away from Bad Diets," *New York Times*, August 9, 2015.
[10]Andrew Jacobs, "A Shadowy Industry Group Shapes Food Policy Around the World," New York Times, September 16, 2019.