Paul A. Sukys

Business Law

WITH UCC APPLICATIONS

Mc Graw Hill Education

15th Edition

Business Law with UCC Applications

Paul A. Sukys

PROFESSOR EMERITUS OF LAW AND APPLIED PHILOSOPHY

NORTH CENTRAL STATE COLLEGE | MANSFIELD, OHIO

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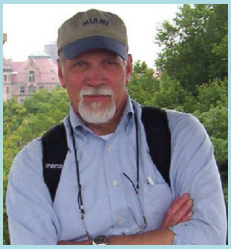
This book is dedicated with much love and many thanks to my wife, Susan. As I've learned during our life together—as a team—the possibilities are limitless.

Also to Jennifer, Ashley, and Megan, all three of whom have grown up to be excellent educators in their own right. They have made me very proud.

Finally, to Austin, Marena, Ariya, Veda, and Forest the newest additions to our family, who have reminded me how wonderful it is to feel young again.

Paul Sukys

About the Author



Courtesy Jennifer A. Chiocco

Paul A. Sukys is an attorney and professor emeritus of applied philosophy, humanities, and law at North Central State College in Mansfield, Ohio, where he has taught courses in business law; the legal and ethical aspects of health care; leadership and the humanities; American government; philosophy and science; ethics; science, art, and literature; introduction to the humanities; Eastern philosophy; the philosophy of religion; and Western philosophy. He has also taught at Mount Vernon Nazarene University, Ashland University, and Cuyahoga Community College in Cleveland. He is the sole author of *Lifting the Scientific Veil: Science Appreciation for the Nonscientist* and *Business Law with UCC Applications* and co-author of *Civil Litigation* and *Understanding Business and Personal Law*. He has written numerous articles, including "The *Hobby Lobby* Teachable Moment: Veil Piercing, Corporate Rights, and the Legal Debate," (*Business Education Forum*) and "Robinson's Theological Catch 22 and Emerson's Divine Man: When Good Intentions Go Wrong," (*Community College Humanities Review*). He has also made various presentations at professional conferences, including a session at the National Business Education Association convention in 2018, entitled, "Employment Law in the 21st Century: Can Basic Principles Survive Under Social, Religious, and Political Pressure?" Sukys earned his doctorate in applied philosophy and art history at the Union Institute and University in Cincinnati. He received undergraduate and graduate degrees in English Literature from John Carroll University in Cleveland, where he taught as a graduate associate. He earned his law degree at the Cleveland-Marshall College of Law, the law school of Cleveland State University. Sukys is a member of the Ohio Bar, the National Business Education Association (NBEA), the Community College Humanities Association (CCHA), the Christian Legal Society, the Ohio State Bar Association (OSBA), and the Chautauqua Literary and Scientific Circle (CLSC). Sukys lives in Cleveland.

Preface

Business Law with UCC Applications has reached its fifteenth edition. Over the last four decades, the text has undergone many changes. When it was first printed, photographs were rarely used and sometimes completely forbidden by the editorial staff. Ancillaries were limited to teacher-friendly test banks and transparencies, and the language used, in an attempt to mimic "legalese," was often just a bit too formal. Today, the pages are filled with photographs, charts, diagrams, and features, and multiple digital ancillaries are available to both the instructor and the student. As for the language, it is familiar and informal, while maintaining a practical approach designed to teach students the proper terms in a way that is both instructive and accessible. Through the years, the authors and editors have attempted to build a text that provides students with an overview of procedural and substantive legal principles that will help them navigate the difficult waters of the law as it relates to the issues they can expect to face in their everyday lives. As in previous editions, a great deal of care has been taken to present legal concepts in the most coherent and accessible way and to provide up-to-date coverage of both business and general law topics that are essential to today's students. All of the chapters for this edition have been updated, and we have continued to enhance our coverage of these important topics. Included in these updates are the following new additions to the text.

- Two critically important topics have been added to Chapter 2, the Sources of the Law. The first new feature explains the nature of executive orders, looks at various types of executive orders, and examines several theories of presidential power. The new section also considers the question of whether the president has the constitutional authority to issue such orders in the first place.
- Another new section added to Chapter 2 investigates the charge that the president's authority has been undermined by the Deep State. The new section investigates the nature of the Deep State from historical and contemporary points of views, explores the motives of Deep State agents, and looks at how the president and Congress can counteract the effects of the Deep State.
- Chapter 5 on Criminal Law and Cybercrimes tackles one of the most distressing and complicated issues of our day—guns in schools. The section investigates the dangers of guns in schools and explores the various attempts by both state and federal authorities to enact laws that will protect school children from gun-related violence.
- Chapter 15, Product Liability and Consumer Protection, includes a new section on the Consumer Finance Protection Bureau (CFPB). The CFPB is important because it is responsible for ensuring that financial consumers are knowledgeable enough to make smart decisions regarding things like credit cards, loans from banks, and other areas of the financial world. An in-depth look at the CFPB is warranted because the bureau has been the focus of much controversy over the last few years.
- Chapter 23, Employment Law, features a controversial case that some legal experts predict will rewrite the relationship between employment law and civil rights. The new case, *Kimberly Hively v. Ivy Tech Community College*, hinges on the question of whether sexual orientation qualifies as gender discrimination under the Civil Rights Act of 1964, something the Equal Employment Opportunity Commission has supported for some time but the courts have been reluctant to embrace, at least until now.

- Chapter 33, Science, Technology, and Law in the 21st Century, now includes expanded coverage of legislative and executive efforts to deal with the threat of climate change. New coverage in that chapter includes the California Delta Water Twin Tunnel Project; the Solid Waste Act; the Toxic Substance Abuse Act; the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); the Oil Pollution Act; and the Paris Climate Agreement.

More details follow in the "Important Changes in the Fifteenth Edition of *Business Law with UCC Applications*" section.

The popular format of previous editions has been preserved, with learning objectives identified in the margin where that material appears in the text. Each chapter begins with an outline followed by the Opening Case, with numbered questions and Chapter Objectives. An Opening Case is chosen to appear at the start of a chapter because that case illustrates multiple legal points within the chapter. Often, the case will feature a look at both the positive and negative consequences of the court's ruling. This approach is meant to emphasize the fact that cases often have legal and social consequences that stretch beyond the effects on the litigants in that individual case.

In other areas in each chapter, titles have been given to every example. Major headings and chapter summaries continue to be numbered, following the chapter outline. The popular case illustrations, presenting either hypothetical or actual situations based on well-founded court decisions, have been retained and updated. Our Quick Quiz feature appears in each chapter and allows students to test their knowledge of the chapter topics while they actively study the text. A new feature entitled *Business Law with UCC Applications—and Now the Applications* looks at some of the ethical, political, social, and practical applications of the UCC related to the content of those chapters in which the feature is located. For example, the installment in Chapter 7 takes a look at how to solve the conflicts that can arise when the parties to a contract are not sure whether a contract is for the sale of goods or for services rendered.

The popular Classic Cases feature has been continued, giving not only the the instructor, but also the students an opportunity to explore topics related to the content of the chapter in a provocative and stimulating way. Classic cases are chosen to remind learners that, despite the passage of time and changes in social customs, many—perhaps most—legal principles remain stable and predictable. Nor is this meant to downplay the advent of new cases and new principles, many of which appear at key points within the pages of the text.

We also have retained case studies pertaining to each of the nine parts of the book that summarize an actual litigated case, present a lengthy extract from the justice's or the judge's decision, and provide follow-up questions that are pertinent to the cases and are appropriate as a review of the legal concepts involved. Most of these cases are chosen because they stand—or will stand—as landmark decisions that have altered—or will alter—the course of jurisprudence for generations to come. The Activities at the end of each chapter, including Key Terms, Questions for Review and Discussion, and Cases for Analysis, help students self-check their understanding of the terms and concepts presented in the chapter. We also have continued to include the *Question of Ethics* element at various strategic points throughout the text. The U.S. Constitution appears in Appendix A. Included in Appendix B is information about how to access the Uniform Commercial Code. Marginal references within the chapters tie these specific documents to the content. The fifteenth edition of *Business Law* thus offers a comprehensive package of materials to meet both instructors' and students' needs.

Important Changes in the Fifteenth Edition of *Business Law with UCC Applications*

Chapter 1 Ethics and the Law

- A new Opening Case, *Ziglar v. Abbasi, 582 U.S.* —— (2017), which focuses on the conflict between preserving national security and protecting human rights.
- A new look at the ethical decision-making process by explaining the difference between being tolerant and being nonjudgmental. The material focuses on the illogical and self-contradictory nature of nonjudgmentalism.
- A creative look at the threat of failed and unstable states on the international scene with an emphasis on the difference between the duty to protect one's own citizens and the duty to protect the citizens of a nation whose government threatens those citizens, as is the case in the current civil war in Syria.
- A novel example discussing the relationship between promoting human rights and dealing with nation-states that fail to do so yet, on another level, are helping to eliminate an even greater evil.
- A note on the new Responsibility to Protect (R2P) protocol instituted and supported by the United Nations.

Chapter 2 Sources of the Law

- A new Opening Case, *States of New York, et al. v. Trump*, Civil Action No. 17-CV-5228 (2017), which involves 15 states and the District of Columbia that filed a joint lawsuit in the U.S. District Court asking that court to grant an injunction that would stop the enforcement of what they called President Trump's unconstitutional DACA order.
- A new take on the development of the two central theories of legal interpretation, textualism and pragmatism.
- A new major addition that explains the nature of executive orders, looks at the types of executive orders, examines the various theories of presidential power, and explores the current challenges to executive power.
- The introduction of a new feature entitled *Business Law with UCC Applications–and Now the Applications.* The installment in Chapter 2 takes a look at the dangers associated with placing legislative power in the hands of a semi-independent body such as the Uniform Law Commission.
- A new section that examines the nature of the Deep State from historical and contemporary points of views, explores the motives of the Deep State agents, and looks at how to counteract the effects of the Deep State.
- A new section that studies the goals and the operation of the Regulatory Flexibility Act.

Chapter 3 The Judicial Process and Cyber-Procedure

- A new Opening Case, *The European Community (EC) v. RJR Nabisco, Inc. (RJR),* 579 U.S. —— (2016), in which the European Community (EC), acting for itself and for its members, brought suit in federal court in New York against the American corporation RJR Nabisco under the Racketeer Influenced and Corrupt Organizations (RICO) Act, claiming that RJR had, in furtherance of its illegal scheme, committed numerous

acts of money laundering, wire fraud, mail fraud, and violations of the Travel Act. For good measure, the EC added several allegations of wrongdoing under the state laws of New York.

- A discussion about how to determine whether a non-nation-state configuration qualifiers as a "foreign state" and, thus, has the right to bring a lawsuit in U.S. District Courts. These non-nation-state configurations include non-governmental organizations, unified international institutions, and conglomerates.
- A discussion about choosing which law applies in a lawsuit in the context of the new Defend Trade Secrets Act (DTSA).
- An examination of *Bristol-Myers Squibb v. Superior Court of California*, a landmark case that redefines the nature of forum shopping in class action lawsuits.
- A look at the new amendments to the federal rules of civil procedure that are designed to limit the amount of information gathering that is conducted by both sides in a civil case.
- Some new details that explore what happens during an arrest in a criminal case, including a look at the exclusionary rule, the fruit of the poisonous tree rule, the attenuation doctrine, the independent source rule, and the inevitable discovery doctrine.
- The addition of new material on the jury selection process as it occurs in a criminal trial.
- The addition of new material on the consequences of a hung jury and about what happens when the judge declares a mistrial.

Chapter 4 Alternative Dispute Resolution and Cyber-ADR

- A new Opening Case, *Considie v. Brookdale Senior Living, Inc*, 124 F. Supp 3d 83 (2015), which discusses whether arbitration can ever be truly mandatory.
- A look at the Federal Arbitration Act (FAA), which is designed to make sure that properly initiated arbitration agreements are enforced by the courts.

Chapter 5 Criminal Law and Cybercrimes

- A new Opening Case, *United States v. Hearst,* 563 F.2d 1313 (9th Cir. 1978), in which the world-renown defense attorney F. Lee Bailey uses the creative defense of coercive persuasion in an ill-fated attempt to earn a not-guilty verdict for heiress-turned-urban guerilla Patty Hearst.
- An ethics feature that focuses on the infamous "texting suicide case" in which a teenage boy killed himself by carbon monoxide poisoning after being told on his cell phone by his girlfriend to "get back in the car."
- A detailed reexamination of the nature of "recklessness" in the law in the context of the Philadelphia Amtrak Derailment tragedy that killed eight people.
- A consideration of the controversial third requirement that some states have added to the three-step test of corporate criminal liability. The third requirement adds that the directors or officers of a corporation must have authorized, approved, or recklessly tolerated the criminal actions of the employees.
- A reconsideration of corporate criminal liability in the context of the Grenfell Tower fire in London, the worst fire in England for more than 100 years.
- A look at the unintended consequences that can emerge from variations in the law that exist from jurisdiction to jurisdiction, especially at the international level.

- A new examination of several legal theories under which corporations can be held criminally liable for their conduct.
- A new study of the dangers of guns in schools and attempts at both the state and federal level to enact laws that will protect school children from gun-related violence.
- An in-depth look at the global cyber-crime wave in cyber-extortion, using malware, ransomware, and other serious cyber-attack strategies.
- A look at the civil cause of action available under the Computer Fraud and Abuse Act (CFAA).
- An examination of state and federal legislation designed to regulate drone activity.
- A discussion of the Stockholm syndrome and coercive persuasion as defenses to criminal liability.

Chapter 6 Tort Law and Cybertorts

- An introduction to the case of *Jailynn Brown, et al. v. Andre T. Harris Sr., et al*, Appellate Case No. 27069, Trial Court Case No. 2014-CV-5144 (2014) which examines the issue of duty, the nature of negligence, and the viability of the defense of assumption of the risk.
- A new examination of the concept of the temporary public figure (also known as the limited-purpose public figure) as it was involved in a false story about the the University of Virginia printed in *Rolling Stone Magazine*.
- The introduction of the two relatively new intentional torts of civil theft and food disparagement.
- A discussion of the actual malice test in a defamation case as it played out in the story of an anti-violence editorial published in the *The New York Times* that falsely accused Sara Palin's political action committee of inspiring the shooting of Democratic Congresswoman Gabby Giffords in 2011.
- A look at the Federal Employers Liability Act (FELA), which established a negligence standard for railroads that all but eliminates the foreseeability causation doctrine in such cases.
- An examination of the doctrine of *ferae naturae* (wild nature) that helps determine the liability of a property owner when people are injured on the owner's property by wild animals.
- A new discussion of the Federal Torts Claims Act, sovereign immunity, and public duty doctrine.
- A new Case Study for Part I, *Barbara Schneider, Plaintiff-Appellant v. Mark Kumpf, Defendant-Appellee,* Court of Appeals of Ohio Second District, Montgomery County, No. 26855. Decided July 29, 2016, 2016-Ohio-5161.

Chapter 7 The Essentials of Contract Law

- A new Opening Case, *Grondin v. Rossington*, 690 F. Supp. 200, which discusses some of the essential elements of a written contract.
- Another installment of the new feature, *Business Law with UCC Applications—and Now the Applications*, which takes a look at the conflicts that can arise when the parties to a contract are not sure whether a contract is for the sale of goods or for services rendered.

Chapter 8 Offer, Acceptance, and Mutual Assent

- A new Opening Case, *B.J. Kadrmas, Inc. v. Oxbow Energy LLC*, 727 N.W. 2d 279 (2007), which discusses the nature of offer and acceptance.
- Another installment of the new feature, *Business Law with UCC Applications—and Now the Applications,* that focuses on UCC 2-204 (1) and (3), which explain the simple nature of a contract and, in doing so, help establish a sane and stable economy.
- A discussion of a new statute titled The Fair and Accurate Credit Transactions Act (FACT Act). The FACT Act, which is actually an amendment to the Fair Credit Reporting Act (FCRA), is designed to cut down on identity theft related to the use of credit and debit cards.
- The examination of a new type of identify theft called catfishing. Catfishing is not identity theft, *per se*. Instead, catfishing involves the creation of an entirely new online identity, a cyber-ghost, who then snags a gullible, but innocent, victim who becomes involved with the cyber-ghost and is then deliberately conned out of large amounts of money.

Chapter 9 Consideration and Cyber-Payments

- A new Opening Case, *Stein v. Gelfand*, 476 F. Supp. 2d. 427 (2007), which explores what happens when the amount of consideration is not known at the time that a contract is made.
- An introductory discussion about a new form of consideration called bitcoin, which is actually a subset of cryptocurrency.

Chapter 10 Capacity and Legality: The Final Elements

- A new Opening Case, *AK Steel Corp. v. ArcelorMittal USA, L.L.C*, 2016-Ohio-3285 (Court of Appeals, 12th Appellate District of Ohio, Butler County), which looks at the nature of restrictive employment agreements.
- A new, more detailed, more complete discussion of noncompete agreements (also referred to as restrictive employment covenants).

Chapter 11 Written Contracts and Cyber-Commerce

- A new Opening Case, *Charlotte Eastland Mall LLC v. Sole Survivor Inc.*, No. COA03-1422, Court of Appeals of North Carolina (October 19, 2004), which looks at those contracts must be in writing to be enforceable.
- Another installment of the new feature, *Business Law with UCC Applications—and Now the Applications*, which takes a look at the conflicts that can arise when the parties to a contract for specially manufactured goods have not reduced that contract to writing.

Chapter 12 Third Parties, Discharge, and Remedies

- A new Opening Case, *Lake Ridge v. Carney*, 66 Ohio St. 3d 376, No. 2464, which looks at the concept of contract repudiation.

Chapter 13 Sales Contracts: Formation, Title, and Risk of Loss

- A new Opening Case, *ePresence, Inc. v. Evolve Software, Inc.*, 190 F. Supp. 2d 159 U.S. District Court, D. Massachusetts (February 27, 2002), which looks at the differences between service contracts and sale of goods contracts.

- Another installment of the new feature, *Business Law with UCC Applications—and Now the Applications*, which takes a look at the question of when to apply the UCC to a case and when to look to other forms of contract law such as common law, consumer protection law, real property law, employment law, or the United Nations Convention on Contracts for the International Sale of Goods.

Chapter 14 Sales Contracts Rights, Duties, Breach, and Warranties

- A new Opening Case, *Hooten Equipment Company v. Trimat, Inc.*, 4th District No. 03CA16 2004-Ohio-1128), which explores the nature of nonconforming goods.
- Another installment of the new feature, *Business Law with UCC Applications—and Now the Applications*, which takes a look at the standards used to measure when, under the UCC, a buyer's rejection of the goods purchased in a sales contract has been effective.

Chapter 15 Product Liability and Consumer Protection

- A new Opening Case, *Peter Macrie, Sr., Peter Macrie, Jr. and Toni Marie Macrie, Plaintiffs-Appellants v. SDS Biotech Corp., Aka Fermenta Plant Protection, Defendant-Respondent,* 267 N.J. Super. 34, which examines the duty to warn and the concept of risk analysis.
- A new in-depth discussion of the the Consumer Finance Protection Bureau (CFPB, or simply the Bureau) and its troubled history.
- An ethical study that focuses on a new Deep State attack on the authority of the president. This attack challenged the power of the president to appoint a new director for the Consumer Finance Protection Bureau.
- The addition of a section on the Military Lending Act (MLA), a statute enacted to protect members the military, especially those on active duty, as well as their spouses and dependents, from being targeted by certain financial organizations and institutions that use questionable lending strategies to take advantage of military personnel who often find themselves in a vulnerable position because of their highly mobile, somewhat unpredictable lifestyles.
- New Case Study for Part 3, *Norcold, Inc. v. Gateway Supply Company*, 298 N.E. 2d 618, 154 Ohio App. 594 (2003).

Chapter 16 The Nature of Negotiable Instruments

- A new Opening Case, *N. E. Guthrie, Petitioner v. National Homes Corporation* 394 S. W. 2d 494 (1965); *N. E. Guthrie, Appellant v. National Homes Corporation, Appellee,* 387 S. W. 2d 158, which looks at the nature of promissory notes.
- A more in-depth discussion of section UCC 3-106, which explains in detail the characteristics that make an instrument unconditional and, therefore, a negotiable instrument.

Chapter 17 Holders in Due Course, Defenses, and Liabilities

- A new Opening Case, *Williams v. Stansbury,* 649 S.W.2d 293, Supreme Court of Texas (1983); and, in the Texas appellate court, *Williams v. Stansbury* 634 S.W.2d 924, (Tex. App. 1982), which takes a look at the relationship between promissory notes and garnishment orders.

- The addition of new material on consumer credit contracts and the FTC legend.
- Another installment of the new feature, *Business Law with UCC Applications—and Now the Applications*, which examines the question of whether the addition of UCC 1-106 (d) to Article 3 makes obsolete most of the other rules laid down in that article.

Chapter 18 Bank–Depositor Relationships and Cyber-Banking

- A new Opening Case, *Spacemakers of America Inc. v. Suntrust Bank*, No: A04A2080 (Court of Appeals of Georgia), which examines the dangers that result from ignoring the activities of those employees who handle the firm's money.
- A new, more detailed discussion clarifying the changing roles of a bank from creditor to debtor and back again.
- A new, more detailed discussion clarifying the roles of a bank as agent and principal.
- A new section on Project Sheltered Harbor, a national protocol designed to stave off a potentially catastrophic run on the banks of the country, similar to the ones that ushered in the Great Depression of the 20th century.
- New Case Study for Part 4, *Read v. South Carolina National Bank*, 86 S. C. 534, 335 S.E.2d 359, Supreme Court of South Carolina.

Chapter 19 Insurance

- A new Opening Case, *State Farm Fire and Casualty Company v. Ramsey*, 719 F.Supp. 1337 (1989) United States District Court, S.D. Mississippi, E.D., which highlights the need to be able to distinguish between tenants-in-common and tenants by the entirety.
- A new discussion of the four types of co-tenancy: tenancy in common, joint tenancy, community property, and tenancy by the entirety.
- A new discussion of the homestead, a type of ownership unique to American law.
- A new discussion of the homestead exemption.
- A new discussion of the proof of loss form, which is designed to detail the personal property destroyed during an incident that gives rise to an insurance claim.
- A new discussion of renters' insurance, which protects tenants against the damage or loss of personal property, stolen personal property, liability for a visitor's personal injury, and liability for negligent destruction of the rented premises.
- A new discussion on the changes that have been made to the federal Affordable Care Act.
- A new discussion on the nature and the extent of of cyber insurance coverage.

Chapter 20 Mortgages, Land Contracts, and the 21st-Century Financial Crisis

- A new Opening Case that was literally ripped from the morning headlines, found in James Leggate, "Cincinnati Sues Company over 'Predatory' Land Sales Contracts, Blighted Properties," *WCPO Cincinnati* (April 14, 2017), which examines the dangers associated with manipulating land contracts.
- A new section explaining land contracts.
- An addition to the discussion of the 21st-century financial crisis and the backlash against the Dodd–Frank Act.

- A new section that discusses the plan, introduced by the administration and the Senate, to alter the operation of both Fannie Mae and Freddie Mac, in order to minimize the role that the federal government has in overseeing the operation of these two government-sponsored enterprises (GSEs).

Chapter 21 Bankruptcy Law: In Theory, in History, and in Practice

- Updated, in-depth coverage of the current state of bankruptcy law in the United States.
- New coverage of the changes in Chapter 13 Bankruptcy filings as initiated under the authority of the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA).

Chapter 22 Agency Law

- A new Opening Case, *Latty v. St. Joseph's Society*, 17 A.3d 155 (2011), 198 Md. App. 254 (2011), which explores the nature of agency law and the extent of vicarious liability under tort law principles.
- Addition of new material on agency law in the health care setting that includes a look at living wills, durable health care power of attorney, DNR identification, and anatomical gift documents.
- Additional material on agency in the health care setting, including the legal definitions of death, terminal condition, and a permanently unconscious state.

Chapter 23 Employment Law

- A new Opening Case, *Kimberly Hively v. Ivy Tech Community College*, No. 15-1720 (2017), which explores the question of whether sexual orientation qualifies as gender discrimination under the Civil Rights Act of 1964.
- New coverage concerning what questions can and cannot be asked by an employer during a job interview process.
- Coverage concerning new guidelines issued by the Occupational Safety and Health Administration (OSHA) concerning what employers can and cannot do in relation to drug and alcohol testing after workplace injuries.
- New coverage concerning the status of private collective actions filed under the Fair Labor Standards Act.
- New coverage concerning the status of the overtime minimum salary increase proposal made by the administration under the FLSA.
- New coverage concerning the Working Families Flexibility Act of 2017.
- New coverage concerning the Strategic Enforcement Plan of the EEOC. The goal of this initiative is to make certain that the legal system is open and accessible to all.
- New coverage concerning the stated objectives of the new Strategic Enforcement Plan.

Chapter 24 Labor Law

- A new Opening Case, chronicled in "About the IDG," *IDG The Independent Drivers Guild*, https://drivingguild.org/about (2017), which involves a look at the new Uber Drivers' Union, the Independent Drivers Guild (the IDG or the Guild),

- A new "Soon to Be a Classic Case" feature on *Janus v. AFSCME*, in which the governor of Illinois challenged a state statute that gave public unions like the American Federation of State, County, and Municipal Employees (AFSCME) the exclusive authority to represent all state employees, even those who were opposed to the very idea of a union.
- New Case Study for Part 5, *Evans v. Georgia Regional Hospital*, 803 F. 3d 1248, U.S. Court of Appeals, Eleventh Circuit.

Chapter 25 The Business Entity: An Introduction

- A new Opening Case, *Van Hooser, et al. v. Keenoin, et al.*, 271 S.W. 2d 270 (Court of Appeals of Kentucky), which involves a study of the differences between a partnership and a corporation.
- The addition of material on a new corporate structure known as the private, religiously based corporate entity.
- The addition of material on a new breed of business entities known collectively as economic development special-purpose entities (EDSPEs), including such diverse corporate structures as special improvement districts, port authorities, new community authorities, joint economic development districts, municipal utility districts, and community improvement corporations.

Chapter 26 The Corporate Entity

- A new Opening Case, *Messick v. Moring* 514 So. 2d 892 (the Supreme Court of Alabama), which involves a close examination of the corporate law doctrine of piercing the corporate veil.
- New coverage of the "Delaware Factor," which is an attempt to explain why many promoters still flock to Delaware to incorporate, despite the fact that most other states have incorporation statutes that are just as easy, economical, effective, and efficient as Delaware's original ground-breaking statute.

Chapter 27 Managing the Corporate Entity

- A new Opening Case, *Unocal Corporation v. Mesa Petroleum Company*, 493 A. 2d 946, (1985), which involves a close examination of the Business Judgment Rule.
- New coverage that examines the many recent challenges to the Sarbanes–Oxley Act.
- Coverage of a new concept known as American legal imperialism.
- New coverage of the unintended consequences that have emerged in the wake of the passage of the Sarbanes–Oxley Act.
- New coverage that examines the environmental, social, and governance (ESG) movement in support of stakeholder corporate control.
- New coverage of the Wells Fargo compensation recovery case, a case that is the most vivid example of a change in corporate policy motivated by a shareholder proposal that was never voted upon.
- New coverage of the Financial Choice Act of 2017 (FCA), which is an attempt to limit the number of shareholders eligible to submit shareholder proposals.

Chapter 28 Government Regulation of the Corporate Entity

- A new Opening Case, *Asadi v. GE Energy (USA) L.L.C.*, No. 12-20522, U.S. Court of Appeals for the Fifth Circuit (October 8, 2013), which involves the use of a textualist approach to statutory interpretation from the bench.

- The addition of the Jumpstart Our Business Startups (JOBS) Act, a federal law designed to empower small businesses to raise capital more efficiently, economically, and effectively.
- New coverage of the SEC's Regulation Systems Compliance and Integrity (REG SCI) protocols, an innovative system designed to short-circuit potential cyber interruptions of the stock exchange system in the future.

Chapter 29 Personal Property and Bailments

- A new Opening Case, *Ritz v. Selma United Methodist Church*, 467 N.W.2d 266, which looks at the differences that exist among lost, abandoned, and mislaid property.
- New coverage of the concept known as natural property.
- New coverage of the concept known as a treasure trove.
- New coverage of some new trends in cultural property protection. Cultural property includes works of art, monuments, and archives that are created by and preserved for a nation, an ethnic group, a tribe, or some other cultural subdivision in order to preserve and celebrate the history, character, religion, and beliefs of that subdivision.

Chapter 30 Real Property and Landlord and Tenant Law

- A new Opening Case, *General Electric Credit Union v. Sharon K. Medow*, 2016 Ohio 3266, Court of Appeals of Ohio, First District, Hamilton County (June 3, 2016), which looks at how dower rights relate to life estates.
- New material on the concept of coverture.
- New material on dower and curtesy. Under the right of dower, a wife had an interest in her husband's property, which she would receive on his death. The husband had a similar right called the right of curtesy.
- New material on spousal rights, which replace dower and curtesy in most states.

Chapter 31 Wills, Advance Directives, and Trusts

- A new Opening Case, *Winkfield v. Children's Hospital and Research Center of Oakland*, Case Number RG 13707598 (2013), which explores the conflicts that often exist between First Amendment religious rights and the right to die with dignity.
- New, more detailed coverage of living wills.
- New, more detailed coverage of the durable power of attorney for health care.
- A new discussion of the difficulties with advance directives.
- New coverage of the physician order for life-sustaining treatment.
- New coverage of protective medical decision documents.
- New coverage of do not resuscitate orders.
- A new discussion of the right to die and the right to live.
- A new discussion of advance directives and the right to die.

Chapter 32 Professional Liability

- A new Opening Case, this one examining the unintended consequences for attorneys that result from the new version of Model Rule 8.4 (g) of the American Bar Association's Code on Ethics and Professional Responsibility.

- Coverage of the new tax code.
- New coverage of financial advisors.
- Coverage of the revised fiduciary rule.

Chapter 33 Science, Technology, and Law in the 21st Century

- A new Opening Case that examines climate change, carbon footprints, sunspots, a mysterious 1,500-year climate cycle, and the Paris Climate Agreement.
- New coverage of the California Delta Water Twin Tunnel Project and its relationship to the proposed federal science court.
- New coverage of the Solid Waste Act.
- New coverage of the Toxic Substance Abuse Act.
- New coverage of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).
- New coverage of the Oil Pollution Act.
- New coverage of the Paris Climate Agreement.
- New coverage of the concept of stocktake.
- Update on global population figures.
- Update on U.S. population growth figures.
- New coverage of the U.S. Supreme Court Case, *Impression Products, Inc. v. Lexmark International, Inc.*, which greatly affects patent law.
- New coverage of the patent law doctrine of the "right to tinker."

Chapter 34 International Law and the New World Order

- A new Opening Case that examines the growing global struggle between liberal democracy and authoritarianism.
- Extensive revision of the technique of predictive political history.
- New up-to-date examples of the emerging new world order.
- The addition of a current real-world example of *Realpolitik* in action.
- The addition of a current real-world example of liberal internationalism in action.
- The addition of a current real-world example of neoconservativism in action.
- The addition of a current real-world example of neoliberalism in action.
- New coverage of the relative effectiveness of liberal democracy and authoritarianism in relation to economic initial conditions.
- New coverage of the relative effectiveness of liberal democracy and authoritarianism in relation to cultural initial conditions.
- New coverage of the relative effectiveness of liberal democracy and authoritarianism in relation to the hybrid initial conditions.
- New coverage on the competing global political ideologies of liberal democracy and authoritarianism.
- New coverage of the doctrine of the Responsibility to Protect (R2P).

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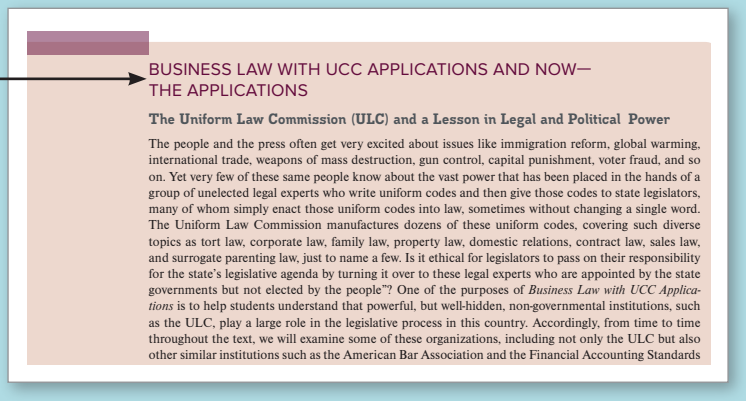
A Guided Tour

Business Law with UCC Applications, 15/e, is full of useful chapter features to make studying productive and hassle-free. The following pages show the kind of engaging, helpful pedagogical features that complement the accessible, easy-to-understand approach to teaching business law.

Business Law with UCC Applications—and Now the Applications


BUSINESS LAW WITH UCC APPLICATIONS AND NOW—
THE APPLICATIONS

The Uniform Law Commission (ULC) and a Lesson in Legal and Political Power

The people and the press often get very excited about issues like immigration reform, global warming, international trade, weapons of mass destruction, gun control, capital punishment, voter fraud, and so on. Yet very few of these same people know about the vast power that has been placed in the hands of a group of unelected legal experts who write uniform codes and then give those codes to state legislators, many of whom simply enact those uniform codes into law, sometimes without changing a single word. The Uniform Law Commission manufactures dozens of these uniform codes, covering such diverse topics as tort law, corporate law, family law, property law, domestic relations, contract law, sales law, and surrogate parenting law, just to name a few. Is it ethical for legislators to pass on their responsibility for the state's legislative agenda by turning it over to these legal experts who are appointed by the state governments but not elected by the people"? One of the purposes of *Business Law with UCC Applications* is to help students understand that powerful, but well-hidden, non-governmental institutions, such as the ULC, play a large role in the legislative process in this country. Accordingly, from time to time throughout the text, we will examine some of these organizations, including not only the ULC but also other similar institutions such as the American Bar Association and the Financial Accounting Standards

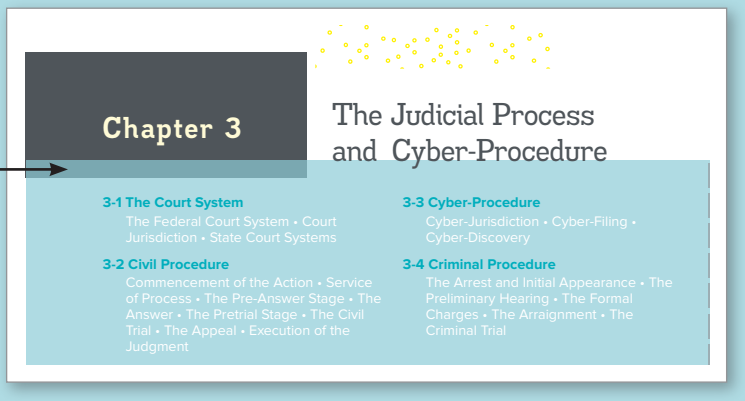
The fifteenth edition of *Business Law with UCC Applications* includes a new feature entitled "*Business Law with UCC Applications*–and Now the Applications." Each installment of this feature explores a political, social, or ethical aspect of the Uniform Commercial Code or the Uniform Law Commission that is not covered in the text proper but is directly related to the content of the chapter in which the feature is located. For example, the installment in Chapter 2, Sources of the Law, investigates the question of whether it is ethical for legislators to pass on their responsibility for the state's legislative agenda by turning part of that agenda over to the Uniform Law Commission, an organization that consists of legal experts appointed by the state governments but not elected by the people.

Uniform Commercial Code References

In each chapter that involves a section or sections of the Uniform Commercial Code, citations to those sections are printed under the topic heading in that chapter. This feature enables students to access the actual text of the UCC in order to double check the rule that is explained at that point in the book. Students can easily refer to the text of any individual code section by accessing the UCC through the URL printed in Appendix B of the text.

Chapter Outline

Each chapter features an outline that allows students to recognize the organization of the chapter at a glance. For reinforcement, the outline's numbering system is used throughout the body of the chapter and is repeated in the end-of-chapter Summary.


Chapter 3

The Judicial Process and Cyber-Procedure

3-1 The Court System
The Federal Court System • Court Jurisdiction • State Court Systems

3-2 Civil Procedure
Commencement of the Action • Service of Process • The Pre-Answer Stage • The Answer • The Pretrial Stage • The Civil Trial • The Appeal • Execution of the Judgment

3-3 Cyber-Procedure
Cyber-Jurisdiction • Cyber-Filing • Cyber-Discovery

3-4 Criminal Procedure
The Arrest and Initial Appearance • The Preliminary Hearing • The Formal Charges • The Arraignment • The Criminal Trial


THE OPENING CASE *Round 1*

The European Community v. RJR Nabisco:
Euros and RICO and Nations ... Oh My!

This case starts with the sale of drugs on the streets of Europe financed by a complicated money laundering scheme allegedly masterminded by the American corporation RJR Nabisco Inc. (RJR). The European Community (EC), acting for itself and for its members, brought suit in federal court in New York against RJR under the Racketeer Influenced and Corrupt Organizations (RICO) Act, claiming that RJR had, in furtherance of its illegal scheme, committed numerous acts of money laundering, wire fraud, mail fraud, and violations of the Travel Act. For good measure, the EC added several allegations of wrongdoing under the state laws of New York. RJR filed a motion to dismiss based on two claims. The first claim stated that since RICO does not expressly authorize extraterritorial claims like this one, the presumption must be against the extraterritorial application of the statute. The second claim stated that the federal courts had no jurisdiction over the state claims because the EC was a conglomerate of nations and not a nation-state itself, which meant it did not satisfy the need for diversity that was required by the federal rules. The district court dismissed the case on both counts.

Dissatisfied with the result, the EC and its member nations filed an appeal in the U.S. Court of Appeals for the Second Circuit. In a surprise move, the appellate court reversed the District Court's ruling. In response to the first claim, the court said that the presumption that a statute like RICO does not apply to extraterritorial conduct can be overcome if a predicate offense named in RICO includes extraterritorial conduct. A **predicate offense** is generally one that provides the resources needed to commit the offenses outlined in the new statute. Racketeering, as laid out in RICO, includes money laundering as a predicate offense. Congress defines money laundering to include extraterritorial activities. Therefore, Congress intended money laundering to have an extraterritorial application in RICO. As for the charges involving mail fraud, wire fraud, and violations of the Travel Act, the appeals court held that since the complaint alleged facts that would give rise to a domestic cause of action, the fact that those facts included extraterritorial offenses did not disqualify the court from hearing the case. As for the second claim, the court decided that the federal court system had subject matter jurisdiction over the state claims because, even though the EC is not a foreign nation, it is an instrumentality that represents several foreign nations, which is enough to satisfy the requirements of the jurisdictional statute.

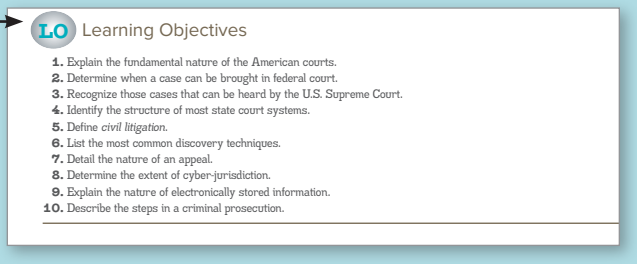
RJR took the case to the U.S. Supreme Court. Not surprisingly, the High Court upheld the ruling by the Court of Appeals. So far, so good for the EC. Then the High Court threw a curve. It ruled that claims brought under RICO and similar statutes by private parties (i.e., any party that is not the U.S. government; in other

The Opening Case

A brief case opens each chapter and introduces the chapter concepts, followed by numbered questions addressing legal issues in the case. Every opening case is reexamined throughout the chapter. Those scenarios that become opening cases are chosen carefully to bring a broad spectrum of illustrations to the text. Some of these are hypotheticals, created specifically for the material in the chapters. Others are drawn from today's headlines and are not yet in the courts. Still others are classic cases that have been used in law courses for decades and thus represent the best illustrations of key points in the law.

Learning Objectives

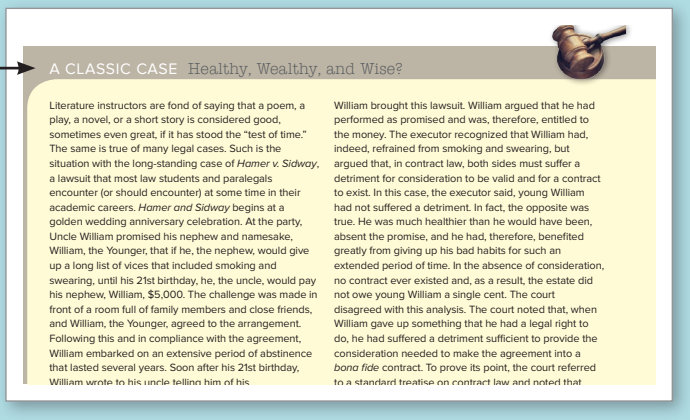
Succinct, crisply written learning objectives follow the opening case at the beginning of each chapter. The numbered objectives describe what the students can expect to learn as a result of completing the chapter. Each objective is identified by a symbol in the margin where the material appears in the text.


LO Learning Objectives

1. Explain the fundamental nature of the American courts.
2. Determine when a case can be brought in federal court.
3. Recognize those cases that can be heard by the U.S. Supreme Court.
4. Identify the structure of most state court systems.
5. Define *civil litigation*.
6. List the most common discovery techniques.
7. Detail the nature of an appeal.
8. Determine the extent of cyber-jurisdiction.
9. Explain the nature of electronically stored information.
10. Describe the steps in a criminal prosecution.

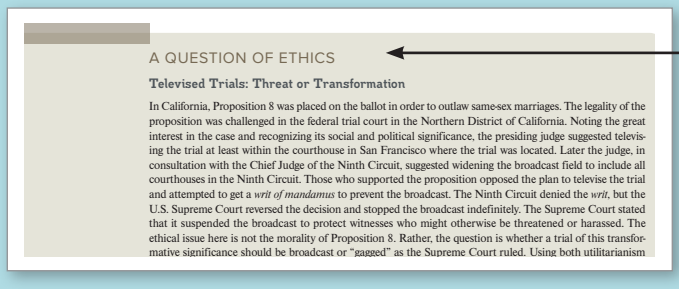
New Classic Cases

A new Classic Cases feature has been included in many chapters in this edition, giving both the instructor and the students an opportunity to explore topics related to the content of the chapter in a provocative and stimulating way.


A CLASSIC CASE Healthy, Wealthy, and Wise?

Literature instructors are fond of saying that a poem, a play, a novel, or a short story is considered good, sometimes even great, if it has stood the "test of time." The same is true of many legal cases. Such is the situation with the long-standing case of *Hamer v. Sidway*, a lawsuit that most law students and paralegals encounter (or should encounter) at some time in their academic careers. *Hamer and Sidway* begins at a golden wedding anniversary celebration. At the party, Uncle William promised his nephew and namesake, William, the Younger, that if he, the nephew, would give up a long list of vices that included smoking and swearing, until his 21st birthday, he, the uncle, would pay his nephew, William, $5,000. The challenge was made in front of a room full of family members and close friends, and William, the Younger, agreed to the arrangement. Following this and in compliance with the agreement, William embarked on an extensive period of abstinence that lasted several years. Soon after his 21st birthday, William wrote to his uncle telling him of his

William brought this lawsuit. William argued that he had performed as promised and was, therefore, entitled to the money. The executor recognized that William had, indeed, refrained from smoking and swearing, but argued that, in contract law, both sides must suffer a detriment for consideration to be valid and for a contract to exist. In this case, the executor said, young William had not suffered a detriment. In fact, the opposite was true. He was much healthier than he would have been, absent the promise, and he had, therefore, benefited greatly from giving up his bad habits for such an extended period of time. In the absence of consideration, no contract ever existed and, as a result, the estate did not owe young William a single cent. The court disagreed with this analysis. The court noted that, when William gave up something that he had a legal right to do, he had suffered a detriment sufficient to provide the consideration needed to make the agreement into a *bona fide* contract. To prove its point, the court referred to a standard treatise on contract law and noted that

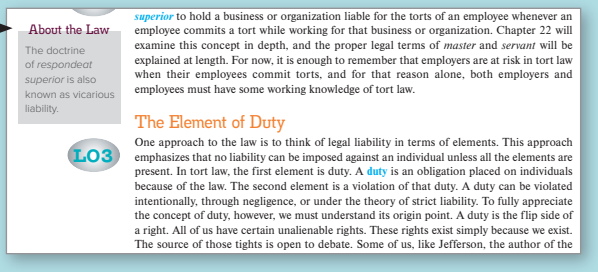

A QUESTION OF ETHICS

Televised Trials: Threat or Transformation

In California, Proposition 8 was placed on the ballot in order to outlaw same-sex marriages. The legality of the proposition was challenged in the federal trial court in the Northern District of California. Noting the great interest in the case and recognizing its social and political significance, the presiding judge suggested televising the trial at least within the courthouse in San Francisco where the trial was located. Later the judge, in consultation with the Chief Judge of the Ninth Circuit, suggested widening the broadcast field to include all courthouses in the Ninth Circuit. Those who supported the proposition opposed the plan to televise the trial and attempted to get a *writ of mandamus* to prevent the broadcast. The Ninth Circuit denied the *writ*, but the U.S. Supreme Court reversed the decision and stopped the broadcast indefinitely. The Supreme Court stated that it suspended the broadcast to protect witnesses who might otherwise be threatened or harassed. The ethical issue here is not the morality of Proposition 8. Rather, the question is whether a trial of this transformative significance should be broadcast or "gagged" as the Supreme Court ruled. Using both utilitarianism

A Question of Ethics boxes challenge students' understanding of previously discussed chapter examples by asking questions specifically relating to ethical dilemmas.

About the Law boxes provide additional clarification of chapter concepts.


About the Law

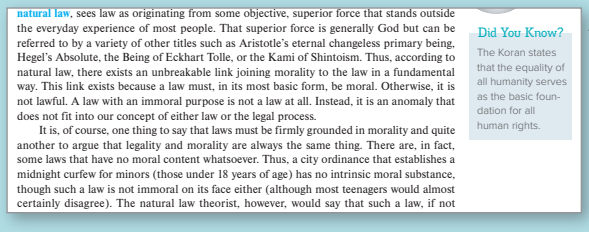
The doctrine of *respondeat superior* is also known as vicarious liability.

superior to hold a business or organization liable for the torts of an employee whenever an employee commits a tort while working for that business or organization. Chapter 22 will examine this concept in depth, and the proper legal terms of *master* and *servant* will be explained at length. For now, it is enough to remember that employers are at risk in tort law when their employees commit torts, and for that reason alone, both employers and employees must have some working knowledge of tort law.

The Element of Duty

LO3

One approach to the law is to think of legal liability in terms of elements. This approach emphasizes that no liability can be imposed against an individual unless all the elements are present. In tort law, the first element is duty. A **duty** is an obligation placed on individuals because of the law. The second element is a violation of that duty. A duty can be violated intentionally, through negligence, or under the theory of strict liability. To fully appreciate the concept of duty, however, we must understand its origin point. A duty is the flip side of a right. All of us have certain unalienable rights. These rights exist simply because we exist. The source of those tights is open to debate. Some of us, like Jefferson, the author of the


natural law, sees law as originating from some objective, superior force that stands outside the everyday experience of most people. That superior force is generally God but can be referred to by a variety of other titles such as Aristotle's eternal changeless primary being, Hegel's Absolute, the Being of Eckhart Tolle, or the Kami of Shintoism. Thus, according to natural law, there exists an unbreakable link joining morality to the law in a fundamental way. This link exists because a law must, in its most basic form, be moral. Otherwise, it is not lawful. A law with an immoral purpose is not a law at all. Instead, it is an anomaly that does not fit into our concept of either law or the legal process.

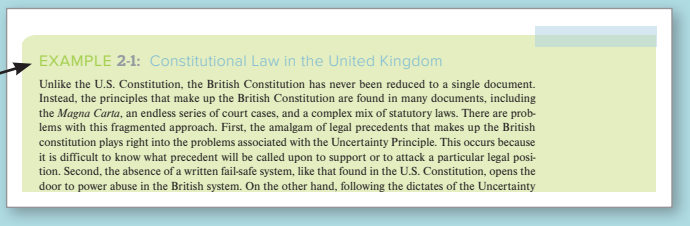
It is, of course, one thing to say that laws must be firmly grounded in morality and quite another to argue that legality and morality are always the same thing. There are, in fact, some laws that have no moral content whatsoever. Thus, a city ordinance that establishes a midnight curfew for minors (those under 18 years of age) has no intrinsic moral substance, though such a law is not immoral on its face either (although most teenagers would almost certainly disagree). The natural law theorist, however, would say that such a law, if not

Did You Know?

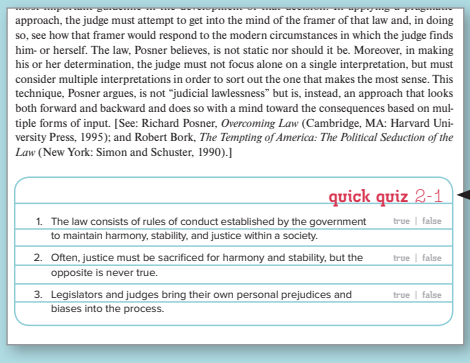
The Koran states that the equality of all humanity serves as the basic foundation for all human rights.

Did You Know? boxes are interesting factoids directly linked to the chapter concept being discussed.

Examples are titled and numbered throughout each chapter and use short vignettes to explain how concepts can be applied in real-life situations.


EXAMPLE 2-1: Constitutional Law in the United Kingdom

Unlike the U.S. Constitution, the British Constitution has never been reduced to a single document. Instead, the principles that make up the British Constitution are found in many documents, including the *Magna Carta*, an endless series of court cases, and a complex mix of statutory laws. There are problems with this fragmented approach. First, the amalgam of legal precedents that makes up the British constitution plays right into the problems associated with the Uncertainty Principle. This occurs because it is difficult to know what precedent will be called upon to support or to attack a particular legal position. Second, the absence of a written fail-safe system, like that found in the U.S. Constitution, opens the door to power abuse in the British system. On the other hand, following the dictates of the Uncertainty

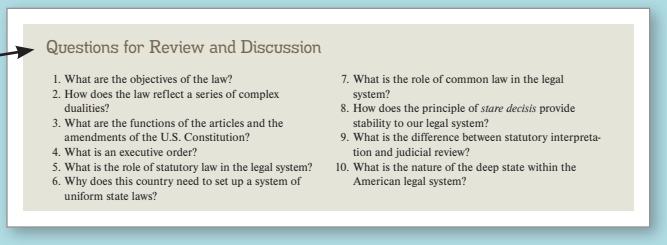

approach, the judge must attempt to get into the mind of the framer of that law and, in doing so, see how that framer would respond to the modern circumstances in which the judge finds him- or herself. The law, Posner believes, is not static nor should it be. Moreover, in making his or her determination, the judge must not focus alone on a single interpretation, but must consider multiple interpretations in order to sort out the one that makes the most sense. This technique, Posner argues, is not "judicial lawlessness" but is, instead, an approach that looks both forward and backward and does so with a mind toward the consequences based on multiple forms of input. [See: Richard Posner, *Overcoming Law* (Cambridge, MA: Harvard University Press, 1995); and Robert Bork, *The Tempting of America: The Political Seduction of the Law* (New York: Simon and Schuster, 1990).]

quick quiz 2-1

1. The law consists of rules of conduct established by the government to maintain harmony, stability, and justice within a society. true | false
2. Often, justice must be sacrificed for harmony and stability, but the opposite is never true. true | false
3. Legislators and judges bring their own personal prejudices and biases into the process. true | false

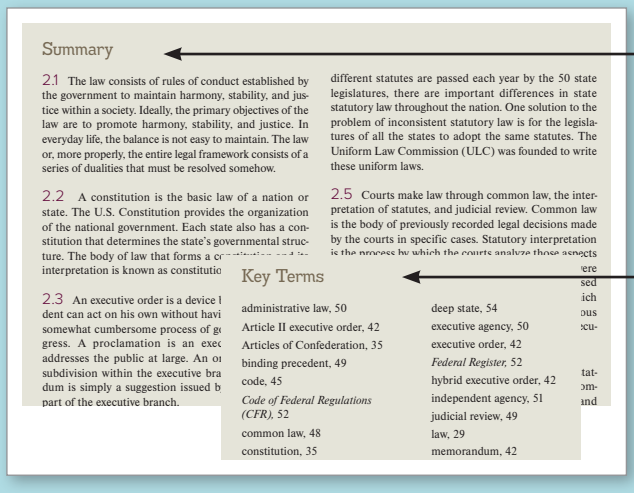
Quick Quiz boxes follow each numbered section and give students the chance to test themselves with three true/false questions. Answers are provided at the end of each chapter.

Questions for Review and Discussion provide a means for students and the instructor to reexamine and discuss the key points of law. All objectives listed at the beginning of each chapter are also reviewed.



Questions for Review and Discussion

1. What are the objectives of the law?
2. How does the law reflect a series of complex dualities?
3. What are the functions of the articles and the amendments of the U.S. Constitution?
4. What is an executive order?
5. What is the role of statutory law in the legal system?
6. Why does this country need to set up a system of uniform state laws?
7. What is the role of common law in the legal system?
8. How does the principle of *stare decisis* provide stability to our legal system?
9. What is the difference between statutory interpretation and judicial review?
10. What is the nature of the deep state within the American legal system?



Summary

2.1 The law consists of rules of conduct established by the government to maintain harmony, stability, and justice within a society. Ideally, the primary objectives of the law are to promote harmony, stability, and justice. In everyday life, the balance is not easy to maintain. The law or, more properly, the entire legal framework consists of a series of dualities that must be resolved somehow.

2.2 A constitution is the basic law of a nation or state. The U.S. Constitution provides the organization of the national government. Each state also has a constitution that determines the state's governmental structure. The body of law that forms a
interpretation is known as constitutio

2.3 An executive order is a device
dent can act on his own without havi
somewhat cumbersome process of g
gress. A proclamation is an exec
addresses the public at large. An o
subdivision within the executive bra
dum is simply a suggestion issued b
part of the executive branch.

different statutes are passed each year by the 50 state legislatures, there are important differences in state statutory law throughout the nation. One solution to the problem of inconsistent statutory law is for the legislatures of all the states to adopt the same statutes. The Uniform Law Commission (ULC) was founded to write these uniform laws.

2.5 Courts make law through common law, the interpretation of statutes, and judicial review. Common law is the body of previously recorded legal decisions made by the courts in specific cases. Statutory interpretation
is the process by which the courts analyze those aspects

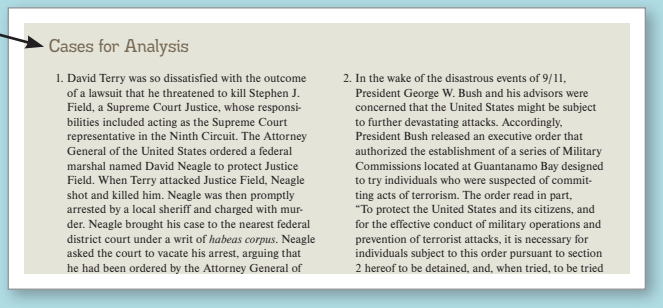
Key Terms

administrative law, 50
Article II executive order, 42
Articles of Confederation, 35
binding precedent, 49
code, 45
Code of Federal Regulations (CFR), 52
common law, 48
constitution, 35
deep state, 54
executive agency, 50
executive order, 42
Federal Register, 52
hybrid executive order, 42
independent agency, 51
judicial review, 49
law, 29
memorandum, 42

Summary Numbered to match the outline at the beginning of the chapter and the main heads within each chapter, the Summary provides an encapsulated review of the chapter's content.

Key Terms Each key term is printed in boldface and defined when introduced in the text. A list of key terms and the page number of first usage appears at the end of each chapter. A glossary of the key terms is provided at the back of the text.

Cases for Analysis have been updated extensively for the 14th edition and chosen for their relevance, ease of understanding, and interesting fact patterns. Many are abridgements of actual court decisions; some are taken from current news stories; and still others are hypothetical situations written to emphasize legal issues and concepts presented in the text.

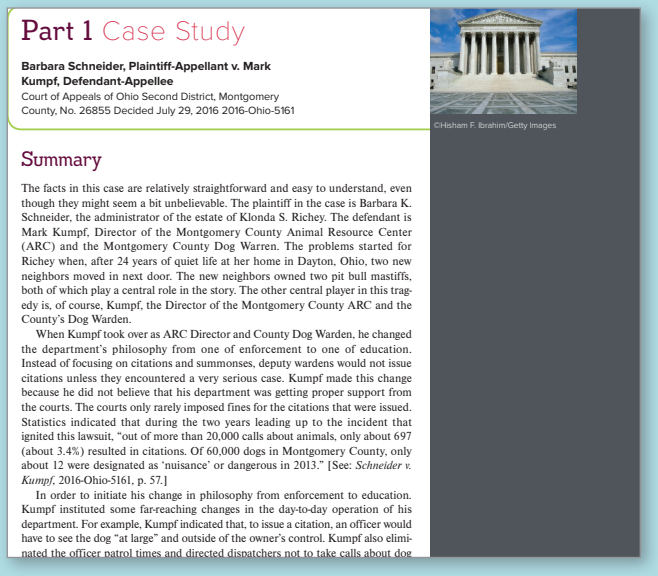


Cases for Analysis

1. David Terry was so dissatisfied with the outcome of a lawsuit that he threatened to kill Stephen J. Field, a Supreme Court Justice, whose responsibilities included acting as the Supreme Court representative in the Ninth Circuit. The Attorney General of the United States ordered a federal marshal named David Neagle to protect Justice Field. When Terry attacked Justice Field, Neagle shot and killed him. Neagle was then promptly arrested by a local sheriff and charged with murder. Neagle brought his case to the nearest federal district court under a writ of *habeas corpus*. Neagle asked the court to vacate his arrest, arguing that he had been ordered by the Attorney General of

2. In the wake of the disastrous events of 9/11, President George W. Bush and his advisors were concerned that the United States might be subject to further devastating attacks. Accordingly, President Bush released an executive order that authorized the establishment of a series of Military Commissions located at Guantanamo Bay designed to try individuals who were suspected of committing acts of terrorism. The order read in part, "To protect the United States and its citizens, and for the effective conduct of military operations and prevention of terrorist attacks, it is necessary for individuals subject to this order pursuant to section 2 hereof to be detained, and, when tried, to be tried

The **Case Study** at the end of each of the nine parts begins with a summary of the facts of the case, is followed by an excerpt from the court's opinion, and concludes with a series of questions.



Part 1 Case Study

Barbara Schneider, Plaintiff-Appellant v. Mark Kumpf, Defendant-Appellee
Court of Appeals of Ohio Second District, Montgomery County, No. 26855 Decided July 29, 2016 2016-Ohio-5161

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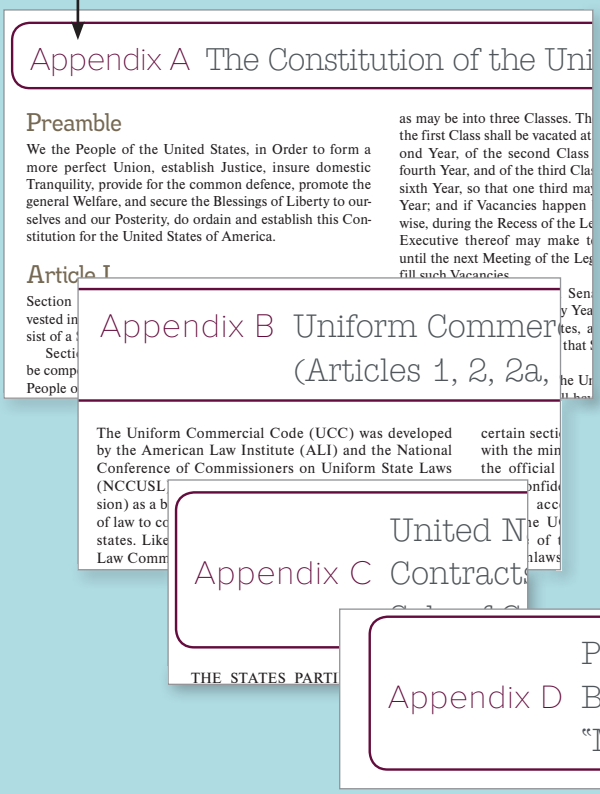
Summary

The facts in this case are relatively straightforward and easy to understand, even though they might seem a bit unbelievable. The plaintiff in the case is Barbara K. Schneider, the administrator of the estate of Klonda S. Richey. The defendant is Mark Kumpf, Director of the Montgomery County Animal Resource Center (ARC) and the Montgomery County Dog Warren. The problems started for Richey when, after 24 years of quiet life at her home in Dayton, Ohio, two new neighbors moved in next door. The new neighbors owned two pit bull mastiffs, both of which play a central role in the story. The other central player in this tragedy is, of course, Kumpf, the Director of the Montgomery County ARC and the County's Dog Warden.

When Kumpf took over as ARC Director and County Dog Warden, he changed the department's philosophy from one of enforcement to one of education. Instead of focusing on citations and summonses, deputy wardens would not issue citations unless they encountered a very serious case. Kumpf made this change because he did not believe that his department was getting proper support from the courts. The courts only rarely imposed fines for the citations that were issued. Statistics indicated that during the two years leading up to the incident that ignited this lawsuit, "out of more than 20,000 calls about animals, only about 697 (about 3.4%) resulted in citations. Of 60,000 dogs in Montgomery County, only about 12 were designated as 'nuisance' or dangerous in 2013." [See: *Schneider v. Kumpf*, 2016-Ohio-5161, p. 57.]

In order to initiate his change in philosophy from enforcement to education. Kumpf instituted some far-reaching changes in the day-to-day operation of his department. For example, Kumpf indicated that, to issue a citation, an officer would have to see the dog "at large" and outside of the owner's control. Kumpf also elimi-
nated the officer patrol times and directed dispatchers not to take calls about dog



Appendix A The Constitution of the Uni

Preamble

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article I

Appendix B Uniform Commer
(Articles 1, 2, 2a,

The Uniform Commercial Code (UCC) was developed by the American Law Institute (ALI) and the National Conference of Commissioners on Uniform State Laws

Appendix C United N
Contract

THE STATES PARTI

Appendix D Patrick Henr
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Four appendices provide critical material for the students: The Constitution of the United States (Appendix A), Articles 1, 2, 2a, and 3 of the Uniform Commercial Code (Appendix B), the United Nations Convention for the International Sale of Goods (Appendix C), and two final documents, Patrick Henry's Tax Assessment Bill and James Madison's "Memorial and Remonstrance" (Appendix D). Marginal references throughout the text refer students to the page of the appendix where the original source of the law being discussed can be found.

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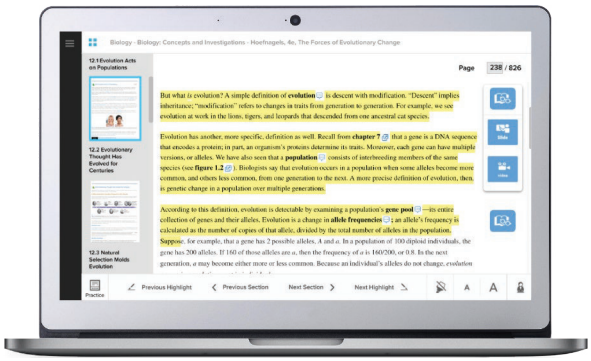

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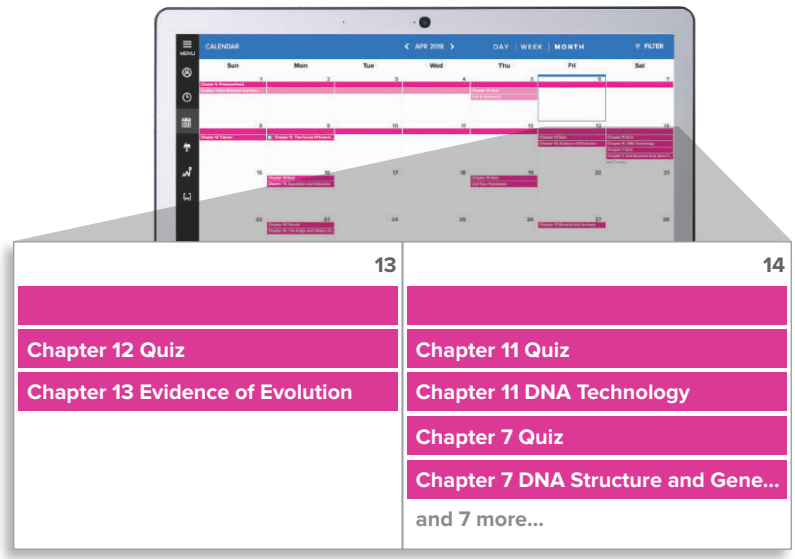

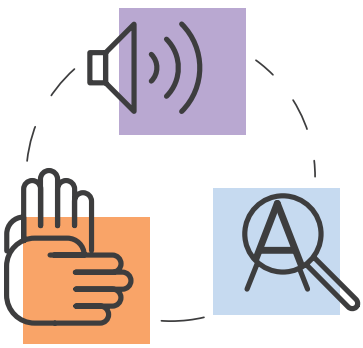

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Part One

Ethics, Law, and the Judicial System

Chapter 1

Ethics and the Law

THE OPENING CASE *Round 1*

National Security versus Human Rights

The question of whether governmental officials can detain individuals without bail in cases that involve suspected threats to national security arose again recently when the U.S. Supreme Court decided the case of *Ziglar v. Abbasi*. To understand the details of this case, we have to travel back in time to September 11, 2001. After the terror attack that brought down the Twin Towers, seriously damaged the Pentagon, and brought down United Flight 93 on 9/11, in an effort to prevent further attacks, FBI agents arrested more than 700 men of Arab and Asian descent and detained them without bail on charges of violating immigration law. Those prisoners who were later determined to be "of interest," some 84 individuals, remained in custody in Brooklyn's Metropolitan Detention Center, while the others were released. The plaintiffs in this case were six young men, five of whom are Muslim, who were held in detention for several months and were subjected to conditions that were alleged to be harsh and cruel. The defendants in the case include John Ashcroft, who was the Attorney General at the time; Robert Mueller, the former FBI Director; and the former Immigration and Naturalization Service Commissioner, James Ziglar. One of the key issues in the case involved the plaintiffs' claim that these three high-ranking government officials had conspired to detain them in harsh conditions in violation of their due process and equal protection rights on the pretext that they were illegal aliens when, in reality, the FBI used the time to investigate them for terrorist connections. The plaintiffs asked the Supreme Court for money damages against the defendants.

The right to seek money damages against high government officials like the ones in this case, for constitutional violations, was acknowledged by the High Court in a previous case, known as the *Bivens* case. However, the *Bivens* case was a very narrow ruling issued cautiously by the Court because it involved creating a cause of action that had not been expressly authorized by Congress. Therefore, the Court would not widen the grounds for such causes of action, especially when "special factors counseling hesitation" existed to convince the Court that widening the cause of action would not be in the best interests of justice. Given this interpretation of *Bivens*, the justices ruled that they would not permit a cause of action for damages in this case against the former Attorney General, the former FBI director, and the former Immigration and Naturalization Service Commissioner because there were, indeed, "special factors counseling hesitation"—namely,

the extraordinary conditions surrounding the events of 9/11. Given the balancing act between an individual's constitutional rights and the rights of the rest of the people to be safe and secure in their homes, the Court opted in favor of security over freedom. So in this case, in the battle between constitutional rights and national security, national security clearly won the day. (Well, almost. The case was actually decided by a 4–2 majority. The justices who ruled in favor of national security were Roberts, Kennedy, Thomas, and Alito. Beyer and Ginsburg dissented, Sotomayor and Kagan had recused themselves, and Gorsuch had not yet joined the Court.)

[See *Ziglar v. Abbasi*, 582 U.S. ------- (2017); and *Ziglar v. Abbasi, Oyez*, August 26, 2017, www.oyez.org/cases/2016/15-1358#!.]

Opening Case Questions

1. Should high-ranking government officials ever be subject to having to pay money damages in a lawsuit just for doing their job? Why or why not?
2. Should the question of whether to promote national security over fundamental rights be based on how many people will be hurt if national security is sacrificed? Explain.
3. Is there ever a time when fundamental freedoms should be upheld at the expense of national security? Explain.
4. Can it ever be said that national leaders must be held to a different level of ethical responsibility than those that bind everyday citizens? If so, what is that level or responsibility; if not, why not?
5. When we enter a social contract not to harm others, have we set up an absolute and unchanging standard, or does such a contract vary from situation to situation? Explain.

Source: See: *Ziglar v. Abbasi,* 582 U.S. ------- (2017); and *Ziglar v. Abbasi,* Oyez, 26 Aug. 2017, www.oyez.org/cases/2016/15-1358#!.

LO Learning Objectives

1. Define *law*, *morality*, and *ethics*.
2. Distinguish between natural law and positive law.
3. Explain the effects of nonjudgmentalism.
4. Describe social contract ethics.
5. Outline the steps in applying utilitarianism.
6. Define *rational ethics*.
7. Explain the dyadic nature of ethics in government.
8. Explore the need for ethical responsibility in business.
9. Describe the need for law in our society.
10. Clarify how the law and ethics can often benefit from anarchy.

1-1 Defining the Law, Morality, and Ethics

LO1

Often people will disagree about the most trivial of matters—whether pumpkin pie tastes best with or without whipped cream, whether London or Paris offers the best theater, and whether baseball or football is the national pastime (it's baseball, by the way). Despite this, some subjects that provoke disagreement are of great importance—whether the death penalty should be outlawed or used more frequently, whether Civil War monuments honoring Confederate soldiers and politicians should be removed from public places, whether parents or the courts should be empowered to make life-and-death decisions about children, and whether national security is more critical than constitutional rights. It would be best were we to employ a commonly understood, universally accepted ethical standard by which to measure these key issues. There is little disagreement on this basic premise. Nevertheless, once we cross that threshold, disagreement becomes the norm rather than the exception. Socrates, speaking through Plato, suggested centuries ago that we begin a study of ethics by

understanding human nature. With that simple axiom in mind, we begin our study of the philosophy of ethics.

First, however, we must define a few key terms. Most legal textbooks and many treatises on ethics begin by defining these disciplines. This tradition stands in marked contrast to most other studies. Few physics textbooks pause to tell the reader what physics is. Fewer history books devote space to explaining the term *history*, and almost no math texts begin by defining *math*; however, that is as it should be. These disciplines and others like them are fixed in our minds as implacable fields of study. In history, for example, the fact that the Cleveland Cavaliers won the 2016 NBA championship (and then lost it in 2017) is not in dispute; nor is the fact that Donald Trump was elected President of the United States in 2016. Nor is our understanding that such events are historical facts. The same is true of the second law of thermodynamics in physics and the multiplication tables in mathematics. These facts are not debatable, except in the most esoteric way. [See: Jeffrie G. Murphy and Jules L. Coleman, *The Philosophy of Law* (Boulder, CO: Westview Press, 1990), p. 6; and John C. Calhoun, "A Disquisition on Government," in *Philosophy in America,* eds. Paul Russell Anderson and Max Harold Fisch (New York: Appleton-Century Crofts, 1939), pp. 356–357.]

The Law and Morality

This is not the case with morality and the law. People *will* argue about both, and when they do so, it is often in a most uncivil manner. They will dispute whether the law is a form of civil management or a way to dictate individual behavior, whether it ought to be created by a national government or a regional state system, and whether it should change regularly or stay the same indefinitely. They will even argue about whether the rules made by the government demand absolute, unquestioned obedience or simply ask for occasional recognition as optional guiding principles. As noted earlier, people will also argue about moral issues. This is why we pause at the beginning of *Business Law* to define the law and morality and to distinguish between ethics and morals, concepts that many of us usually do not think about on a daily basis.

The **law** consists of rules of conduct established by the government of a society to maintain harmony, stability, and justice. It accomplishes these objectives by defining the duties and rights of the people. The law also provides a way to protect the people by enforcing these duties and rights through the courts, the executive branch, and the legislature. The law is therefore a means of civil management. Certainly, the law usually cannot stop a person from doing wrong; however, the law can punish an individual who chooses to do that wrong, whatever it might be. The law then draws the line between conduct that is permissible and that which is not allowed, so people, at the very least, know that they can be punished if they choose to disobey the law.

EXAMPLE 1-1: The Government's Case against Jack Bauer

Once upon a time, in a mythical version of post-9/11 America, a government agent named Jack Bauer worked for a federal law enforcement agency known as the Counter Terrorist Unit (CTU). In this mythical America, as depicted on the long-running and highly successful TV show *24*, Bauer pretty much did whatever he had to do to protect American interests and save American lives, up to and including torture. Neither Bauer nor CTU escape accountability, however, and in season seven of *24*, Bauer is subpoenaed to testify before a Senate oversight committee. When asked by the chairman of the committee whether he tortured a terrorist, Bauer admits that he did (saving the lives of 45 people, 10 of whom were children). The chairman then observes that Bauer clearly believes that the ends justify the means and that he cares nothing about the law. In response, Bauer (well, okay, Kiefer Sutherland) makes an

interesting observation. He says that he adapted to a situation in order to carry out his mission, which was to save the lives of those innocent civilians; however, when considering the question of whether he broke the law, Bauer does not duck, shift, or dodge responsibility. Instead, he says, "In answer to your question, am I above the law, no sir, I am more than willing to be judged by the people." As noted earlier, Bauer clearly understands that the law draws a line between conduct that is permissible and that which is not. So Bauer, as an admitted lawbreaker, knows that he can be punished for choosing to break that law and accepts that responsibility. This is what is meant when we say that the law usually cannot stop a person from doing wrong; however, the law can punish an individual who chooses to do that wrong, whatever it might be, even torture.

In contrast, **morals** are values that govern the difference between right and wrong and good and evil. As a result, we should see morality as more fundamental than law. Therefore, morality ought to serve as a guide for those bodies within our society—such as the courts, the executive branch, the legislature, and the administrative agencies—that make, interpret, and enforce the law. Most of the time, morality and legality ought to match up with each other. Indeed, many philosophers of law state that morality is a necessary element of the law. In effect, then, any law not grounded in morality cannot be considered a philosophically valid law.

Values and Ethics

So far we have defined **law** as a set of rules created by the government to establish a means of civil management that directs people to do what is right and avoid what is wrong. The purpose served by the law includes the creation of harmony, stability, and justice. The assumption is that if these purposes are met, right will be served and wrong defeated. Moreover, we have also defined **morals** as those fundamental values that determine the difference between right and wrong in the first place. What we have not explained, however, is where those values come from. This is the job of ethics. **Ethics** is the attempt to develop a means of determining what these values really are and for formulating and applying rules that enforce those values.

Natural Law

LO2

According to one system of legal thought, morality and the law are united in a common bond based on their intrinsic nature. This system of thought, which is generally known as **natural law**, sees law as originating from some objective, superior force that stands outside the everyday experience of most people. That superior force is generally God but can be referred to by a variety of other titles such as Aristotle's eternal changeless primary being, Hegel's Absolute, the Being of Eckhart Tolle, or the Kami of Shintoism. Thus, according to natural law, there exists an unbreakable link joining morality to the law in a fundamental way. This link exists because a law must, in its most basic form, be moral. Otherwise, it is not lawful. A law with an immoral purpose is not a law at all. Instead, it is an anomaly that does not fit into our concept of either law or the legal process.

It is, of course, one thing to say that laws must be firmly grounded in morality and quite another to argue that legality and morality are always the same thing. There are, in fact, some laws that have no moral content whatsoever. Thus, a city ordinance that establishes a midnight curfew for minors (those under 18 years of age) has no intrinsic moral substance, though such a law is not immoral on its face either (although most teenagers would almost certainly disagree). The natural law theorist, however, would say that such a law, if not moral in and of itself, is, at the very least, morally neutral and, therefore, has integrity as a

Did You Know?

The Koran states that the equality of all humanity serves as the basic foundation for all human rights.

law. Moreover, in a larger sense, a law that says minors must be safe at home after midnight, while not intrinsically moral, contributes to the orderly and stable functioning of society and is, therefore, moral because of its purpose and effect.

Positive Law

Natural law is sometimes confused with positive law because both depend on an outside force for their understanding of law, morality, and human rights. The difference is that positive law says that the law comes from social institutions rather than from God or some other outside force. **Positive law**, then, is a legal theory that says the law originates from an outside source that has emerged from within society. The process works something like this: The people of a society discover their rights as they live and work together. This discovery leads to commonly held rights that are described in a series of documents, such as the Magna Carta and the Bill of Rights. Exactly why people discover rather than invent universal rights is not clear. One argument says that rights are intuitively understood to exist within the human character. So, when people write documents such as the Bill of Rights, they include certain human rights such as the right to be treated fairly under the law. [See: Alan Dershowitz, *Rights from Wrongs: A Secular Theory of the Origin of Rights* (New York: Perseus Books Group, 2004), pp. 39–42.]

Some people say that human decency will ultimately triumph over human cruelty, giving rise to a just and moral society that will eventually abolish the worst sins of humanity. This brand of positive law is sometimes called the *Law of Peoples*. Not everyone agrees with this position, but such agreement is not necessary, so long as principles of decency and social justice can be found in certain universal documents such as the Bill of Rights in the United States Constitution or the United Nations Universal Declaration of Human Rights. Despite the differences between positive law and natural law, they hold one idea in common—namely, the belief that human values are universal, that is, they apply to all people at all times. [See: John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), pp. 6–7.]

Nonjudgmentalism

LO3

Before we can discuss the process of making ethical decisions, we must make one thing absolutely clear. Making ethical decisions demands that we make judgments—period. Old default statements—such as "well, it may be right for you but it's not right for me," or "no one can ever tell any one else what is right because morals are subjective," or "who am I to judge another person's moral actions"—must be recognized for what they truly are: escape clauses that encourage people to turn a blind eye to activities that are, well, wrong. Now before you get too excited about this, you should remember that the law requires judgment too, and if you do not believe that, there is no point in reading any further because every chapter in this book will spell out actions that are wrong to make sure that you do, instead, that which is right. Moreover, if you are still uncomfortable with this, then you should reread the preceding sections that established that any law not grounded in morality cannot be considered a philosophically valid law. If you still don't believe this, then the next time a police officer pulls you over for speeding, try telling the officer that following speed limits might be right for the officer, but they are not right for you

Did You Know?

The Greek word *ethos*, which forms the root of the English word *ethics*, means "character."

So how did this attitude of nonjudgmentalism originate? That's fair question. Some of this results from a good-natured attempt to understand another person's behavior, especially when that behavior is difficult to talk about because it is embarrassing or controversial. While this attitude is commendable on one level, on another it can be seen as a self-focused attempt to avoid the difficulties involved in discussing such behavior with that other person. Instead of saying, "that behavior is wrong," we say, "I don't want to talk about it!" Nonjudgmentalism also originates in a culture that wants tolerance to be one of its highest virtues.

While tolerance is a great idea in the abstract, in reality it often degenerates into the intolerance of those who refuse to tolerate the behavior in question. Suppose, for example, an individual, in an expression of tolerance for pro-choice advocates and gay marriage supporters were to say, "If you do not tolerate pro-choice people and gay marriage supporters, then you have no place in my neighborhood." Inherent in that attempt to be tolerant of one group, is an expression of intolerance of another group.

Those who insist on being nonjudgmental make several additional errors. First, the expression of nonjudgmentalism is illogical and self-contradictory. When people say, "who am I to judge another person's morality," they are implying that anyone who decides to judge another person's morality is wrong to do so. So their expression of support for nonjudgmentalism is, in fact, a judgment against those who do judge. Second, to avoid being judgmental, nonjudmentalists must be morally neutral on all types of behavior, including genocide, slavery, rape, and so on. On the flip side, they must also be morally neutral about honesty, justice, kindness, generosity, and so on. Imagine saying, "telling the truth might be right for you, but it is not right for me."

Finally, moral nonjudgmentalism is a slippery slope. Once you refuse to judge the telling of "little white lies," you cannot condemn covering up a burglary. Nor can you denounce committing perjury in a deposition or lying about fictitious weapons of mass destruction. Ultimately, all behavior becomes morally acceptable, and the nonjudmentalist forfeits all right to shocked by any behavior, no matter how vile or depraved. With all this in mind, we now turn to the process of ethical decision making. (See: Regis Nicoll, "The Problem with Non-Judmentalism," *Crisis Magazine*, June 15, 2017, http://crisismagazine.com/2017/who-am-i-judge-2; and James Kalb, "The Intolerance of Liberal Toleration," *Crisis Magazine*, June 5, 2013, http://crisismagazine.com/2013/the-intolerance-of-liberal-toleration.)

Ethical Decision Making

People make ethical decisions every day; however, how they make those decisions is not always clear. Some people say that they do not think about ethics but instead act instinctively when faced with a moral problem. Others say that they just do what they "believe" is right. Still others say that they follow the rules they learned in school, in their place of worship, or in their family setting. Some professions, businesses, and organizations develop guidelines, usually called rules of conduct or canons of professional responsibility. Such rules generally describe certain levels of behavior. Some behaviors are encouraged; others are discouraged. Punishments are often included in these guidelines.

Although such rules are admirable, they are often so long and complex that they end up covering pages of text that require an in-depth study just to understand the basics. A case in point involves the Ohio Rules of Professional Conduct for attorneys. The code consists of eight different subsections, each of which includes from 4 to 18 rules. Each rule is then followed by a series of official comments that review, explain, and clarify each of the rules and any amendments that have been made to those rules. In all, the Ohio Rules cover 207 pages of text. Moreover, and more to the point, such rules are aimed at professional conduct alone and often do not even address general moral conduct. Sometimes, such codes even go so far as to excuse or ignore immoral conduct. For instance, Official Comment 2 following Rule 8.4 of the Ohio Rules covering the misconduct of an attorney, states that "matters of personal morality, such as adultery and comparable offenses ... have no specific connection to fitness for the practice of law."

Perhaps, most telling, is the fact that these rules frequently supply "loopholes" that permit people to escape culpability even when such culpability is obvious. Again, Official Comment 4 following Ohio Rule 8.4 states that "(a) lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists." We can legitimately question the effectiveness of an obligation that can be avoided simply by manufacturing a

"good faith belief that no valid obligation exists." The negative rights advocate would observe that the attorney is really saying, "I know what is ethically and legally correct here, but I'd rather do it my own way." Clearly, all of us need some other moral guide.

quick quiz 1-1

1. Natural law theory holds that there is no link between morality and law. true | false
2. Law has nothing to do with civil management. true | false
3. Ethical decisions are made in a variety of ways. true | false

1-2 Ethical Theories

Throughout the history of the philosophy of ethics, many scholars have offered several ethical theories for determining those values that ought to guide all ethical decisions. Theses theories include social contract ethics, utilitarianism, and rational ethics. Although these theories differ in their particulars, they all have one thing in common: Each theory is based on the assumption that people want to live ethical lives. If this were not the case, there would be no need to fashion these theories in the first place. Nevertheless, despite this common assumption, the theories differ greatly in their individual approaches to the problem of determining the nature of the values that underline ethical decision making. Our job here is to see that some of these theories work rather well, while others are less effective than we would prefer.

Social Contract Ethics

LO4

Social contract ethics holds that right and wrong are measured by the obligations imposed on each individual by an implied agreement among all the people within a particular social system. Although social contract ethics has existed in one form or another for centuries, the English philosopher Thomas Hobbes is generally credited with formulating the modern version of the theory in his book *Leviathan* (1651). At the most fundamental level, Hobbes says that human beings have two core rights that cannot be sacrificed, traded, or relinquished in any way: (1) the right to live and (2) the right to live in peace and security. In order to protect those two rights, people enter a social contract under which they agree to limit all other "rights" and to establish a central governing authority whose job it is to protect those rights by establishing an orderly, safe, and secure governmental system. Hobbes prefers a monarchy because a monarchy provides not only the type of safe and secure system that he is looking for, but also the continuity guaranteed by a clear line of succession, something oligarchies and dictatorships lack. [See: Thomas Hobbes, *Leviathan* (New York: Simon and Schuster, 1962); and George Mace, *Locke, Hobbes, and the Federalist Papers: An Essay on the Genesis of the American Political Heritage* (Carbondale: Southern Illinois University Press, 1979).]

Shortcomings of Social Contract Ethics Naturally, for the social contract to work, most people must adhere to its rules, and those who do not must be punished. If this were not the case, then the social contract would disintegrate, and the society would return to a "state of nature" in which people must fend for themselves. The existence of the social contract permits people to live together in peace and harmony, but it does not permit anyone, not even the leader, to violate the core rights of life and security. Should a leader consistently violate core rights, then the people have a duty to demand that such oppressive and

dangerous behavior end. For example, should a leader begin to arrest individuals indiscriminately, the people would have the duty to seek an end to that behavior, and if such behavior continued, the people would have both a right and a duty to alter or abolish that governmental system and replace it with another, more protective system.

Another problem is that social contract ethics is descriptive rather than prescriptive. A **descriptive theory** simply describes the values at work within a social system, rather than explaining how the values originated in the first place. In contrast, a **prescriptive theory** explains how to come up with the values that permit a society to run smoothly. Of course, not everyone believes that social contract ethics is descriptive only. Some ethical theorists argue that social contract ethics is a prescriptive ethics because it places a value on the obligation to protect life and security. Thus, the people benefit by knowing that others,

A CLASSIC CASE The Declaration of Independence

Most Americans accept a paradigm that suggests that America's identity began with the Declaration of Independence as authored by Thomas Jefferson. Indeed, Jefferson himself, the third president of the United States, wanted to be remembered for only three things, one of which was the writing of the Declaration of Independence in 1776. Moreover, the common belief is that Jefferson was influenced primarily by the English philosopher John Locke (1632–1704) with assistance from the Genevan intellectual Jean-Jacques Rousseau (1712–1778). This assumption is somewhat skewed because it ignores the contribution of the social contract philosopher Thomas Hobbes who, in his landmark book *Leviathan*, outlined the core truths that Jefferson included in the Declaration. Moreover, Hobbes was influenced by Niccolo Machiavelli (1469–1527) and Francis Bacon (1469–1526), both of whom also anticipated the central core ideas of the Declaration. This unconventional view was originally promoted by George Mace, formerly of Southern Illinois University and the Brookings Institute, in his landmark book *Locke, Hobbes, and the Federalist Papers: An Essay on the Genesis of the American Political Heritage*. Mace argues, quite convincingly, that the four central truths included by Jefferson in the Declaration are pulled directly from Hobbes. To demonstrate this Mace focuses on a template of the Declaration and then proposes that we superimpose these four Hobbesian truths. What results is a fairly convincing case for the influence of Hobbes on our most sacred American scripture, the Declaration of Independence. The four truths look like this:

1. Human beings in their natural state have a common human nature.
2. Human beings need a social contract to protect themselves from one another.
3. Social contracts must protect certain essential core rights.
4. Failing social contracts can be abolished.

The pertinent section of the Declaration looks like this:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

What do you think? Point out where in the opening section of the Declaration we find the four central truths supported by the Machiavelli–Bacon–Hobbes triad. The same triad also influenced James Madison in the writing of the Bill of Rights. See the Classic Case feature in Chapter 2 for more details on this unusual interpretation of American scripture. [See: George Mace, *Locke, Hobbes, and the Federalist Papers: An Essay on the Genesis of the American Political Heritage* (Carbondale: Southern Illinois University Press, 1979).]

Source: See: George Mace, *Locke, Hobbes, and the Federalist Papers: An Essay on the Genesis of the American Political Heritage* (Carbondale: Southern Illinois University Press, 1979).

including the sovereign himself or herself, will not violate those core rights. Social contract ethics, therefore, concentrates on each individual's obligation to everyone else and on the belief that, as long as these obligations are met, social stability will be preserved.

Utilitarianism

LO5

Utilitarianism is an ethical theory that says that the morality of an action is determined by its ultimate effects. The more good that results, the more ethical is the action. Conversely, the more bad that results, the less ethical is the action. Unlike social contract ethics, which admits the social contract is inherently unstable, utilitarianism seeks only one permanent goal: the greatest good for the greatest number. Determining the greatest good for the greatest number, however, is not as simple as it sounds. For one thing, we must resist the temptation to transform the greatest good for the greatest number principle into the "greatest good for me" principle. One way to avoid mistakes that can result from an improper application of utilitarianism is to follow its central elements by following these steps:

1. The action to be evaluated should be stated in unemotional, general terms. For example, "stealing another person's property" is emotional language; "confiscating property for one's own use" is somewhat less emotional.

THE OPENING CASE *Round 2*

National Security versus Human Rights

A brief review of the facts in the Opening Case will demonstrate the logic and the elements behind utilitarianism. Recall that after the terror attack on 9/11, FBI agents arrested more than 700 men of Arab and Asian descent and detained them without bail on charges of violating immigration law. Those prisoners who were later determined to be "of interest," some 84 individuals, remained in custody while the others were released. The plaintiffs in this case were six young men, five of whom are Muslim, who were held in detention for several months and were subjected to conditions that were alleged to be harsh and cruel. One of the key issues in the case involved the plaintiffs' claim that agents of the federal government detained them in harsh conditions in violation of their due process and equal protection rights. To evaluate the case based on utilitarianism, we must apply the five steps noted above. First, the action to be evaluated should be stated in unemotional, general terms. In this case, we would say that the action under consideration is whether, after a terrorist attack, agents of the federal government should detain, indefinitely and without bail, certain unregistered aliens of an ethnic background matching that of the terrorists until they can be cleared. Second, every person or class of people that will be affected by the action must be identified. The people who are affected are the suspects themselves, of course, plus their families and the people of the city in which the suspects we detained. Third, the good and bad consequences in relation to those people must be considered. The results of this evaluation look like this: (1) The detained individuals lost their freedom for an indefinite period of time, under harsh conditions; (2) their families lost the comfort and support of those individuals; (3) the people of the city appear to be protected from further error attacks, at least any involving theses individuals and others like them who were also detained. (4) Next, all alternatives to the action stated in step 1 must be considered. In this case, there appear to be only two options, either detain them or set them free. (5) Finally, once step 4 has been carried out, a conclusion must be reached. Whichever alternative creates the greatest good for the greatest number of people affected by the action is the one that ought to be taken. In this case, the action taken was designed to protect the inhabitants of the city. Even if we operate on the conservative side of calculating numbers and confine ourselves to Manhattan, we end up with just about 1,600,000 people. Those affected on the other side of the ledger, the suspects, did lose their freedom and did suffer many indignities, but to what end—to protect the people of New York. Therefore, the greatest good for the greatest number of people was attained. Or was it? See the Opening Case, Round 3.

2. Every person or class of people that will be affected by the action must be identified.
3. Good and bad consequences in relation to those people affected must be considered.
4. All alternatives to the action stated in step 1 must be considered.
5. Once step 4 has been carried out, a conclusion must be reached. Whichever alternative creates the greatest good for the greatest number of people affected by the action is the one that ought to be taken.

Shortcomings of Utilitarianism Despite its systematic approach to ethical questions, utilitarianism often fails to produce consistent moral judgments. The main problem with utilitarianism is developing a commonly understood definition of good. It is one thing to say that utilitarianism demands the greatest good for the greatest number of people; it is another thing entirely to define what is actually meant by the word *good*. Some people might define the greatest good as life itself, so if an action simply keeps most people affected by that action alive, that action is seen as promoting the greatest good. Others may be a bit more particular and see the greatest good in terms of the quality of life. Thus, life as a slave may be seen as less desirable than life as a free person, and any action that keeps people alive but reduces them to slavery would not be seen as promoting the greatest good. Of course, this just complicates the formula even further because people may have different ideas about the quality of life.

Some people see the quality of life in terms of creature comforts. Thus, actions that ensure that the greatest number of people will have jobs, homes, vehicles, and disposable income for clothes, travel, and entertainment would be promoting the greatest good. And actions that guarantee jobs and the good life are seen as promoting that greatest good for the greatest number. Others might see the quality of life in terms of more abstract principles, such as the need to have an environment that promotes freedom and justice. In this scenario, actions that guarantee freedom and justice would promote the greatest good, even though some people might be put at risk because promoting freedom means having strict rules about when and under what circumstances that freedom might be curtailed. The Opening Case gives us a pretty good example of this dilemma.

THE OPENING CASE *Round 3*

National Security versus Human Rights

Remember that, in the aftermath of 9/11, the FBI detained more than 700 men of Arab and Asian descent without bail on charges of violating immigration law. Eventually 84 prisoners, who had been determined to be "of interest" remained in custody. The plaintiffs in this case were six young men, five of whom are Muslim, who were detained for several months in conditions described as harsh and cruel. Later, the six detainees brought suit against several high-level government officials, alleging that the government had violated their due process and equal protection rights. Remember that as the last step of the utilitarian process, we must decide which alternative creates the greatest good for the greatest number of people affected by the action. In this case, the action taken deprived six individuals of their freedom without due process, in exchange for the lives of some 1,600,000 residents of Manhattan. The result seems inevitable (six lives reduced to unlawful imprisonment weighed 1,600,000 Manhattan residents). However, if the greatest good represents freedom and justice, then the result is different. Depriving six men of their freedom by unjustly denying them due process is just a start down that slippery slope we discussed earlier. It may be six people today, then 60 tomorrow, then 120,000 detained in internment camps, and then—who knows—perhaps 6 million in concentration camps. Therefore, it would seem that the greatest good for the greatest number of people was not attained. Think about it.

Rational Ethics

LO6

Rational ethics replaces the prescriptive approach of social contract theory and the result-oriented standard of utilitarianism with a system that is arguably objective, logical, and relatively consistent. Although forms of rational ethics were known in pre-Enlightenment times, the German philosopher Immanuel Kant is customarily recognized as having constructed the theory in several books including especially *Groundwork of the Metaphysics of Morals* (1785). **Rational ethics** is a philosophical theory that says ethical values can be determined by a proper application of human reason. The theory assumes, and rightfully so, that because all human beings are rational, all human beings ought to have the same ethical values. Therefore, rational ethics ought to establish universal rules of behavior that apply to all people at all times. For this reason, rational ethics is often referred to as *objective ethics*.

As rational beings, people think for themselves and, in doing so, recognize their own self-worth as individuals. Along with self-worth comes a belief in certain rights. These rights include the right to life and the right to security. Rational beings recognize that they do not want to be killed or endangered. Thus, each individual has a duty to refrain from violating the rights of all other human beings. As rational beings, people also realize that it is logical to establish rules that support the continued existence of society. A rule that destroys a society that tries to follow it would be an illogical rule. Consider the following rule: "Kill people who annoy you." A person who adheres to rational ethics would instantly recognize that such a rule is both illogical and immoral. If everyone in a society were to adopt such a rule, that society would collapse because everyone annoys someone at some time.

Shortcomings of Rational Ethics

Even though rational ethics appears to be almost foolproof on the surface, it is not without its difficulties. One difficulty lies within what are referred to as penumbra rights. **Penumbra rights** are those that are found in those indeterminate or indistinct shadow areas associated with more uniformly accepted rights, such as the right to a safe and secure life. Thus, while it is clear that people have an unalienable right to a secure life, it is not quite as clear that they, therefore, have the right to arm themselves. The right to bear arms, then, is one those penumbra rights that is found within the shadow of the right to a secure life. Similarly, while it is clear that security is a core right, it is not as clear that security includes a secure reputation that is free from defamatory attacks orchestrated by other people in the media. Such penumbra rights must be interpreted by experts, most of which are found in the court system operating as judges, mediators, and magistrates. Another difficulty with rational ethics is that it does not always consider the shadowy nuances of everyday life. Rational ethics demands a clean and orderly universe wherein words, beliefs, and actions are the same for everyone. That does not always happen, as the accompanying example illustrates.

EXAMPLE 1-2: Lies and Politics: One State's Solution

The Ohio General Assembly, in an admirable if somewhat quixotic attempt to return a level of dignity to politics, made lying in political campaigns a crime. More specifically, Ohio Revised Code Section 3517.22 made it a criminal offense to "[p]ost, publish, circulate, distribute, or otherwise disseminate a false statement concerning a candidate, either knowing the same to be false or with reckless disregard for whether it was false or not, if the statement is designed to promote the election, nomination, or defeat of the candidate." The law was challenged by Susan B. Anthony List (SBAL), an advocacy group that wanted to erect a billboard that identified a state representative as having voted for federally funded abortions. The representative complained to the Ohio Elections Commission arguing that because he had never voted for federally funded abortions, the billboard would be broadcasting a lie. In reaction, the

billboard company decided that it would simply not erect the troublesome sign. The SBLA believed that its right to freedom of speech had been violated, and the representative believed that his right to a safe and secure reputation had also been violated. It is at this point that rational ethics has a problem. *Rational ethics* clearly declares that it is logical to establish rules that support the continued existence of society. That much is clear; however, in this case, we have conflicting rules. On the one hand, a rule that says people must have free speech in a political debate is quite logical, while on the other hand, a rule that demands that people always tell the truth in political campaigns is also quite logical. The problem is that, in this case, as in many others, the *truth* of the matter is not clear. Under the act, insurers cannot use federal money to pay for abortions directly, and so the representative is correct. He did not vote for federally funded abortions; however, the act does support the use of federal dollars to pay for abortion-inclusive insurance coverage. So the advocacy group is also correct because, through an accounting strategy, federal money indirectly enables abortions. The difficulty with the precise and logical nature of rational ethics is that real life is not always that precise and logical. [See: *Susan B. Anthony List, et al., Petitioners v. Steven Driehaus, et al.* (No. 13-193), U.S. Court of Appeal for the Sixth Circuit (2013).]

Source: See: *Susan B. Anthony List, et al., Petitioners v. Steven Driehaus, et al.*, (No. 13-193) United States Court of Appeal for the Sixth Circuit (2013).

Notwithstanding the logical structure of rational ethics, many people are uneasy with some of its apparently incomplete parameters. As we saw in the example, one of the really difficult elements of rational ethics is that its practitioners simply assume that all concepts, terms, and ideas will have universal meaning. Thus, when Kant, for example, says that we must always tell the truth, he assumes that all things have a universally recognized meaning that is unquestionable. While such a belief works much of the time, it still falls quite short of being a consistently normative principle. If that were not the case, then we would not have the problem outlined in *Susan B. Anthony List v. Driehaus*.

quick quiz 1-2

1.	Utilitarianism focuses on the consequences of an action.	true | false
2.	Rational ethics is a form of nonjudgmentalism.	true | false
3.	Utilitarianism and rational ethics always reach the same moral conclusion.	true | false

1-3 Ethics and the Government

LO7

If you have concluded that determining an ethical value system is difficult, then you have clearly been reading quite closely, and you have an unobstructed view of the problems associated with ethical decision making. Unfortunately, once we apply the same process to the government, matters become even more opaque. To see this, let's start with a few basics. The federal government runs the nation and, on the international scene, nations run the world. This simple reality emerges because nations possess territory, raise money through taxation, police their borders, protect their people, and if necessary, use force in a legitimate and responsible way. The government of a nation has two objectives that simultaneously justify its power and enable the proper exercise of that power. Those two objectives are (1) to protect its own existence and (2) to protect the lives, health, and well-being of its own citizens. Both

of these responsibilities must be carried out in an ethical way. While this sounds like a simple and straightforward mandate, it is not. Government actions require a dyadic sense of responsibility that is often quite confusing to those officials who must act accordingly.

A Governmental and Ethical Dyad

Most people assume, and with good reason, that a single level of morality governs the behavior of both civilians and leaders. In an essay titled, "Politics as a Vocation," Max Weber suggests that this view is flawed. Weber argues, instead, that a **dyad** or a two-level system of morality exists, represented by the **ethic of ultimate ends** for individuals and an **ethic of responsibility** for national leaders. The ethic of ultimate ends must be practiced by individuals because individuals can never completely foresee "the ultimate ends" of their actions. Therefore, individuals must obey absolute moral precepts, such as "turn the other cheek" despite the fact that the ultimate consequences of those actions are unclear or uncomfortable. From this perspective, we can see why the ethic of ultimate ends is also often referred to as the ethic of benevolence.

On the other hand, the ethic of responsibility demands that the moral actor—in this case, a national leader—must consider his or her responsibilities to those people who depend on that leader for safety and security. So, for example, if a neighboring nation is belligerent, aggressive, or determined to fight ancient cultural, religious, and ethnic wars, the leaders of the first nation cannot ignore that threat, as much as they might want to. In short, they are not permitted to "turn the other cheek" because to do so would endanger the innocent people they have the duty to protect. Unfortunately, many national leaders fail to see this distinction. The leaders of the United States have been especially guilty of this shortsightedness. [See: Max Weber, "Politics as a Vocation," in *The Great Political Theories: From the French Revolution to Modern Times,* ed. Michael Curtis (New York: Harper, 2008), pp. 426–436).]

Shortcomings of the Ethical Dyad

The primary shortcoming of the ethical dyad is not the ethic itself, but the difficulty that leaders have executing one level of that ethic—the ethic of responsibility. Moreover, this is not a minor error. In a study titled *A New Pattern for a Tired World*, the essayist Louis Bromfield develops an argument that echoes the approach suggested by Weber. In doing so, Bromfield focuses on the United States, maintaining that American leaders have mishandled their basic responsibilities by focusing on what Bromfield calls "world responsibility" rather than national responsibility. What results, ironically enough, is a pattern of irresponsibility. American leaders try to help other nations as they might try to reform the poor in their local neighborhood—by giving every homeless person a handout but helping none of them get a job.

In international terms, Bromfield says this means momentarily rescuing failing nations by transferring billions into their treasuries but never dealing with the actual cause of the problem. This level of ineptitude on the part of the Americans may be understandable since the United States was ill prepared for world leadership when it assumed that role in 1918. Understandable, however, is not the same as defensible. Bromfield argues that to be truly responsible, leaders must adopt a far-reaching vision that measures what is best for the nation's citizens in terms of what is best for the economic stability of the world. Ironically, this requires disengagement from the entire world and a focus on the economic and civic health of the United States and its nearest neighbors.

Bromfield argues that the United States, Europe, Russia, China, Japan, and India must develop economic alliances with those nations closest to them, geographically and culturally. Economic alliances are crucial to global stability because, when people are fed, clothed, housed, and healthy, they do not resort to violence. Bromfield's economic alliances would look like this: The United States would join with Canada, Mexico, and other nations in the Western Hemisphere; Russia, China, and Japan would unite; the European nations would

join with one another; and India would join with Pakistan (and probably with Australia and New Zealand). Once these alliances were economically healthy, they would trade with the other members in their own bloc, until they institute a network of trust. The four major economic blocs would then form trade agreements among themselves and later with smaller nations, offering help only to those nations that request assistance. This would be an effective exercise in the ethic of responsibility, first in relation to their people, and, second, in relation to the rest of the world. Bromfield goes so far as to predict a unified world economy in the far future, as long as national leaders act responsibly. He does not use the word *globalization*, but he might was well have. [See: Louis Bromfield, *A New Pattern for a Tired World* (New York: Harper, 1954).]

The Threat of Failed States

As noted above, Bromfield suggests that international decision making be based on economic motivations. His position would reduce most (all?) international decisions to market-based, value-driven decisions, aimed at preserving international peace through trade and through commerce—period. There is certainly much logic to the notion that many international problems can be solved by creating economic alliances. Of course, the success of Bromfield's plan depends upon the benevolence of the rich nations; however, the basic rule of Weber's ethical dyad is that leaders must not think benevolently but must, instead, think in terms of national responsibility. The danger is that, as the gap between the rich and poor nations grows, the rich may no longer feel it is in their national best interests to invite the poor nations into their regional alliances; therefore, the gap between the rich and poor may soon become impassable. Thus, these alliances may not lead to the global cooperation he envisions but, instead, to the global equivalent of a dual class system—the rich law abiding nations and the failed and unstable states.

Failed states are those in which the government has completely collapsed or has become so ineffective that it can no longer provide sustenance or security for its own people. **Unstable states** are those in which the government suppresses its own people thus inviting a future revolt that might destabilized a region. All of this can be avoided by taking into consideration Bromfield's other premise—that the people who live in those failed and unstable states may become so desperate they have nothing to lose by using violence. This reality is made even more unsettling because, in the modern, wireless world of global interconnectedness, asymmetrical warfare makes even the richest nation vulnerable to attack from agents of cyber-terror, chemical and biological warfare, and nuclear weapons. Thus, it may actually be in the best interests of the rich nations to make sure the people of the poor and unstable nations are cared for and protected, and thus have the chance to develop, healthy, safe and productive lives.

EXAMPLE 1-3: The Ethical Dyad in Action

In the shadow of the May 22, 2017, terror attack in Manchester, England, President Trump was involved in what was deemed to be a routine foreign policy tour. One stop on the tour led President Trump to Saudi Arabia, where he met with Saudi leaders to cement a deal that had been negotiated by Secretary of Defense Jim Mattis, Secretary of State Rex Tillerson, and National Security Adviser H. R. McMaster. Under the terms of the agreement, the United States agreed to sell Saudi Arabia weaponry, military vehicles, naval ships, and military hardware that would be used in the fight against ISIS. More importantly, in exchange for this military material and weaponry, Saudi leadership agreed to build and lead an Arab-based coalition that would be used in the battle to destroy Isis and in the crusade to keep Iran contained within its own territory. There were those on the home front who opposed this agreement because of Saudi Arabia's poor human rights record. In fact, the record has been labeled one of the

worst in the region. A white paper complied by the Human Rights Watch listed numerous violations in the areas of free speech, women's rights, and criminal justice. The odd thing about this is that under Weber's doctrine, none of this would matter. Weber's ethic of responsibility would say that the president's only duty is to protect the American people. So, if the agreement manages to help the United States obtain assistance in the destruction of ISIS and the containment of Iran, thus protecting our our citizens against attack and preserving our access to oil, then the president was doing his job.

Bromfield would disagree. Bromfield would say that protecting our own people may mean protecting the rights of the citizens of other nations. Remember, an unstable state like Saudi Arabia is just as threatening to global order as a failed state. This is because the people who live in failed and unstable states have become so desperate they have nothing to lose by using violence, and violence in one nation can destabilized an entire region, thus threatening global trade. So, while Weber would approve of this military agreement with Saudi Arabia, Bromfield would not. Weber would see it as a proper exercise of the ethic of responsibility because both states would be protected from the dual threats of ISIS and Iran. In contrast, Bromfield would see it as violation of that ethic because, as long as the people of Saudi Arabia are persecuted, the state itself is unstable and open to rebellion, which could destabilize the entire region, thus threatening American interests at home and abroad. [See: Daniel Henninger, "From 9/11 to Manchester," *The Wall Street Journal,* May 16, 2017, p. A-15; "Saudi Arabia Events of 2016," *Human Rights Watch: World Report 2017*, https://www.hrw.org/world-report/2017/country-chapters/saudi-arabi; and "Saudi Arabia 2014 Human Rights Report," *Country Reports on Human Rights Practices for 2014*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, https://www.state.gov/documents/organization/236832.pdf.]

The Responsibility to Protect

So who is correct, Weber who says that the internal human rights record of a fellow nation is none of our business as long as our needs are met, or Bromfield who argues that the ethic of responsibility is only exercised properly when the safety and stability of very nation is met? Although the debate will likely go on, no matter what, it is interesting to note that the ethic of responsibility as interpreted by Bromfield recently received support from an unlikely source, the United Nations. In 2005, a new global doctrine was proposed at the United Nations World Summit. The new doctrine, which has been dubbed the **Responsibility to Protect (R2P)**, declares that the leadership of every nation has a definitive duty to protect its own people from four major threats, genocide, war crimes, ethnic cleansing and crimes against humanity. Crimes against humanity include such things as slavery, torture, rape, sexual slavery, mass murder, hostage taking, terrorism, kidnapping, and apartheid, among several others. A nation-state that commits such offenses is considered to be a rogue state. Were the UN to have stopped here, R2P would clearly be a simple reiteration of Weber's position.

However, it did not stop here. Instead, it added a second layer to the doctrine. That layer declares that the international community has the duty to police all other members of the community to ensure that none of them victimize their own people. Moreover, if such offenses are discovered in a particular nation, it is the duty of all other nations to stop those offenses by resolution, by sanctions, by military intervention, or by all three. Curiously, this sounds very much like Bromfield's second premise, which reminds us that the security of the planet depends on the security of every nation. Thus, to prevent violence, terrorism, war, and so on, it is best to make sure that the people of every nation have the chance to develop healthy, stable, productive lives. Only then will the people of those nations have no reason to upset the stability of the global community. Bromfield's plan to build economic support regions would encourage this type of cooperation and might lead to the type global economic

community that he once envisioned. [See: Richard Haas, *A World in Disarray: American Foreign Policy and the Crisis of the Old Order* (New York: Penguin Press, 2017), pp. 115–119. See also: Bromfield.]

quick quiz 1-3

1. Weber supports the idea of a dyadic or two-level system of morality in government. true | false
2. The main shortcoming of the ethical dyad is that leaders cannot execute the ethic of responsibility. true | false
3. Bromfield suggests that the major powers develop military alliances. true | false

1-4 Ethics and Business

While businesses come in every shape and size, the dominate business organization on the national and international scene is the corporation. Corporations carry a great deal of influence over the economy, the community, and the people. There are those who say that a corporation has no ethical responsibility beyond making a profit for its shareholders. This is, in fact, the traditional view of corporate responsibility. It is a view that has remained so ingrained in our system that, until recently, it was the only view built into statutory and common law. Recently, however, voices have been raised arguing that corporations have a high degree of ethical responsibility to those people affected by their decisions.

The Traditional Corporate Culture

Although all businesses affect the economy and the community, the greatest force in the American industrial state is the corporation, in general, and the multinational corporation, in particular. The reality of corporate power is revealed by the fact that philosophers on both ends of the political spectrum can point to the corporation as a guiding force in modern civilization. For instance, in his treatise, *Individualism Old and New*, the *pragmatic* American philosopher, John Dewey, notes, "The United States has steadily moved from an earlier pioneer individualism to a condition of corporate dominance." Similarly, the *theoretical* philosopher Herbert Marcuse once remarked that no one, not even the former enemies of capitalism, can escape the influence of corporate power. In fact, Marcuse goes so far as to say that in the modern global marketplace, "the socialist and communist systems are linked with capitalism." [See: John Dewey, *Individualism: Old and New* (New York: Capricorn Books, 1962); and Herbert Marcuse, *Five Lectures: Psychoanalysis, Politics, and Utopia,* trans. Jeremy J. Shapiro and Shierry M. Weber (Boston: Beacon Press, 1970).]

One reason that corporations have such power is that they are legal persons, created under the authority of federal and state statutes. This status as a "legal person" gives the corporation certain rights and abilities that other business entities do not always have. For instance, as legal persons they are accorded certain constitutional rights, such as the right not to be deprived of property without due process of law. They can also own property in their own name and have lawsuits filed to protect them or vindicate their rights. There are, of course, many types of corporations. Our focus will be on those corporations that are privately run to make a profit for their owners, who are referred to as shareholders. The traditional view says that privately owned corporations are created solely to make a profit for their shareholders. Consequently, the foremost job of any manager is to maximize those

profits. In fact, under the traditional rule of shareholder dominance, the managers of a corporation could be held liable in a court of law for making decisions that do not guarantee that the shareholders would receive a maximum return on their investment.

As defined previously, the type of thinking promoted by the court in Example 1-5 is referred to as utility thinking or **cost–benefit thinking**. Using utility thinking, a corporate manager simply looks at the action he or she is about to take and asks whether the benefit to the shareholders will outweigh the cost to the corporation. If the shareholders' benefits offset corporate costs, then the action is taken. If not, the action is abandoned. Proponents of this position justify cost–benefit thinking in three ways. First, the profits to the shareholders must always come first. Second, it would be unfair to divert funds that belong to the shareholders to activities that do not directly benefit the shareholders. Third, a corporation's managers are accountable to the shareholders and to no one else. The problem with utility thinking is that it often results in actions that are clearly unethical and potentially illegal.

EXAMPLE 1-4: Corporate Culture and Utility Thinking

When Lynn Cummings discovered that the managers of a corporation in which she owned stock had made a decision that had caused shareholders to lose money in a merger plan, she sued, seeking a reversal of the merger or a suitable payment from the managers that would make up for her losses. Basically, Cummings second-guessed the way that the managers had made their decision, arguing that they had not properly researched the merger and had not placed the shareholders' profits first. The managers argued that they had made their decision based on the long-term benefits of the merger to everyone involved, including the local community and the economy of the nation and state. The court sided with Cummings, noting that the job of the managers was to look out for the shareholders' profits, not the long-term benefits to the community or the economy.

EXAMPLE 1-5: Maximum Corporate Irresponsibility

The managers of Taylor-Beechaum Pharmaceuticals Inc. received a report that the corporation's latest weight-loss drug, biomiocin, was having unpredicted side effects that caused problems for several people. The managers of Taylor-Beechaum ordered the accounting department to determine how much it would cost to recall all the biomiocin now on the market, suspend manufacturing, and conduct more tests on the drug's safety. The accountants reported that it would be more cost effective to simply leave the drug on the market and pay off anyone who might be injured and who might bring a lawsuit against Taylor-Beechaum. Keeping the drug on the shelves would allow the corporation to continue to pay dividends to the shareholders. In contrast, if the drug were taken off of the market, the payment of dividends would be suspended pending the outcome of the new testing program. Consequently, the corporate managers decided to leave biomiocin on the shelves. This decision not only violated virtually every ethical standard that we've studied thus far (except nonjudgmentalism), but also evaded the corporation's responsibility to consumers, to the government, to the shareholders, and to the public at large.

Reasons for Ethical Responsibility

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The fact that corporate officers and directors have made such irresponsible decisions should not be surprising. Nor should it be surprising that until recently, the law supported such decisions. The idea that a corporation is a legal person did not spring full grown into the law when the first corporations were formed. In fact, it took jurists quite some time to see that

corporations were neither partnerships nor miniature democratic states but, instead, vehicles for making a profit. Once jurists recognized the unique position that corporations hold within the hierarchy of business associations, however, they easily granted certain privileges to corporate entities. Despite this, as the jurists entered the modern age, they began to see that there were a number of reasons that corporations, like Taylor-Beechaum in Example 1-5, should accept ethical responsibility for their actions. Some of these reasons are built on the legal advantages granted to corporations. Others are based on the idea that many corporations are powerful forces in their communities. Still others focus on the self-interest of the corporation. Whatever the case, these arguments are being voiced more loudly and with more conviction with each passing fiscal year.

Legal Advantages Granted to the Corporation The first argument supporting corporate social responsibility is based on the premise that corporations are granted certain rights as a result of the incorporation process. For example, the corporate form offers limited liability to those who share in its ownership. This means that the personal assets of the corporate owners cannot be taken if the corporation defaults on a contract or commits a tort or a crime. In addition, under provisions of most incorporation statutes, a corporation is considered an artificially created person. This means that, under provisions of the U.S. Constitution and those of most state constitutions, a corporation, like a natural person, cannot be deprived of life, liberty, or property without due process of law. This also means that a corporation can own property in its own name and bring a lawsuit to vindicate its rights. Because corporations have all these rights, they owe an obligation to the public and to the community at large to act responsibly. In practical terms, this means that the decisions of corporate managers must not be narrowly focused on the profits of the shareholders.

EXAMPLE 1-6: The Andrean-Harrison Donation

As part of a downsizing campaign, the Andrean-Harrison Corporation was about to close operations in Tulsa. The company owned an office building and a small laboratory on the outskirts of Tulsa adjacent to 30 acres of undeveloped land. The corporation had a chance to sell the land at a price that would have made a profit for the shareholders of the company. Rather than take advantage of this offer, Andrean-Harrison decided to donate the land to the city. The fact that the corporation was a legal person meant that it owned the land and could donate it to the city. Corporate officials acted responsibly in this case, taking advantage of the corporation's right to own land in its own name.

The Impact of Corporate Decision Making A second reason for demanding ethical behavior from corporations is that corporate decision making clearly has an impact on more people than just the shareholders and the managers. Those who support corporate ethical responsibility often argue that many corporate decisions, such as whether to open or close a factory, will affect everyone in the local community. Those affected by such decisions include suppliers, consumers, employees, support businesses, and community members. Consequently, the argument goes, all of these groups should be taken into consideration when corporate managers make decisions. Some individuals who support this form of extreme corporate ethical responsibility would like to see representatives from the employees' union, from consumer protection groups, from environmental protection groups, and from the local chamber of commerce on every corporation's board of directors. Others, however, argue that because corporate decisions affect more individuals and groups than just the shareholders and managers, those decisions should be made by an impartial group of corporate outsiders. Often the corporate outsiders named are governmental officials.

EXAMPLE 1-7: Corporate Cooperation and Compromise

When the directors of Igar International Corporation were working on plans to diversify their operation, they considered opening a chemical plant in Santa Ana. Before making the decision, they sent a team of experts to Santa Ana to investigate the possibility of establishing an operation just within the city limits. Although the city officials promised Igar a tax abatement and agreed to donate several acres of land to the corporation, citizens' groups were against the plant because of environmental and health concerns. The corporation could have simply found a more receptive or, perhaps, a less vocal city in which to locate; however, instead of simply discarding their consideration of Santa Ana, they worked with the citizens' groups to meet their concerns. Ultimately, the two sides agreed on modifications to the project and moved forward. The willingness of the company to discuss the proposed changes in its operation reflected an understanding of the corporation's ethical responsibility based on the fact that corporate decisions have a far-ranging impact.

Enlightened Corporate Self-Interest Finally, there are those who argue, rather convincingly, that accepting ethical responsibility is actually in the long-term best interests of the corporation. This argument, which is generally referred to as enlightened self-interest, is based on the notion that ethically responsible corporations benefit by creating goodwill for themselves, thus motivating consumers to purchase their products, investors to buy their stock, and lawmakers to grant them further legal advantages. In addition, the corporation benefits because the community at large gains from such decisions. If the community at large is healthy, the argument goes, then the corporation that relies on that community will be healthy also.

EXAMPLE 1-8: Failed Negotiations Lead to Problems

The CEO of Pilder and Wesselkamper International Inc. decided to suspend negotiations with union representatives when she learned that they were about to demand a salary increase that she believed was untenable given the corporation's financial health, or lack thereof. The union threatened to file a complaint with the National Labor Relations Board, charging that the CEO and her staff were not cooperating with the collective bargaining process. The union also indicated that it was considering publishing an advertisement in *The New York Times* denouncing the CEO's decision and eventually would authorize a strike. The CEO continued to resist further negotiations and simply shut down operations. Eventually, the company filed for bankruptcy and dissolved its operation. Neither of the parties involved in this case opted to pursue a course of enlightened self-interest, which resulted in the worst possible conclusion for all those involved.

Efforts to Promote Ethical Behavior

As noted previously, the traditional view of a corporation says that its primary role is to make a profit for its shareholders. This means that corporate managers are obligated to make decisions that maximize those profits. Moreover, under the traditional role of corporate managers, those managers could be sued for making a decision that hurt the corporation's profits and thereby reduced or eliminated dividends; however, recent amendments to many corporate statutes have been designed to encourage corporate managers to make broader-based, more ethical decisions. Thus, some statutes now permit managers to consider factors beyond