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ESSENTIALS OF THE LEGAL ENVIRONMENT TODAY



Roger LeRoy Miller



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Roger LeRoy Miller

Institute for University Studies, Arlington, Texas



Australia • Brazil • Japan • Korea • Mexico • Singapore • Spain • United Kingdom • United States

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Essentials of The Legal Environment Today

FIFTH EDITION

Roger LeRoy Miller

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& Qualitative Business:*
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Preface

It is no exaggeration to say that today's legal environment is changing at a pace never before experienced. In many instances, technology is both driving and facilitating this change. The expanded use of the Internet for both business and personal transactions has led to new ways of doing business and, consequently, to a changing legal environment for the twenty-first century. In the midst of this evolving environment, however, one thing remains certain: for those entering the business world, an awareness of the legal and regulatory environment of business is critical.

The Fifth Edition of *Essentials of the Legal Environment Today* is designed to bring this awareness to your students. They will learn not only about the traditional legal environment but also about some of the most significant recent developments in the e-commerce environment. They will also be motivated to learn through our use of high-interest pedagogical features that explore real-life situations and legal challenges facing businesspersons and consumers. For the Fifth Edition, we have spent a great deal of effort making this book more contemporary, exciting, and visually appealing than ever before. I believe that teaching the legal environment can be enjoyable and so, too, can learning about it.

Unique New Digital Learning Systems

Before discussing the many new aspects of this text, however, I wish to point out the exciting new digital products offered in conjunction with the text.

MindTap Legal Environment for Essentials of the Legal Environment Today, Fifth Edition

MindTap™ Legal Environment is a fully online, highly personalized learning experience built upon authoritative Cengage Learning content. By combining readings, multimedia, activities, and assessments into a singular Learning Path, **MindTap** guides students through their course with ease and engagement. Instructors personalize the Learning Path by customizing Cengage Learning resources and adding their own content via apps that integrate into the **MindTap** framework seamlessly with Learning Management Systems.

Legal environment instructors have told us that it is important to help students **Prepare** for class, **Engage** with the course concepts to reinforce learning, **Apply** these concepts in real-world scenarios, and use legal reasoning and critical thinking to **Analyze** business law and legal environment content.

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

1. **Prepare**—Interactive worksheets are guided readings designed to prepare students for classroom discussion by ensuring reading and comprehension.
2. **Engage**—Real-world videos with related questions help engage students by displaying the relevance of business law in everyday life.
3. **Apply**—Brief hypotheticals help students practice spotting issues and applying the law in the context of short factual scenarios.
4. **Analyze**—Case-problem blueprints promote deeper critical thinking and legal reasoning by building on acquired knowledge to truly assess students' understanding of legal principles.

Each and every item in the Learning Path is assignable and gradable. This gives instructors the knowledge of class standings and concepts that may be difficult. Additionally, students gain knowledge about where they stand—both individually and compared to the highest performers in class.

To view a demo video and learn more about *MindTap Legal Environment*, please visit www.cengage.com/mindtap.

Cengage Learning Testing Powered by Cognero

Cengage Learning Testing Powered by Cognero is a flexible, online system that allows you to do the following:

- Author, edit, and manage *Test Bank* content from multiple Cengage Learning solutions.
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Start Right Away! *Cengage Learning Testing Powered by Cognero* works on any operating system or browser.

- No special installs or downloads are needed.
- Create tests from school, home, the coffee shop—anywhere with Internet access.

What Will You Find

- ***Simplicity at every step.*** A desktop-inspired interface features drop-down menus and familiar intuitive tools that take you through content creation and management with ease.
- ***Full-featured test generator.*** Create ideal assessments with your choice of fifteen question types—including true/false, multiple choice, opinion scale/Likert, and essay. Multi-language support, an equation editor, and unlimited metadata help ensure your tests are complete and compliant.
- ***Cross-compatible capability.*** Import and export content into other systems.

What Is New in the Fifth Edition

Instructors have come to rely on the coverage, accuracy, and applicability of *Essentials of the Legal Environment Today*. To make sure that this text engages your students, solidifies their understanding of legal concepts, and provides the best teaching tools available, I now offer the following items in the text.

New Chapter on Internet Law, Social Media, and Privacy

For the Fifth Edition, I have included an entirely new chapter (Chapter 9) entitled **Internet Law, Social Media, and Privacy**. Social media have entered the mainstream and become a part of everyday life for many businesspersons. Throughout the text, I recognize this trend by incorporating the Internet and social media as they relate to the topics under discussion.

I also give the legal issues and laws surrounding the Internet, social media, and privacy special emphasis in this new chapter. In addition, the chapter discusses recent legal developments concerning the protection of social media passwords and the use of social media by employers and law enforcement.

New Managerial Strategy Features

For the Fifth Edition, I have created a new feature entitled *Managerial Strategy* that focuses on the management aspects of business law. Special emphasis is given to sustainability, ethical trends, and changing managerial responsibilities.

Each feature includes a short section entitled *Managerial Implications* that provides concrete information for managers and connects the topic under discussion to operating a business. Each feature also concludes with two *Business Questions* that prompt students to further examine the issues discussed. **Suggested answers to all the Business Questions are included in the Solutions Manual for this text.**

Topics examined in these features include:

- Budget Cuts for State Courts Can Affect Businesses (Chapter 2).
- Marriage Equality and the Constitution (Chapter 4).
- Small-Business Owners Now Have Recourse When Cyber Thieves Empty Their Bank Accounts (Chapter 11).
- Many Companies Have to Revise Their Social Media Policies (Chapter 16).

New Spotlight Cases and Spotlight Case Problems

For the Fifth Edition of *Essentials of the Legal Environment Today*, certain cases and case problems have been carefully chosen as exceptionally good teaching cases. *Spotlight Cases* and *Spotlight Case Problems* are labeled either by the name of one of the parties or by the subject involved. Some examples include *Spotlight on Apple*, *Spotlight on Beer Labels*, *Spotlight on Gucci*, *Spotlight on Macy's*, *Spotlight on Nike*, and *Spotlight on the Seattle Mariners*.

Instructors will find these *Spotlight Cases* useful to illustrate the legal concepts under discussion. Students will enjoy studying these cases because the parties are often familiar and the cases involve interesting and memorable facts. **Suggested answers to all case-ending questions and case problems are included in the Solutions Manual for this text.**

New Cases and Case Problems

The Fifth Edition of *Essentials of the Legal Environment Today* is filled with new cases and case problems. Every chapter features new cases and case problems from 2013 and 2014, and some chapters include three new cases. That means more than 85 percent of the cases are new to this edition.

The new cases have been carefully selected based on three criteria:

1. They illustrate important points of law.
2. They are of high interest to students and instructors.
3. They are simple enough factually for legal environment students to understand.

I have made it a point to find recent cases that enhance learning. I have also eliminated cases that are too difficult procedurally or factually.

Improved Ethics Coverage

For the Fifth Edition of *Essentials of the Legal Environment Today*, I have significantly revised and updated the chapter on ethics and business decision making (Chapter 3). The chapter now presents a more practical, realistic, case-study approach to business ethics and the dilemmas facing businesspersons today. It also provides step-by-step guidance for making ethical business decisions.

The emphasis on ethics is reiterated in materials throughout the text, particularly the *Ethical Issue* features and the pedagogy that accompanies selected cases and features. I also

discuss **corporate governance issues** in Chapter 20. Finally, many chapters in the text include *A Question of Ethics* case problem that provides a modern-day example of the kinds of ethical issues faced by businesspersons and explores the ways that courts can resolve them.

Additional Features of This Text

Essentials of the Legal Environment Today, Fifth Edition, includes a number of pedagogical devices and special features, including those discussed here.

Online Developments

The Fifth Edition contains many new **Online Developments** features, which examine cutting-edge cyberlaw issues coming before today's courts. Here are some examples of these features:

- Corporate Reputations under Attack (Chapter 3)
- Do Computers Have Free Speech Rights? (Chapter 4)
- Facebook Uses Privacy Concerns to “Smear” Google (Chapter 6)
- Even Smartphones Are Vulnerable to Cyber Attacks (Chapter 7)
- The New Era of Crowdfunding (Chapter 11)
- Social Media in the Workplace Come of Age (Chapter 16)
- The Justice Department Goes after E-Book Pricing (Chapter 19)

Each feature concludes with a *Critical Thinking* question that asks the student to analyze some facet of the issues discussed in the feature. **Suggested answers to these questions are included in the *Solutions Manual* for this text.**

Emphasis on Business and on Critical Thinking

For the Fifth Edition, I have focused on making the text more business related. To that end, I have carefully chosen cases, features, and problems that are relevant to operating a business.

In addition, I recognize that today's business leaders must often think “outside the box” when making business decisions. For this reason, I have included numerous critical thinking and legal reasoning elements in this text. Almost all of the features and cases presented in the text conclude with some type of critical thinking question.

Cases may include one of the following critical thinking questions:

- *What If the Facts Were Different?*
- *The Ethical Dimension*
- *The E-Commerce Dimension*
- *The Global Dimension*
- *The Legal Environment Dimension*

Suggested answers to all questions following cases can be found in the *Solutions Manual* for this text.

Managerial Implications in Selected Cases

In addition to the critical thinking questions, I have included special case pedagogy at the end of selected cases that have particular importance for business managers. This section, called *Managerial Implications*, points out the significance of the court's ruling in the case for business owners and managers.

Highlighted and Numbered Examples and Case Examples

Many instructors use cases and examples to illustrate how the law applies to business. For this edition, I have expanded both the in-text examples and the discussion of case law by adding highlighted numbered **Examples** and **Case Examples** in every chapter.

These two features are uniquely designed and consecutively numbered throughout each chapter for easy reference. *Examples* illustrate how the law applies in a specific situation. *Case Examples* present the facts and issues of an actual case, and then describe the court's decision and rationale. The numbered *Examples* and *Case Examples* features are integrated throughout the text to help students better understand how courts apply the principles in the real world.

Two Issue Spotters

At the conclusion of each chapter, I include **two Issue Spotters** related to the chapter's topics that facilitate student learning and review of the materials. **Suggested answers to the Issue Spotters in every chapter are provided in Appendix C at the end of the text.**

Reviewing Features in Every Chapter

In the Fifth Edition of *Essentials of the Legal Environment Today*, I continue to offer a *Reviewing* feature at the end of every chapter to help solidify students' understanding of the chapter materials. Each *Reviewing* feature presents a hypothetical scenario and then asks a series of questions that require students to identify the issues and apply the legal concepts discussed in the chapter.

These features are designed to help students review the chapter topics in a simple and interesting way and see how the legal principles discussed in the chapter affect the world in which they live. An instructor can use these features as the basis for in-class discussion or encourage students to use them for self-study prior to completing homework assignments. **Suggested answers to the questions posed in the Reviewing features can be found in the Solutions Manual for this text.**

Debate This Feature

To encourage student participation and motivate students to think critically about the rationale underlying the law on a particular topic, I continue to offer a *Debate This* feature. Each *Debate This* consists of a brief statement or question concerning the chapter material that can be used to spur lively classroom or small group discussions. It can also be used as a written assignment. This feature follows the *Reviewing . . .* feature at the end of each chapter.

Suggested pro and con responses to the Debate This features can be found in the Solutions Manual for this text.

Exhibits

When appropriate, I also illustrate important aspects of the law in graphic form in exhibits. In all, nearly fifty exhibits are featured in *Essentials of the Legal Environment Today*, Fifth Edition. Several of these exhibits are new, and I have modified existing exhibits to achieve better clarity.

Case Problems

Every chapter includes a 2013 and 2014 case problem in the *Business Scenarios and Case Problems* that appear at the end of the chapter. These problems are designed to clarify how modern courts deal with the business issues discussed in the chapter.

At the request of instructors, I have given every business scenario and case problem a label that identifies the chapter topic to which the question relates. These labels make it easier for instructors who wish to assign only certain questions to their students. In addition, for this edition, I have added references to the section in the text where the problem's answer can be found.

I have also included three special problems—the *Spotlight Case Problems* (in selected chapters, as mentioned earlier), which are based on good teaching cases with interesting facts, the *In Your Court* case problems that challenge students to place themselves as the judge in the case described, and the *Business Case Problem with Sample Answer* (discussed next).

Suggested answers to all *Business Scenarios and Case Problems* are included in the *Solutions Manual* for this text.

Business Case Problem with Sample Answer in Each Chapter

In response to those instructors who would like students to have sample answers available for some of the questions and case problems, I include a *Business Case Problem with Sample Answer* in each chapter. The *Business Case Problem with Sample Answer* is based on an actual case, and students can access a sample answer in Appendix D at the end of the text.

A Complete Supplements Package

This edition of *Essentials of the Legal Environment Today* is accompanied by many teaching and learning supplements, which are available on the password-protected portion of the Instructor's Companion Web Site.

The complete teaching/learning package includes the supplements listed next. For further information on *Essentials of the Legal Environment Today* teaching/learning package, contact your local sales representative or visit *Essentials of the Legal Environment Today* Web site.

Instructor's Companion Web Site

The Instructor's Companion Web Site contains the following supplements:

- ***Instructor's Manual.*** Includes sections entitled “Additional Cases Addressing This Issue” at the end of selected case synopses.
- ***Solutions Manual.*** Provides answers to all questions presented in the text, including the questions in each case, feature, and unit-ending feature.
- ***Test Bank.*** A comprehensive test bank that contains multiple choice, true/false, and short essay questions.
- ***Case-Problem Cases.***
- ***Case Printouts.***
- ***PowerPoint slides.***
- ***Lecture Outlines.***
- ***Business Law Digital Video Library.*** Provides access to ninety videos, including the *Drama of the Law* videos and video clips from actual Hollywood movies. Access to our Digital Library is available in an optional package with each new text at no additional cost. You can access the Business Law Digital Video Library, along with corresponding *Video Questions* that are related to specific chapters in the text, at www.cengagebrain.com.

For Users of the Fourth Edition

First of all, I want to thank you for helping make *Essentials of the Legal Environment Today* a best-selling legal environment text in America today. Second, I want to make you aware of the numerous additions and changes that I have made in this edition—many in response to comments from reviewers.

New Chapter and Feature

For this edition, I have added more material on Internet law and social media throughout the text. In addition, I have created an entire chapter (Chapter 9) on Internet law, social media, and privacy.

I have also added new *Managerial Strategy* features for the Fifth Edition.

Significantly Revised Chapters

Every chapter of the Fifth Edition has been revised as necessary to incorporate new developments in the law or to streamline the presentations. Other major changes and additions for this edition include the following:

- **Chapter 3 (Business Ethics)**—This chapter has been thoroughly revised with all new cases, business scenarios, and many new case problems. It includes a new section on business ethics and social media, as well as an in-depth discussion of stakeholders and corporate social responsibility. The chapter also provides step-by-step guidance on making ethical business decisions and includes materials on global business ethics. An *Online Developments* feature examines Corporate Reputations under Attack.
- **Chapter 4 (Business and the Constitution)**—The chapter has been revised and updated to be more business oriented. It has numerous new *Examples* and *Case Examples*, many of which are based on United States Supreme Court decisions. The chapter includes an updated discussion of privacy rights and the equal protection clause. I have added two new cases and four new features, which discuss computers and free speech, Facebook photos and the First Amendment, same-sex marriages, and pretexting.
- **Chapter 6 (Tort Law)**—This chapter has been thoroughly revised and updated. It includes a new defamation case example involving soccer player David Beckham. All of the cases presented in the chapter are new to this edition, including a *Spotlight on the Seattle Mariners*. An *Online Developments* feature involves Facebook and privacy concerns.
- **Chapter 7 (Criminal Law and Cyber Crime)**—The chapter includes three new cases and many new examples and case examples. There is a new subsection and 2014 case on the reasonable expectation of privacy, and a new *Online Developments* covering cyber attacks on smartphones.
- **Chapter 8 (Intellectual Property Rights)**—The materials on intellectual property rights have been thoroughly revised and updated to reflect the most current laws and trends. Two of the cases are new, and a United States Supreme Court decision is presented as a *Spotlight Case*. There is a discussion of the dispute between Apple, Inc., and Samsung Electronics Company over smartphones, and many new examples, including one on Sherlock Holmes to illustrate how works fall into the public domain. There are numerous new features. An *Online Developments* discusses The Emergence of Patent Trolls. A *Beyond Our Borders* discusses a 2013 United States Supreme Court decision on the resale on eBay of textbooks purchased abroad. The case problems include a *Spotlight on Macy's*.
- **Chapter 9 (Internet Law, Social Media, and Privacy)**—This chapter is all new and was created for the Fifth Edition to explore timely topics. It discusses legal issues that

are unique to the Internet, such as spam, domain name disputes, cybersquatting, digital copyright laws, and file-sharing. It also discusses social media, company-wide social media networks, state legislation on social media, the Electronic Communications Privacy Act, and password protection. The chapter also covers online defamation, data collection and cookies, and online privacy, and includes several features.

- **Chapter 10 (International Law in a Global Economy)**—The chapter now discusses international dispute resolution and includes a feature on border searches of electronic devices. There are three new cases, including a new *Spotlight on International Torts* that involves Mercedes-Benz Argentina, and several new examples, such as one concerning the 2014 Russian takeover of Crimea.
- **Chapter 11 (Business Organizations)**—This chapter now provides more practical information and recent examples. There are three new cases, a new *Managerial Strategy and Ethical Issue* feature, and an *Online Developments* feature on crowdfunding.
- **Chapters 12 and 13 (the contracts materials)**—The materials on contracts have been substantially revised and updated to include numerous new examples and case examples. Five of the six cases are new, and they include a *Classic Case* and a new *Spotlight on Nike*. Both of the chapters have an *Online Developments* feature—one concerns the validity of e-signatures in contracts with online schools and another discusses catfishing and online friends. There is also a new *Spotlight on Taco Bell* case problem.
- **Chapter 14 (Sales, Leases, and Product Liability)**—This chapter includes two new cases and a *Spotlight on Baseball Cards*. Three new features have been added, one on how local governments are attempting to levy taxes on online travel companies, another on whether merchants should be collecting data on customers' buying habits, and another on imposing product liability in China. A *Spotlight on Apple* case problem is included.
- **Chapter 15 (Creditor's Rights and Bankruptcy)**—This chapter has been revised to be more up to date and comprehensible. I have streamlined the materials to focus on those concepts that students need to know and included updated dollar amounts of various provisions of the Bankruptcy Code. There are three new cases, a new *Online Developments*, and a new section and *Spotlight Case* on Mortgages.
- **Chapter 16 (Employment, Immigration, and Labor Law)**—This chapter discusses many legal issues facing employers today, and includes updated minimum wage figures and Social Security and Medicare percentages. I have also included a discussion of the Affordable Care Act (Obamacare). The materials on immigration law have been streamlined and updated, and include a discussion of state immigration legislation and its constitutionality. A *Managerial Strategy* feature covers how many companies are changing their social media policies, and an *Online Developments* feature discusses social media in the workplace. A *Spotlight on Coca-Cola* case problem is included.
- **Chapter 17 (Employment Discrimination)**—I have added new *Examples* and *Case Examples* throughout this chapter, as well as new numbered lists of elements, and two new cases. Relevant United States Supreme Court decisions affecting employment issues are discussed throughout this chapter, including a 2014 decision on affirmative action.
- **Chapter 19 (Antitrust Law and Promoting Competition)**—I have added a new exhibit, several new *Examples* and *Case Examples*, and expanded coverage of leading cases. An *Online Developments* feature discusses price fixing and e-books. Updated thresholds for interlocking directorates have been incorporated.
- **Chapter 20 (Investor Protection and Corporate Governance)**—This chapter has been substantially revised, updated, and simplified. It includes new numbered lists of elements, two new cases, and a *Classic Case*. A new *Ethical Issue* feature covers shareholder "say-on-pay" provisions.

Acknowledgments for Previous Editions

Since I began this project, a sizable number of legal environment of business professors and others have helped us in various phases of the undertaking. The following reviewers offered numerous constructive criticisms, comments, and suggestions during the preparation of the previous editions.

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I also wish to extend special thanks to Diane May, Winona State University, for her contributions to the Fifth Edition, specifically for preparing the Blueprint Cases that are included in *MindTap* for this edition.

As in all past editions, I owe a debt of extreme gratitude to the numerous individuals who worked directly with us or at Cengage Learning. In particular, I wish to thank Vicky True-Baker and Michael Worls for their helpful advice and guidance during all of the stages of this new edition. I extend my thanks to Rebecca von Gillern, my managing developer, for her many useful suggestions and for her efforts in coordinating and ensuring the timely and accurate publication of all supplemental materials. I am also indebted to Katie Jergens for her excellent marketing advice.

My content project manager, Ann Borman, and art director, Michelle Kunkler, made sure that I came out with an error-free, visually attractive Fifth Edition. I appreciate their efforts. I am also indebted to the staff at Lachina, our compositor. Their ability to generate the pages for this text quickly and accurately made it possible for us to meet our ambitious printing schedule.

I especially wish to thank Katherine Marie Silsbee for her management of the entire project, as well as for the application of her superb research and editorial skills. I also wish to thank William Eric Hollowell, who co-authored the *Solutions Manual* and the *Test Bank* for his excellent research efforts. I was fortunate enough to have the copyediting services of Beverly Peavler and am grateful for the efforts of Katherine Wetzel, Vickie Reiersen, and Roxanna Lee for their proofreading and other assistance, which helped to ensure an error-free text. Finally, I thank Suzanne Jasin of K & M Consulting for her many special efforts on this project.

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Through the years, I have enjoyed an ongoing correspondence with many of you who have found points on which you wish to comment. I continue to welcome all comments and promise to respond promptly. By incorporating your ideas, I can continue to write a legal environment text that is best for you and best for your students.

R.L.M.

Dedication

To Ginny,

You are always
so very positive.
Thanks,

R.L.M.

UNIT 1



(AP Photo/The Daily Astorian/Kara Hansen)

The Foundations

UNIT CONTENTS

1. Business and Its Legal Environment
2. Courts and Alternative Dispute Resolution
3. Business Ethics
4. Business and the Constitution

Business and Its Legal Environment

LEARNING OBJECTIVES

The five learning objectives below are designed to help improve your understanding of the chapter. After reading this chapter, you should be able to answer the following questions:

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

CONTENTS

- Business Activities and the Legal Environment
- Sources of American Law
- The Common Law Tradition
- Classifications of Law

(AP Photo/The Daily Astorian/Kara Hansen)



**"Laws should be like clothes.
They should be made to fit the people they are meant to serve."
—Clarence Darrow, 1857–1938 (American lawyer)**

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

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

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

In this introductory chapter, we look first at an important question for any student reading this text: How do business law and the legal environment affect business decision making? Next, we describe the basic sources of American law, the common law tradition, and some schools of legal thought. We conclude the chapter with a discussion of some general classifications of law.

Business Activities and the Legal Environment

As those entering the business world will learn, laws and government regulations affect all business activities—hiring and firing decisions, workplace safety, the manufacturing and marketing of products, and business financing, to name just a few. To make good business decisions, a basic understanding of the laws and regulations governing these activities is essential. Moreover, in today's setting, simply being aware of what conduct can lead to legal **liability** is not enough. Businesspersons must develop critical thinking and legal reasoning skills so that they can evaluate how various laws might apply to a given situation and determine the potential result of their course of action. Businesspersons are also under increasing pressure to make ethical decisions and to consider the consequences of their decisions for stockholders and employees (as will be discussed in Chapter 2).

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

Many Different Laws May Affect a Single Business Transaction

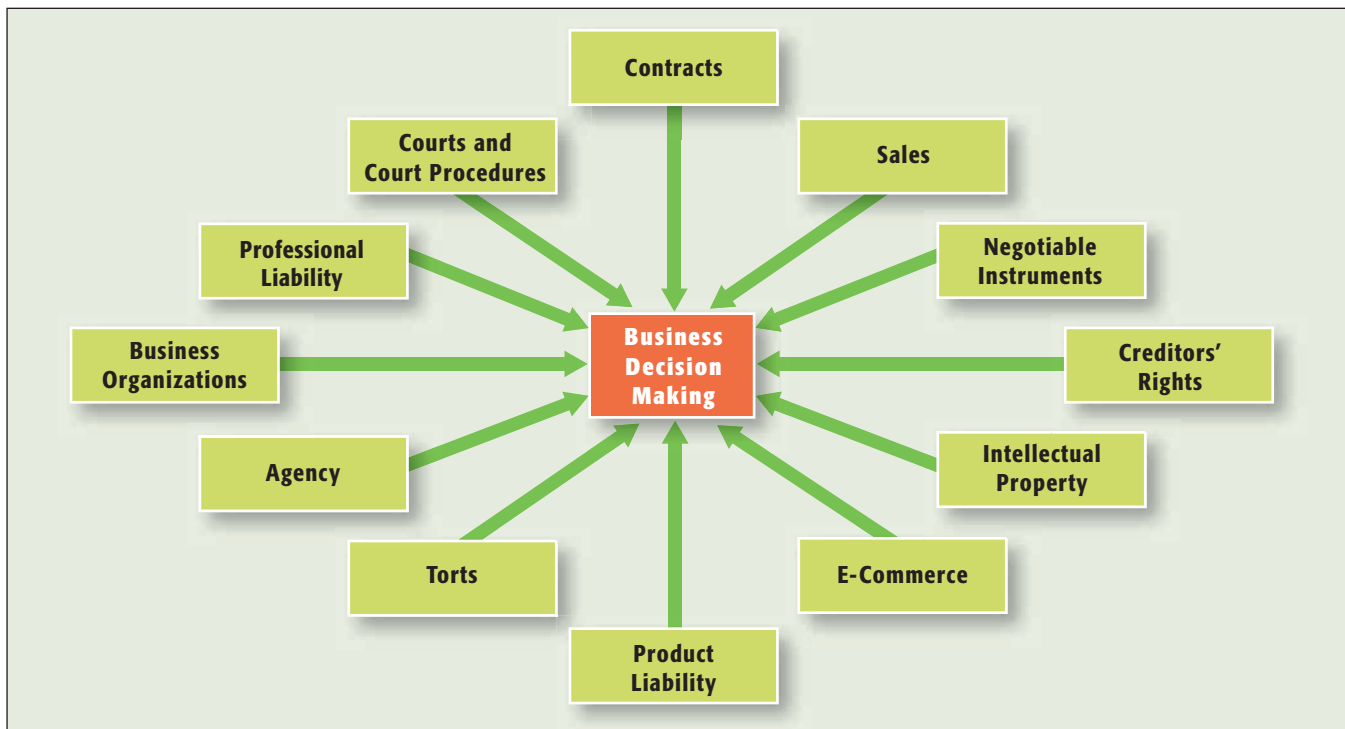
As you will note, each chapter in this text covers a specific area of the law and shows how the legal rules in that area affect business activities. Although compartmentalizing the law in this fashion facilitates learning, it does not indicate the extent to which many different laws may apply to just one transaction. This is where the critical thinking skills that you will learn throughout this book become important. You need to be able to identify the various legal issues, apply the laws that you learn about, and arrive at a conclusion on the best course of action.

EXAMPLE 1.1 Suppose that you are the president of NetSys, Inc., a company that creates and maintains computer network systems for other business firms. NetSys also markets software for internal computer networks. One day, Janet Hernandez, an operations officer for Southwest Distribution Corporation (SDC), contacts you by e-mail about a possible contract involving SDC's computer network. In deciding whether to enter into a contract with SDC, you need to consider, among other things, the legal requirements for an enforceable contract. Are the requirements different for a contract for services and a contract for products? What are your options if SDC **breaches** (breaks, or fails to perform) the contract? The answers to these questions are part of contract law and sales law.

Breach The failure to perform a legal obligation.

Other questions might concern payment under the contract. How can you guarantee that NetSys will be paid? For example, if SDC pays with a check that is returned for insufficient funds, what are your options? Answers to these questions can be found in the laws that relate to negotiable instruments (such as checks) and creditors' rights. Also, a dispute may arise over the rights to NetSys's software, or there may be a question of liability if the software is defective. There may even be an issue as to whether you and Hernandez had the authority to make the deal in the first place. Resolutions of these questions may be found in the laws that relate to intellectual property, e-commerce, torts, product liability, agency, business organizations, or professional liability. ●

Finally, if any dispute cannot be resolved amicably, then the laws and the rules concerning courts and court procedures spell out the steps of a lawsuit. Exhibit 1–1 that follows illustrates the various areas of the law that may influence business decision making.

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

Linking Business Law to the Six Functional Fields of Business

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

1. Corporate management.
2. Production and transportation.
3. Marketing.
4. Research and development.
5. Accounting and finance.
6. Human resource management.

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

The Role of the Law in a Small Business

Some of you may end up working in a small business or even owning and running one yourselves. The small business owner/operator is the most general of managers. When you seek additional financing, you become a finance manager. When you “go over the books” with your bookkeeper, you become an accountant. When you decide on a new advertising

Exhibit 1–2 Linking Business Law to the Management of a Small Business

campaign, you are suddenly the marketing manager. When you hire employees and determine their salaries and benefits, you become a human resources manager.

Just as the functional fields of business are linked to the law, so too are all of these different managerial roles that a small-business owner must perform. See Exhibit 1–2, which shows some of the legal issues that may arise as part of the management of a small business. Large businesses face most of these issues, too.

Sources of American Law

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

- The U.S. Constitution and the constitutions of the various states.
- Statutes, or laws, passed by Congress and by state legislatures.

Learning Objective 1

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

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

- Regulations created by administrative agencies, such as the federal Food and Drug Administration.
- Case law (court decisions).

We describe each of these important primary sources of law in the following pages and discuss how to find statutes, regulations, and case law in the appendix at the end of this chapter.

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

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

Constitutional Law

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

The federal government and the states have separate written constitutions that set forth the general organization, powers, and limits of their respective governments. **Constitutional law** is the law as expressed in these constitutions.

The U.S. Constitution is the supreme law of the land. As such, it is the basis of all law in the United States. A law in violation of the U.S. Constitution, if challenged, will be declared unconstitutional and will not be enforced, no matter what its source. Because of its paramount importance in the American legal system, we discuss the U.S. Constitution at length in Chapter 4 and present the complete text of the U.S. Constitution in Appendix B.

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

Statutory Law

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

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

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

Laws enacted by legislative bodies at any level of government, such as the statutes passed by Congress or by state legislatures, make up the body of law generally referred to as **statutory law**. When a legislature passes a statute, that statute ultimately is included in the federal code of laws or the relevant state code of laws. Whenever a particular statute is mentioned in this text, we usually provide a footnote showing its **citation** (a reference to a publication in which a legal authority—such as a statute or a court decision—or other source can be found). In the appendix following this chapter, we explain how you can use these citations to find statutory law.

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

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

Uniform Laws During the 1800s, the differences among state laws frequently created difficulties for businesspersons conducting trade and commerce among the states. To counter these problems, a group of legal scholars and lawyers formed the National Conference of Commissioners on Uniform State Laws (NCCUSL, online at www.nccusl.org)

in 1892 to draft **uniform laws** (“model statutes”) for the states to consider adopting. The NCCUSL still exists today and continues to issue uniform laws: it has issued more than two hundred uniform acts since its inception.

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

The Uniform Commercial Code (UCC) One of the most important uniform acts is the Uniform Commercial Code (UCC), which was created through the joint efforts of the NCCUSL and the American Law Institute.¹ The UCC was first issued in 1952 and has been adopted in all fifty states,² the District of Columbia, and the Virgin Islands. The UCC facilitates commerce among the states by providing a uniform, yet flexible, set of rules governing commercial transactions. Because of its importance in the area of commercial law, we discuss the UCC more fully in Chapter 14.

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

Administrative Law

Another important source of American law is administrative law, which consists of the rules, orders, and decisions of administrative agencies. An administrative agency is a federal, state, or local government agency established to perform a specific function. Rules issued by various administrative agencies now affect almost every aspect of a business's operations. For instance, administrative rules may regulate a firm's capital structure and financing, its hiring and firing procedures, its relations with employees and unions, and the way it manufactures and markets its products. Because of its significance and influence on businesses, we discuss administrative law in detail in Chapter 5.

Case Law and Common Law Doctrines

The rules of law announced in court decisions constitute another basic source of American law. These rules of law include interpretations of constitutional provisions, of statutes enacted by legislatures, and of regulations created by administrative agencies. Today, this body of judge-made law is referred to as **case law**. Case law—the doctrines and principles announced in cases—governs all areas not covered by statutory law or administrative law and is part of our common law tradition. We look at the origins and characteristics of the common law tradition in some detail in the pages that follow.

Case Law The rules of law announced in court decisions. Case law interprets statutes, regulations, constitutional provisions, and other case law.

The Common Law Tradition

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

Learning Objective 2
What is the common law tradition?

Early English Courts

After the Normans conquered England in 1066, William the Conqueror and his successors began the process of unifying the country under their rule. One of the means they used

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

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

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

Learning Objective 3
What is a precedent? When might a court depart from precedent?

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

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

to do this was the establishment of the king's courts, or *curiae regis*. Before the Norman Conquest, disputes had been settled according to the local legal customs and traditions in various regions of the country. The king's courts sought to establish a uniform set of rules for the country as a whole. What evolved in these courts was the beginning of the **common law**—a body of general rules that applied throughout the entire English realm. Eventually, the common law tradition became part of the heritage of all nations that were once British colonies, including the United States.

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

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

Stare Decisis

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

The Importance of Precedents in Judicial Decision Making

Under the doctrine of *stare decisis*, once a court has set forth a principle of law as being applicable to a certain set of facts, that court and courts of lower rank must follow that decision. Lower courts must adhere to that principle and apply it in future cases involving similar fact patterns. *Stare decisis* has two aspects: (1) decisions made by a higher court are binding on lower courts, and (2) a court should not overturn its own precedents unless there is a strong reason to do so.

Controlling precedents in a *jurisdiction* (an area in which a court or courts have the power to apply the law) are referred to as binding authorities. A **binding authority** is any source of law that a court *must* follow when deciding a case. Binding authorities include constitutions, statutes, and regulations that govern the issue being decided, as well as court decisions that are controlling precedents within the jurisdiction. United States Supreme Court case decisions, no matter how old, remain controlling until they are overruled by a subsequent decision of the Supreme Court, by a constitutional amendment, or by congressional legislation.

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

3. Pronounced *stah-ree dih-sis-is*.

bringing a case to court can usually rely on the court to make a decision based on what the law has been.

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

CASE EXAMPLE 1.2 In *Brown v. Board of Education of Topeka*,⁴ the United States Supreme Court expressly overturned precedent when it concluded that separate educational facilities for whites and blacks, which had been upheld as constitutional in numerous previous cases,⁵ were inherently unequal. The Supreme Court's departure from precedent in the *Brown* decision received a tremendous amount of publicity as people began to realize the ramifications of this change in the law. ●

When There Is No Precedent At times, a case may raise issues that have not been raised before in that jurisdiction, so the court has no precedents on which to base its decision. When deciding such cases, called "cases of first impression," courts often look at precedents established in other jurisdictions for guidance. Precedents from other jurisdictions, because they are not binding on the court, are referred to as **persuasive authorities**.

A court may also consider other factors, including legal principles and policies underlying previous court decisions or existing statutes, fairness, social values and customs, public policy, and data and concepts drawn from the social sciences.

Can a court consider unpublished decisions as persuasive precedent? See this chapter's *Online Developments* feature that follows for a discussion of this issue.

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

Equitable Remedies and Courts of Equity

A **remedy** is the means given to a party to enforce a right or to compensate for the violation of a right. **EXAMPLE 1.3** Elena is injured because of Rowan's wrongdoing. If Elena files a lawsuit and is successful, a court can order Rowan to compensate Elena for the harm by paying her a certain amount. The compensation is Elena's remedy. ●

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

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

Learning Objective 4

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

Remedies in Equity *Equity* is a branch of law founded on what might be described as notions of justice and fair dealing. Equity seeks to supply a remedy when no adequate remedy at law is available. When individuals could not obtain an adequate remedy in a court of law, they petitioned the king for relief. Most of these petitions were referred to the *chancellor*, an adviser to the king who had the power to grant new and unique remedies. Eventually, formal chancery courts, or *courts of equity*, were established. Thus, two distinct court systems were created, each having its own set of judges and its own set of remedies. The remedies granted by the chancery courts were called *remedies in equity*.

4. 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).

5. See *Plessy v. Ferguson*, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896).



ONLINE DEVELOPMENTS

How the Internet Has Expanded Precedent

The notion that courts should rely on precedents to decide the outcome of similar cases has long been a cornerstone of U.S. law. Nevertheless, the availability of “unpublished opinions” over the Internet has changed what the law considers to be precedent.

An *unpublished opinion* is a decision issued by an appellate (reviewing) court that is not intended for publication in a reporter (the bound books that contain court opinions).^a Courts traditionally did not consider unpublished opinions to be “precedents,” binding or persuasive, and often did not allow attorneys to refer to (cite) these decisions in their arguments.

Increased Online Availability of Unpublished Decisions

The number of court decisions not published in printed books has risen dramatically in recent years. Nearly 80 percent of the decisions of the federal appellate courts are unpublished, and the number is equally high in some state court systems.

Even though certain decisions are not intended for publication, they are posted (“published”) almost immediately in online legal databases, such as Westlaw and Lexis. With the proliferation of free legal databases and court Web sites, the general public also has almost instant access to the unpublished decisions of most courts. This situation has caused many to question why these opinions have no precedential effect.

Before the Internet, not considering unpublished decisions as precedent might have been justified on the grounds of fairness. How could lawyers know about decisions if they were not printed in the case reporters? Now that opinions are so readily available on the Web, however, this justification is no

longer valid. Moreover, it now seems unfair not to consider these decisions as precedent because they are so publicly accessible. Some claim that unpublished decisions could make bad precedents because these decisions frequently are written by staff attorneys and law clerks, rather than by judges, so the reasoning may be inferior. If the decision is considered merely as persuasive precedent, however, judges who disagree with the reasoning are free to reject the conclusion.

The Federal Rules Now Allow Judges to Consider Unpublished Opinions

The United States Supreme Court made history in 2006 when it announced that it would allow lawyers to cite unpublished decisions in all federal courts. Rule 32.1 of the Federal Rules of Appellate Procedure states that federal courts may not prohibit or restrict the citation of federal judicial opinions that have been designated as “not for publication,” “nonprecedential,” or “not precedent.” The rule applies only to federal courts and only to unpublished opinions issued after January 1, 2007. It does not specify what weight a court must give to its own unpublished opinions or to those from another court.

Basically, Rule 32.1 establishes a uniform rule for all of the federal courts that allows attorneys to cite—and judges to consider as persuasive precedent—unpublished decisions.

Critical Thinking

Only a few states, such as Massachusetts, have followed the federal courts in allowing unpublished decisions to be used as persuasive precedent. The other states claim that doing so would increase the already heavy workload of their courts. Under the current system, a judge who designates an opinion as unpublished does not have to take the time to provide a complete set of facts, references, and views. Does this argument justify the different treatment for unpublished opinions in the state and federal courts? Explain.

^a Recently decided cases that are not yet published are also sometimes called *unpublished opinions*, but because these decisions will eventually be printed in reporters, we do not include them here.

Plaintiff One who initiates a lawsuit.

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

Plaintiffs (those bringing lawsuits) had to specify whether they were bringing an “action at law” or an “action in equity,” and they chose their courts accordingly. **EXAMPLE 1.4** A plaintiff might ask a court of equity to order the **defendant** (the person against whom a lawsuit is brought) to perform within the terms of a contract. A court of law could not issue such an order because its remedies were limited to the payment of money or property as compensation for damages.

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

The Merging of Law and Equity Today, in most states, the courts of law and equity have merged, and thus the distinction between the two courts has largely disappeared. A plaintiff may now request both legal and equitable remedies in the same action, and the trial court judge may grant either form—or both forms—of relief (see Chapter 13). The distinction between legal and equitable remedies remains significant, however, because a court normally will grant an equitable remedy only when the remedy at law (monetary damages) is inadequate. To request the proper remedy, a businessperson (or her or his attorney) must know what remedies are available for the specific kinds of harms suffered. Exhibit 1–3 summarizes the procedural differences (applicable in most states) between an action at law and an action in equity.

Schools of Legal Thought

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

Jurisprudence The science or philosophy of law.

The Natural Law School Those who adhere to the **natural law** theory believe that a higher, or universal, law exists that applies to all human beings and that written laws should imitate these inherent principles. If a written law is unjust, then it is not a true (natural) law and need not be obeyed. The natural law tradition is one of the oldest and most significant schools of jurisprudence. It dates back to the days of the Greek philosopher Aristotle (384–322 B.C.E.), who distinguished between natural law and the laws governing a particular nation. According to Aristotle, natural law applies universally to all humankind.

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

The notion that people have "natural rights" stems from the natural law tradition. Those who claim that certain nations, such as China and North Korea, are depriving many of their citizens of their human rights are implicitly appealing to a higher law that has universal applicability. The question of the universality of basic human rights also comes into play in the context of international business operations. For instance, U.S. companies that have

Exhibit 1–3 Procedural Differences between an Action at Law and an Action in Equity

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

operations abroad often hire foreign workers as employees. Should the same laws that protect U.S. employees apply to these foreign employees? This question is rooted implicitly in a concept of universal rights that has its origins in the natural law tradition.

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

Legal Positivism In contrast, *positive*, or national, law (the written law of a given society at a particular point in time) applies only to the citizens of that nation or society. Those who adhere to **legal positivism** believe that there can be no higher law than a nation's positive law. According to the positivist school, there is no such thing as "natural rights." Rather, human rights exist solely because of laws. If the laws are not enforced, anarchy will result. Thus, whether a law is morally "bad" or "good" is irrelevant. The law is the law and must be obeyed until it is changed—in an orderly manner through a legitimate lawmaking process.

A judge with positivist leanings probably would be more inclined to defer to an existing law than would a judge who adheres to the natural law tradition.

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

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

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

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

Legal Realism In the 1920s and 1930s, a number of jurists and scholars, known as *legal realists*, rebelled against the historical approach to law. **Legal realism** is based on the idea that law is just one of many institutions in society and that it is shaped by social forces and needs. This school believes that because the law is a human enterprise, judges should look beyond the law and take social and economic realities into account when deciding cases. Legal realists also think that the law can never be applied with total uniformity. Given that judges are human beings with unique experiences, personalities, value systems, and intellects, different judges will obviously bring different reasoning processes to the same case. Female judges, for instance, might be more inclined than male judges to consider whether a decision might have a negative impact on the employment of women or minorities.

Classifications of Law

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

EXAMPLE 1.5 A state law that provides employees with the right to workers' compensation benefits (see Chapter 16) for any on-the-job injuries they sustain is a substantive law because it creates legal rights. Procedural laws, in contrast, establish the method by which an employee must notify the employer about an on-the-job injury, prove the injury, and periodically submit additional proof to continue receiving workers' compensation benefits. Note that a law concerning workers' compensation may contain both substantive and procedural provisions. ●

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

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

Other classification systems divide law into (1) federal law and state law, or (2) private law (dealing with relationships between persons) and public law (addressing the relationship between persons and their governments). Frequently, people use the term **cyberlaw** to refer to the emerging body of law that governs transactions conducted via the Internet.

Cyberlaw is not really a classification of law, nor is it a new *type* of law. Rather, it is an informal term used to describe traditional legal principles that have been modified and adapted to fit situations that are unique to the online world. Of course, in some areas new statutes have been enacted, at both the federal and state levels, to cover specific types of problems stemming from online communications. Throughout this book, you will read about how the law is evolving to govern specific legal issues that arise in the online context.

Cyberlaw An informal term used to refer to all laws governing transactions conducted via the Internet.

Civil Law and Criminal Law

Civil law spells out the rights and duties that exist between persons and between persons and their governments, and the relief available when a person's rights are violated. Typically, in a civil case, a private party sues another private party (although the government can also sue a party for a civil law violation) to make sure that the other party complies with a duty or pays for the damage caused by the failure to comply with a duty.

EXAMPLE 1.6 If a seller fails to perform a contract with a buyer, the buyer may bring a lawsuit against the seller. The purpose of the lawsuit will be either to compel the seller to perform as promised or, more commonly, to obtain monetary damages for the seller's failure to perform. •

Much of the law that we discuss in this text is civil law. Contract law, for example, which we will discuss in Chapters 12 and 13, is civil law. The whole body of tort law (see Chapter 6) is civil law. Note that *civil law* is not the same as a *civil law system*. As you will read shortly, a **civil law system** is a legal system based on a written code of laws.

Criminal law has to do with wrongs committed against society for which society demands redress. Criminal acts are proscribed by local, state, or federal government statutes (see Chapter 7). Thus, criminal defendants are prosecuted by public officials, such as a district attorney (D.A.), on behalf of the state, not by their victims or other private parties. Whereas in a civil case the object is to obtain a remedy (such as monetary damages) to compensate the injured party, in a criminal case the object is to punish the wrongdoer in an attempt to deter others from similar actions. Penalties for violations of criminal statutes consist of fines and/or imprisonment—and, in some cases, death.

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

Learning Objective 5

What are some important differences between civil law and criminal law?

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

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

National and International Law

Although the focus of this book is U.S. business law, increasingly businesspersons in this country engage in transactions that extend beyond our national borders. In these situations, the laws of other nations or the laws governing relationships among nations may come into play. For this reason, those who pursue a career in business today should have an understanding of the global legal environment (discussed further in Chapter 10).

National Law The law of a particular nation, such as the United States or Sweden, is **national law**. National law, of course, varies from country to country because each country's law reflects the interests, customs, activities, and values that are unique to that nation's culture. Even though the laws and legal systems of various countries differ substantially, broad similarities do exist, as discussed in this chapter's *Beyond Our Borders* feature.

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



BEYOND OUR BORDERS

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

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

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

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

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

Critical Thinking

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

International Law The law that governs relations among nations.

International Law In contrast to national law, international law applies to more than one nation. **International law** can be defined as a body of written and unwritten laws observed by independent nations and governing the acts of individuals as well as governments. It is a mixture of rules and constraints derived from a variety of sources, including the laws of individual nations, customs developed among nations, and international treaties and organizations. Each nation is motivated not only by the need to be the final authority over its own affairs, but also by the desire to benefit economically from trade and harmonious relations with other nations. In essence, international law is the result of centuries-old attempts to strike a balance between these competing needs.

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

Reviewing . . . Business and Its Legal Environment

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

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

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

Key Terms

| | | | |
|-----------------------|-----------------------|------------------------------|---------------------------|
| binding authority 8 | cyberlaw 13 | majority opinion 25 | procedural law 12 |
| breach 3 | defendant 10 | national law 13 | remedy 9 |
| case law 7 | dissenting opinion 25 | natural law 11 | secondary source of law 6 |
| citation 6 | historical school 12 | ordinance 6 | <i>stare decisis</i> 8 |
| civil law 13 | international law 14 | <i>per curiam</i> opinion 26 | statutory law 6 |
| civil law system 13 | jurisprudence 11 | persuasive authority 9 | substantive law 12 |
| common law 8 | law 2 | plaintiff 10 | uniform law 7 |
| concurring opinion 25 | legal positivism 12 | plurality opinion 26 | |
| constitutional law 6 | legal realism 12 | precedent 8 | |
| criminal law 13 | liability 3 | primary source of law 5 | |

Chapter Summary: Business and Its Legal Environment

Sources of American Law

1. **Constitutional law**—The law as expressed in the U.S. Constitution and the various state constitutions. The U.S. Constitution is the supreme law of the land. State constitutions are supreme within state borders to the extent that they do not violate the U.S. Constitution or a federal law.
2. **Statutory law**—Laws or ordinances created by federal, state, and local legislatures and governing bodies. None of these laws can violate the U.S. Constitution or the relevant state constitutions. Uniform laws, when adopted by a state legislature, become statutory law in that state.
3. **Administrative law**—The rules, orders, and decisions of federal or state government administrative agencies.
4. **Case law and common law doctrines**—Judge-made law, including interpretations of constitutional provisions, of statutes enacted by legislatures, and of regulations created by administrative agencies. The common law—the doctrines and principles embodied in case law—governs all areas not covered by statutory law or administrative law.

Continued

Chapter Summary: Business and Its Legal Environment—Continued

| | |
|--------------------------|---|
| The Common Law Tradition | <div>1. Common law—Law that originated in medieval England with the creation of the king’s courts, or <i>curiae regis</i>, and the development of a body of rules that were common to (or applied in) all regions of the country.</div> <div>2. Stare decisis—A doctrine under which judges “stand on decided cases”—or follow the rule of precedent—in deciding cases. <i>Stare decisis</i> is the cornerstone of the common law tradition.</div> <div>3. Remedies—A remedy is the means by which a court enforces a right or compensates for a violation of a right. Courts typically grant legal remedies (monetary damages) but may also grant equitable remedies (specific performance, injunction, or rescission) when the legal remedy is inadequate or unavailable.</div> <div>4. Schools of legal thought—Judges’ decision making is influenced by their philosophy of law. The following are four important schools of legal thought, or legal philosophies:<div>a. Natural law tradition—One of the oldest and most significant schools of legal thought. Those who believe in natural law hold that there is a universal law applicable to all human beings and that this law is of a higher order than positive, or conventional, law.</div><div>b. Legal positivism—A school of legal thought centered on the assumption that there is no law higher than the laws created by the government. Laws must be obeyed, even if they are unjust, to prevent anarchy.</div><div>c. Historical school—A school of legal thought that stresses the evolutionary nature of law and looks to doctrines that have withstood the passage of time for guidance in shaping present laws.</div><div>d. Legal realism—A school of legal thought that generally advocates a less abstract and more realistic approach to the law that takes into account customary practices and the circumstances in which transactions take place.</div></div> |
|--------------------------|---|

Issue Spotters

1. The First Amendment to the U.S. Constitution provides protection for the free exercise of religion. A state legislature enacts a law that outlaws all religions that do not derive from the Judeo-Christian tradition. Is this law valid within that state? Why or why not? (See *Sources of American Law*.)
2. Under what circumstances might a judge rely on case law to determine the intent and purpose of a statute? (See *The Common Law Tradition*.)

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

For Review

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

Business Scenarios and Case Problems

- 1-1. Binding versus Persuasive Authority.** A county court in Illinois is deciding a case involving an issue that has never been addressed before in that state's courts. The Iowa Supreme Court, however, recently decided a case involving a very similar fact pattern. Is the Illinois court obligated to follow the Iowa Supreme Court's decision on the issue? If the United States Supreme Court had decided a similar case, would that decision be binding on the Illinois court? Explain. (See *The Common Law Tradition*.)
- 1-2.  In Your Court—Remedies.** Arthur Rabe is suing Xavier Sanchez for breaching a contract in which Sanchez promised to sell Rabe a Van Gogh painting for \$150,000. (See *The Common Law Tradition*.)
1. In this lawsuit, who is the plaintiff, and who is the defendant?
 2. If Rabe wants Sanchez to perform the contract as promised, what remedy should Rabe seek?
 3. Suppose that Rabe wants to cancel the contract because Sanchez fraudulently misrepresented the painting as an original Van Gogh when in fact it is a copy. In this situation, what remedy should Rabe seek?
 4. Will the remedy Rabe seeks in either situation be a remedy at law or a remedy in equity?
 5. Suppose that the court finds in Rabe's favor and grants one of these remedies. Sanchez then appeals the decision to a higher court. Read through the subsection entitled "Parties to Lawsuits" in the appendix following this chapter. On appeal, which party in the Rabe-Sanchez case will be the appellant (or petitioner), and which party will be the appellee (or respondent)? (See *Reading and Understanding Case Law*.)
- 1-3. Philosophy of Law.** After World War II ended in 1945, an international tribunal of judges convened at Nuremberg, Germany. The judges convicted several Nazi war criminals of "crimes against humanity." Assuming that the Nazis who were convicted had not disobeyed any law of their country and had merely been following their government's (Hitler's) orders, what law had they violated? Explain. (See *Schools of Legal Thought*.)
- 1-4.  Spotlight on AOL—Common Law.** AOL, LLC, mistakenly made public the personal information of 650,000 of its members. The members filed a suit, alleging violations of California law. AOL asked the court to dismiss the suit on the basis of a "forum-selection" clause in its member agreement that designates Virginia courts as the place where member disputes will be tried. Under a decision of the United States Supreme Court, a forum-selection clause is unenforceable "if enforcement would contravene a strong public policy of the forum in which suit is brought." California has declared in other cases that the AOL clause contravenes a strong public policy. If the court applies the doctrine of *stare decisis*, will it dismiss the suit? Explain. [*Doe 1 v. AOL, LLC*, 552 F.3d 1077 (9th Cir. 2009)] (See *The Common Law Tradition*.)
- 1-5. Sources of Law.** Under a Massachusetts state statute, large wineries could sell their products through wholesalers or to consumers directly, but not both. Small wineries could use both methods. Family Winemakers of California filed a suit against the state, arguing that this restriction gave small wineries a competitive advantage in violation of the U.S. Constitution. The court agreed that the statute was in conflict with the Constitution. Which source of law takes priority, and why? [*Family Winemakers of California v. Jenkins*, 592 F.3d 1 (1st Cir. 2010)] (See *Sources of American Law*.)
- 1-6.  Business Case Problem with Sample Answer—Law Around the World.** Karen Goldberg's husband was killed in a terrorist bombing in Israel. She filed a suit in a U.S. federal court against UBS AG, a Switzerland-based global financial services company. She claimed that UBS aided her husband's killing because it provided services to the terrorists. UBS argued that the case should be transferred to another country. Like many nations, the United States has a common law system. Other nations have civil law systems. What are the key differences between these systems? [*Goldberg v. UBS AG*, 690 F.Supp.2d 92 (E.D.N.Y. 2010)] (See *Classifications of Law*.)
- For a sample answer to Problem 1-6, go to Appendix D at the end of this text.
- 1-7. Reading Citations.** Assume that you want to read the court's entire opinion in the case of *People v. Tuttle*, 304 Mich.App. 72, 850 N.W.2d 484 (2014). Read the section entitled "Finding Case Law" in the appendix that follows this chapter, and then explain specifically where you would find the court's opinion. (See *Finding Case Law*.)
- 1-8.  A Question of Ethics—Stare Decisis.** On July 5, 1884, Dudley, Stephens, and Brooks—"all able-bodied English seamen"—and a teenage English boy were cast adrift in a lifeboat following a storm at sea. They had no water with them in the boat, and all they had for sustenance were two one-pound tins of turnips. On July 24, Dudley proposed that one of the four in the lifeboat be sacrificed to save the others. Stephens agreed with Dudley, but Brooks refused to consent—and the boy was never asked for his opinion. On July 25, Dudley killed the boy, and the three men then fed on the boy's body and blood. Four days later, the men were rescued by a passing vessel. They were taken to England and tried for the murder of the boy. If the men had not fed on the boy's body, they would probably have died of starvation within the four-day period. The boy, who was in a much weaker condition, would likely have died before the rest. [*Regina v. Dudley and Stephens*, 14 Q.B.D. (Queen's Bench Division, England) 273 (1884)] (See *The Common Law Tradition*.)
1. The basic question in this case is whether the survivors should be subject to penalties under English criminal law, given the men's unusual circumstances. You be the judge and decide the issue. Give the reasons for your decision.
 2. Should judges ever have the power to look beyond the written "letter of the law" in making their decisions? Why or why not?

Appendix to Chapter 1:

Finding and Analyzing the Law

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

Finding Statutory and Administrative Law

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

United States Code

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

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

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

State Codes

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

In some codes, subjects are designated by number. In others, they are designated by name. For example, “13 Pennsylvania Consolidated Statutes Section 1101” means that the statute can be found in Title 13, Section 1101, of the Pennsylvania code. “California Commercial Code Section 1101” means the statute can be found in Section 1101 under the subject

heading “Commercial Code” of the California code. Abbreviations are commonly used. For instance, “13 Pennsylvania Consolidated Statutes Section 1101” may be abbreviated “13 Pa. C.S. § 1101,” and “California Commercial Code Section 1101” may be abbreviated “Cal. Com. Code § 1101.”

Administrative Rules

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

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

Finding Case Law

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

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

State Court Decisions

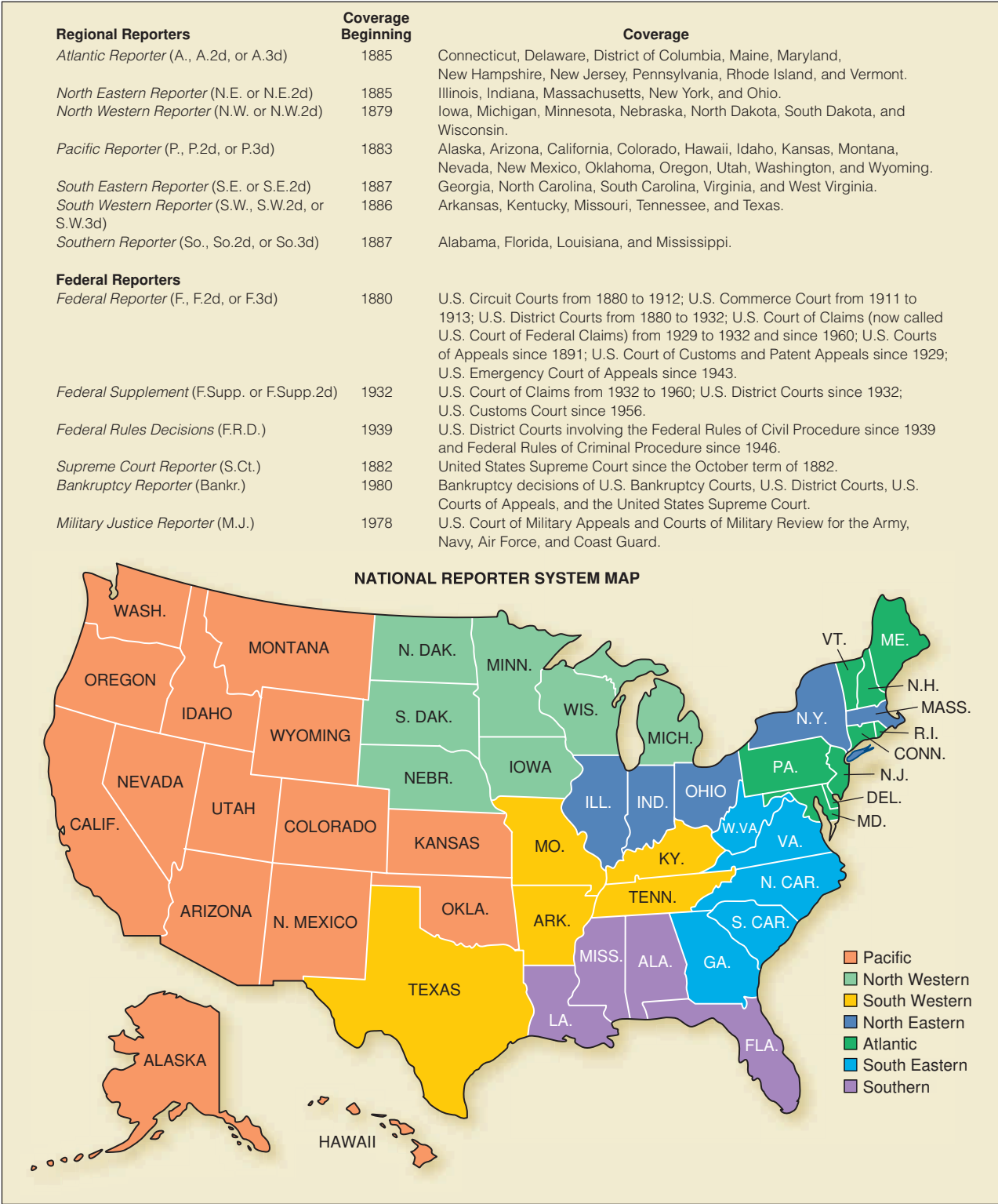
Most state trial court decisions are not published in books (except in New York and a few other states, which publish selected trial court opinions). Decisions from state trial courts are typically filed in the office of the clerk of the court, where the decisions are available for public inspection.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

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

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

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

Exhibit 1A-1 West’s National Reporter System—Regional/Federal



Case Citations After appellate decisions have been published, they are normally referred to (cited) by the name of the case; the volume, name, and page number of the state's official reporter (if different from the National Reporter System); the volume, name, and page number of the West's National Reporter; and the volume, name, and page number of any other selected reporter. (Citing a reporter by volume number, name, and page number, in that order, is common to all citations. The year that the decision was issued is often included at the end in parentheses.) When more than one reporter is cited for the same case, each reference is called a *parallel citation*.

Note that some states have adopted a “public domain citation system” that uses a somewhat different format for the citation. For example, in Ohio, a Ohio court decision might be designated “2014-Ohio-1838,” meaning that the case was decided in the year 2014 by an Ohio state court and was the 1838th decision issued by that court during that year. Parallel citations to the *Ohio Appellate Reporter* and the *North Eastern Reporter* are still included after the public domain citation.

Consider the following case citation: *Wells Fargo Bank, N.A. v. Strong*, 149 Conn.App. 384, 89 A.3d. 392 (2014). We see that the opinion in this case can be found in Volume 149 of the official *Connecticut Appellate Court Reports*, on page 384. The parallel citation is to Volume 89 of the *Atlantic Reporter, Third Series*, on page 392.

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

Federal Court Decisions

Federal district (trial) court decisions are published unofficially in the *Federal Supplement* (F Supp. or FSupp.2d), and opinions from the circuit courts of appeals (federal reviewing courts) are reported unofficially in the *Federal Reporter* (F, F2d, or F3d). Cases concerning federal bankruptcy law are published unofficially in West's *Bankruptcy Reporter* (Bankr. or B.R.).

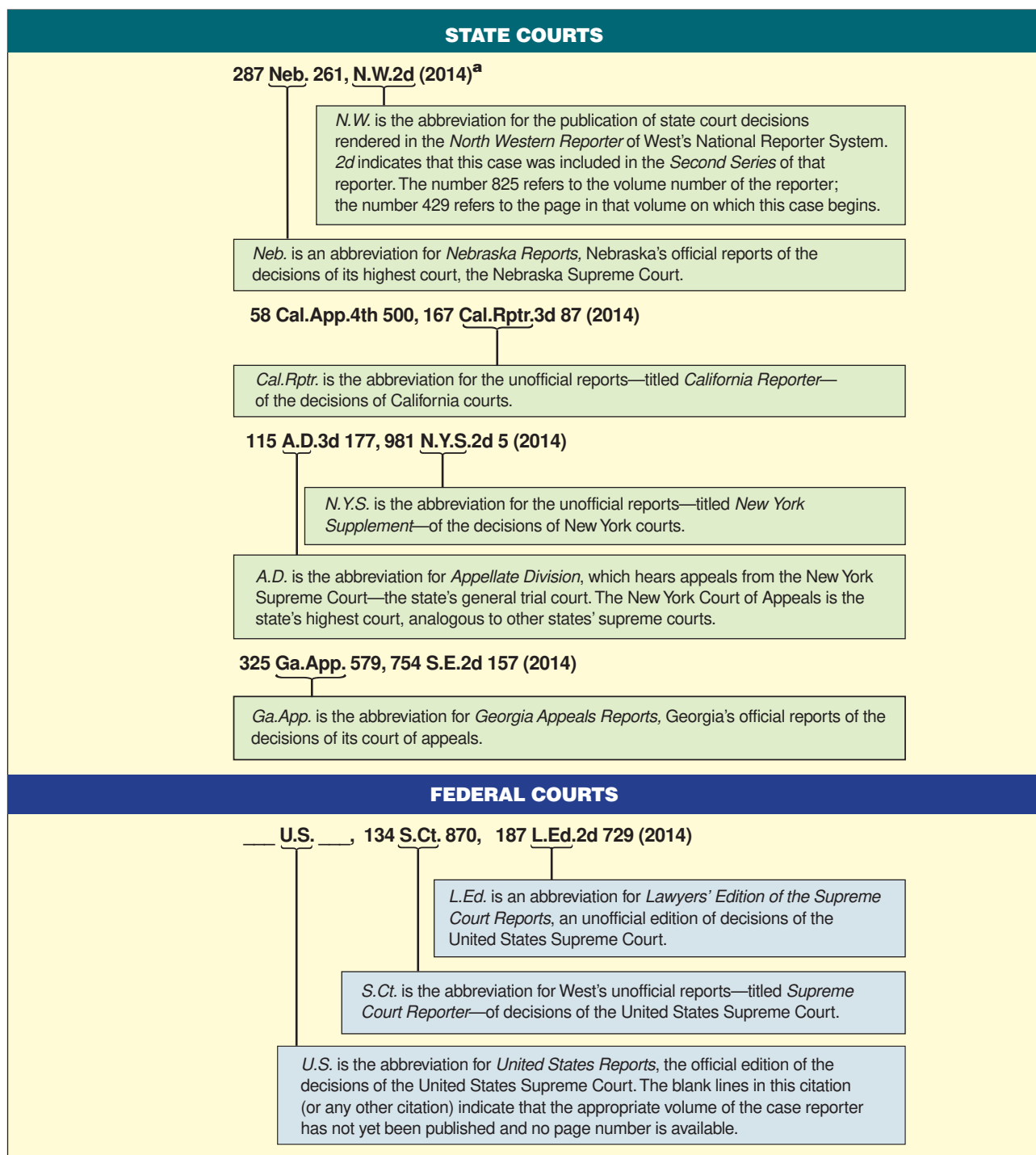
The official edition of United States Supreme Court decisions is the *United States Reports* (U.S.), which is published by the federal government. Unofficial editions of Supreme Court cases include West's *Supreme Court Reporter* (S.Ct.) and the *Lawyers' Edition of the Supreme Court Reports* (L.Ed.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

Unpublished Opinions

Many court opinions that are not yet published or that are not intended for publication can be accessed through Westlaw® (abbreviated in citations as “WL”), an online legal database. When no citation to a published reporter is available for cases cited in this text, we give the WL citation (such as 2014 WL 238128, which means it was case number 238128 decided in the year 2014). Sometimes, both in this text and in other legal sources, you will see blanks left in a citation. This occurs when the decision will be published, but the particular volume number or page number is not yet available.

Old Case Law

On a few occasions, this text cites opinions from old, classic cases dating to the nineteenth century or earlier. Some of these cases are from the English courts. The citations to these cases may not conform to the descriptions given above because they were published in reporters that are no longer used today.

Exhibit 1A–2 How to Read Citations

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

Exhibit 1A–2 How to Read Citations

| FEDERAL COURTS (Continued) | |
|---|--|
| 742 F.3d 330 (8th Cir. 2014) | <i>8th Cir.</i> is an abbreviation denoting that this case was decided in the U.S. Court of Appeals for the Eighth Circuit. |
| 994 F.Supp.2d 558 (D.D.C. 2014) | <i>D.D.C.</i> is an abbreviation indicating that the U.S. District Court for the Southern District of Florida decided this case. |
| ENGLISH COURTS | |
| 9 Exch. 341, 156 Eng.Rep. 145 (1854) | <i>Eng.Rep.</i> is an abbreviation for <i>English Reports, Full Reprint</i> , a series of reports containing selected decisions made in English courts between 1378 and 1865. |
| | <i>Exch.</i> is an abbreviation for <i>English Exchequer Reports</i> , which includes the original reports of cases decided in England's Court of Exchequer. |
| STATUTORY AND OTHER CITATIONS | |
| 18 U.S.C. Section 1961(1)(A) | <i>U.S.C.</i> denotes <i>United States Code</i> , the codification of <i>United States Statutes at Large</i> . The number 18 refers to the statute's U.S.C. title number and 1961 to its section number within that title. The number 1 in parentheses refers to a subsection within the section, and the letter A in parentheses to a subsection within the subsection. |
| UCC 2–206(1)(b) | <i>UCC</i> is an abbreviation for <i>Uniform Commercial Code</i> . The first number 2 is a reference to an article of the UCC, and 206 to a section within that article. The number 1 in parentheses refers to a subsection within the section, and the letter b in parentheses to a subsection within the subsection. |
| <i>Restatement (Third) of Torts, Section 6</i> | <i>Restatement (Third) of Torts</i> refers to the third edition of the American Law Institute's <i>Restatement of the Law of Torts</i> . The number 6 refers to a specific section. |
| 17 C.F.R. Section 230.505 | <i>C.F.R.</i> is an abbreviation for <i>Code of Federal Regulations</i> , a compilation of federal administrative regulations. The number 17 designates the regulation's title number, and 230.505 designates a specific section within that title. |

Continued

Exhibit 1A-2 How to Read Citations, Continued

WESTLAW® CITATIONS^b

2014 WL 340977

WL is an abbreviation for Westlaw. The number 2014 is the year of the document that can be found with this citation in the Westlaw database. The number 340977 is a number assigned to a specific document. A higher number indicates that a document was added to the Westlaw database later in the year.

UNIFORM RESOURCE LOCATORS (URLs)

http://www.westlaw.com^c

The suffix *com* is the top level domain (TLD) for this Web site. The TLD *com* is an abbreviation for “commercial,” which usually means that a for-profit entity hosts (maintains or supports) this Web site.

westlaw is the host name—the part of the domain name selected by the organization that registered the name. In this case, West registered the name. This Internet site is the Westlaw database on the Web.

www is an abbreviation for “World Wide Web.” The Web is a system of Internet servers that support documents formatted in *HTML* (hypertext markup language) and other formats as well.

http://www.uscourts.gov

This is “The Federal Judiciary Home Page.” The host is the Administrative Office of the U.S. Courts. The TLD *gov* is an abbreviation for “government.” This Web site includes information and links from, and about, the federal courts.

http://www.law.cornell.edu/index.html

This part of a URL points to a Web page or file at a specific location within the host’s domain. This page is a menu with links to documents within the domain and to other Internet resources.

This is the host name for a Web site that contains the Internet publications of the Legal Information Institute (LII), which is a part of Cornell Law School. The LII site includes a variety of legal materials and links to other legal resources on the Internet. The TLD *edu* is an abbreviation for “educational institution” (a school or a university).

http://www.ipl2.org/div/news

This part of the URL points to a static *news* page at this Web site, which provides links to online newspapers from around the world.

div is an abbreviation for “division,” which is the way that ipl2 tags the content on its Web site as relating to a specific topic.

The site *ipl2* was formed from the merger of the Internet Public Library and the Librarians’ Internet Index. It is an online service that provides reference resources and links to other information services on the Web. The site is supported chiefly by the *iSchool* at Drexel College of Information Science and Technology. The TLD *org* is an abbreviation for “organization” (normally nonprofit).

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

c. The basic form for a URL is “service://hostname/path.” The Internet service for all of the URLs in this text is *http* (hypertext transfer protocol). Because most Web browsers add this prefix automatically when a user enters a host name or a hostname/path, we have generally omitted the *http://* from the URLs listed in this text.

Reading and Understanding Case Law

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

Case Titles and Terminology

The title of a case, such as *Adams v. Jones*, indicates the names of the parties to the lawsuit. The *v.* in the case title stands for *versus*, which means “against.” In the trial court, Adams was the plaintiff—the person who filed the suit. Jones was the defendant. If the case is appealed, however, the appellate court will sometimes place the name of the party appealing the decision first, so the case may be called *Jones v. Adams*. Because some reviewing courts retain the trial court order of names, it is often impossible to distinguish the plaintiff from the defendant in the title of a reported appellate court decision. You must carefully read the facts of each case to identify the parties.

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

Parties to Lawsuits The party initiating a lawsuit is referred to as the *plaintiff* or *petitioner*; depending on the nature of the action, and the party against whom a lawsuit is brought is the *defendant* or *respondent*. Lawsuits frequently involve more than one plaintiff and/or defendant. When a case is appealed from the original court or jurisdiction to another court or jurisdiction, the party appealing the case is called the *appellant*. The *appellee* is the party against whom the appeal is taken. (In some appellate courts, the party appealing a case is referred to as the *petitioner*, and the party against whom the suit is brought or appealed is called the *respondent*.)

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

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

- When all the judges (or justices) agree, a **unanimous opinion** is written for the entire court.
- When there is not unanimous agreement, a **majority opinion** is generally written. It outlines the views of the majority of the judges deciding the case.
- A judge who agrees (concurs) with the majority opinion as to the result but not as to the legal reasoning often writes a **concurring opinion**. In it, the judge sets out the reasoning that he or she considers correct.
- A **dissenting opinion** presents the views of one or more judges who disagree with the majority view.

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

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

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

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

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

- Sometimes, no single position is fully supported by a majority of the judges deciding a case. In this situation, we may have a **plurality opinion**. This is the opinion that has the support of the largest number of judges, but the group in agreement is less than a majority.
- Finally, a court occasionally issues a **per curiam opinion** (*per curiam* is Latin for “of the court”), which does not indicate which judge wrote the opinion.

A Sample Court Case

Knowing how to read and analyze a court opinion is an essential step in undertaking accurate legal research. A further step involves “briefing” the case by summarizing and reducing the texts of the opinions to their essential elements. (For instructions on how to brief a case, go to Appendix A at the end of this text.)

The cases contained within the chapters of this text have already been analyzed and partially briefed by the authors, and the essential aspects of each case are presented in a convenient format consisting of three basic sections: *Background and Facts*, *In the Words of the Court* (excerpts from the court’s opinion), and *Decision and Remedy*, as shown in Exhibit 1A–3 on the pages that follow, which has also been annotated to illustrate the kind of information that is contained in each section. Each case is followed by a critical-thinking question regarding some issue raised by the case. A section entitled *Impact of This Case on Today’s Law* concludes the *Classic Cases* that appear throughout the text to indicate the significance of the case for today’s legal landscape.

To illustrate the elements in a court opinion, we present an annotated opinion in Exhibit 1A–3. The opinion is from an actual case that the United States Court of Appeals for the Ninth Circuit, decided in 2014. You will note that triple asterisks (* * *) and quadruple asterisks (* * * *) frequently appear in the opinion. The triple asterisks indicate that we have deleted a few words or sentences from the opinion for the sake of readability or brevity. Quadruple asterisks mean that an entire paragraph (or more) has been omitted.

Additionally, when the opinion cites another case or legal source, the citation to the case or other source has been omitted to save space and to improve the flow of the text. These editorial practices are continued in the other court opinions presented in this book. Whenever we present a court opinion that includes a term or phrase that may not be readily understandable, we add a bracketed definition or paraphrase.

Exhibit 1A–3 A Sample Court Case

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

EXPERIENCE HENDRIX L.L.C. v. HENDRIXLICENSING.COM LTD.

United States Court of Appeals, Ninth Circuit,

742 F.3d 377 (2014).

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

DAVID M. EBEL, Circuit Judge.

The sole heir of deceased rock legend Jimi Hendrix formed two companies, * * *

L.L.C. is an abbreviation for limited liability company, a hybrid form of business enterprise that offers the limited liability of the corporation and the tax advantages of a partnership.

Experience Hendrix, **L.L.C.**, and its wholly owned subsidiary, Authentic Hendrix, L.L.C. (collectively “Experience Hendrix”).

* * * *

Exhibit 1A–3 A Sample Court Case, Continued

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

In the context of this case, a *license* is an agreement permitting the license holder to use a trademark for certain limited purposes

A *domain name* is the last part of an Internet address (such as hendrixlicensing.com).

To *allege* is to assert to be true as described.

The *Lanham Act* is a federal statute enacted in 1946 that protects the owner of a trademark against the use of a similar mark if any consumer confusion might result.

A *summary judgment* is a judgment that a court enters without beginning or continuing a trial. This judgment can be entered only if no facts are in dispute and the only question is how the law applies to the facts.

To *enjoin* is to issue an injunction—a court decree ordering a person to do or refrain from doing a certain activity.

Damages is money sought as a remedy for a wrongful act.

BACKGROUND

Experience Hendrix holds a number of trademarks associated with Jimi Hendrix, including the names “Hendrix” and “Jimi Hendrix” and Jimi Hendrix’s signature, as well as logos incorporating a “headshot” of Hendrix. Experience Hendrix uses these trademarks to market, sell and **license** Hendrix-related merchandise, including apparel, posters, and artwork sold to the public through Internet websites and brick-and-mortar retail stores throughout the United States.

[Andrew Pitsicalis and his company, Hendrixlicensing.com, L.L.C. (collectively “Pitsicalis”)] has also used Jimi Hendrix’s celebrity status commercially. Pitsicalis owns, or has licenses to use, photographs and original pieces of art depicting Hendrix, as well as visual artwork created by Hendrix himself. In 2008, Pitsicalis began licensing the right to use these images to produce and sell Hendrix-related merchandise, including apparel, posters and household items. Like Experience Hendrix, Pitsicalis’s licensees sold this merchandise over the Internet and in brick-and-mortar stores. Pitsicalis placed marks on his licensed products that used the names “Hendrix” and “Jimi Hendrix,” as well as Jimi Hendrix’s signature and a logo of Hendrix’s headshot with a guitar. In conducting his business, Pitsicalis also used two websites with the **domain names** hendrixlicensing.com and hendrixartwork.com.

In March 2009, Experience Hendrix sued Pitsicalis [in a federal district court]. * * *

Experience Hendrix **alleged** that Pitsicalis was infringing Experience Hendrix’s trademarks in violation of the federal **Lanham Act**. * * * The district court granted Experience Hendrix * * * **summary judgment** on the federal Lanham Act claim, concluding that Pitsicalis had infringed Experience Hendrix’s trademarks. The court permanently **enjoined** Pitsicalis’s infringing activity. * * * Although the jury awarded Experience Hendrix **damages** * * * totaling [\$366,650], the district court reduced the jury’s award to \$60,000. These cross-appeals followed.

Continued

Exhibit 1A-3 A Sample Court Case, Continued**DISCUSSION**

* * * *

The second major section of the opinion responds to the parties' appeals.

On appeal, Pitsicalis challenges * * * the district court's conclusion that he is liable for infringing Experience Hendrix's trademarks: Pitsicalis argues that his domain names hendrixlicensing.com and hendrixartwork.com did not violate the federal Lanham Act by infringing Experience Hendrix's trademark "Hendrix."

* * * On appeal. Experience Hendrix seeks reinstatement of the jury's entire damages award.

* * * *

Nominative fair use refers to the reasonable and limited use of a name without the owner's permission. Fair use is a defense to an infringement claim, depending on such factors as, in this case, the purpose and character of the use.

Pitsicalis defended his use of the trademark "Hendrix" in his domain names only as **nominative fair use**. Nominative fair use applies where a defendant has used the plaintiff's mark to describe the plaintiff's product. The district court rejected Pitsicalis's nominative fair use defense, concluding that Pitsicalis used "Hendrix" in his domain names to refer, not to Experience Hendrix's products (as is required for a nominative fair use defense), but only to Pitsicalis's own product or service, licensing and marketing Hendrix-related goods (which is not protected under the nominative fair use defense). On appeal, Pitsicalis does not argue that his domain names refer to Experience Hendrix's products. Nor does he contend that Jimi Hendrix is Experience Hendrix's product. We, therefore, **affirm** the district court's decision to enter * * * summary judgment for Experience Hendrix.

To *affirm* is to validate or give legal force to.

* * * *

Based on Pitsicalis's infringing Experience Hendrix's trademarks in violation of the Lanham Act, the jury awarded Experience Hendrix 1) \$60,000, representing the profits Pitsicalis made from licensing his infringing goods; and 2) \$306,650 to compensate Experience Hendrix for the profits Experience Hendrix lost because of Pitsicalis's infringing conduct.

In this context, to *strike* is to remove or expunge.

* * * *

* * * After the jury's verdict, the district court * * * **struck**, as unsupported by the evidence, all of the damages awarded except the \$60,000 award.

Exhibit 1A-3 A Sample Court Case, Continued

* * * *

* * * In striking the jury's award for Experience Hendrix's lost profits, the district court held that, while Experience Hendrix had presented evidence of its lost revenue, it had failed to offer any evidence as to its expenses, which the jury was required to deduct from the lost revenue in order to calculate Experience Hendrix's lost profits.

[But] there was **sufficient evidence** before the jurors from which they could calculate the profits Experience Hendrix lost due to Pitsicalis's infringing conduct. That evidence included the following: There was undisputed evidence that, at the same time that Pitsicalis was licensing his infringing goods, Experience Hendrix suffered a significant decline in its own licensing revenue earned from products similar to Pitsicalis's infringing merchandise. There was also testimony describing the nature of licensing revenue generally as a **licensee's** payment to the **licensor** of a percentage of the licensee's revenue in return for the use of the licensor's **intellectual property**. In addition, the jury had before it financial documents * * * which summarized and compared Experience Hendrix's licensing revenue from 2006 through 2009. * * * So we conclude that the district court erred in * * * **vacating** the damages of \$306,650 in Experience Hendrix's lost profits.

* * * *

CONCLUSION

For the foregoing reasons, we * * * **AFFIRM** the district court's decision granting Experience Hendrix * * * summary judgment on its claim that Pitsicalis's use of "Hendrix" in its domain names infringed Experience Hendrix's mark "Hendrix." * * * We **REVERSE** * * * the district court's * * * decision to strike most of the jury's award of damages. * * *

We * * * **REMAND** for a new trial on such damages.

AFFIRMED IN PART, REVERSED IN PART, * * * AND REMANDED.

Sufficient evidence is evidence that is sufficient to satisfy an unprejudiced mind seeking the truth.

A *licensee* is one who receives a license to use another's property.

A *licensor* is one who grants the right to use his or her property to another.

Intellectual property is property resulting from intellectual, creative processes, such as a trademark.

To *vacate* is to cancel, invalidate, or void.

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

Here, to *reverse* is to reject or overrule the court's judgment.

In this context, to *remand* is to send back to the lower court.

Courts and Alternative Dispute Resolution

LEARNING OBJECTIVES

The five learning objectives below are designed to help improve your understanding of the chapter. After reading this chapter, you should be able to answer the following questions:

1. What is judicial review? How and when was the power of judicial review established?
2. Before a court can hear a case, it must have jurisdiction. Over what must it have jurisdiction? How are the courts applying traditional jurisdictional concepts to cases involving Internet transactions?
3. What is the difference between a trial court and an appellate court?
4. What is discovery, and how does electronic discovery differ from traditional discovery?
5. What are three alternative methods of resolving disputes?

CONTENTS

- The Judiciary's Role
- Basic Judicial Requirements
- The State and Federal Court Systems
- Following a State Court Case
- The Courts Adapt to the Online World
- Alternative Dispute Resolution



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**"An eye for an eye will make the whole world blind."
—Mahatma Gandhi, 1869–1948 (Indian political and spiritual leader)**

Every society needs to have an established method for resolving disputes. Without one, as Mahatma Gandhi implied in the chapter-opening quotation, the biblical "eye for an eye" would lead to anarchy. This is particularly true in the business world—almost every businessperson will face a lawsuit at some time in his or her career. For this reason, anyone involved in business needs to have an understanding of court systems in the United States, as well as the various methods of dispute resolution that can be pursued outside the courts.

In this chapter, after examining the judiciary's overall role in the American governmental scheme, we discuss some basic requirements that must be met before a party may bring a lawsuit before a particular court. We then look at the court systems of the United States in some detail and, to clarify judicial procedures, follow a hypothetical case through a state court system. Because Islamic legal systems are prevalent in many parts of the world, some judges in this country have been asked to accept some Islamic law. You will read later in this chapter about this controversy.

Throughout this chapter, we indicate how court doctrines and procedures are being adapted to the needs of a cyber age. The chapter concludes with an overview of some alternative methods of settling disputes, including online dispute resolution.

The Judiciary's Role

As you learned in Chapter 1, the body of American law includes the federal and state constitutions, statutes passed by legislative bodies, administrative law, and the case decisions and legal principles that form the common law. These laws would be meaningless, however, without the courts to interpret and apply them. This is the essential role of the judiciary—the courts—in the American governmental system: to interpret and apply the law.

Judicial Review

As the branch of government entrusted with interpreting the laws, the judiciary can decide, among other things, whether the laws or actions of the other two branches are constitutional. The process for making such a determination is known as **judicial review**. The power of judicial review enables the judicial branch to act as a check on the other two branches of government, in line with the checks-and-balances system established by the U.S. Constitution. (Today, nearly all nations with constitutional democracies, including Canada, France, and Germany, have some form of judicial review.)

Learning Objective 1

What is judicial review? How and when was the power of judicial review established?

Judicial Review The process by which a court decides on the constitutionality of legislative enactments and actions of the executive branch.

The Origins of Judicial Review in the United States

The power of judicial review is not mentioned in the U.S. Constitution (although many constitutional scholars believe that the founders intended the judiciary to have this power). The United States Supreme Court explicitly established this power in 1803 in the case *Marbury v. Madison*.¹ In that decision, the Court stated, “It is emphatically the province [authority] and duty of the Judicial Department to say what the law is. . . . If two laws conflict with each other, the courts must decide on the operation of each. . . . [I]f both [a] law and the Constitution apply to a particular case, . . . the Court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.” Since the *Marbury v. Madison* decision, the power of judicial review has remained unchallenged. Today, this power is exercised by both federal and state courts.

Basic Judicial Requirements

Before a court can hear a lawsuit, certain requirements must first be met. These requirements relate to jurisdiction, venue, and standing to sue. We examine each of these important concepts here.

Jurisdiction

In Latin, *juris* means “law,” and *diction* means “to speak.” Thus, “the power to speak the law” is the literal meaning of the term **jurisdiction**. Before any court can hear a case, it must have jurisdiction over the person (or company) against whom the suit is brought (the

Jurisdiction The authority of a court to hear and decide a specific case.

1. 5 U.S. (1 Cranch) 137, 2 L.Ed. 60 (1803).

defendant) or over the property involved in the suit. The court must also have jurisdiction over the subject matter of the dispute.

Jurisdiction over Persons or Property Generally, a court can exercise personal jurisdiction (*in personam* jurisdiction) over any person or business that resides in a certain geographic area. A state trial court, for example, normally has jurisdictional authority over residents (including businesses) in a particular area of the state, such as a county or district. A state's highest court (often called the state supreme court, as will be discussed shortly) has jurisdiction over all residents of that state.

A court can also exercise jurisdiction over property that is located within its boundaries. This kind of jurisdiction is known as *in rem* jurisdiction, or “jurisdiction over the thing.” **EXAMPLE 2.1** A dispute arises over the ownership of a boat in dry dock in Fort Lauderdale, Florida. The boat is owned by an Ohio resident, over whom a Florida court normally cannot exercise personal jurisdiction. The other party to the dispute is a resident of Nebraska. In this situation, a lawsuit concerning the boat could be brought in a Florida state court on the basis of the court's *in rem* jurisdiction. ●

Long Arm Statute A state statute that permits a state to exercise jurisdiction over nonresident defendants.

Long Arm Statutes Under the authority of a state **long arm statute**, a court can exercise personal jurisdiction over certain out-of-state defendants based on activities that took place within the state. Before exercising long arm jurisdiction over a nonresident, however, the court must be convinced that the defendant had sufficient contacts, or *minimum contacts*, with the state to justify the jurisdiction.² Generally, this means that the defendant must have enough of a connection to the state for the judge to conclude that it is fair for the state to exercise power over the defendant. If an out-of-state defendant caused an automobile accident or sold defective goods within the state, for instance, a court will usually find that minimum contacts exist to exercise jurisdiction over that defendant.

CASE EXAMPLE 2.2 After an Xbox game system caught fire in Bonnie Broquet's home in Texas and caused substantial personal injuries, Broquet filed a lawsuit in a Texas court against Ji-Haw Industrial Company, a nonresident company that made the Xbox components. Broquet alleged that Ji-Haw's components were defective and had caused the fire. Ji-Haw argued that the Texas court lacked jurisdiction over it, but in 2008, a state appellate court held that the Texas long arm statute authorized the exercise of jurisdiction over the out-of-state defendant.³ ●

Similarly, a state may exercise personal jurisdiction over a nonresident defendant who is sued for breaching a contract that was formed within the state, even when that contract was negotiated over the phone or through correspondence. **EXAMPLE 2.3** Sharon Mills, a California resident, forms a corporation to distribute a documentary film on global climate change. Brad Cole, an environmentalist who lives in Ohio, loans the corporation funds that he borrows from an Ohio bank. A year later, the film is still not completed. Mills agrees to repay Cole's loan in a contract arranged through phone calls and correspondence between California and Ohio. When Mills does not repay the loan, Cole files a lawsuit in an Ohio court. In this situation, the Ohio court can likely exercise jurisdiction over Mills because her phone calls and letters have established sufficient contacts with the state of Ohio. ●

Corporate Contacts Because corporations are considered legal persons, courts use the same principles to determine whether it is fair to exercise jurisdiction over a corporation.⁴

2. The minimum-contacts standard was established in *International Shoe Co. v. State of Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945).

3. *Ji-Haw Industrial Co. v. Broquet*, 2008 WL 441822 (Tex.App.—San Antonio 2008).

4. In the eyes of the law, corporations are “legal persons”—entities that can sue and be sued. See Chapter 11.