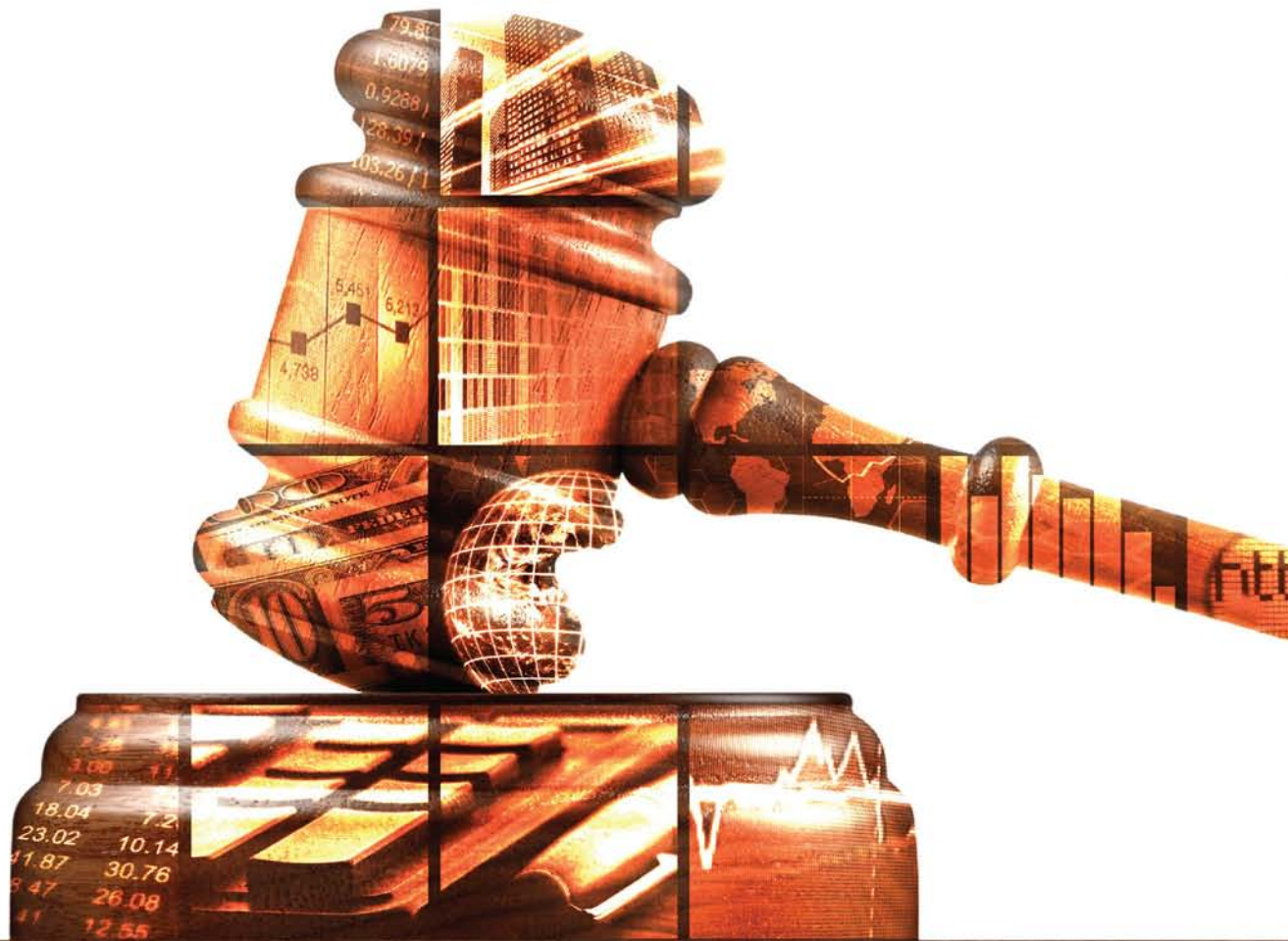


11th Edition

ROGER LEROY MILLER

# Business Law Today

COMPREHENSIVE EDITION TEXT & CASES



BUSINESS LAW TODAY SERIES

**11th Edition**

# Business Law Today

**COMPREHENSIVE EDITION**

**ROGER LEROY MILLER**

Institute for University Studies  
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# Preface



The study of business and the legal environment has universal applicability. A student entering any field of business must have at least a passing understanding of business law in order to function in the real world. *Business Law Today: Comprehensive Edition* provides the information in an interesting and contemporary way. The Eleventh Edition continues its established tradition of being the most up-to-date text on the market.

Instructors have come to rely on the coverage, accuracy, and applicability of *Business Law Today: Comprehensive Edition*. This best-selling text engages your students, solidifies their understanding of legal concepts, and provides the best teaching tools available. I have spent a great deal of effort making this edition more contemporary, exciting, and visually appealing than ever before. Special pedagogical devices within the text focus on legal, ethical, global, and corporate issues, while addressing core curriculum requirements.

## What's New in the Eleventh Edition

The Eleventh Edition incorporates the latest legal developments and United States Supreme Court decisions. It also includes more than fifty new features and seventy new cases, hundreds of new numbered examples and *Case Examples*, new Exhibits, *Learning Objectives*, margin definitions, and Case Problems.

### New Chapter on Internet Law, Social Media, and Privacy

For the Eleventh Edition, I have included an entirely new chapter (Chapter 7) 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.

### New Features

The Eleventh Edition of *Business Law Today: Comprehensive Edition* is filled with exciting new features, including the following:

- Twenty-three **Adapting the Law to the Online Environment** features examine cutting-edge cyberlaw issues. Seventeen of these are new and cover topics such as Facebook poker, hacking, patent trolls, paying with smartphones, revenge porn, and social media.
- Twenty new **Ethical Issues** focus on the ethical aspects of a topic being discussed in order to emphasize that ethics is an integral part of a business law course.
- Six new **Beyond Our Borders** features (for a total of twenty-four) focus on the global legal environment and illustrate how other nations deal with specific legal concepts being discussed.
- A new feature entitled **Managerial Strategy** that focuses on the management aspects of business law. There are ten of these new features throughout the text, covering such topics as the commercial use of drones, marriage equality, and the use of company e-mail systems to organize a union.

- Fourteen **Business Application** features and eight **Linking Business Law to [one of the six functional fields of business]** features are included at the end of selected chapters. The *Business Application* features emphasize practical considerations and offer checklists related to the chapter's contents, whereas the *Linking Business Law* features underscore how the law relates to other fields of business.
- Eighteen **Landmark in the Law** features discuss a landmark case, statute, or other legal development that has had a significant effect on business law.

## New Cases and Case Problems

The Eleventh Edition of *Business Law Today: Comprehensive Edition* has new cases and case problems from 2014 and 2015 in every chapter. The new cases have been carefully selected to illustrate important points of law and be of high interest to students and instructors. I have made it a point to find recent cases that enhance learning and are simple enough for business law students to understand.

Certain cases and case problems have been carefully chosen as good teaching cases and are designated as **Spotlight Cases** and **Spotlight Case Problems**. Some examples include *Spotlight on Apple*, *Spotlight on Beer Labels*, *Spotlight on Nike*, and *Spotlight on the Seattle Mariners*. Instructors will find these *Spotlight* decisions useful to illustrate the legal concepts under discussion, and students will enjoy studying these cases because they involve interesting and memorable facts. Other cases have been chosen as **Classic Cases** because they establish a legal precedent in the particular area of law.

Each case concludes with a question, which may be called *Critical Thinking*, *What If the Facts Were Different?* or *Why Is This Case Important?* *Classic Cases* conclude with an *Impact of This Case on Today's Law* section that clarifies how the case has affected the legal environment. *Suggested answers to all case-ending questions can be found in the Solutions Manual for this text.*

## Many New Highlighted and Numbered Case Examples

Many instructors use cases and examples to illustrate how the law applies to business. For this edition, I have added more than one hundred new highlighted and numbered **Examples**, and more than one hundred new highlighted and consecutively numbered **Case Examples**. *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.

## Critical Thinking and Legal Reasoning Elements

Critical thinking questions conclude most of the features and cases in this text. There is also a **Debate This** question at the end of each chapter that requires students to think critically about the rationale underlying the law on a particular topic.

Answers to all critical thinking questions, as well as to the **Business Scenarios and Case Problems** at the end of every chapter, are presented in the *Solutions Manual* for the text. In addition, the answers to one case problem in each chapter, called the **Business Case Problem with Sample Answer**, appear in *Appendix F*.

The chapter-ending materials also include a separate section of questions that focus on critical thinking and writing. This section always includes a **Business Law Critical Thinking Group Assignment** and may also include the following:

- **Critical Legal Thinking** questions require students to think critically about some aspect of the law discussed in the chapter.

- **Business Law Writing** questions require students to compose a written response to a business-oriented critical-thinking question.
- **Case Analysis Questions** require students to read through a case excerpt in *Appendix G*, brief the case, and then answer a series of questions relating to the case.

## Other Pedagogical Devices within Each Chapter

- **Learning Objectives** (questions at the beginning of each chapter and in the margin of the text provide a framework for the student).
- **Preventing Legal Disputes** (integrated text sections offer practical guidance on how businesspersons can avoid legal disputes and litigation in a particular area).
- **Chapter Outline** (an outline of the chapter's first-level headings).
- **Margin definitions.**
- **Highlighted and numbered Examples and Case Examples** (illustrate legal principles).
- **Quotations** and **Know This** (margin features).
- **Exhibits.**
- **Photographs** (with critical thinking questions) and **cartoons.**

## Chapter-Ending Pedagogy

- **Reviewing . . . features** (in every chapter).
- **Debate This** (a statement or question at the end of the *Reviewing* feature).
- **Key Terms** (with appropriate page references).
- **Chapter Summary** (in table format).
- **Issue Spotters** (in every chapter with answers in *Appendix D*).
- **Learning Objectives Check** (The *Learning Objectives* questions are presented again to aid students in reviewing the chapter. For this edition, answers to the even-numbered questions for each chapter are provided in *Appendix E*.)
- **Business Scenarios and Case Problems** (Every chapter includes a *Business Case Problem with Sample Answer* answered in *Appendix F*, *A Question of Ethics*, and a *Business Law Critical Thinking Group Assignment*. Selected chapters include a *Spotlight Case Problem*.)

## Unit-Ending Pedagogy

Each of the seven units in the Eleventh Edition of *Business Law Today: Comprehensive Edition* concludes with the following features (which are answered in the *Solutions Manual*):

- **Business Case Study with Dissenting Opinion**—This feature presents a court case that relates to a topic covered in the unit. It opens with an introductory section, discusses the case background and significance, and then provides excerpts from the court's majority opinion and from a dissenting opinion as well. The case study portion ends with *Questions for Analysis*—a series of questions that prompt the student to think critically about the legal, ethical, economic, international, or general business implications of the case.
- **Business Scenario**—This feature presents a hypothetical business situation and then asks a series of questions about how the law applies to various actions taken by the firm. To answer the questions, the student must apply the laws discussed throughout the unit.
- **Group Project**—The final portion of the unit-ending pedagogy is a *Group Project* that requires students to work together to formulate answers based on materials they learned in the previous chapters.



## Supplements

*Business Law Today: Comprehensive Edition*, Eleventh Edition, provides a substantial supplements package designed to make the tasks of teaching and learning more enjoyable and efficient. The following supplements are available for instructors.

### ***MindTap Business Law for Business Law Today: Comprehensive Edition, Eleventh Edition***

*MindTap*™ 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 (LMSs).

The *MindTap Business Law* product provides a four-step Learning Path, Case Repository, Adaptive Test Prep, and an Interactive eBook designed to meet instructors' needs while also allowing instructors to measure skills and outcomes with ease. Each and every item 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.

### ***Cengage Learning Testing Powered by Cognero***

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

- Author, edit, and manage *Test Bank* content from multiple Cengage Learning solutions.
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### **What Instructors Will Find**

- ***Simplicity at every step.*** A desktop-inspired interface features drop-down menus and familiar, intuitive tools that take instructors through content creation and management with ease.
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**Case Problem Blueprints** - promote deeper CRITICAL THINKING and legal reasoning by guiding students step by step through a case problem.



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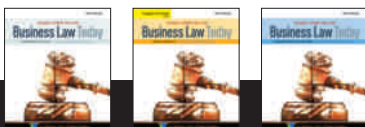
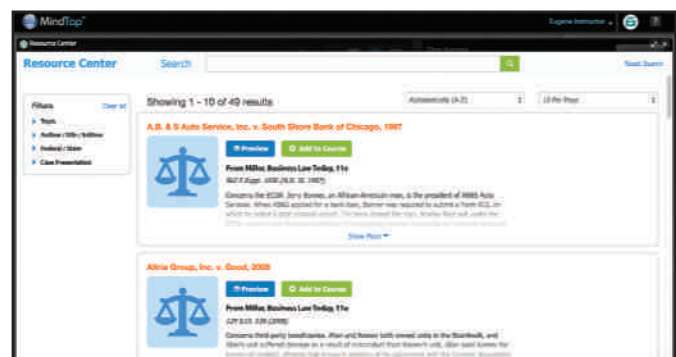
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MindTap's Adaptive Test Prep helps students study for exams with unlimited practice tests, quizzes, and feedback aimed specifically at helping them understand the course concepts.

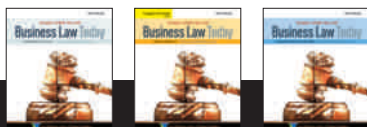
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The feedback provided is available in up to three formats:

- ▶ eBook link back to the reading
- ▶ written remediation
- ▶ video walk-throughs



These resources consist of robust explanations created by some of the best business law educators in the country. *My Study Plan* also provides chapter level resources such as flashcards and chapter summary reviews.



## BUSINESS LAW TODAY SERIES



# Turn the Light on Engagement with Interactive eBook Activities



An eBook environment leads to more interaction with the material and a deeper learning of Business Law concepts. MindTap offers interactive cases, interactive exhibits, and video whiteboard explanations for the business law classroom.



## **Interactive Cases**

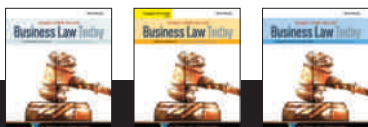
Bring cases to life with an interactive environment that pulls students into the material. Instead of reading a boxed case feature, these interactive cases ask questions throughout, provide detailed answers, help guide students to a deeper understanding of the case, and enhance their legal reasoning skills. After reading the case, students are asked application questions to assess their understanding at a broader level.

## **Interactive Exhibits**

Select static exhibits from within the narrative are now interactive. Students can enjoy manipulating figures and exhibits to better solidify their understanding of key concepts in the text. These activities are sure to engage students in the learning process and encourage greater focus and participation.

## **Video Whiteboard Explanations**

Bring key legal concepts to life, literally, with short, entertaining animations. Video whiteboard explanations help students remember and learn key concepts with fun, real-world examples. Each being 3 minutes or less, these videos are an exciting way to help students see how they'd encounter these concepts in their own lives or in the near future when entering the business world.



## BUSINESS LAW TODAY SERIES

## 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 *Learning Objectives*, the questions in each case and feature, the *Issue Spotters*, the *Business Scenarios and Case Problems*, *Critical Thinking and Writing Assignments*, and the unit-ending features. New for this edition, we also provide a set of *Alternative Case Problems* for every chapter.
- **Test Bank.** A comprehensive test bank contains multiple-choice, true/false, and short essay questions.
- **Case-Problem Cases.**
- **Case Printouts.**
- **PowerPoint Slides.**

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Roger LeRoy Miller



## *Dedication*

To Rob Dewey,

Thanks for being  
a true professional  
for so many years.

R.L.M.



# Business Law Today

**COMPREHENSIVE EDITION**





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# Unit 1

## The Legal Environment of Business

- 1 The Legal Environment
- 2 Constitutional Law
- 3 Courts and Alternative Dispute Resolution
- 4 Tort Law
- 5 Product Liability
- 6 Intellectual Property Rights
- 7 Internet Law, Social Media, and Privacy
- 8 Criminal Law and Cyber Crime
- 9 Business Ethics

# 1

## CHAPTER OUTLINE

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

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## 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?

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

# The Legal Environment

In the chapter-opening quotation, Clarence Darrow asserts that law should be created to serve the public. Because you are part of that public, the law is important to you. In particular, 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, all of them 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. 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*.

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.

“Laws should be like clothes. They should be made to fit the people they are meant to serve.”

**CLARENCE DARROW**  
1857–1938  
(AMERICAN LAWYER)



## 1-1 Business Activities and the Legal Environment

Laws and government regulations affect almost all business activities—from hiring and firing decisions to workplace safety, the manufacturing and marketing of products, business financing, and more. To make good business decisions, businesspersons need to understand the laws and regulations governing these activities.

Realize also that in today's business world, 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 best course of action. Businesspersons are also pressured to make ethical decisions. Thus, the study of business law necessarily involves an ethical dimension.

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

### 1-1a 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. Exhibit 1-1 illustrates the various areas of the law that may influence business decision making.

**EXAMPLE 1.1** When Mark Zuckerberg started Facebook as a Harvard student, he probably did not imagine all the legal challenges his company would face as a result of his business decisions.

- Shortly after Facebook was launched, others claimed that Zuckerberg had stolen their ideas for a social networking site. Their claims involved alleged theft of intellectual property (see Chapter 6), fraudulent misrepresentation (see Chapter 14), partnership law (see Chapter 31), and securities law (see Chapter 36). Facebook ultimately paid a significant amount (\$65 million) to settle those claims out of court.
- By 2015, Facebook had been sued repeatedly for violating users' privacy (such as by disseminating private information to third parties for commercial purposes—see Chapters 4 and 7). In 2012 and 2014, lawsuits were filed against Facebook for violating users' privacy (and federal laws) by tracking their Web site usage and by scanning private messages for purposes of data mining and user profiling. Also in 2014, a suit was filed in Europe against Facebook alleging violations of EU laws governing privacy and data use.
- Facebook's business decisions have come under scrutiny by federal regulators, such as the Federal Trade Commission (FTC) and the Securities and Exchange Commission (SEC). The company settled a complaint filed by the FTC alleging that Facebook failed to keep "friends" lists and other user information private. ■



Mark Zuckerberg, founder of Facebook, has faced numerous legal challenges. These include privacy issues and the alleged theft of intellectual property. Can large Internet firms completely avoid such legal problems?

**A key to avoiding business disputes is to think ahead when starting or running a business or entering a contract.** Learn what you can about the laws pertaining to that specific enterprise or transaction. Have some idea of the legal ramifications of your business decisions, and seek the advice of a licensed attorney. When you need to choose an attorney, obtain recommendations from friends, relatives, or business associates who have had long-standing relationships with their attorneys.

**PREVENTING  
LEGAL  
DISPUTES**



**Exhibit 1–1** Areas of the Law That May Affect Business Decision Making**1–1b 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 plan to become attorneys. Many of you are taking other business school courses and may therefore be familiar with the functional fields of business listed below:



Why is basic knowledge of business law and the legal environment so important today?

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, numerous chapters conclude with a special feature called “*Linking Business Law to* [one of the six functional fields of business].” The link between business law and accounting is so significant that we discuss it in detail in Chapter 40.

**1–1c 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. The small business owner/operator is the most general of managers. When you seek additional

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

financing, you become a finance manager. When you “go over the books” with your book-keeper, you become an accountant. When you decide on a new advertising 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 the different managerial roles that a small-business owner/operator must perform. Exhibit 1–2 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.

## 1–2 Sources of American Law

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

**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.

## LEARNING OBJECTIVE 1

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

- The U.S. Constitution and the constitutions of the various states.
- Statutory law—including laws passed by Congress, state legislatures, and local governing bodies.
- 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. (See the appendix at the end of this chapter for a discussion of how to find statutes, regulations, and case law.)

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

## 1-2a Constitutional Law

The federal government and the states have written constitutions that set forth the general organization, powers, and limits of their respective governments. **Constitutional law**, which deals with the fundamental principles by which the government exercises its authority, is the law as expressed in these constitutions.

The U.S. Constitution is the basis of all law in the United States. It provides a framework for statutes and regulations, and thus is the supreme law of the land. 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 2 and present its complete text 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** 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.

## 1-2b 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**—regulations passed by municipal or county governing units to deal with 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.uniformlaws.org](http://www.uniformlaws.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.

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.<sup>1</sup> The UCC was first issued in 1952 and has been adopted in all fifty states,<sup>2</sup> 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 cite the UCC frequently in this text. We also present excerpts of the UCC in Appendix C. From time to time, the NCCUSL revises the articles contained in the UCC and submits the revised versions to the states for adoption.

## 1-2c 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, including the 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 great detail in Chapter 37.

## 1-2d 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.

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

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

## 1-3 Common Law Tradition

Because of our colonial heritage, much American law is based on the English legal system. 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?

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.



### 1-3a Early English Courts

**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 facts.

#### LEARNING OBJECTIVE 3

What is a precedent? When might a court depart from precedent?

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 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.)

### 1-3b 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**<sup>3</sup> (“to stand on decided cases”).

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

**The Importance of Precedents in Judicial Decision Making** Under the doctrine of *stare decisis*, judges are obligated to follow the precedents established within their jurisdictions. (The term *jurisdiction* refers to a geographic area in which a court or courts have the power to apply the law—see Chapter 3.) Once a court has set forth a principle of law as being applicable to a certain set of facts, that court must apply the principle in future cases involving similar facts. Courts of lower rank (within the same jurisdiction) must do likewise. Thus, *stare decisis* has two aspects:

1. A court should not overturn its own precedents unless there is a strong reason to do so.
2. Decisions made by a higher court are binding on lower courts.

Controlling precedents in a *jurisdiction* 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

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

## KNOW THIS

Courts normally must follow the rules set forth by higher courts in deciding cases with similar fact patterns.

3. Pronounced stahr-ee dih-si-sis.

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 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 1.5** In *Brown v. Board of Education of Topeka*,<sup>4</sup> 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,<sup>5</sup> 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. Technological advances such as the one discussed in this chapter's *Adapting the Law to the Online Environment* feature often raise new legal issues, for example.

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.

### 1-3c 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 1.6** 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 either money or property, including land, as compensation. 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.”

**Remedies in Equity** *Equity* is a branch of law founded on notions of justice and fair dealing. It 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. The remedies granted by the chancery courts were called *remedies in equity*.

**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 1.7** A plaintiff



Why would this scene not have been likely before 1954?

**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.

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

**Plaintiff** One who initiates a lawsuit.

### LEARNING OBJECTIVE 4

What is the difference between remedies at law and 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).

## ADAPTING THE LAW TO THE **ONLINE** ENVIRONMENT

### Can New Laws Prevent People from Wearing Google Glass?

**G**oogle Glass is a wearable computer. Basically, it's a Bluetooth-enabled, hands-free device that allows wearers to take photos and videos, surf the Internet, and do other activities through voice commands. For the most part, Google Glass devices have been sold to consumers. One result has been legal problems, including problems involving privacy issues, safety while driving, and movie pirating.

#### Invasion of Privacy?

Privacy advocates point out that it is much easier to film or photograph others secretly with wearable video technology than with cameras or even cell phones. The more people use wearable video technology, the greater the problem will become. The so-called sacred precincts of private life will increasingly be violated. This issue came up over a hundred years ago with the creation of low-cost cameras. Initially, there were widespread bans on cameras at beaches.<sup>a</sup>

Today, numerous bars and restaurants are banning Google Glass. Corporations are concerned that employees wearing Google Glass can more easily photograph documents that reveal trade secrets.

What about facial recognition software in Google Glass? Such an application could allow anyone to get personal information about another person just by looking at the person through a Google Glass headset. Even Congress has made inquiries about this possibility. In response, Google announced

a. Samuel D. Warren and Louis D. Brandeis, "The Right to Privacy," *Harvard Law Review* 4 (December 15, 1890): 193–220.



*Under what circumstances could a user of Google Glass be violating the right to privacy of others?*

that it would not allow facial recognition applications on Glass.

In any event, the doctrine of a reasonable expectation of privacy is going to be challenged because of Google Glass. If Glass is ubiquitous, can any of us have a reasonable expectation of privacy when we are in public places?

#### Driving While Watching

When a San Diego policeman pulled over a motorist for speeding, she was also cited for "driving with a monitor visible to driver." California law prohibits in-vehicle video displays that are visible to the vehicles' drivers.<sup>b</sup> The charge was thrown out because of a lack of evidence that the device was in operation at the time of the purported offense.

A number of states have introduced legislation that would restrict the use of Google Glass while driving. All such legislation specifies the prohibited activity as "using" wearable devices, such as Google Glass. William & Mary law professor Adam Gershowitz argues

b. California Vehicle Code Section 27602.

that such driving bans are unenforceable. A police officer has no way of knowing whether a passing driver was *using*, as opposed to simply *wearing*, Google Glass.

#### The Pirated Movie Problem

Pirated movies offered free on the Internet have greatly affected revenues for movie production companies and movie theaters. Not surprisingly, movie theater owners are on the lookout for camouflaged, hand-held cameras during screenings of movies.

When an AMC theater in Columbus, Ohio, noticed a customer wearing a Google Glass device, it contacted the Motion Picture Association of America (MPAA), which then contacted the federal Department of Homeland Security. An hour into the movie, the Glass wearer was removed from the theater by Immigration and Customs Enforcement (ICE) officers. He was released when an officer connected his Glass to a computer, which showed that no video of the movie had been taken.

Both the MPAA and the AMC theater chain stated that wearing "devices with recording capabilities is not appropriate at movie theaters." Note, though, that any restrictions on Google Glass and similar wearable devices will be more difficult to enforce as more individuals use prescription lenses in such devices.

#### CRITICAL THINKING

- What benefits could wearers of Google Glass obtain from using facial recognition technology?

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

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. ■ Equitable remedies will be discussed in greater detail in Unit 2.

**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.

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.

**Equitable Principles and Maxims** Over time, the courts have developed a number of **equitable principles and maxims** that provide guidance in deciding whether plaintiffs should be granted equitable relief. Because of their importance, both historically and in our judicial system today, these principles and maxims are set forth in this chapter's *Landmark in the Law* feature.

### 1–3d 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.

**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.

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 operations abroad

## KNOW THIS

Even though courts of law and equity have merged, the principles of equity still apply, and courts will not grant an equitable remedy unless the remedy at law is inadequate.

**Equitable Principles and Maxims** General propositions or principles of law that have to do with fairness (equity).

**Jurisprudence** The science or philosophy of law.

**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.

### 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



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.

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

**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.

**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.

## LANDMARK IN THE LAW

## Equitable Principles and Maxims

**I**n medieval England, courts of equity were expected to use discretion in supplementing the common law. Even today, when the same court can award both legal and equitable remedies, it must exercise discretion. Students of business law and the legal environment should know that courts often invoke equitable principles and maxims when making their decisions. Here are some of the most significant equitable principles and maxims:

1. *Whoever seeks equity must do equity.* (Anyone who wishes to be treated fairly must treat others fairly.)
2. *Where there is equal equity, the law must prevail.* (The law will determine the outcome of a controversy in which the merits of both sides are equal.)
3. *One seeking the aid of an equity court must come to the court with clean hands.*

(Plaintiffs must have acted fairly and honestly.)

4. *Equity will not suffer a wrong to be without a remedy.* (Equitable relief will be awarded when there is a right to relief and there is no adequate remedy at law.)
5. *Equity regards substance rather than form.* (Equity is more concerned with fairness and justice than with legal technicalities.)
6. *Equity aids the vigilant, not those who rest on their rights.* (Equity will not help those who neglect their rights for an unreasonable period of time.)

The last maxim has come to be known as the *equitable doctrine of laches*. The doctrine arose to encourage people to bring lawsuits while the evidence was fresh. If they failed to do so, they would not be allowed to bring a lawsuit. What constitutes a reasonable time, of course, varies according to the circumstances of the case.

Time periods for different types of cases are now usually fixed by statutes of

*limitations*—that is, statutes that set the maximum time period during which a certain action can be brought. After the time allowed under a statute of limitations has expired, no action can be brought, no matter how strong the case was originally.

**APPLICATION TO TODAY'S WORLD** The equitable maxims listed here underlie many of the legal rules and principles that are commonly applied by the courts today—and that you will read about in this book. For instance, in the contracts materials you will read about the doctrine of promissory estoppel.

Under this doctrine, a person who has reasonably and substantially relied on the promise of another may be able to obtain some measure of recovery, even though no enforceable contract exists. The court will estop (bar) the one making the promise from asserting the lack of a valid contract as a defense. The rationale underlying the doctrine of promissory estoppel is similar to that expressed in the fourth and fifth maxims listed.



**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 reasons 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 believe 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.

## 1-4 Classifications of Law

The law may be broken down according to several classification systems. 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 1.8** A state law that provides employees with the right to workers' compensation benefits for any on-the-job injuries they sustain is a substantive law because it creates legal rights (workers' compensation laws will be discussed in Chapter 28). 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. ■

Another classification system divides law into federal law and state law. Still another system distinguishes between 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, but cyberlaw is not really a classification 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. Throughout this book, you will read about how the law is evolving to govern specific legal issues that arise in the online context.

### 1-4a Civil Law and Criminal Law

**Civil law** spells out the rights and duties that exist between persons and between persons and their governments. It also specifies the relief available when a person's rights are violated. Typically, in a civil case, a private party sues another private party 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 1.9** 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. ■ The government can also bring civil lawsuits against private parties in many situations.

Much of the law that we discuss in this text—including contract law and tort law—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. (See this chapter's *Beyond Our Borders* feature for a discussion of the different legal systems used in other nations.)

**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. 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

**Legal Realism** A school of legal thought that holds 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.

**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.

**Cyberlaw** An informal term used to refer to all laws governing electronic communications and transactions, particularly those conducted via the Internet.

**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.

attempt to deter others from similar actions. Penalties for violations of criminal statutes consist of fines and/or imprisonment—and, in some cases, death.

1-4b 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,



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 elsewhere. 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.

Civil Law Systems

Although national law systems share many commonalities, they also have distinct differences. 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).

Common Law and Civil Law Systems Today

Exhibit 1-4 lists some countries that follow either the common law system or the civil law system. Generally, 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.

Islamic Legal Systems

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 lives, 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.

Exhibit 1-4 The Legal Systems of Selected Nations

CIVIL LAW		COMMON LAW	
Argentina	Indonesia	Australia	Nigeria
Austria	Iran	Bangladesh	Singapore
Brazil	Italy	Canada	United Kingdom
Chile	Japan	Ghana	United States
China	Mexico	India	Zambia
Egypt	Poland	Israel	
Finland	South Korea	Jamaica	
France	Sweden	Kenya	
Germany	Tunisia	Malaysia	
Greece	Venezuela	New Zealand	

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.

**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.

**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. We will examine the laws governing international business transactions in Chapters 19 and 20.

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

**International Law** The law that governs relations among nations.

## Reviewing . . . The Legal Environment

Suppose that the California legislature passes a law that severely restricts carbon dioxide emissions of automobiles in that state. A group of automobile manufacturers files a suit against the state of California to prevent 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

<b>binding authority</b> 8	<b>historical school</b> 12	<b>plaintiff</b> 9
<b>case law</b> 7	<b>international law</b> 15	<b>plurality opinion</b> 26
<b>citation</b> 6	<b>jurisprudence</b> 11	<b>precedent</b> 8
<b>civil law</b> 13	<b>law</b> 2	<b>primary source of law</b> 5
<b>civil law system</b> 13	<b>legal positivism</b> 12	<b>procedural law</b> 13
<b>common law</b> 8	<b>legal realism</b> 13	<b>remedy</b> 9
<b>concurring opinion</b> 25	<b>liability</b> 3	<b>secondary source of law</b> 6
<b>constitutional law</b> 6	<b>majority opinion</b> 25	<b>stare decisis</b> 8
<b>criminal law</b> 13	<b>national law</b> 15	<b>statutory law</b> 6
<b>cyberlaw</b> 13	<b>natural law</b> 11	<b>substantive law</b> 13
<b>defendant</b> 10	<b>ordinance</b> 6	<b>uniform law</b> 7
<b>dissenting opinion</b> 26	<b>per curiam opinion</b> 26	
<b>equitable principles and maxims</b> 11	<b>persuasive authority</b> 9	

Chapter Summary: The Legal Environment

<b>Sources of American Law</b>	<p>1. <i>Constitutional law</i>—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.</p> <p>2. <i>Statutory law</i>—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.</p> <p>3. <i>Administrative law</i>—The rules, orders, and decisions of federal or state government administrative agencies.</p> <p>4. <i>Case law and common law doctrines</i>—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.</p>
<b>Common Law Tradition</b>	<p>1. <i>Common law</i>—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.</p> <p>2. <i>Stare decisis</i>—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.</p> <p>3. <i>Remedies</i>—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.</p> <p>4. <i>Schools of legal thought</i>—Judges’ decision making is influenced by their philosophy of law. The following are four important schools of legal thought, or legal philosophies:</p> <ul style="list-style-type: none"><li>a. <i>Natural law tradition</i>—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.</li><li>b. <i>Legal positivism</i>—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.</li><li>c. <i>Historical school</i>—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.</li><li>d. <i>Legal realism</i>—A school of legal thought that generally advocates a less abstract and more realistic approach to the law. This approach takes into account customary practices and the circumstances in which transactions take place.</li></ul>
<b>Classifications of Law</b>	<p>The law may be broken down according to several classification systems, such as substantive or procedural law, federal or state law, and private or public law. Two broad classifications are civil and criminal law, and national and international law. Cyberlaw is not really a classification of law but a term that refers to the growing body of case and statutory law that applies to Internet transactions.</p>



## 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 *Sources of American Law*.)

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

## Learning Objectives Check

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?

—Answers to the even-numbered *Learning Objectives Check* questions can be found in Appendix E at the end of this text.

## 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 *Common Law Tradition*.)

**1-2. 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 *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)?

**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 *Common Law Tradition*.)

**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 *Common Law Tradition*.)

**1-5. 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



in 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 1–5, go to Appendix F at the end of this text.

**1–6. Reading Citations.** Assume that you want to read the court's entire opinion in the case of *Baker v. Premo*, 268 Or.App. 406, 342 P.3d 142 (2015). 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*.)

**1–7. 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 *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?

## Critical Thinking and Writing Assignments

**1–8. Business Law Writing.** John's company is involved in a lawsuit with a customer, Beth. John argues that for fifty years higher courts in that state have decided cases involving circumstances similar to his case in a way that indicates he can expect a ruling in his company's favor. Write at least one paragraph discussing whether this is a valid argument. Write another paragraph discussing whether the judge in this case must rule as those other judges did, and why. (See *Common Law Tradition*.)



1. One group will explain the difference between a concurring opinion and a majority opinion.
2. Another group will outline the difference between a concurring opinion and a dissenting opinion.
3. A third group will explain why judges and justices write concurring and dissenting opinions, given that these opinions will not affect the outcome of the case at hand, which has already been decided by majority vote.

**1–9. Business Law Critical Thinking Group Assignment—Court Opinions.** Read through the subsection entitled "Decisions and Opinions" in the appendix following this chapter. (See *Reading and Understanding Case Law*.)



# 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 court decision—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 of the U.S.C., the federal government also provides a searchable online database of the *United States Code* at [www.gpo.gov](http://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 may be used. For example, “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 is 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 (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 book 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 West’s National Reporter System, published by Thomson Reuters. Most lawyers and libraries have these reporters because they report cases more quickly and are distributed more widely than the state-published reports. In fact, many states have eliminated their own reporters in favor of West’s National Reporter System.

The 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 abbreviations refer to *Second Series* and *Third Series*, respectively.) The states included in each of these regional divisions are indicated in Exhibit 1A–1, which illustrates West’s National Reporter System.

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

Regional Reporters	Coverage Beginning	Coverage
<i>Atlantic Reporter</i> (A., A.2d, or A.3d)	1885	Connecticut, Delaware, District of Columbia, Maine, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island, and Vermont.
<i>North Eastern Reporter</i> (N.E. or N.E.2d)	1885	Illinois, Indiana, Massachusetts, New York, Utah, and Ohio.
<i>North Western Reporter</i> (N.W. or N.W.2d)	1879	Iowa, Michigan, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin.
<i>Pacific Reporter</i> (P., P.2d, or P.3d)	1883	Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, Washington, and Wyoming.
<i>South Eastern Reporter</i> (S.E. or S.E.2d)	1887	Georgia, North Carolina, South Carolina, Virginia, and West Virginia.
<i>South Western Reporter</i> (S.W., S.W.2d, or S.W.3d)	1886	Arkansas, Kentucky, Missouri, Tennessee, and Texas.
<i>Southern Reporter</i> (So., So.2d, or So.3d)	1887	Alabama, Florida, Louisiana, and Mississippi.
<b>Federal Reporters</b>		
<i>Federal Reporter</i> (F., F.2d, or F.3d)	1880	U.S. Circuit Courts from 1880 to 1912; U.S. Commerce Court from 1911 to 1913; U.S. District Courts from 1880 to 1932; U.S. Court of Claims (now called U.S. Court of Federal Claims) from 1929 to 1932 and since 1960; U.S. Courts of Appeals since 1891; U.S. Court of Customs and Patent Appeals since 1929; U.S. Emergency Court of Appeals since 1943.
<i>Federal Supplement</i> (F.Supp., F.Supp.2d, or F.Supp.3d)	1932	U.S. Court of Claims from 1932 to 1960; U.S. District Courts since 1932; U.S. Customs Court since 1956.
<i>Federal Rules Decisions</i> (F.R.D.)	1939	U.S. District Courts involving the Federal Rules of Civil Procedure since 1939 and Federal Rules of Criminal Procedure since 1946.
<i>Supreme Court Reporter</i> (S.Ct.)	1882	United States Supreme Court since the October term of 1882.
<i>Bankruptcy Reporter</i> (Bankr.)	1980	Bankruptcy decisions of U.S. Bankruptcy Courts, U.S. District Courts, U.S. Courts of Appeals, and the United States Supreme Court.
<i>Military Justice Reporter</i> (M.J.)	1978	U.S. Court of Military Appeals and Courts of Military Review for the Army, Navy, Air Force, and Coast Guard.

**NATIONAL REPORTER SYSTEM MAP**

The map illustrates the geographical distribution of the six regional reporter systems. The Pacific region (orange) covers the westernmost states. The North Western region (green) covers the upper midwest. The South Western region (yellow) covers the southern midwest and parts of the south. The North Eastern region (blue) covers the northeast. The Atlantic region (dark green) covers the eastern seaboard. The Southern region (purple) covers the southern states. Each state is labeled with its abbreviation: WASH., MONTANA, N. DAK., MINN., VT., ME., N.H., MASS., R.I., N.Y., PA., N.J., CONN., DEL., MD., VA., W.VA., OHIO, IND., ILL., MICH., WIS., MINN., S. DAK., NEBR., IOWA, MO., KY., TENN., N. CAR., S. CAR., GA., ALA., MISS., ARK., OKLA., TEXAS, CALIF., OREGON, IDAHO, WYOMING, NEVADA, UTAH, COLORADO, ARIZONA, N. MEXICO, ALASKA, and HAWAII.

**Case Citations** After appellate decisions have been published, they are normally referred to (cited) by the name of the case and the volume, name, and page number of the reporter(s) in which the opinion can be found. The citation first lists information from the state's official reporter (if different from West's National Reporter System), then the *National Reporter*, and then any other selected reporter. (Citing a reporter by volume number, name, and page number, in that order, is common to all citations.) 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, an Ohio court decision might be designated "2015-Ohio-620," meaning that the decision was the 620th decision issued by the Ohio Supreme Court in 2015. Parallel citations to the *Ohio Appellate Court Reporter* and the *North Eastern Reporter* are included after the public domain citation.

Consider the following citation: *Brody v. Brody*, 315 Conn. 300, 105 A.3d 887 (2015). We see that the opinion in this case can be found in Volume 315 of the official *Connecticut Reports*, on page 300. The parallel citation is to Volume 105 of the *Atlantic Reporter, Third Series*, page 887.

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 listed and explained in Exhibit 1A–2.

## Federal Court Decisions

Federal district (trial) court decisions are published unofficially in the *Federal Supplement* (F.Supp., F.Supp.2d, or F.Supp.3d), and opinions from the circuit courts of appeals (federal reviewing courts) are reported unofficially in the *Federal Reporter* (F., F.2d, or F.3d). 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

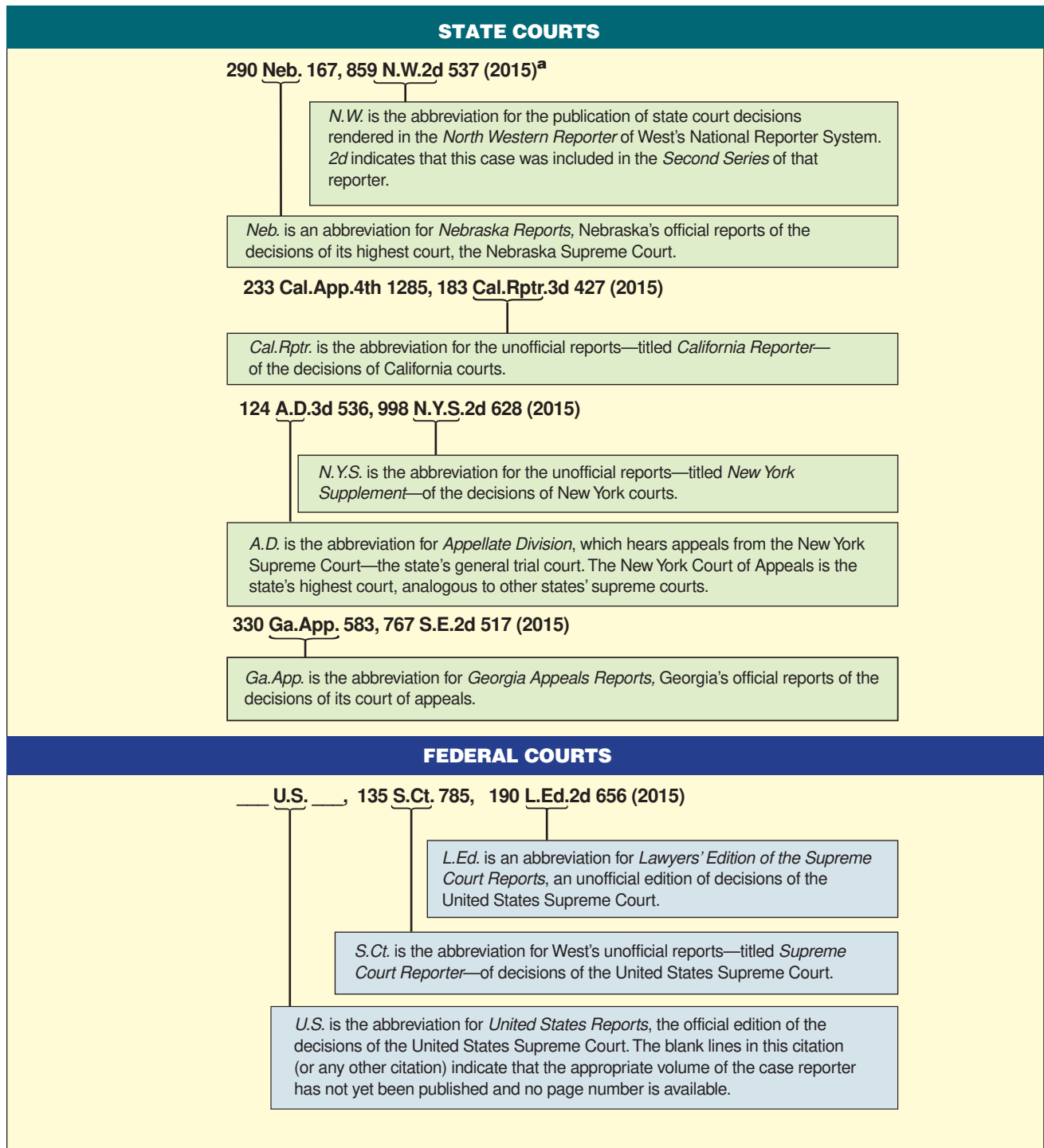
Many court opinions that are not yet published or that are not intended for publication can be accessed through Westlaw® (abbreviated in citations as "WL"), an online legal database. When no citation to a published reporter is available for cases cited in this text, we give the WL citation (such as 2015 WL 687700, which means it was case number 687700 decided in the year 2015).

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 Cases

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.



**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.

Continues

**Exhibit 1A–2 How to Read Citations****FEDERAL COURTS (Continued)****775 F.3d 1172 (9th Cir. 2015)**

*9th Cir.* is an abbreviation denoting that this case was decided in the U.S. Court of Appeals for the Ninth Circuit.

**\_\_\_ F.Supp.3d \_\_\_ (N.D.Cal. 2015)**

*N.D.Cal.* is an abbreviation indicating that the U.S. District Court for the Northern District of California decided this case.

**WESTLAW® CITATIONS<sup>b</sup>****2015 WL 358246**

*WL* is an abbreviation for Westlaw. The number 2015 is the year of the document that can be found with this citation in the Westlaw database. The number 358246 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.

**STATUTORY AND OTHER CITATIONS****18 U.S.C. Section 1961(1)(A)**

*U.S.C.* denotes *United States Code*, the codification of *United States Statutes at Large*. 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)**

*UCC* is an abbreviation for *Uniform Commercial Code*. 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.

**Restatement (Third) of Torts, Section 6**

*Restatement (Third) of Torts* refers to the third edition of the American Law Institute's *Restatement of the Law of Torts*. The number 6 refers to a specific section.

**17 C.F.R. Section 230.505**

*C.F.R.* is an abbreviation for *Code of Federal Regulations*, 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.

**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.

# 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** As mentioned, 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. 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.

**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.