



MARIANNE M. JENNINGS

Business

ITS LEGAL, ETHICAL, AND GLOBAL ENVIRONMENT



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Business

ITS LEGAL, ETHICAL, AND GLOBAL ENVIRONMENT

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**Business: Its Legal, Ethical, and
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A Different World, but the Same Issues

The seventh edition of this book was published amidst the fallout from the legal, ethical, and, too often, financial collapses of Enron, WorldCom, Adelphia, Health-South, Parmalat, Arthur Andersen, Kmart, and others. With Sarbanes–Oxley on the books and new regulatory demands on corporations, we thought perhaps we had turned the corner. But the eighth edition was published as Wall Street and the economy were reeling from the fallout of a subprime mortgage market operating under regulatory radar without a great deal of disclosure on portfolio risk. When the ninth edition was published, the SEC had just settled a civil suit it brought against Goldman Sachs for allegedly selling securities to clients it was betting against as a short-seller in a scheme that saw its profits reach double-digit billions. Goldman paid a fine of \$550 million. In late 2009, Goldman’s CEO, Lloyd Blankfein, uttered the same words that Jeffrey Skilling did in 2000: “We are doing God’s work.” At press time of the tenth edition, there were questions about the fairness of the scrutiny of taxpayers by an administrative agency, the Internal Revenue Service, and the Justice Department’s tapping of phones of news corporations. Book publishers signed antitrust consent decrees for agreeing to fix prices in order to compete with Amazon. A factory in Bangladesh, that produced clothing for U.S. retailers, collapsed, killing over 600 employees, a collapse that was caused by noncompliance with safety and code standards. Now, as this 11th edition is published the EPA has tightened regulations so much that two major coal companies have gone out of business. The Veterans Administration is trying to recover from a program that was designed to reduce queue times for patients but resulted in patients dying. A pharmaceutical company raised its prices on one prescription drug by 5,000%, and Apple has a monitor because it was found guilty of being the master mind behind publishers fixing prices on their electronic books. The raisin farmers had a major victory in the U.S. Supreme Court that will change forever government price and supplies controls on raisin. And insider trading remains in the news, for both convictions and the reversals of those convictions as courts sort through the question, “When exactly does insider trading occur?”

The patterns of business behavior that push the envelope of law and ethics continue. Two of the leaders in the New York legislature were convicted on corruption charges, companies from Embraer to GlaxoSmithKline, and even FIFA faced charges and investigations under the Foreign Corrupt Practices Act. Charges against FedEx for alleged shipping of controlled substances were dismissed because there was no proof that anyone knew what was in the packages. Blue Bell ice cream was shut down for four months because of the presence of listeria in its plants. The FCC was deluged with comments on a proposed rule that would have allowed cell phone use on airplanes. In response to the outcry from flight attendants, passengers, and pilots, the FCC did not promulgate the rule. The issues of law and ethics are still at the forefront of business, sports, and government. It has become a tall order just to keep up with all the events!

These companies and organizations and their employees and executives certainly could have benefited from understanding and keeping at the forefront of their decision processes the basics of law and ethics! The legal and ethical environments of business are center stage. Several editions ago, Congress made massive regulatory reform a reality with the passage of the Sarbanes–Oxley legislation on corporate governance, accounting regulation, and criminal penalties. But the SEC missed some large market schemes, so Congress passed Dodd-Frank with new directives to the SEC on financial reports, disclosures, and primary offerings. The continuing reliance on new credit mechanisms resulted in a central agency, the Consumer Protection Bureau, handling all forms of consumer credit. Business is even more international, and changes, such as Brexit (Great Britain’s decision to withdraw from the EU), mean more changes in trade, regulation, and tariffs. FCPA cases have expanded and there is increasing cooperation among countries to address money-laundering schemes and the problems of world leaders hiding funds in accounts around the world.

The world and business continue to change and grow, but law and ethics have retained their role and importance. In fact, now more than ever, we need to understand the legal and ethical issues that affect our businesses and our lives. The knowledge base and even the questions in law and ethics remain the same, but the underlying facts have changed. For example, we still debate the social responsibility role of business. Now we raise that issue in the context of whether companies should use inversions, or reverse acquisitions, by foreign companies to reduce their effective tax rates. We continue to delve into the pros and cons of sending production to other countries. We still have the question of when a contract is formed, but now we face that question with “point and click” technology rather than faxes and letters. We continue to be concerned about our privacy as consumers, but now we wonder who really has access to our Facebook page. We still wonder about the extent of copyright law. The file-sharing programs have never quite gone away and the film industry now litigates the downloading of copyrighted films. The world is different, but law and ethics form the constant framework into which we fit the issues of the day. In the materials that follow, you have the chance to understand the marvelous stability of this framework and the ease with which you can apply it to this very different world. Be sure to look for descriptions of the new structure as well as the continuing features in the book, such as the “Consider” tutorials, the ethics issues, and the Business Strategy application exercises.

Building the Bridge: Applying Legal and Ethical Reasoning to Business Analysis

I gave my students a midterm exam—a review of Netflix and its various business issues, including the cost of rights, issues in film production, and problems with obtaining subscriptions. These students are in the second year of their master’s degree studies. They have been trained in economics, marketing, management, and finance. But as they completed their analysis of this fast-growing darling of the stock market, they had an epiphany. A company can get the finance issues right, have the right brand appeal and great offerings, and even yield terrific subscription sales. However, it can all fall apart over the legal issues. What if the estimates on subscriptions released with earnings reports are overly optimistic?

What if something goes wrong in shooting one of their original production films? Does insurance cover them? Who pays the costs of a late finish on those promised films? What about international copyrights? What happens when copyright holders do not want their films licensed internationally? They are very capable *business* students. However, they did not realize until this midterm exam how much of business turns on anticipating the legal issues and getting them resolved correctly. And they also realized that all of our discussions of ethics and social responsibility had a role in doing business. TANSTAAFL—“there ain’t no such thing as a free lunch” when it comes to international business. There are costs associated with tapping into a seemingly boundless market of subscribers. And those costs come from legal issues, which, if handled poorly, can affect a company’s value and tarnish its brand name.

Why couldn’t these students see the interconnection and critical roles of law and ethics in business until this case for their midterm? It was not for lack of exposure to the law. I taught my course “by the book,” so to speak. Students could recite the components of a valid contract, rattle off the requirements for bankruptcy, and recall from memory the antitrust statutes. Yet, I was coming to realize, this rote knowledge was not enough. One of my best former students, who had gone on to medical school, came to me perplexed about her office lease. She said that the complex in which she wanted to open her practice had a “no advertising” policy. In fact, she said that when she toured the premises with a leasing agent, the leasing agent turned to her and said, “You’re not one of those doctors who advertises, are you? Because if you are, we can’t lease to you. We have a policy against it.” One of my best students, who knew the antitrust statutes well, could not apply them to her everyday business. Worse, perhaps, she could not *recognize* when to apply these statutes: She did not see the antitrust implications of the agent’s statements nor the problems with the physicians in the complex taking such an approach to screening tenants.

I have reached the conclusion that there have always been shortcomings in the standard approach to teaching business students law and ethics. Students were not ignorant of the law; rather, they simply lacked the necessary skills to recognize legal and ethical issues and to apply their knowledge of law and ethics to business decision making. As instructors, we were not integrating legal and ethical reasoning with business analysis. My conclusion led me to develop my own materials for classroom use and eventually led to the publication of the first edition of this book. Now in its eleventh edition, *Business: Its Legal, Ethical, and Global Environment* brings to the classroom the most integrated approach to learning law and ethics available in the market today. Throughout every chapter and in every feature, students and instructors are continually reminded of how various legal and ethical principles apply in business contexts. For all areas of law and ethics, this book answers the question: How does this concept affect a business? This book builds a bridge for the student between knowledge of law and ethics and application of both in business. My 39 years of teaching law and ethics finally brought this realization: Business ethics is not easily grasped nor practiced in business because we depersonalize ethical issues. If we just allow the company or organization to make the decision, our ethics are not in question; the companies’ are. The ethical issues in the book require students to bring ethical issues into their lives, their circumstances, their world. This feature also forces them to answer this question in a wide variety of contexts: “If it were you, and you were faced with the dilemma and required to make a decision, what would you do?”

Strengthening the Bridge: New Content, Business Applications, and Learning Aids

For the eleventh edition, *Business: Its Legal, Ethical, and Global Environment* has undergone further refinement. New content has been added, outdated content has been removed, new business applications have been integrated into every chapter, and the learning aids have been modified and refocused to help students understand and apply legal and ethical concepts.

New Content

The eleventh edition of *Business: Its Legal, Ethical, and Global Environment* continues to meet its goal of helping students with their understanding of how law and ethics apply to the business world. The organizational structure, based on feedback from those who use the text, has been changed. The four parts remain, but there is a new mix of topics and chapters in those four parts. Part 1 offers the student an overview of the legal, ethical, and judicial environments of business. Part 2 covers the regulatory environments of business, including environmental regulation and sustainability. Part 3 covers all aspects of sales, contracts, and competition. Part 4 covers business management and corporate governance, and this newly restructured section covers all issues related to employees, boards, agents, and how to keep all of these groups coordinated while taking legal and ethical actions. Cyber law is now integrated into every chapter so that it can be covered in contracts (formation), employment (right of employee privacy in e-mails), and criminal law (everything from industrial espionage to spamming).

Ethics

Business Ethics and Social Responsibility (Chapter 2) offers new examples and insights on the application of ethics to business decision making. Chapter 2 is chock full of the examples the last two years have netted—including GM's engine switch guilty plea and VW's use of emissions defeating software. A new biography focuses on Captain Sullenberger who landed an airplane safely in a river and offers his perspectives on how we know the right thing to do in moments of pressure. Ethics coverage is also integrated throughout all chapters.

Business Applications

Biography

Each chapter contains a biography. Biographies provide students with business history through the study of individuals and companies involved with the area of law and ethics covered in the chapter. For example, Chapter 1 has a biography on Uber, the company that shook up the world of cab transportation. Chapter 4 has a new biography on a legal battle between a small business and its production of parts for another company's tabletop game including the tools used in that litigation, and the *pro bono* work of lawyers in helping a small business in *Games Workshop v. Chapterhouse*. Chapter 19 provides the story of the death of an orca whale trainer at Sea World and the resulting investigations and backlash that Sea World experienced. Chapter 15 gives a biography of Mattel and its Bratz dolls and its long intellectual property battle over who had the idea for the dolls.

For the Manager's Desk

Each chapter also contains at least one “For the Manager’s Desk” feature. These readings provide students the opportunity to see how business interrelates with ethics and law. The readings feature topics tackled by publications such as *Wall Street Journal*, *Harvard Business Review*, *Corporate Finance Review*, and the *American Business Law Journal*. This feature offers the latest best practices as well as data from academic studies and insights from that research. For example, the Chapter 8 “For the Manager’s Desk” discusses who ends up going to prison for business crimes and how long their sentences last. Chapter 19’s feature deals with the recent series of cases brought by interns for lack of pay and excessive hours as well as the Department of Labor’s proposed responses. Chapter 13 discusses how to manage celebrity tweets when they are your spokesperson, i.e., what can Kim Kardashian tweet about an anti-nausea drug she was using during her pregnancy that will not run afoul of FDA restrictions? Chapter 15’s Manager’s Desk discusses the problems with a trademark or trade name that is offensive.

Learning Aids

. . . and the Law

Each chapter contains a popular feature to further integrate law and ethics with the other “silos” of business. The “. . . and the Law” feature puts law and ethics in the context of economics, human resources, public policy, strategy, finance, and other areas to illustrate the ways knowledge of the where and how for the fit of law and ethics can help make better managers and better decisions. For example, Chapter 20’s “HR and the Law” discusses the dangers and conflicts office romances produce and how managers can deal with those issues. Chapter 1 includes a discussion of the FIFA corruption scandal how the issues were investigated and the problems involved in an NGO. Chapter 8’s “Strategy and the Law” takes a look at what corporations charged with a crime should do and the options for pleas available with the Justice Department. Chapter 14’s “Social Responsibility and the Law” discusses the possible anticompetitive effects of organizations such as Common Code for the Coffee Community and the Bioplastic Feedstock Alliance. These features apply the principles from business disciplines to understand more fully the depth and breadth of management issues.

Case Headlines

Every court case has a case headline that summarizes what issues are involved in the case. Chapter 7 has a new case on the actions of the Russian tax authorities involving Yukos, an international oil company, and the resulting impact in the market and has this title, “When Putin Affects the Value of Oil Stock.” In Chapter 8, a new case on criminal intent, whether the owner of a salvage yard was aware of his contamination of water, has this intriguing case title, “Mordechay’s Sump Pump and *Mens Rea*.” In Chapter 6, the case *Hornbeck Offshore Services, L.L.C. et al. v Salazar* deals with an issue of whether agency action was arbitrary and capricious in issuing a moratorium on offshore drilling, and the case title is “Drilling Down to the Facts Supporting a Rule.” The vivid one-line description and colorful facts of the case, a common thread throughout the case choices in the text, help students internalize the rules and lessons about not destroying evidence for a potential lawsuit.

Chapter Openings and the “Consider. . .” Feature

Chapters begin with an opening problem, titled “Consider. . .”, which presents a legal dilemma relevant to the chapter’s discussion and similar to those business managers need to handle. These are revisited and answered in the body of the chapter. For example, Chapter 6 has a new chapter opening “Consider. . .” on a proposed regulation on the use of cell phones on airplanes and then walks that issue through the full regulatory process. In addition to this Consider problem opening, each chapter also has quotes, data, humor, or insights to pique reader interest about the chapter topics.

Chapter Summary

Each chapter concludes with a summary that reinforces the major concepts of the chapter. Each summary is constructed around the key questions introduced at the start of the chapter and key terms presented throughout the chapter.

Business Strategy Applications

Each chapter has a business strategy connection designed to help students understand where law and ethics fit in developing effective business strategies. For example, in Chapter 13 there is a new business strategy on the problems with highway guard rails and the litigation brought about by a competitor who reported changes in the guard rail design that had not been cleared with the federal government. Chapter 5 has a strategy feature that discusses who gives money in politics, how much, and why. Chapter 8’s strategy feature discusses the components of an effective compliance program. The Chapter 12 strategy deals with how restaurants are coping with no-shows in their reservations and their contract rights when someone makes a reservation but never shows up.

Organization and Features: A Structure to Guide Students to Reasoning and Analysis

The classic features have been updated and strengthened. The organization has been retained to continue to meet student needs in the classroom.

Organization

The four parts in the book serve to organize the materials around four basic areas: (1) understanding the legal environment, (2) understanding the regulatory environment, (3) dealing with sales, contracts and competition, and (4) management and governance. Every chapter integrates international and ethical topics.

Part 1

In four chapters, Part 1 offers an introduction to law, an introduction to business ethics and the judicial system, and a discussion of litigation and alternative dispute resolution. Part 1 provides students with a foundation in law and ethics as well as legal and ethical reasoning, necessary for the areas of law in the chapters that follow. By being brief (four chapters), Part 1 offers instructors an early and logical break for exams.

Part 2

In six chapters, Part 2 covers the regulatory environment of business, including the following topics: constitutional law, administrative and international law, business crimes and business torts, and environmental regulation. At the completion of Parts 1 and 2, students have a grasp of the legal system, ethical boundaries, and the laws that affect business operational decisions.

Part 3

The five chapters in Part 3 present students with the legal and ethical issues surrounding contracts, sales, and competition. Part 3 includes the following topics: contract formation and performance (including coverage of consumer issues); product liability; intellectual property; trade restraints; and business competition and antitrust. From the negotiation of price to the collection of accounts, this segment of the book covers all aspects of selling business products and services. This section is structured so that the contracts discussion precedes the complexities of property and competition.

Part 4

The five chapters in Part 4 discuss business management and governance. Topics include the management of employees, from agency law to employment regulation to employee rights to issues in discrimination. Part 4 also includes the governance issues of business structure and management, including financing and securities law issues. This section covers the issues of running, managing, and financing a business.

Woven throughout all the chapters are cyber law issues, as marked by margin icons, and featuring discussions of everything from e-mail privacy to the problems of hacking.

Features**Court Cases**

Edited court language cases provide in-depth points of law, and many cases include dissenting and concurring opinions. Case questions follow to help students understand the points of law in the case and think critically about the decision. The courts have been active since the last edition, and many 2015–2016 case decisions are presented throughout the book. Students will be able to study Donald Trump’s claim for defamation when a writer misstated his net worth. Can a company avoid Foreign Corrupt Practices Act violations when it has its agent appointed a government official in another country? What happens when a young man saves his Pepsi points to claim a Harrier Jet that he sees in a Pepsi spoof ad for “Pepsi stuff”? Does he get his jet?

Consider . . .

“Consider . . .” problems, along with “Ethical Issues” and “Business Planning Tips,” have been a part of every chapter since the first edition. The “Consider . . .” features, often based on real court cases, ask students to evaluate and analyze the legal and ethical issues discussed in the preceding text. Because these issues are integrated into the text, students must address and think critically about these issues as they encounter them. Through interactive problems, students learn to judge case facts and determine the consequences. Moreover, answers to all of these opening “Consider . . .” features are referenced in the text and clearly marked. There are more “Consider . . .” features throughout each chapter. Chapter 3 has a new “Consider . . .”

on whether Katy Perry could be sued in Missouri for her alleged infringement of a Missouri songwriter's song. Chapter 12 has a new consider on whether a mistake on the total square footage in a property is grounds for setting aside a contract for purchase of that property.

"Consider . . ." brings the most current topics into the book and the classroom.

Thinking, Applying, and Answering: "Consider . . ." Tutorials—A Guide for Reasoning

One "Consider . . ." per chapter is solved for the students in a methodical walk-through that helps them understand how to apply the legal principles or case precedent that they have just studied. The facts of the case or hypothetical are presented and the students are asked to recall what they have just learned. Next, students are walked through applying those principles to the current facts. Finally, they are given the answer and the reason that answer is consistent with their thinking and applying.

Ethical Issues

The "Ethical Issues" feature appears in every chapter and presents real-world ethical problems for students to grapple with. "Ethical Issues" help integrate coverage of ethics into every chapter. The ethical issues also include personal and real-life examples that help students relate to the pervasive nature of ethical dilemmas that they do and will continue to face. Chapter 6 includes the U.S. Supreme Court case reversing the bribery conviction of former Virginia governor Bob McDonnell and his wife, followed by an ethics issue that asks students to review whether their taking of vacations, a Rolex, clothing, and help with a wedding from a donor crossed ethical lines. Chapter 12 includes an ethical issue that asks students to evaluate students who accept an employment offer and then renege because a better one came along.

Business Planning Tips

Students are given sound business and legal advice through "Business Planning Tips." With these tips, students not only know the law but also know how to anticipate issues and ensure compliance. How to make your property safer, how to conduct an interview without violating the Americans with Disabilities Act, and how to train employees to preserve documents and potential evidence if customers make claims.

Cyberlaw

Cyberlaw has been integrated throughout the book. Most chapters also include a segment on cyberlaw. These chapter-by-chapter materials, marked by an icon, give students the chance to see how new technology fits into the existing legal framework.

Exhibits

Exhibits include charts, figures, and business and legal documents that help highlight or summarize legal and ethical issues from the chapter. With the credit and financial market reforms, securities law reforms on stock offerings, and the changes in criminal penalties, many of the charts are either new or updated.

End-of-Chapter Problems

Many end-of-chapter problems have been updated and now focus more on actual cases. There are new chapter problems throughout the book of varied lengths for different instructor needs.

The Informed Manager: Who Should Use This Book?

With its comprehensive treatment of the law, integrated business applications, and full-color design, *Business: Its Legal, Ethical, and Global Environment* is well suited for both undergraduate and MBA students. The book is used extensively in undergraduate education programs around the country. In addition, this edition has been class-tested with MBA students, and it is appropriate for MBA and executive education programs.

A Note on AACSB Standards

The strong presence of ethics, social responsibility, international law and issues, and the integration of other business disciplines make the book an ideal fit for meeting AACSB standards and curriculum requirements. The AACSB standards emphasize the need for students to have an understanding of ethical and global issues. The eleventh edition continues with its separate chapter on ethics as well as ethical issues and dilemmas for student discussion and resolution in every chapter. The separate chapter on international law continues its expanded coverage from the last edition, and each chapter has a segment devoted to international law issues. The eleventh edition includes readings on expanded international law enforcement cooperation, the challenges of ethics and law in international business, the role of lawyers in other countries, and attitudes outside the United States on insider trading and antitrust laws.

This edition presents students with the legal foundation necessary for business operations and sales but also affords the students the opportunities to analyze critically the social and political environments in which the laws are made and in which businesses must operate. An examination of the lists of companies and individuals covered in the biographies, and of the publications from which the “For the Manager’s Desk” readings are based on, demonstrates the depth of background the eleventh edition offers in those areas noted as critical by the AACSB. The materials provide a balanced look at regulation, free enterprise, and the new global economy.

Supplements

Business: Its Legal, Ethical, and Global Environment offers a comprehensive and well-crafted supplements package for both students and instructors.

MindTap

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About the Author

Professor Marianne Jennings is an emeritus professor of legal and ethical studies in business from the W.P. Carey School of Business at Arizona State University. She was named professor of the year in the College of Business in 1981, 1987, 2000, and 2010 and was the recipient of a Burlington Northern teaching excellence award in 1985. She served as director of the Joan and David Lincoln Center for Applied Ethics at ASU from 1995–1999. From 2006–2007, she served as the faculty director for the MBA Executive Program. She continues to teach graduate courses in business ethics and ethical culture at ASU and other colleges around the country.

Professor Jennings has authored hundreds of articles in academic, professional and trade journals. She was given best article awards by the Institute of Internal Auditors and the Association of Government Accountants in 2001 and 2004. In 2006, her article, “Ethics and Investment Management: True Reform,” was selected by the United Kingdom’s *Emerald Management Review* from 15,000 articles in 400 journals as one of the top 50 articles in 2005. She was named one of the Top 100 Thought Leaders by Trust Across America in 2010. In 2012 she was named one of the 100 Most Influential People in Business Ethics by Ethisphere magazine. She served on the board of directors for Arizona Public Service (now Pinnacle West Capital Corporation), the owner of the Palo Verde Nuclear Station, from 1987 through 2000. She served on the boards of Zealous Capital Corporation from 1996–1998 and the Center for Children with Chronic Illness and Disability at the University of Minnesota. She served as chair of the Bonneville International Advisory Board for KHTC/KIDR from 1994–1999. She was appointed to the board of advisors for the Institute of Nuclear Power Operators in 2004. In 2015 she was named an affiliated scholar with the Center for the Study of Economic Liberty at Arizona State University.

Currently she has six textbooks and monographs in circulation. The ninth edition of her textbook, *Case Studies in Business Ethics*, and the eleventh edition of her textbook, *Business: Its Legal, Ethical and Global Environment* will be published in January 2017. Her first textbook, *Real Estate Law*, had its 11th edition published in January 2016. Her text, *Anderson’s Business and the Legal Environment* had its 23rd edition published in January 2016.

Her book, *Business Strategy for the Political Arena*, was selected in 1985 by Library Journal as one of its recommended books in business/government relations. *A Business Tale: A Story of Ethics, Choices, Success, and a Very Large Rabbit*, a fable about business ethics, was chosen by Library Journal in 2004 as its business book of the year. *A Business Tale* was also a finalist for two other literary awards for 2004. In 2000, her book on corporate governance was published by the New York Times MBA Pocket Series. Professor Jennings’ book on long-term success, *Building a Business Through Good Times and Bad: Lessons from Fifteen Companies, Each With a Century of Dividends*, was published in October 2002 and has been used by Booz, Allen, Hamilton for its work on business longevity. Her book, *The Seven Signs of Ethical Collapse is used by auditors in advance detection of fraud and is a primer on corporate culture, including analysis of board efficacy*. Her books have been translated into five languages.

She is a contributing editor for the *Real Estate Law Journal* and *New Perspectives*. She served on the Board of Editors for the *Financial Analysts Journal* from 2007–2012. She served as editor-in-chief of the *Journal of Legal Studies Education* during 2003–2004. During 1984–85, she served as then-Governor Bruce Babbitt’s appointee to the Arizona Corporation Commission. In 1999 she was appointed by then-Governor Jane Dee Hull to the Arizona Commission on Character.

Her columns have been syndicated around the country, and her work has appeared in the *Wall Street Journal*, the *Chicago Tribune*, the *New York Times*, *Washington Post*, and the *Reader’s Digest*. A collection of her essays, *Nobody Fixes Real Carrot Sticks Anymore*, first published in 1994 is still being published. She was given an Arizona Press Club award in 1994 for her work as a feature columnist. She has been a commentator on business issues on *All Things Considered* for National Public Radio. She served as chair of the Bonneville International Advisory Board for KHTC/KIDR from 1994–1997 and was a weekly commentator on KGLE during 1998. She has appeared on CNBC, CBS This Morning, the Today Show, and CBS Evening News.

Professor Jennings earned her undergraduate degree in finance and her J. D. from Brigham Young University. She has done consulting work for law firms, government agencies, businesses and professional groups including AES, AICPA, Allstate, Amgen, AstraZeneca, Bell Helicopter, Blue Cross Blue Shield, Boeing, Bristol-Myers Squibb, Certified Financial Analysts Institute, CoBank, Coca-Cola, Department of Energy, Department of Interior, Dial Corporation, DuPont, Hy-Vee Foods, IBM, Institute of Internal Auditors, Mattel, Motorola, Southern California Edison, Pfizer, Raytheon, Tenet, Toyota, U.S. Navy, Veterans Administration, and VIAD.

Personal: Married since 1976 to Terry H. Jennings, Maricopa County Attorney’s Office Deputy County Attorney; five children: Sarah, Sam, and John, and the late Claire and Hannah Jennings.

Acknowledgments

By its eleventh edition, a book has evolved to a point of trademark characteristics. This book is known for its hands-on examples and readings for business managers. That trademark evolves because of the efforts of many. They are the reviewers and adopters of the text who provide ideas, cases, and suggestions for improvement and inclusion, and I thank them all.

Any edition of a book bears the mark of the editors who work to design, refine, market, and produce it. Seven editions ago, Rob Dewey saw potential for the book and applied his enthusiasm and market insights to mold a somewhat ugly duckling into a four-color swan. The book also carries the imprimatur of Steve Silverstein, who confronted me with a profound question, “Why can’t those in business see these ethical dilemmas when they are in the midst of them?” His question forced me back to the drawing board and resulted in the more personal ethical dilemmas. Vicky True, now in Rob’s role, understands the needs of instructors because of her intense road schedule, holds a keen sense of market direction, and offers the insights of both to help to shape this new edition. Kristen Meere, new as the editor for this edition, came into the work with little lead time and picked up the baton and ran with me as we worked through a tight schedule. Kris Tabor has been with me since the first edition, helping with word processing, IMs, study guides, test banks, and venting. We mark 30 years of a terrific partnership with this edition.

This book also carries the unmistakable liveliness of an author who shares her life with helpful and delightful children and one tolerant husband. Since the first edition of this book, I have added four children to our first, witnessed two graduate from college, one from law school, grieved over the loss of two, and seen the others grow up all too quickly in a household in which these words, “Mom, the UPS guy is here with page proofs,” made up their first sentences. They now simply witness me hovering over my computer from dawn’s light until I fall asleep on the keyboard. My children and my husband, collectively my family, are the most charming people I know. They have brought me stories, pop culture, and good sense with their, “Uh-oh, here we go!” when their mother finds outrage in yet another ethical lapse in business. Even from their now—globally dispersed positions, they call and ask, “How’s the writing going?” Their vibrancy is found in the color and charm of these pages. I am grateful for their unanimous and unwavering support for my work. Finally, I am grateful to my parents who taught me through their words and examples of the importance and rewards of ethics and hard work.

Marianne Moody Jennings



Part 1

Business: Its Legal, Ethical, and Judicial Environment

Simply stated, you cannot run a successful business without knowing the law. What is legal? Where can I find the laws I need to know? How do I make decisions about legal conduct that is ethically troublesome to me? What if I have a disagreement with a customer, employee, or shareholder? How and where can I resolve our differences?

This portion of the book explains what law is, where it can be found, how it is applied, and how legal disputes are resolved. But beyond the legal environment of a business, there are the ethical issues. Just because what you are doing is legal does not mean it is ethical. And why should a manager make ethical choices and behave honorably in business? Law and ethics are inextricably intertwined. A commitment to both is part of a sustainable business model.

Introduction to Law

Most people understand the law through personal experiences. Some are exposed to law through traffic tickets. Others encounter the law when a problem arises with a landlord or lease. Many wonder about their rights when search engines and other Internet companies gather information about them without their realizing such efforts were ongoing. Facing income reductions in tough economic times, many wonder what their rights are when collectors call or file suit. Their understanding of the law may be limited by the anger they feel about an annoying collection agent, their e-mail being scanned or a traffic ticket. However, without traffic laws, the roads would be a study in survival of the fittest. The law is your source of assurance that you have rights when it comes to collection agency actions. Each day businesses find and face legal and ethical issues in everything from privacy rights on Facebook to proper documentation of employees' citizenship.

The types of laws and the penalties for violating them vary from state to state and from city to city, but, however much they vary, laws exist everywhere and at every level of government. Indeed, law is a universal, necessary foundation of an orderly society. Law helps maintain order, imposing on us certain minimum standards of conduct. When we fall short of those standards, we risk penalties. Law is made up of rules that control people's conduct and their interrelationships. Traffic laws control not only our conduct when we are driving but also our relationships with other drivers using the roads. In some instances, traffic laws give other drivers a right-of-way, and we are liable to them for any injuries we cause by not following those laws.

This chapter offers an introduction to law. How is law defined? What types of laws are there? What are the purposes and characteristics of law? Where are laws found, and who enacts them?

UPDATE



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*This country's planted thick with
laws from coast to coast . . .
and if you cut them down . . .
d'you really think you could
stand upright in the winds that
would blow then?*

A MAN FOR ALL SEASONS, ACT I

Consider . . .

1.1

John Yates, a commercial fisherman, caught undersized red grouper in federal waters in the Gulf of Mexico. To prevent federal authorities from confirming that he had harvested undersized fish, Yates ordered a crew member to toss the suspect fish into the sea. Yates was charged with, and convicted of, violating 18 U.S.C. § 1519,

"Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation . . . or

any case filed . . . or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both."

Mr. Yates says that the statute applies to financial records and not fish. The statute was passed after Enron collapsed and its financial records and audit papers had been shredded to deter such actions by businesses. Who decides whether the law applies to hurling fish overboard? What should the court decide?

1-1 Definition of Law

Philosophers and scholars throughout history have offered definitions of law. Aristotle, the early Greek philosopher, wrote that "the law is reason unaffected by desire" and "law is a form of order, and good law must necessarily mean good order." Oliver Wendell Holmes Jr., a U.S. Supreme Court justice of the early twentieth century, said, "[L]aw embodies the story of a nation's development through many centuries." Sir William Blackstone, the English philosopher and legal scholar, observed that law was "that rule of action which is prescribed by some superior and which the inferior is bound to obey." *Black's Law Dictionary* defines law as "a body of rules of action or conduct prescribed by the controlling authority, and having legal binding force."¹ Law has been defined at least once by every philosopher, statesman, and police officer.

Law is simply the body of rules governing individuals and their relationships. Most of these rules become law through a recognized governmental authority. Laws give us basic freedoms, rights, and protections. Law also offers a model of conduct for members of society in their business and personal lives and gives them certainty of expectation. Plans, businesses, contracts, and property ownership are based on the expectation that the law will provide consistent protection of rights. Without such constancy in legal boundaries, society would be a mass of chaos and confusion.

1-2 Classifications of Law

1-2a Public versus Private Law

Public law includes those laws enacted by some authorized governmental body. State and federal constitutions and statutes are all examples of public laws, as are the state incorporation and partnership procedures, county taxation statutes, and local zoning laws.

Private law, on the other hand, is developed between two individuals. For example, landlords usually have regulations for their tenants, and these regulations are private laws. Homeowners' associations have developed an important body of private law that regulates everything from the type of landscaping for homes in a subdivision to whether homeowners can erect basketball hoops in their driveways. The terms of a contract are a form of private law for the contracting parties. Although the requirements for forming and the means for enforcing that contract may be a matter of public law, the terms for performance are the private law the parties agree to as the rules for governing their relationships. Employer rules in a corporation are also examples of private law; as long as those rules do not infringe any public rights or violate any statutory or constitutional protections, those rules define a private law relationship between employer and employee. For example, most companies now have Twitter and Facebook policies that limit the type of information and comments employees can post about their employers in social media outlets. Interestingly, both state legislatures and the U.S. Congress have proposed legislation that would control employer restrictions on employees' posts. Public law is being changed to reflect technological areas that are not yet addressed in employment law.

1-2b Criminal versus Civil Law

A violation of a **criminal law** is a wrong against society. A violation of a **civil law** is a wrong against another person or persons. Criminal violations have penalties such as fines and imprisonment. When you run a red light, you have committed a criminal violation and owe society a penalty, such as a fine or imprisonment. Violations of civil laws, on the other hand, require restitution: someone who violates a civil law must compensate the harmed party. If you do run a red light and strike and injure a pedestrian, your criminal case is society's remedy. The civil wrong in the same action requires you to pay damages to that pedestrian.

If you drive while intoxicated, you are breaking a criminal law and are subject to a fine, jail term, or license suspension. If you have an accident while driving intoxicated, you commit a civil wrong against anyone you injure. People who are injured as a result of your driving while intoxicated can file a civil suit against you to recover for injuries to their persons and property (cars).

Other differences also distinguish civil laws from criminal laws and their enforcement. For example, different rights and procedures are used in the trials of criminal cases (see Chapter 8 for more details).

1-2c Substantive versus Procedural Law

Substantive laws are those that give rights and responsibilities. **Procedural laws** provide the means for enforcing substantive rights. For example, if Zeta Corporation has breached its contract to buy 3,000 microchips from Yerba Corporation, Yerba has the substantive right to expect performance and may be able to collect damages for breach of contract by bringing suit. The laws governing how Yerba's suit is brought and the trial process are procedural laws. Procedural laws are also used in criminal cases, such as grand jury proceedings or arraignments and pleas (see Chapter 8 for more information).

1-2d Common versus Statutory Law

The term **common law** has been in existence since 1066, when the Normans conquered England and William the Conqueror sought one common set of laws for

governing a then-divided England. The various customs of each locality were conglomered so that all fiefdoms could operate under a “common” system of law. The common law came about as judges in different areas settled disputes in similar ways by consulting their fellow judges on their previous decisions before making decisions. This principle of following other decisions is referred to as *stare decisis*, meaning “let the decision stand.” This process of legal reasoning is still followed today. The courts use the judicial decisions of the past in making their judgments in order to provide the consistency and constancy of the law.

As much of an improvement as it was, the common law was still just uncodified law. Because of increased trade, population, and complexities, the common law needed to be supplemented. As a result, **statutory law**, which is passed by some governmental body and written in some form, was created.

Today, in the United States, we have common law and statutory law. Some of our common law still consists of principles from the original English common law. For example, how we own and pass title to real property are areas largely developed from English common law. The body of common law continues to grow, however: the judicial system’s decisions constitute a form of common law that is used in the process of *stare decisis*. Courts throughout the country look to other courts’ decisions when confronted with similar cases.

Statutory law exists at all levels of government—federal, state, county, city, borough, and town. Our statutory law varies throughout our nation because of the cultural heritages of various regions. For example, the southwestern states have marital property rights statutes—often referred to as community property laws—that were influenced by the Spanish legal system implemented in Mexico. The northeastern states have different marital property laws that were influenced by English laws on property ownership. Louisiana’s contract laws are based on French principles because of the early French settlements there.

1-2e Law versus Equity

Equity is a body of law that attempts to do justice when the law does not provide a remedy, when the remedy is inadequate, or when the application of the law is terribly unfair. Equity, which originated in England, came into being because the technicalities of the common law often resulted in unresolved disputes or unfair resolutions. The monarchy allowed its chancellor to hear those cases that could not be resolved in the common law courts; eventually, a separate set of equity courts developed that were not bound by rigid common law rules. These courts could get more easily to the heart of a dispute. Over time, they developed remedies not available under common law. Common law, for example, usually permitted only the recovery of monetary damages. Courts of equity, on the other hand, could issue orders, known as **injunctions**, prohibiting certain conduct or ordering certain acts. The equitable remedies available in the **courts of chancery** were gradually combined with the legal remedies of the common law courts so that now parties can have their legal and equitable remedies determined by the same court.

Today’s courts award equitable remedies when the legal remedy of money damages would be inadequate. For example, the copyright infringement cases brought by the recording and motion picture industries sought injunctions against the individuals and companies that provided the technological means for making unauthorized individual copies of movies and songs. The record companies, the movie producers, and the artists could never be adequately compensated with

money for these forms of infringement because the continued activity caused the loss of their exclusive copyrights. The remedy that they sought and were given were injunctions that, within certain parameters, ordered a halt to the sites and programs that facilitated the unauthorized downloading of copyrighted materials.

1-3 Purposes of Law

1-3a Keeping Order

Laws carry some form of penalty for their violation. Violations of securities laws carry a fine or imprisonment or both. Violations of civil laws also carry sanctions. If an employer discriminates against you by refusing to give you a raise or promotion because of your age, gender, or race, you can seek money damages. A driver who injures another while driving intoxicated can be prosecuted but must also pay for the damages and the costs of the injuries the other person experiences. These civil and criminal penalties for violations of laws prevent feuds and the use of primitive methods for settling disputes, such as force.

During the summer of 2016, a number of U.S. cities experienced protests and riots because of concerns about particular police officers' conduct. These cities imposed curfews in order to bring quiet to the city streets as well as preventing damages to and looting of businesses. A simple curfew law helped to bring order to those cities.

1-3b Influencing Conduct

Laws also influence conduct in a society. For example, securities laws require companies to make certain disclosures about those securities before they can be sold to the public. The antitrust laws passed in the early twentieth century prohibited some methods of competition, such as price fixing, and limited others, such as mergers (see Chapter 14). These types of laws continue to change the way businesses operate. For example, Google recently agreed to stop restricting its advertisers from working with other search engines.

1-3c Honoring Expectations

Businesses commit resources, people, and time to ventures, expansion, and product development with the expectation that the contracts for those commitments will be honored and enforced according to existing law. Investors buy stock with the knowledge that they will enjoy some protection of that investment through the laws that regulate both the securities themselves and the companies in which they have invested. Laws allow prior planning based on the protections inherent in the law.

1-3d Promoting Equality

Laws have been used to achieve equality in those aspects of life in which equality is not a reality. For example, the equal-right-to-employment acts (see Chapter 20) were passed to bring greater equality to the job market. The social welfare programs of state and federal governments were created to further the cause of economic justice. The antitrust laws attempt to level the playing field for the free enterprise system to operate efficiently.

1-3e Law as the Great Compromiser

A final and important purpose of law is to act as the great compromiser. Few people, groups, or businesses agree philosophically on how society, business, or government should be run. Law serves to mesh different views into one united view so that all parties are at least partially satisfied. When disputes occur, the courts apply the law to the parties' situation in an attempt to strike a compromise between two opposing views. The U.S. Supreme Court has provided compromises for the rights of businesses to be involved in the political process and make donations to candidates (see Chapter 5). In the relationship between freedom of speech and advertising regulation, the law serves as the mediator.

1-4 Characteristics of Law

1-4a Flexibility

As society changes, the law must change with it. When the United States was an agricultural nation, the issues of antitrust, employment discrimination, and securities fraud rarely arose. However, as the United States became an industrialized nation, those areas of law expanded, and they continue to expand today. As the United States further evolves into a technological and information-based society, still more areas of law will be created and developed. Computer fraud and identity theft, for example, were unknown issues 35 years ago; today, both state and federal laws address these issues through criminal statutes (see Chapter 8). The introduction of document attachments and electronic signature programs required the courts to re-examine how offers and acceptances of contracts are made, with electronic signatures now legislatively sanctioned as having the same force and effect as signatures on paper (see Chapter 11).

Circumstances change through technology, sociology, and even biology. The law must address those changes. What are the rights of copyright holders when an Internet company creates a system that allows users to post videos that are copyrighted? With billions of users and millions of videos, how do we protect copyrighted materials?

1-4b Consistency

Although the law must be flexible, it still must be predictable. Law cannot change so suddenly that parties cannot rely on its existence or protection. Being able to predict the outcome of a course of conduct allows a party to rely on a contract or dissuades a party from the commission of a crime. For a contract, a judicial remedy can be ordered for breach or non-performance; for a crime, a prescribed punishment is the result.

1-4c Pervasiveness

The law must be pervasive and cover all necessary areas, but at the same time, it cannot infringe on individual freedoms or become so complex that it is difficult to enforce. For example, laws cover the formation, operation, and dissolution of corporations. Laws govern corporate management decisions on expanding, developing, and changing the nature of the corporation. Laws also ensure that shareholders' rights are protected. The corporation has great flexibility in management, as long as it stays within these legal boundaries.



In the following case, the U.S. Supreme Court was a deeply divided court on a statutory interpretation question, a question that touched on many of the purposes of law. The majority and dissenting opinions show the struggle courts face as they try to honor the law's dual purposes of keeping order while preserving rights. Case 1.1 is briefed in Exhibit 1.1. A **brief** is a tool used by lawyers, law students, and judges to help them summarize a case and focus on its facts and the key points of the decision by the court. The *Yates* case answers the questions posed in the "Consider . . ." problem at the beginning of the chapter.

CASE 1.1

Yates v. U.S.
135 S.Ct. 1074 (2015)

Hurling Fish Overboard the *Miss Katie*: Obstruction of Justice?

FACTS

On August 23, 2007, the *Miss Katie*, a commercial fishing boat, was six days into an expedition in the Gulf of Mexico. Her crew numbered three, including Yates, the captain. Engaged in a routine offshore patrol to inspect both recreational and commercial vessels, Officer John Jones of the Florida Fish and Wildlife Conservation Commission decided to board the *Miss Katie* to check on the vessel's compliance with fishing rules. Because he had been deputized as a federal agent by the National Marine Fisheries Service, Officer Jones had authority to enforce federal, as well as state, fishing laws.

Upon boarding the *Miss Katie*, Officer Jones noticed three red grouper that appeared to be undersized hanging from a hook on the deck. At the time, federal conservation regulations required immediate release of red grouper less than 20 inches long. Officer Jones instructed Yates to keep the undersized fish segregated from the rest of the catch until the ship returned to port. After Jones departed, Yates instead told a crew member to throw the undersized fish overboard. For this offense, Yates was charged with destroying, concealing, and covering up undersized fish to impede a federal investigation, in violation of 18 U.S.C. § 1519:

"Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter

or case, shall be fined under this title, imprisoned not more than 20 years, or both."

Yates was convicted but moved to dismiss the charges, arguing that §1519's reference to "tangible object" means objects used to store information, such as computer hard drives, not fish. The District Court denied Yates's motion, and a jury found him guilty. The Eleventh Circuit affirmed the conviction, concluding that §1519 applies to the destruction or concealment of fish because, as objects having physical form, fish fall within the dictionary definition of "tangible object." Yates, who was sentenced to 30 days in jail and three years of supervised probation as well as carrying a felony conviction for life, appealed.

JUDICIAL OPINION

GINSBURG, Justice

Although dictionary definitions of the words "tangible" and "object" bear consideration in determining the meaning of "tangible object" in §1519, they are not dispositive. Whether a statutory term is unambiguous "is determined [not only] by reference to the language itself, [but also by] the specific context in which that language is used, and the broader context of the statute as a whole."

Section 1519's position within Title 18, Chapter 73, further signals that §1519 was not intended to serve as a cross-the-board ban on the destruction of physical evidence. Congress placed §1519 at the end of Chapter 73 following immediately after pre-existing specialized provisions expressly aimed at corporate fraud and financial audits.

CONTINUED

The contemporaneous passage of §1512(c)(1), which prohibits a person from “alter[ing], destroy[ing], mutilat[ing], or conceal[ing] a record, document, or other object . . . with the intent to impair the object’s integrity or availability for use in an official proceeding,” is also instructive.

Use of traditional tools of statutory interpretation to examine markers of congressional intent within the Sarbanes–Oxley Act and §1519 itself thus call for rejection of an aggressive interpretation of “tangible object.”

Having used traditional tools of statutory interpretation to examine markers of congressional intent within the Sarbanes–Oxley Act and §1519 itself, we are persuaded that an aggressive interpretation of “tangible object” must be rejected. It is highly improbable that Congress would have buried a general spoliation statute covering objects of any and every kind in a provision targeting fraud in financial record-keeping.

Reversed.

ALITO, Justice, Concurring

[T]hough the question is close, traditional tools of statutory construction confirm that John Yates has the better of the argument. Three features of 18 U.S.C. § 1519 stand out to me: the statute’s list of nouns, its list of verbs, and its title. Although perhaps none of these features by itself would tip the case in favor of Yates, the three combined do so. Start with the nouns. Section 1519 refers to “any record, document, or tangible object.”

[T]he term “tangible object” should refer to something similar to records or documents. A fish does not spring to mind—nor does an antelope, a colonial farmhouse, a hydrofoil, or an oil derrick. All are “objects” that are “tangible.” But who wouldn’t raise an eyebrow if a neighbor, when asked to identify something similar to a “record” or “document,” said “crocodile”?

[My] analysis is influenced by §1519’s title: “Destruction, alteration, or falsification of *records* in Federal investigations and bankruptcy.” (Emphasis added.) This too points toward filekeeping, not fish. Titles can be useful devices to resolve “doubt about the meaning of a statute.” The title is especially valuable here because it reinforces what the text’s nouns and verbs independently suggest—that no matter how other statutes might be read, this particular one does not cover every noun in the universe with tangible form.

KAGAN, Justice Dissenting with Justices SCALIA, KENNEDY, AND THOMAS

If none of the traditional tools of statutory interpretation can produce today’s result, then what accounts

for it? The plurality offers a clue when it emphasizes the disproportionate penalties §1519 imposes if the law is read broadly. Section 1519, the plurality objects, would then “expose[] individuals to 20-year prison sentences for tampering with *any* physical object that *might* have evidentiary value in *any* federal investigation into *any* offense.” That brings to the surface the real issue: overcriminalization and excessive punishment in the U.S. Code.

Now as to this statute, I think the plurality somewhat—though only somewhat—exaggerates the matter. The plurality omits from its description of §1519 the requirement that a person act “knowingly” and with “the intent to impede, obstruct, or influence” federal law enforcement. And in highlighting §1519’s maximum penalty, the plurality glosses over the absence of any prescribed minimum. (Let’s not forget that Yates’s sentence was not 20 years, but 30 days.) Congress presumably enacts laws with high maximums and no minimums when it thinks the prohibited conduct may run the gamut from major to minor. That is assuredly true of acts obstructing justice. Most district judges, as Congress knows, will recognize differences between such cases and prosecutions like this one, and will try to make the punishment fit the crime. Still and all, I tend to think, for the reasons the plurality gives, that §1519 is a bad law—too broad and undifferentiated, with too-high maximum penalties, which give prosecutors too much leverage and sentencers too much discretion. And I’d go further: In those ways, §1519 is unfortunately not an outlier, but an emblem of a deeper pathology in the federal criminal code.

But whatever the wisdom or folly of §1519, this Court does not get to rewrite the law. “Resolution of the pros and cons of whether a statute should sweep broadly or narrowly is for Congress.” If judges disagree with Congress’s choice, we are perfectly entitled to say so—in lectures, in law review articles, and even in *dicta*. But we are not entitled to replace the statute Congress enacted with an alternative of our own design.

I respectfully dissent.

CASE QUESTIONS

1. Explain what Mr. Yates did and why.
2. Describe the terms used in the statute at issue and the history of the statute.
3. Why does the dissent think the majority made the decision it did?

Exhibit 1.1 Sample Case Brief

| | |
|--------------------------|--|
| Name of case: | <i>Yates v. U.S.</i> |
| Court: | U.S. Supreme Court |
| Citation: | 135 S.Ct. 1074 (2015) |
| Parties and their roles: | United States (respondent/prosecutor); John L. Yates (petitioner/defendant) |
| Facts: | John Yates, a commercial fisherman, caught undersized red grouper in federal waters in the Gulf of Mexico. To prevent federal authorities from confirming that he had harvested undersized fish, Yates ordered a crew member to toss the suspect fish into the sea. Yates was charged with obstruction of justice through destruction of the small red-grouper fish. |
| Issues: | Is the release of fish back into the sea obstruction of justice? |
| Lower court decision: | Yates was convicted and appealed. His conviction was upheld. He appealed to the U.S. Supreme Court. |
| Decision: | A split court held that the fish were not “tangible objects” for purposes of the obstruction of justice statute. The court held that the statute was passed to cover files and electronic records and not tangible objects such as fish. The conviction was reversed. |
| Reasoning: | The court held that the statute was passed in the wake of financial and ethical collapses in companies and was not intended to have generic application. It was directed at electronic files and documentation, not tangible objects such as fish. |

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Ethical Issues

Evaluate the ethics of Mr. Yates in hurling the fish back after the federal agent told him to retain them.

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Consider ...

1.2

Andrew B. Katakis received a letter from his bank informing him that federal investigators had subpoenaed his bank records. On September 3, 2010, Katakis purchased, downloaded, and installed a program called DriveScrubber on his home computer, a Dell. DriveScrubber places deleted information into free space on the computer. DriveScrubber actively overwrites all data in the free space of a hard drive. Once a file is

overwritten by DriveScrubber, it is impossible to retrieve it.

Katakis’s business partner, Steve Swanger, kept two computers at their office. Katakis told Swanger that he wanted to install a “scrubber program” on their computers and that there was “nothing wrong with us cleaning our computers.” The Swanger Dell had 4,000 e-mails on it, and Katakis began deleting them. After seeing that it would

take a long time for the e-mails to be deleted, Katakis went home. When he returned to the office on Monday, Swanger noticed that almost all of the e-mails on his Dell had been deleted from his e-mail in-box.

The government seized the computers in its investigation of an alleged bid-rigging scheme. When examining Swanger's Dell, the government discovered ten incriminating e-mails that implicated Katakis. Katakis was either a sender or recipient of all ten e-mails. Swanger was also either the sender or recipient of all ten e-mails. The e-mails were discovered in the deleted items folder in Swanger's e-mail. Metadata attached to the e-mails showed that Katakis had received and opened all of them. However, Katakis had deleted the e-mails, and the government expert believed that Katakis had destroyed them using DriveScrubber. However, because the e-mails were part of an Exchange e-mail program, deleted e-mails simply go into a deleted mail folder and are not subject to DriveScrubber overwrite. Still, the government never found the e-mails on the Katakis computer. Katakis was charged with obstruction of justice for destroying electronic documents. What should the court do with the case? Based on what you learned in the *Yates* case, was this obstruction of justice? *U.S. v. Katakis*, 800 F.3d 1017 (9th Cir. 2015).

THINK: Before answering this problem, review the opinions in the *Yates* case. Recall the following.

1. According to the majority, the statute applies to the destruction of documents or electronic records.
 - a. The e-mails were electronic records.
 - b. The e-mails were missing.
2. The e-mails were relevant to the bid-rigging investigation and charges.
3. The e-mails were not covered by the DriveScrubber program that Katakis installed.

APPLY: The e-mails are covered by the obstruction statute because the court carefully outlined what was included in and covered by the statute and electronic records are part of the coverage.

ANSWER: However, what is different about this case from the *Yates* case is that the proof does not connect Katakis with destruction of the e-mails. There must be some form of a record, but there must also be destruction, and the experts in the case indicated that DriveScrubber would not have automatically destroyed the e-mails because they were in an Exchange folder, not the computer free space over which DriveScrubber writes. Circumstantial evidence does not provide the connection between the missing records and Katakis. The case was dismissed.

Re: The Cover-Up vs. the Crime

One of the important lessons of the *Yates* case is for those who run businesses to understand that when inspectors or officers find violations in their operations, the worst thing to do is to attempt to conceal the evidence. Concealment or obstruction always reach felony levels. The fines and imprisonment, as with §1519, can be as high as 20 years. Once caught, the best

approach is, in consultation with a lawyer, to determine your rights and options. However, undertaking the destruction of documents, records, or fish only brings greater penalties. If the statutes are excessive or unfair, there is always the appeal of the sentence itself, but the issue will be the fairness of the sentence and not a felony conviction for the act of obstruction.

For the Manager's Desk

1-5 The Theory of Law: Jurisprudence

Law is the compromise of conflicting ideas. Not only do people differ in their thinking on the types of specific laws, they also differ on the theory behind the law or the values a legal system should try to advance or encourage. Many can agree on the definition of law and its purposes but still differ on how those purposes are best accomplished. The incorporation of theories or values into the legal process is, perhaps, what makes each society's laws different and causes law to change as society changes its values. These different theories or value bases for law are found in an area of legal study called **jurisprudence**, a Latin term meaning "wisdom of the law." In many cases, how the law should work is unclear. Conflicting philosophical views often come together in litigation. Judges and lawmakers must struggle to do the best good for the most members of society.

1-5a The Theory of Law: Positive Law

There are some who see law as simply written orders that we must keep. Known as the positive law school of thought, those who subscribe to it believe that the critical part of the law is obedience so that we can have an orderly society.

1-5b The Theory of Law: Natural Law

Another theory of jurisprudence is that of natural law, a theory that holds that we have certain rights that cannot be taken away by law. The United States of America's form of government was grounded in the natural law theorists' views that we have certain unalienable rights that cannot be taken away by any law. Any law that purports to take away those rights is invalid and must be challenged, either through the courts or through civil disobedience. An example would be slavery. While slavery was legal in the United States and other countries for many years, it was constantly met with dissent, disobedience, and eventually civil war. Natural law trumped the positive law, and slavery was eliminated because it was a violation of natural law, and laws were changed to make it illegal.

1-5c The Theory of Law: The Protection of Individuals and Relationships

Justice Oliver Wendell Holmes, in "Natural Law," his famous essay written in 1918 at the height of World War I, rejected the notion of natural law. His essay began with the famous phrase, "The life of the law has not been logic; it has been experience." Holmes's opinion is that our interactions with each other constitute the foundation of law.

If I do live with others they tell me what I must do if I wish to remain alive. If I do live with others they tell me what I must do and abstain from doing various things or they will put the screws to me.²

In other words, the law is what keeps the peace among us, and should we choose to ignore it, those around us will take control and bring us into compliance.

1-5d The Theory of Law: The Social Contract

Roscoe Pound, another legal philosopher and dean of Harvard Law School for 20 years, had a different view of jurisprudence from Justice Holmes. His view was that law exists as the result of those who happen to be in power, that there is a type

of social contract that we mutually honor. In 1941, Pound wrote his famous credo, called “My Philosophy of Law.”

I think of law as in one sense a highly specialized form of social control in a developed politically organized society—a social control through the systematic and orderly application of the force of such a society. Moreover, it operates through a judicial process and an administrative process, which also go by the name of law. . . .³

Consider . . .

1.3

Apply the theories of jurisprudence to the following situations.

1. Major General Antonio M. Taguba led an investigation of the conduct of U.S. soldiers in the Abu Ghraib prison in Iraq. The 54-page report documented brutal treatment of Iraqi prisoners, torture, and humiliation, all in violation of either the Geneva Convention for the treatment of prisoners of war or the standards of the Red Cross. General Taguba referred to the treatment of the prisoners as consisting of “egregious acts and grave violations of international law.”⁴ One of the findings of the report is that the soldiers serving as prison guards had little training. General Taguba recommended training for soldiers in when to disobey orders. A fellow officer said of General Taguba, “If you want the truth; he’s going to tell you the truth. He’s a stand-up guy.”⁵ General Taguba’s father was Staff Sergeant Tomas Taguba, a man who fought in the Battle of Bataan and was taken prisoner by the Japanese. He

escaped from prison there and joined the fighters in Japan who opposed the government.

Based on these brief descriptions of these two men, what philosophy of law do you think they would follow?

2. A supervisor has ordered an employee to inflate the company’s earnings for the quarter so that their unit can meet their goals and attain their bonuses. Must the employee obey?
3. Is a businessperson who believes the tax system to be unconstitutional justified in refusing to pay taxes? How will society react to such a position?
4. Is there any example of a law that is accepted by everyone in society? What about the laws against speeding? What happens, according to the philosophers, when there is no common agreement on what the law should be?
5. Refer back to the *Yates* case. What school of thought on jurisprudence do you think Mr. Yates followed?

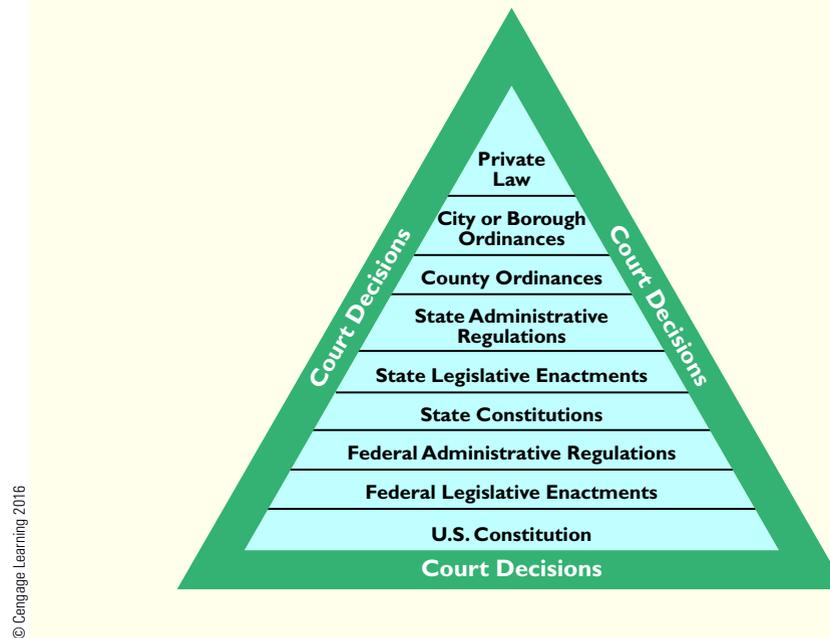
1-6 Sources of Law

Laws exist in different forms at every level of government. As discussed earlier, law exists not only in statutory form but also in its common law form through judicial decisions. Statutory law exists at all levels of government. Statutes are written laws enacted by some governmental body with the proper authority—legislatures, city governments, and counties—and published and made available for public use and knowledge. These written statutes are sometimes referred to as codified law, and their sources, as well as constitutions, are covered in the following sections.

1-6a Constitutional Law

The U.S. Constitution and the constitutions of the various states are unique forms of law. **Constitutions** are not statutes because they cannot be added to, amended,

Exhibit 1.2 Sources of Law



or repealed with the same ease as can statutes. Constitutions are the law of the people and are changed only by lengthier and more demanding procedures than those used to repeal statutes.

Constitutions tend to protect general rights, such as speech, religion, and property (see Chapter 5 for a more complete discussion). They also provide a framework for all other forms of laws. The basic rights and protections afforded in them cannot be abridged or denied by the other sources of law. In other words, a statute's boundaries are formed by constitutionally protected rights. Exhibit 1.2 is an illustration of the sources of law; constitutional law is at the base of the pyramid diagram because of its inviolate status.

1-6b Statutory Law at the Federal Level

Congressional Law

Congress is responsible for statutory law at the federal level. The laws passed by Congress become part of the **United States Code** (U.S.C.). Examples of such laws are the 1933 and 1934 Securities Acts (see Chapter 18), the Sherman Act and other antitrust laws (see Chapter 14), the Equal Employment Opportunity Act (see Chapter 20), the National Labor Relations Act (see Chapter 19), the Truth-in-Lending Act (see Chapter 11), the USA Patriot Act (see Chapters 8 and 18), and the Internal Revenue Code (see Chapter 19).

Statutes from the U.S.C. are referenced or *cited* by a standard form of legal shorthand, often referred to as a **cite** or **citation**. The number of the title is put in front of "U.S.C." to tell which volume of the Code to go to. For example, "15 U.S.C." refers to Title 15 of the U.S. Code (Title 15 happens to cover securities). There may be more than one volume that is numbered "15," however. To enable you to find the

volume you need, the reference or cite has a section (§) number following it. This section number is the particular statute referenced, and you must look for the volume of Title 15 that contains that section. For example, the first volume of Title 15 contains §§ 1–11. A full reference or cite to a United States Code statute looks like this: 15 U.S.C. §77. When a U.S.C. cite is given, the law cited will be a federal law passed by Congress.

Executive Orders

Executive orders are laws of the executive branch of the federal government and deal with those matters under the direct control of that branch. For example, on his second day in office, President Barack Obama issued an executive order prohibiting the use of waterboarding in questioning military combatants who are in U.S. custody. In 2015, President Obama issued an executive order that increased background checks on private gun sales, including those sales at gun shows.

Federal Administrative Regulations

The federal government has administrative agencies that serve the functions of promulgation of rules (called regulations) for developing specifics such as forms and time requirements for carrying out the legislative enactments of Congress, in addition to enforcing both the laws and regulations (see Chapter 6 for more details). Examples of federal agencies include the Environmental Protection Agency (EPA), the Equal Employment Opportunity Commission (EEOC), and the Securities and Exchange Commission (SEC).

Federal regulations are found in the Code of Federal Regulations (CFR), a set of paperback volumes that is published once each year. A citation from the CFR has a structure similar to that of a U.S.C. cite. For example, 12 C.F.R. §226 is volume 12 of the CFR, and §226 is a section that deals with credit disclosure rights.

1-6c Statutory Law at the State Level

As noted on p. 13–14, each state has its own constitution. State constitutions cannot circumvent or cancel any of the rights afforded under the U.S. Constitution. These state constitutions provide the authority for the state statutory law structure.

Legislative Law and State Codes

Each state has its own code containing the laws passed by its legislature. **State codes** contain the states' criminal laws, laws for incorporation, laws governing partnerships, and contract laws. Much of the law that affects business is found in these state codes. Some of the laws passed by the states are **uniform laws**, which are drafted by groups of businesspeople, scholars, and lawyers in an effort to make interstate business less complicated. For example, the **Uniform Commercial Code (UCC)**, which has been adopted in 49 states, governs contracts for the sale of goods, commercial paper, security interests, and other types of commercial transactions. Having this uniform law in the various states gives businesses the opportunity to deal across state lines with some certainty. Other uniform acts passed by many state legislatures include the Uniform Partnership Act (Revised), the Uniform Residential Landlord and Tenant Act, the Model Business Corporation Act, and the Uniform Probate Code.

State Administrative Law

Just as at the federal level, state governments have administrative agencies with the power to pass regulations dealing with the statutes and powers given by the

state legislatures. For example, most states have an agency to handle incorporations and the status of corporations in the state. Most states also have a tax agency to handle income or sales taxes in the state.

1-6d Local Laws of Cities, Counties, and Townships

In addition to federal and state statutes, local governments can pass **ordinances** or statutes within their areas of power or control. For example, cities and counties have the authority to handle zoning issues, and the municipal code outlines the zoning system and whatever means of enforcement and specified penalties apply. These local laws govern lesser issues, such as dog licensing, curfews, and loitering. However, local governments are often responsible for national legal trends. For example, city and county bans on Styrofoam containers have resulted in the transformation of the fast-food industry by the use of new types of containers. City ordinances often affect national companies, and the companies make changes nationwide to comply with local ordinances.

1-6e Private Laws

Private laws are a final source of written law and are found, for example, in contracts and landlord regulations. These private laws are enforceable provided they are not inconsistent with rights and protections afforded under the other sources of law (see Chapters 3 and 4).

1-6f Court Decisions

Looking at Exhibit 1.2, you can see that all of the sources of law just covered are surrounded in the pyramid by the term “Court Decisions.” Often the language in a statute is unclear, or perhaps whether the statute or ordinance applies in a particular situation is unclear. When these ambiguities or omissions occur in the statutory language, courts provide interpretation or clarification of the law when disputing parties bring suit. These court decisions are then read along with the statutory language in order to give a complete analysis of the scope and intent of the statute. The *Yates* case is an example of how laws are interpreted and applied as factual twists arise.

Business Strategy

Strategy for Small Businesses and Legal Issues

From the *Yates* case and the extent of the sources of law, it is easy to see that a small businessman landed in a great deal of legal difficulty. In fact, his court battle began in 2011 and did not end until the 2015 U.S. Supreme Court decision. It also took two years, from the boat inspection in 2009 until 2011, for the criminal charges to be brought against him. How does a small business keep up with legal issues and potential

pitfalls? Small businesses are not always able to have lawyers on call or following all the potential pitfalls they might face. To ensure that they are keeping abreast of the law, changes, and development in their business areas, many small businesses belong to trade associations. Those associations provide members with information about court decisions, pending legislations, and cautions about business practices.

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1-7 Introduction to International Law

Business is global. Companies headquartered in Japan have factories in the United States, and U.S. firms have manufacturing plants in South America and subcontractors and suppliers in China. Trade and political barriers to economic development no longer exist. Businesses must be adept at trading across country boundaries, and such trade requires an understanding of international law.

International law is not a neat body of law like contract law or the UCC. Rather, it is a combination of the laws of various countries, international trade customs, and international agreements. Article 38(1) of the Statute of the International Court of Justice (a court of the United Nations that countries consent to have resolve disputes) is a widely recognized statement of the sources of international law:

- (a) *international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;*
- (b) *international custom as evidence of a general practice accepted as law;*
- (c) *the general principles of law recognized by civilized nations;*
- (d) *judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.*

1-7a Custom

Every country has its boundaries for allowable behavior, and these boundaries are unwritten but recognized laws. The standards of behavior are reflected in statements made by businesspeople and government officials. Custom develops over time and through repeated conduct. For example, working conditions in factories around the world have improved over the past 20 years not through changes in laws but through the business custom of inspections, monitors, and transparent disclosure of supply chain resources. Business custom is now one of assuming responsibility for the conditions in factories that supply parts and labor for goods produced around the world.

In addition to operations, businesses must develop a knowledge of and sensitivity to individual country customs related to negotiations and relationships. For example, unlike the United States, most countries do not offer a warranty protection on goods and instead follow a philosophy of *caveat emptor*, "Let the buyer beware." Other countries also do not recognize the extensive rules of insurance and risk followed here with respect to the shipment of goods. Multinational firms must make provisions for protection of shipments in those countries with different standards. Differing laws can affect product content and quality. For example, lead-based paint is not permitted for use on children's toys in the United States, but in China, at one point, lead-based paint was standard in toy production. A toy manufacturer must learn to specify legal standards for suppliers because custom and laws in that country may find the suppliers assuming the same standards they use apply to production for businesses outside their country.

At one time, the customs of China with respect to intellectual property, most particularly computer software, lagged behind those of Europe and the United States. Chinese custom was to separate infringement into two categories: ordinary acts and serious acts. Ordinary infringement was not regarded as a legal issue and requires only that the party apologize, destroy the software, and not engage in infringement again. Courts were rarely involved in ordinary infringement cases.

However, the U.S. government demanded more protection for its copyright holders by imposing trade sanctions, and China eventually agreed to revise its customs and laws to afford protection. In this case, China's customs had to be changed to provide protection similar to that afforded in other countries.

1-7b **Treaties**

A **treaty** is an agreement between or among nations on a subject of international law signed by the leaders of the nations and ratified by the nations' governing bodies. In the United States, treaties are ratified by the Senate and are included in the pyramid (Exhibit 1.2) as federal legislative enactments.

Treaties can be between two nations—**bilateral treaties**—or **multilateral treaties**—those that are made among several nations. Other treaties, recognized by almost all nations, are called general or **universal treaties**. Universal treaties are a reflection of widely followed standards of behavior. For example, the Geneva Convention is a universal treaty covering the treatment of prisoners of war. The Vienna Convention is a universal treaty covering diplomatic relations. The Warsaw Convention is a treaty that addresses issues of liability for injuries to passengers and property during international air travel. For more discussion on trade treaties, see Chapter 7.

1-7c **Private Law in International Transactions**

Those businesses involved in multinational trade and production rely heavily on private law to ensure performance of contractual obligations. Even though each country has a different set of laws, all of them recognize the autonomy of parties in an international trade transaction and allow the parties to negotiate contract terms that suit their needs, as long as none of the terms is illegal. **Party autonomy** allows firms to operate uniformly throughout the world if their contracts are recognized as valid in most countries. For example, most international trade contracts have a choice-of-law clause whereby the parties decide which country's law will apply to their disputes under the contract.

1-7d **International Organizations**

Some international organizations provide the means for facilitating multinational commercial transactions. For example, the World Trade Organization (WTO) (see Chapter 7 for more details) provides a Dispute Settlement Body (DSB), a forum for resolving trade disputes related to multilateral treaties.

1-7e **The Doctrines of International Law**

There are a number of principles of international law that are widely accepted and honored by most countries. These include the **act of state doctrine**, a theory that protects governments from reviews of their actions by courts in other countries. In any action in which the government of a country has taken steps to condemn or confiscate property, the courts of other countries will not interfere (see Chapter 7 for a full discussion of this and other doctrines of international law).

1-7f **Trade Law and Policies**

The importance of trade laws, tariffs, and policies has increased directly with the rising numbers of international business transactions. Chapter 7 provides additional details on trade laws, tariffs, restrictions, and trade agreements.

Re: When Worldwide Soccer Involves Bribery

For the Manager's Desk

The scandal erupted around the world as Interpol and law enforcement agents from Europe and the United States descended on the offices of FIFA, the World Cup soccer organization. The agents were there to seize records and computers because of allegations of an international bribery scandal in the organization that had existed for years and funneled millions to individual leaders in the organization.

The case was representative of a new approach of cooperation among nations for curbing bribery, money laundering, and securities fraud. Working together,

multinational task forces focus on activities and then together bring charges against individuals in their own countries.

FIFA is an NGO (non-governmental organization) that is still subject to the standards that OECD nations have adopted for curbing bribery. The result of the cooperation in the investigation is the indictment of leaders, their resignations, and the end of the excessive payments that teams and cities vying for the World Cup were paying in exchange for FIFA favors and award of contracts.

1-7g Uniform International Laws

Because trade barriers have been largely eliminated, contracts have been and are being formed between and among businesses from virtually all nations. However, not all nations have the same approach to contracts. Indeed, some nations have no contract laws or commercial codes. In an attempt to introduce uniformity in international contract law, the United Nations developed its Contracts for the International Sale of Goods (CISG), which has been adopted widely and allows businesses to opt in or out of its application in adopting countries. Similar to the UCC (see Chapter 11), the CISG has provisions on contract formation, performance, and damages. More information on the CISG can be found in Chapters 7, 11, and 12.

1-7h The European Union

Once referred to as the Common Market and later known as the European Community (EC), the European Union (EU) is a tariff-free group of European countries that have joined together to enjoy the benefits of barrier-free trade. Formed in 1992, the single economic community requires member nations to subscribe to the same monetary standard, the elimination of immigration and customs controls, universal product and job safety standards, uniform licensing of professionals, and unified taxation schedules. The EU has been experiencing tension because of the weaker economies of some of its members and the need for other members to provide economic support for failing government finances. Great Britain's vote to withdraw (Brexit) from the EU in 2016 signals more tension and change. More details on the governance of the EU can be found in Chapter 7.



Biography

Uber: The Importance of Law in a Developing Business

Uber has become the little company that could. In a brilliant recognition of the costs of intra-city transportation, Uber offered customers who had been tied to cabs or public transportation a service of car transportation without the high cost. Staffed by independent contractors who use their own cars, San Francisco-based Uber has expanded worldwide to 300 cities in 60 countries.

However, one lawyer observed, “A lot of these start-ups initially don’t think much about regulation. They do things first, then ask questions.”⁶ For example, Uber did not understand the power of taxi drivers. In Paris, the company was met with protests by taxi drivers who were lobbying city officials to impose a 15-minute wait time on Uber drivers. That is, they wanted to require Uber to wait 15 minutes before picking up a passenger to give the taxis a chance to pick up the waiting passenger. France has charged two Uber executives with “deceptive commercial practices.”

In the United States, the Department of Labor has been pushing to have Uber drivers classified as employees, something that would increase Uber’s costs because of benefits and wage taxes. Many cities have been resistant to Uber infiltration and have required cab licensing or restricted Uber to rides within the city and not from the airports.

Uber has learned that it must work with regulators in order to establish a relationship and prevent the types of restrictions it has experienced at the local, state, and federal levels. In Munich, Uber has been working with city officials in order to obtain permission to operate under existing laws there. Uber maintains that its goal is to provide low-cost transportation in a system in which there are monopolies held by cabs that charge high rates. Filling that niche seems to be working except for the regulatory challenges.

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SUMMARY

How is law defined?

- Law is a form of order. Law is the body of rules of society governing individuals and their relationships.

What types of laws are there?

- Public law—codified law; statutes; law by government body
- Private law—rules created by individuals for their contracts, tenancy, and employment
- Civil law—laws regulating harms and carrying damage remedies
- Criminal law—laws regulating wrongful conduct and carrying sentences and fines
- Statutory law—codified law

- Common law—law developed historically and by judicial precedent
- Substantive laws—laws giving rights and responsibilities
- Procedural laws—laws that provide enforcement rights

What are the purposes of law?

- Keep order; influence conduct; honor expectations; promote equality; offer compromises

What are the characteristics of law?

- Flexibility; consistency; pervasiveness
- Jurisprudence—theory of law

Where are laws found and who enacts them?

- Constitution—document that establishes structure and authority of a government
- Federal statutes—laws passed by Congress: the U.S. Code
- State statutes—laws passed by state legislatures, including uniform laws on contracts and business organizations
- Ordinances—local laws passed by cities, counties, and townships

What are the sources of international law?

- Customs—the standards of conduct and norms in a country

- Treaties—agreements between and among nations regarding their political and commercial relationships
- Private law—party autonomy recognized in all nations
- International doctrines—widely accepted principles of law followed in most countries
- European Union—group of nations working collectively for uniform laws and barrier-free trade
- Uniform laws—Contracts for the International Sale of Goods (CISG)

QUESTIONS AND PROBLEMS

1. Bryant Gunderson is a sole proprietor with a successful bungee-jumping business. He is considering incorporating his business. What levels and sources of law would affect and govern the process of incorporation?

2. Jeffrey Stalwart has just been arrested for ticket scalping outside the Great Western Forum in Los Angeles. Jeffrey sold a ticket to a Taylor Swift concert to an intense fan for \$1,200; the face value of the ticket was \$48. Ticket scalping in Los Angeles is a misdemeanor. Will Jeffrey's court proceedings be civil or criminal?

3. The U.S. Golf Association put a new rule (effective January 1, 2016) that prohibits players from anchoring their putters to their chests. Tim Clark, a golfer from South Africa, who has won ten championships, anchors his putter to his chest and reacted, "We are not going to roll over and just accept this. We have been put in a position where we have to fight for our livelihoods."⁷ Explain what source of law is involved. How can the rule be challenged? Where would the golfers go to court?

4. Define and contrast the following:
- a. Civil law and criminal law
 - b. Substantive law and procedural law
 - c. Common law and statutory law
 - d. Private law and public law

5. During the 2001 baseball season, Barry Bonds, a player with the San Francisco Giants, hit 73 home runs in one season, a new record that went beyond the 72 set by Mark McGwire in 2000. Mr. Bonds made

his record-breaking home run in San Francisco. When he hit the home run, the ball went into the cheap seats. All agree that Alex Popov had his glove on the home-run ball. However, Patrick Hayashi ended up with the ball.

Mr. Popov filed suit alleging that Mr. Hayashi assaulted Mr. Popov in order to get the ball. A substantial amount of videotape shows Mr. Popov's "gloving" of the ball. Mr. Popov says the ball belongs to him because he held that ball in a "Sno-cone position" and others wrested it from his control.

Mark McGwire's ball from his record-breaking home run sold for \$3 million. The battle for the Bonds home-run ball carries high financial stakes. What areas of law will be involved in the judge's determination of who gets the baseball? (Peter Page, "Ownership of Historic Baseball Is in Extra Innings," *National Law Journal*, November 12, 2001.)

6. They call them "floating bacchanals." Offshore from Florida and California cities, sunseekers take their rafts and boats and tie them together as they share adult beverages, music, swimming, and the sun. However, after a day of floating, many involved in the floating community are so drunk that they cannot get their rafts and boats back to shore. In addition, safety patrols have difficulties gaining access to take action when there are arguments. What level of law could be directed to control these types of activities? Where would those laws be promulgated?

7. Around 5:00 A.M. on January 1, 2004, Matthew Schmucker, who was 18 at the time, was traveling alone in a horse and buggy near the intersection of Indiana

State Road 37 and Notestine Road in Harlan, Indiana. He was intoxicated at the time and failed to stop at an intersection, thereby colliding with the side of a 2003 Dodge Stratus carrying David Candon and Monica Young, who is now paralyzed from the neck down as a result of the accident. Schmucker was charged with being a minor in possession of alcohol and failing to stop at a throughway. Candon, Young, and their children, who were in the car at the time of the auto/buggy collision, brought suit against Schmucker. Schmucker declared bankruptcy and asked to be discharged from his obligations to Candon and Young. Candon and Young argued that the injury was a “willful and malicious injury by a vessel” under the bankruptcy code and was thus a nondischargeable debt. Schmucker said a horse and buggy is not a vessel. Discuss the role of the court in this case. What would the court look to in making its decision? What is the impact of the court’s decision on the ability of the family to recover for injuries? [*Young v Schmucker*, 409 B.R. 477 (N.D. Ind. 2008)]

8. Ms. Paris Hilton, a well-known celebrity with a ubiquitous presence on television and in *People* magazine, had her driver’s license suspended by the state of California because of driving under the influence (DUI) or while intoxicated (DWI). She was then pulled over by officers for DUI while driving with a suspended license. Following a hearing on the second traffic stop, a judge sentenced Ms. Hilton to 45 days in jail for failure to honor the terms of her DUI probation, including driving while intoxicated.

List all the types of laws that apply to Ms. Hilton in her situation and also where the specific California laws would appear on the pyramid of the sources of law. If Ms. Hilton asked for a pardon or commutation of her sentence by the governor of California, would the law allow it?

9. Classify the following subject matters as substantive or procedural laws:

- a. Traffic law on speeding
- b. Small claims court rules
- c. Evidence
- d. Labor law
- e. Securities

10. The New York Attorney General began an investigation of Monster Energy Drinks (Monster Beverage), Pepsi’s AMP (PepsiCo), and 5-Hour Energy Drinks (Living Essentials) to determine whether the companies were adequately disclosing the amount of caffeine in their drinks. The investigation focuses on the fact that there are other ingredients in the drinks, such as black tea extract and guarana, that are disclosed on the labels of the drinks, but the labels don’t disclose that there may be additional caffeine in the additional ingredients.

The Food and Drug Administration (FDA) has already issued a warning about combining these energy drinks with alcohol consumption because of several resulting deaths. In addition, the Department of Health and Human Services (HHS) has issued a report warning about the negative health impact of excessive caffeine consumption. The report documented data from emergency room physicians about young people requiring emergency room treatment because of consumption of alcohol and energy drinks. Neither agency has, however, taken any action against the makers of these drinks.

List all of the applicable layers of law involved in this energy drink situation. What statutory interpretations do you think there will have to be as a result of the investigation? (Nelson D. Schwarz, “New York State Is Investigating Energy Drink Makers,” *New York Times*, August 29, 2012, p. B1.)

Economics, Ethics & the Law

The Cost of Corporate Wrongdoing

Read and analyze “Paying the Piper: An Empirical Examination of Longer-Term Financial Consequences of Illegal Corporate Behavior,” 40 *Academy of Management Journal* 129 (1997), by Melissa S. Baucus and David A. Baucus. Then answer the following questions.

- a. What financial impact does illegal corporate behavior have on a company?
- b. How long does a company feel the impact of illegal behavior?
- c. How does the market react to illegal corporate behavior?
- d. What are the financial costs of violating the law?

NOTES

1. Reprinted with permission of Thomson Reuters.
2. Oliver Wendell Holmes, "Natural Law," 32 *Harvard Law Review* 40 (1918). Copyright © 1918 by The Harvard Law Review Association.
3. From *My Philosophy of Law* by Roscoe Pound. © 1941 West Publishing Corporation. Reprinted with permission of West Group.
4. Douglas Jehl, "Head of Inquiry on Iraq Abuses Now in Spotlight," *New York Times*, May 11, 2004, A1, A12.
5. *Id.*
6. Mark Scott, "The Bumps in Uber's Fast Lane," *New York Times*, July 8, 2015, p. B1.
7. Steve DiMeglio, "Golf Rule Could Go to Court," *USA Today*, May 22, 2013, p. 1C.

Business Ethics and Social Responsibility

If we were to make a list of the headlines of the past 20 years, we would realize that we have been through two stock market and economic collapses, scandals with performance-enhancing drugs in sports, car manufacturers falsifying car emissions through software programs, food producers knowingly selling salmonella-contaminated products, and mortgage foreclosures based on robo signatures. We would find fake courses for student-athletes at universities and cheating scandals in high schools, colleges, and on the SAT exams. And then we would recall that bank traders were rigging currency exchange rates even as CEOs were convicted for knowingly violating safety standards. We witnessed the largest Ponzi scheme in the history of the world, one that was masterminded by the former chairman of NASDAQ. World soccer offices were raided one morning because of a multicountry bribery investigation. And a new book explains the rules for young people beginning their business careers with Rule #176 being, Don't steal more than \$3.00 of office supplies per quarter.

What happened to ethics? Is doing business just a matter of lying and getting away with it? Does anybody really care about ethics in business now? Has society drifted, and is business conduct just a reflection of changing ethical norms? And what does it mean to be ethical in our lives and in business? This chapter discusses these questions and answers several others: What is ethics? How does ethics affect me? What is business ethics? Why is business ethics important? What ethical standards should a business adopt? How do employees recognize ethical dilemmas? How are ethical dilemmas resolved? How does a business create an ethical atmosphere?

UPDATE 

For up-to-date news on ethical issues, go to mariannejennings.com

Goodness is the only investment that never fails.

HENRY D. THOREAU
Walden, "Higher Laws"

Of all the passions, the passion for the Inner Ring is most skillful in making a man who is not yet a very bad man do very bad things.

C.S. LEWIS
"The Inner Ring"

A bad reputation is like a hangover. It takes a while to get rid of, and it makes everything else hurt.

JAMES PRESTON
Former CEO, Avon

There is a big difference between what we have the right to do and what is right.

HON. JUSTICE POTTER STEWART
Associate Justice,
U.S. Supreme Court,
1958–1981

**$P = f(x)$
The probability of an ethical outcome is a direct function of the amount of money involved; the more money, the less likely the ethical outcome.**

CFA INSTITUTE

Consider . . .

2.1

1. Who said, "I have done absolutely nothing wrong"?
2. What CEO said, "In today's regulatory environment, it's virtually impossible to violate the rules. It's impossible for a violation to go undetected, certainly not for a considerable period of time"?
3. What CEO said, "We are the good guys. We are on the side of angels"?
4. Who said, "Go after the men who seek out prostitutes"?
5. Who said, "It'll give me a chance to show my innocence"?
6. What company had a 64-page, award-winning code of ethics?*

*ANSWERS: **1.** Former Illinois governor Rod Blagojevich, charged with attempting to fill President Obama's Senate seat in exchange for favors and perks and convicted of lying to the FBI. **2.** Bernie Madoff, former CEO of Bernard L. Madoff Investment Securities LLC, a firm that perpetrated a \$50 billion Ponzi scheme. **3.** Jeffrey Skilling, former CEO of Enron, and Lloyd Blankfein, CEO of Goldman Sachs. **4.** Former New York governor Eliot Spitzer, in 2004, when he was establishing a task force as New York attorney general to halt prostitution in New York. Mr. Spitzer resigned when his long-standing relationship with a call girl was uncovered in a sting operation. **5.** John Kinncan, former owner of Broadband Research LLC, a Wall Street analyst firm, who later entered a guilty plea to all charges of insider trading. **6.** Enron.

The chapter's opening "Consider . . ." teaches us that often we look at what companies and business executives say and do and the fact that the companies are doing well and assume that they must all have high ethical standards. The quotes are ironic because these individuals and/or their companies then crossed the ethical lines they touted as standards.

We look at these individuals' behaviors and wonder why they thought they could get away with their poor ethical choices or why they believed they were immune from the laws and our ethical standards. We like to think of ourselves as so different from those who cross ethical and/or legal lines. But all of them were college graduates, nearly all with business degrees. All of them were respected by their friends and were active in community projects and institutions. These individuals were "good" people, but they lost sight of personal ethics, business ethics, and the importance of ethics in success. Before they committed their business crimes, the worst that could have been said about many white-collar criminals who are serving six-month to 25-year prison sentences is that they had parking and speeding tickets. Keeping ethics with us, in life and in business, can help us avoid the kinds of mistakes that so many bright and capable businesspeople have made. But, we wonder, what are ethics? How do we know when we have them? How do we keep them when we face pressures, whether on an important exam or in meeting the quarterly numbers or our sales quota at work? This chapter answers these questions.