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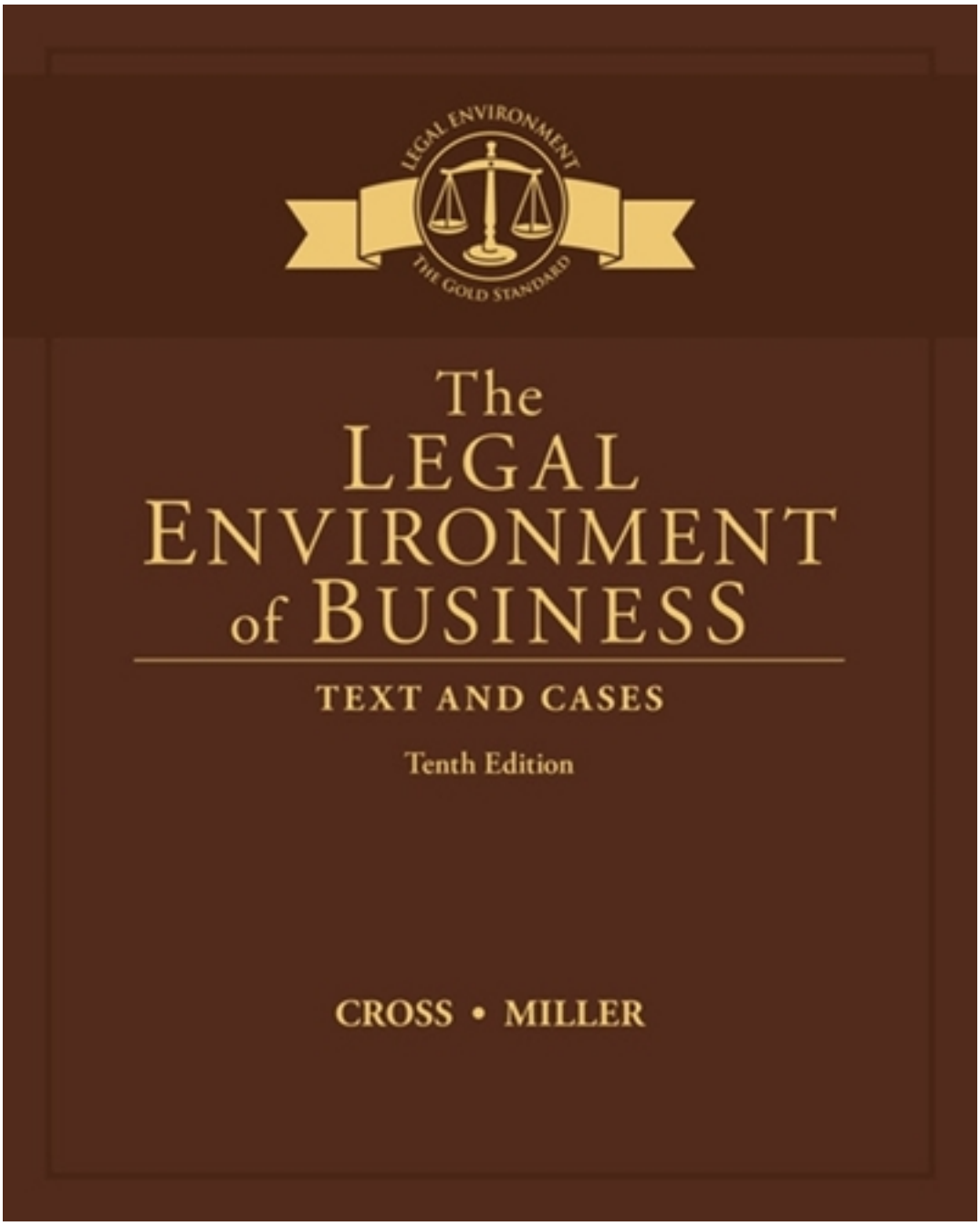

Solutions

CHAPTER 1

LAW AND LEGAL REASONING

ANSWER TO CRITICAL THINKING QUESTION IN THE FEATURE

ETHICS TODAY—CRITICAL THINKING QUESTION

When is the Supreme Court justified in* not *following the doctrine of* stare decisis*? The doctrine of *stare decisis* requires a court to adhere to precedent to promote predictability and consistency. To overcome the doctrine of *stare decisis* a precedent must be more than just wrongly decided. There has to be a special reason to overrule it. It is more likely that the Supreme Court waves the doctrine of *stare decisis* when issues unrelated to business are the focus of cases at bar. Specifically, issues that involve discrimination, freedom of speech, privacy, and so on are more likely to involve disregarding of the doctrine of *stare decisis* if the political atmosphere has changed since the original decision.

ANSWERS TO QUESTIONS IN THE REVIEWING FEATURE AT THE END OF THE CHAPTER

1A. ***Parties***

The automobile manufacturers are the plaintiffs, and the state of California is the defendant.

2A. ***Remedy***

The plaintiffs are seeking an injunction, an equitable remedy, to prevent the state of California from enforcing its statute restricting carbon dioxide emissions.

3A. ***Source of law***

This case involves a law passed by the California legislature and a federal statute; thus the primary source of law is statutory law.

4A. ***Finding the law***

Federal statutes are found in the *United States Code,* and California statutes are published in the *California Code*. You would look in these sources to find the relevant state and federal statutes.

ANSWER TO DEBATE THIS QUESTION IN THE REVIEWING FEATURE AT THE END OF THE CHAPTER

Under the doctrine of* stare decisis*, courts are obligated to follow the precedents established in their jurisdictions unless there is a compelling reason not to. Should U.S. courts continue to adhere to this common law principle, given that our government now regulates so many areas by statute? Both England and the U.S. legal systems were constructed on the common law system. The doctrine of *stare decisis* has always been a major part of this system—courts should follow precedents when they are clearly established, excepted under compelling reasons. Even though more common law is being turned into statutory law, the doctrine of *stare decisis* is still valid. After all, even statutes have to be interpreted by courts. What better basis for judges to render their decisions than by basing them on precedents related to the subject at hand?

In contrast, some students may argue that the doctrine of *stare decisis* is passé. There is certainly less common law governing, say, environmental law than there was 100 years ago. Given that federal and state governments increasingly are regulating more aspects of commercial transactions between merchants and consumers, perhaps the courts should simply stick to statutory language when disputes arise.

ANSWERS TO ISSUE SPOTTERS AT THE END OF THE CHAPTER

1A. ***Under what circumstances might a judge rely on case law to determine the intent and purpose of a statute?*** Case law includes courts' interpretations of statutes, as well as constitutional provisions and administrative rules. Statutes often codify common law rules. For these reasons, a judge might rely on the common law as a guide to the intent and purpose of a statute.

2A. ***After World War II, several Nazis were convicted of "crimes against humanity" by an international court. Assuming that these convicted war criminals had not disobeyed any law of their country and had merely been following their government's orders, what law had they violated? Explain.*** At the time of the Nuremberg trials, "crimes against humanity" were new international crimes. The laws criminalized such acts as murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population. These international laws derived their legitimacy from "natural law."

Natural law, which is the oldest and one of the most significant schools of jurisprudence, holds that governments and legal systems should reflect the moral and ethical ideals that are inherent in human nature. Because natural law is universal and discoverable by reason, its adherents believe that all other law is derived from natural law. Natural law therefore supersedes laws created by humans (national, or "positive," law), and in a conflict between the two, national or positive law loses its legitimacy.

The Nuremberg defendants asserted that they had been acting in accordance with German law. The judges dismissed these claims, reasoning that the defendants' acts were commonly regarded as crimes and that the accused must have known that the acts would be considered criminal. The judges clearly believed the tenets of natural law and expected that the defendants, too, should have been able to realize that their acts ran afoul of it. The fact that the "positivist law" of Germany at the time required them to commit these acts is irrelevant. Under natural law theory, the international court was justified in finding the defendants guilty of crimes against humanity.

ANSWERS TO BUSINESS SCENARIOS AT THE END OF THE CHAPTER

1–1A. ***Binding versus persuasive authority***

A decision of a court is binding on all inferior courts. Because no state's court is inferior to any other state's court, no state's court is obligated to follow the decision of another state's court on an issue. The decision may be persuasive, however, depending on the nature of the case and the particular judge hearing it. A decision of the United States Supreme Court on an issue is binding, like the decision of any court, on all inferior courts. The United States Supreme Court is the nation's highest court, however, and thus, its decisions are binding on all courts, including state courts.

1-2A. ***Sources of law***

(a) The U.S. Constitution—The U.S. Constitution is the supreme law of the land. A law in violation of the Constitution, no matter what its source, will be declared unconstitutional and will not be enforced.

(b) The federal statute—Under the U.S. Constitution, when there is a conflict between a federal law and a state law, the state law is rendered invalid.

(c) The state statute—State statutes are enacted by state legislatures. Areas not covered by state statutory law are governed by state case law.

(d) The U.S. Constitution—State constitutions are supreme within their respective borders unless they conflict with the U.S. Constitution, which is the supreme law of the land.

1-3A. **Stare decisis**

Stare decisis is a Latin phrase meaning "to stand on decided cases." In the King's Courts of medieval England, it became customary for judges to refer to past decisions (precedents) in deciding cases involving similar issues. Over time, because of application of the doctrine of

stare decisis to issues that came before the courts, a body of jurisprudence was formed that came to be known as the "common law"—because it was common to the English realm. Common law was applied in the American colonies prior to the War of Independence and was adopted by the American states following the Revolution. Common law continues to be applied today in all cases except those falling under specific state or federal statutory law. The doctrine of *stare decisis* is fundamental to the development of our legal tradition because without the acceptance and application of this doctrine, the evolution of any objective legal concepts—and thus a legal "tradition"—would have been impossible.

ANSWERS TO BUSINESS CASE PROBLEMS AT THE END OF THE CHAPTER

1–4A. SPOTLIGHT ON AOL—*Common law*

The doctrine of *stare decisis* is the process of deciding case with reference to former decisions, or precedents. Under this doctrine, judges are obligated to follow the precedents established within their jurisdiction.

In this problem, the enforceability of a forum selection clause is at issue. There are two precedents mentioned in the facts that the court can apply The United States Supreme Court has held that a forum selection clause is unenforceable "if enforcement would contravene a strong public policy of the forum in which suit is brought." And California has declared in other cases that the AOL clause contravenes a strong public policy. If the court applies the doctrine of *stare decisis*, it will dismiss the suit.

In the actual case on which this problem is based, the court determined that the clause is not enforceable under those precedents.

1-5A. BUSINESS CASE PROBLEM WITH SAMPLE ANSWER—*Reading Citations*

The court's opinion in this case—*Equal Employment Opportunity Comission v. Autozone, Inc.*, 809 F.3d 916 (7th Cir. 2016)—can be found in volume 809 of *Federal Reporter, Third Series* on page 916. The U.S. Court of Appeals for the Seventh Circuit issued this opinion in 2016.

1-6A. A QUESTION OF ETHICS—*The common law tradition*

(a) Your answer to these questions and the reasons for those answers will likely follow one of the three schools of jurisprudential thought discussed in Chapter 1. In other words, your reasoning would indicate how you personally view the nature of ethics and the law. If your sentiments are similar to those of the positivist school, you would have little difficulty. Your answers would include that regardless of the necessity, or even the ethicality, of the men's actions, the criminal law of their nation should be applied. In contrast, if you hold that there is a higher, "natural" law with legal and ethical principles to which all human beings are subject, you might have concluded that, given their circumstances, the men should be subject to that higher law, not any nation's particular laws. If you reached this conclusion, then you would have to further decide whether those principles would sanction the killing of another human being for the sake of necessity—survival in these circumstances—or absolutely prohibit the taking of

another's life under any circumstances. This is both a legal and an ethical question that you would ultimately answer on the basis of your personal ethical, religious, or philosophical leanings. Approaching the question from a legal realist's perspective, you would probably attempt to balance your personal, subjective view of the men's actions against the views held by the others—how do most people feel about the issue? How would they respond to whatever your decision might be? As a judge, do you have an obligation to be responsive to society's ethical standards? If so, to what extent should this obligation be a determining factor in your decision, and how do you balance this obligation against your duty to uphold the law?

(b) The legal realists believed that, just as each judge is influenced by the beliefs and attitudes unique to his or her personality, so, too, is each case attended by a unique set of circumstances. According to the legal realist school of thought, judges should tailor their decisions to take account of the specific circumstances of each case, rather than rely on an abstract rule that may not relate to those circumstances. Legal realists also believe that judges should consider extra-legal sources, such as economic and sociological data, in making decisions, to the extent that those sources illuminate the circumstances and issues involved in specific cases. A counterargument can be derived from the positivist school: the law is the law, and there is no need to look beyond it to apply it. In fact, a legal positivist might argue that looking at extra-legal sources would be acting contrary to the law.

ANSWERS TO LEGAL REASONING GROUP ACTIVITY QUESTIONS AT THE END OF THE CHAPTER

1–7A. ***Court opinions***

(a) A majority opinion is a written opinion outlining the views of the majority of the judges or justices deciding a particular case. A concurring opinion is a written opinion by a judge or justice who agrees with the conclusion reached by the majority of the court but not necessarily with the legal reasoning that led the conclusion.

(b) A concurring opinion will voice alternative or additional reasons as to why the conclusion is warranted or clarify certain legal points concerning the issue. A dissenting opinion is a written opinion in which a judge or justice, who does not agree with the conclusion reached by the majority of the court, expounds his or her views on the case.

(c) Obviously, a concurring or dissenting opinion will not affect the case involved—because it has already been decided by majority vote—but such opinions may be used by another court later to support its position on a similar issue.

ALTERNATE CASE PROBLEM ANSWERS

CHAPTER 2

COURTS AND ALTERNATIVE DISPUTE RESOLUTION

2-1A. ***Arbitration***

The public policy that the court weighed in making its decision included the policy of "not tolerating the knowing misappropriation of state funds by state officials or employees," as well as "[t]he public policy of discouraging fraud," which is "firmly rooted in our common law." The defendant asserted the public policy of discouraging discrimination against the mentally ill. The court considered this policy, but "did not find that Beaudry's discharge was motivated by an intent to discriminate against the mentally ill." In this case, "the policy of minimizing discrimination against the mentally ill did not outweigh the damaging consequences to the concomitant policy goal of refusing to countenance the knowing misappropriation of state moneys." The court vacated the award, the union appealed, and a state appellate court affirmed the trial court's decision.

2-2A. ***Arbitration***

The U.S. Court of Appeals for the Third Circuit held that the arbitration award, requiring Exxon to reinstate Fris, should be vacated as contrary to public policy. The court reasoned that the award "violates a public policy that is both well defined and dominant," that is "that owners and operators of oil tankers should be permitted to discharge crew members who are found to be intoxicated while on duty." The court explained, "An intoxicated crew member on such a vessel can cause loss of life and catastrophic environmental and economic injury. Some of this injury may not be reparable by money damages." The court offered, as an example, harm caused by oil spills. "Moreover," added the court, "it is entirely possible that much of the cost resulting from a major oil spill may fall on taxpayers and those who are injured by the accident."

2-3A. ***Jurisdiction***

The North Carolina state court held that it had personal jurisdiction over the Florida defendants. On appeal, the North Carolina Court of Appeals agreed. The appellate court initially pointed out that a court can assert "personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum

State. When a corporation purposefully avails itself of the privilege of conducting activities in this State, it is not unreasonable to subject it to suit here." The court pointed out that Health Care advertised Cal-Ban in North Carolina. "Health Care sold the Cal-Ban 3000 capsules to its distributor, defendant CKI Industries, who in turn advertised and sold the drug to defendant Prescott's Pharmacies." The court concluded, "[a]ccordingly," that the defendants "injected Cal-Ban 3000 into the stream of commerce of this State with the expectation that the drug would be purchased by consumers here. The trial court properly exercised personal jurisdiction over defendants."

2-4A. ***Standing to sue***

The court held that the Blues had standing and denied the tobacco companies' motion to dismiss the case. The defendants argued in part that any injury to the plaintiffs was indirect and too remote to permit them to recover, and that it would be too difficult to determine whether the plaintiffs' injuries were due to the defendants' conduct or to intervening third causes. The court reasoned that the damages claimed in this case were separate from the damages suffered by smokers. The plaintiffs "seek recovery only for the economic burden of those medical claims and procedures which they directly paid as a result of tobacco use." The Blues had paid for the smokers' health care, and thus only the Blues could recover those amounts. As to whether the injuries were too remote, the court said that if "as alleged, the defendants conducted a decades long scheme to deceive the American public and its health providers concerning the addictive characteristics and health hazards of their tobacco products, and if they conspired to deprive smokers of safer or less addictive tobacco products, then their actions can properly be characterized as illegal and deliberate criminal fraud." If so, the plaintiffs' injuries would have been foreseeable and direct. The court also noted that the plaintiffs might have reliable statistical and expert evidence to show the percentage of damage caused by the defendants' actions.

Note: The Blues filed suits in three federal district courts. Two of the courts refused to dismiss the suits, applying the reasoning set out above. The third court agreed with the defendants, however. See *Regence Blueshield v. Philip Morris, Inc.,* 40 F.Supp.2d 1179 (W.D.Wash.1999). In that case, the court concluded that the Blues' injuries were "derivative" of personal injuries to smokers because it would be impossible to separate the smokers' injuries from those of the insurers and there would thus be a possibility of "duplicative recovery."

2-5A. ***E-Jurisdiction***

The court denied Boyer's motion to dismiss the complaint for lack of personal jurisdiction. "[T]he likelihood that personal jurisdiction can be constitutionally exercised [in the context of Internet activities] is directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet." Boyer "posted Internet messages on the Yahoo bulletin board, which included negative information regarding ABFI." He "also sent an e-mail to ABFI's independent auditors, accusing ABFI of 'fraudulent accounting practices' and 'borderline criminal conduct' . . . with the understanding that the independent auditors were situated in Pennsylvania." Also, the court held that the e-mail fell under the state's long-arm statute, which, like other states' long-arm statutes, permits the exercise of jurisdiction "where an act or omission outside the Commonwealth [Pennsylvania] causes harm or tortious injury inside the Common-

wealth." Finally, the court reasoned that "its exercise of jurisdiction over Defendant Boyer would not necessarily violate traditional notions of fair play and substantial justice. It is true that as a non-resident individual, Boyer will be burdened in being forced to defend himself in Pennsylvania. However, his conduct appears to be directed towards Pennsylvania where Plaintiff is located and where Plaintiff's auditors are located. Plaintiff's interest in adjudicating its dispute and vindicating its reputation in Pennsylvania appears to be self-evident. . . . In addition, it does seem reasonable and fair to require Boyer to conduct his defense in Pennsylvania since that is where he sent the negative e-mail."

2-6A. ***Arbitration***

The court denied Auto Stiegler's motion. A state intermediate appellate court reversed this ruling, and Little appealed to the California Supreme Court, which held that the appeal provision was unenforceable but which also held that the provision could be cut from the agreement and the agreement could then be enforced. Auto Stiegler argued in part that the "provision applied evenhandedly to both parties." The court stated, "[I]f that is the case, [the defendant fails] to explain adequately the reasons for the $50,000 award threshold. From a plaintiff's perspective, the decision to resort to arbitral appeal would be made not according to the amount of the arbitration award but the potential value of the arbitration claim compared to the costs of the appeal. If the plaintiff and his or her attorney estimate that the potential value of the claim is substantial, and the arbitrator rules that the plaintiff takes nothing because of its erroneous understanding of a point of law, then it is rational for the plaintiff to appeal. Thus, the $50,000 threshold inordinately benefits defendants. Given the fact that Auto Stiegler was the party imposing the arbitration agreement and the $50,000 threshold, it is reasonable to conclude it imposed the threshold with the knowledge or belief that it would generally be the defendant." The court acknowledged that "parties may justify an asymmetrical arbitration agreement when there is a legitimate commercial need," but added that the "need must be other than the employer's desire to maximize its advantage in the arbitration process. There is no such justification for the $50,000 threshold. The explanation for the threshold . . . that an award in which there is less than that amount in controversy would not be worth going through the extra step of appellate arbitral review . . . makes sense only from a defendant's standpoint and cannot withstand scrutiny."

2-7A. ***Jurisdiction***

The court denied Sharman's motion to dismiss. The court explained that "fairness consists principally of ensuring that jurisdiction over a person is not exercised absent fair warning that a particular activity may subject that person to the jurisdiction of a foreign sovereign." Thus, "the touchstone constitutional inquiry is whether the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." In this case, "Sharman provides its KMD software to millions of users every week . . . . Sharman has not denied and cannot deny that a substantial number of its users are California residents, and thus that it is, at a minimum, constructively aware of continuous and substantial commercial interaction with residents of this forum. Further, Sharman is well aware that California is the heart of the entertainment industry, and that the brunt of the injuries described . . . is likely to be felt here. It is hard to imagine on these bases alone that Sharman would not reasonably

anticipate being haled into court in California. However, jurisdiction is reasonable for an important added reason: Sharman's effective predecessor, Kazaa BV, was engaged in this very litigation when Sharman was formed. . . . Because Sharman has succeeded Kazaa BV in virtually every aspect of its business, Sharman reasonably should have anticipated being required to succeed Kazaa BV in this litigation as well. If Sharman wished to structure its primary conduct with some minimum assurance that it would not be haled into court in this forum, it simply could have avoided taking over the business of a company already enmeshed in litigation here."

2-8A. ***Standing to sue***

This problem concerns standing to sue. As you read in the chapter, to have standing to sue, a party must have a legally protected, tangible interest at stake. The party must show that he or she has been injured, or is likely to be injured, by the actions of the party that he or she seeks to sue. In this case, the issue is whether the Covingtons had been injured, or were likely to be injured, by the county's landfill operations. Clearly, one could argue that the injuries that the Covingtons complained of directly resulted from the county's violations of environmental laws while operating the landfill. The Covingtons lived directly across from the landfill, and they were experiencing the specific types of harms (fires, scavenger problems, groundwater contamination) that those laws were enacted to address. Indeed, this was the conclusion reached by the appellate court in this case. While the trial court found that the Covingtons lacked standing to sue, when the plaintiffs appealed to U.S. Court of Appeals for the Ninth Circuit, that court found that the Covingtons did have standing to assert their claims. The appellate court remanded (sent back) the case to the lower court for a trial.

2–9A. ***Arbitration***

Based on a recent holding by the Washington state supreme court, the federal appeals court held that the arbitration provision was unconscionable and therefore invalid. Because it was invalid, the restriction on class-action suits was also invalid. The state court reasoned that by offering a contract that restricted class actions and required arbitration, the company had improperly stripped consumers of rights they would normally have to attack certain industry practices. Class-action suits are often brought in cases of deceptive or unfair industry practices when the losses suffered by an individual consumer are too small to warrant a consumer suing. In this case, the alleged added cell phone fees are so small that no one consumer would be likely to litigate or arbitrate the matter due to the expenses involved. Because the arbitration agreement eliminates the possibility of class actions, it violates public policy and is void and unenforceable.

2-10A. ***Jurisdiction***

Courts apply a minimum-contacts test to determine if they can exercise jurisdiction over out-of-state corporations. The test is usually met if a corporation advertises or sells its products within the state. The test can also be met if the corporation has an ongoing business relationship as shown by frequent transactions with a party within the state.

Here, IPC, a New Jersey firm, did not advertise or otherwise solicit business in North Carolina. But IPC and Southern Prestige did have an ongoing busienss relationship characterized by thirty-two transactions. Thus, the test for minimum contacts is most likely met, and the court can exercise jurisdiction over the parties.

In the actual case on which this problem is based, IPC asked the court to dismiss the suit, but the court refused. On appeal, a state intermediate appellate court affirmed this decision.

Chapter 1

Law and Legal Reasoning

INTRODUCTION

The first chapters in Unit 1 provide the background for the entire course. Chapter 1 sets the stage. At this point, it is important to establish goals and objectives. For your students to benefit from this course, they must understand that (1) the law is a set of general rules, (2) that, in applying these general rules, a judge cannot always fit a case to suit a rule, so must fit (or find) a rule to suit the case, (3) that, in fitting (or finding) a rule, a judge must also supply reasons for the decision.

The tension in the law between the need for stability, predictability, and continuity, and the need for change is one of the major concepts introduced in this chapter. The answer to the question, "What is the law?," includes how jurists have answered it, how common law courts originated, and the rationale for the doctrine of *stare decisis*.

Another major concept in the chapter involves the distinctions among today's sources of law and a distinction in its different classifications. The sources include the federal constitution and federal laws, state constitutions and statutes (including the UCC), local ordinances, administrative agency regulations, and case law. The classification is the distinction between civil and criminal law. These sources and categories give students a framework on which to hang the mass of principles known as the law.

CHAPTER OUTLINE

I. Business Activities and the Legal Environment

A. MANY DIFFERENT LAWS MAY AFFECT A SINGLE BUSINESS DECISION
Various areas of the law can affect different aspects of a business (such as Facebook). A businessperson should know enough about the law to know when to ask for advice.

B. ETHICS AND BUSINESS DECISION MAKING
Ethics can influence business decisions.

II. Sources of American Law

A. CONSTITUTIONAL LAW
The federal constitution is a general document that distributes power among the branches of the government. It is the supreme law of the land. Any law that conflicts with it is invalid. The states also have constitutions, but the federal constitution prevails if their provisions conflict.

B. STATUTORY LAW
Statutes and ordinances are enacted by Congress, state legislatures, and local legislative bodies. Much of the work of courts is interpreting what lawmakers meant when a law was passed and applying that law to a set of facts (a case).

1. Uniform Laws
Panels of experts and scholars create uniform laws that any state's legislature can adopt.

2. The Uniform Commercial Code
The Uniform Commercial Code (UCC) provides a uniform flexible set of rules that govern most commercial transactions. The UCC has been adopted by all the states (only in part in Louisiana), the District of Columbia, and the Virgin Islands.

ADDITIONAL BACKGROUND—

National Conference of Commissioners on Uniform State Laws, Co-sponsor of the Uniform Commercial Code

As explained in the text, the Uniform Commercial Code (UCC) is an ambitious codification of commercial common law principles. The UCC has been the most widely adopted, and thus the most successful, of the many uniform and model acts that have been drafted. The **National Conference of Commissioners on Uniform State Laws** is responsible for many of these acts. The National Conference of Commissioners on Uniform State Laws is an organization of state commissioners appointed by the governor of each state, the District of Columbia, and Puerto Rico. Their goal is to promote uniformity in state law where uniformity is desirable. The purpose is to alleviate problems that arise in an increasingly interdependent society in which a single transaction may cross many states. Financial support comes from state grants. The members meet annually to consider drafts of proposed legislation. The American Law Institute works with the National Conference of Commissioners on Uniform State Laws on some of the uniform state laws.

C. ADMINISTRATIVE LAW

Administrative law consists of the rules, orders, and decisions of administrative agencies.

1. Federal Agencies

Executive agencies within the cabinet departments of the executive branch are subject to the power of the president to appoint and remove their officers. The officers of independent agencies serve fixed terms and cannot be removed without just cause.

2. State and Local Agencies

These agencies are often parallel federal agencies in areas of expertise and subjects of regulation. Federal rules that conflict with state rules take precedence.

D. CASE LAW AND COMMON LAW DOCTRINES

Another basic source of American law consists of the rules of law announced in court decisions. These rules include judicial interpretations of constitutional provisions, of statutes enacted by legislatures, and of regulations created by administrative agencies.

III. The Common Law Tradition

American law is based on the English common law legal system. Knowledge of this tradition is necessary to students' understanding of the nature of our legal system.

A. EARLY ENGLISH COURTS

The English system unified its local courts in 1066. This unified system, based on the decisions judges make in cases, is the common law system.

1. Courts of Law and Remedies at Law

A court of law is limited to awarding payments of money or property as compensation.

2. Courts of Equity

Equity is a branch of unwritten law, which was founded in justice and fair dealing, and seeks to supply a fairer and more adequate remedy than a remedy at law.

3. Remedies in Equity

A court of equity can order specific performance, an injunction, or rescission of a contract.

4. Equitable Maxims

These guide the application of equitable remedies.

B. LEGAL AND EQUITABLE REMEDIES TODAY

Today, in most states, a plaintiff may request both legal and equitable remedies in the same action, and the trial court judge may grant either form—or both forms—of relief.

C. THE DOCTRINE OF *STARE DECISIS*

1. Case Precedents and Case Reporters

The common law system involves the application, in current cases, of principles applied in earlier cases with similar facts.

2. *Stare Decisis* and the Common Law Tradition
The use of precedent forms the basis for the doctrine of *stare decisis*.

3. Controlling Precedents
A court's application of a specific principle to a certain set of facts is binding on that court and lower courts, which must then apply it in future cases. A controlling precedent is binding authority. Other binding authorities include constitutions, statutes, and rules.

ENHANCING YOUR LECTURE—



"IS AN 1875 CASE PRECEDENT STILL BINDING?

In a suit against the U.S. government for breach of contract, Boris Korczak sought compensation for services that he had allegedly performed for the Central Intelligence Agency (CIA) from 1973 to 1980. Korczak claimed that the government had failed to pay him an annuity and other compensation required by a secret *oral* agreement he had made with the CIA. The federal trial court dismissed Korczak's claim, and Korczak appealed the decision to the U.S. Court of Appeals for the Federal Circuit.

At issue on appeal was whether a Supreme Court case decided in 1875, *Totten v. United States*,[a] remained the controlling precedent in this area. In *Totten,* the plaintiff alleged that he had formed a secret contract with President Lincoln to collect information on the Confederate army during the Civil War. When the plaintiff sued the government for compensation for his services, the Supreme Court held that the agreement was unenforceable. According to the Court, to enforce such agreements could result in the disclosure of information that "might compromise or embarrass our government" or cause other "serious detriment" to the public. In Korczak's case, the federal appellate court held that the *Totten* case precedent was still "good law," and therefore Korczak, like the plaintiff in *Totten,* could not recover compensation for his services. Said the court, "*Totten,* despite its age, is the last pronouncement on this issue by the Supreme Court. . . . We are duty bound to follow the law given us by the Supreme Court unless and until it is changed."[b]

THE BOTTOM LINE

Supreme Court precedents, no matter how old, remain controlling until they are overruled by a subsequent decision of the Supreme Court, by a constitutional amendment, or by congressional legislation.

a. 92 U.S. 105 (1875).
b. *Korczak v. United States,* 124 F.3d 227 (Fed.Cir. 1997).

4. *Stare Decisis* and Legal Stability
This doctrine permits a predictable, quick, and fair resolution of cases, which makes the application of law more stable.

5. Departures from Precedent
A judge may decide that a precedent is incorrect, however, if there may have been changes in technology, for example, business practices, or society's attitudes.

6. When There Is No Precedent
When determining which rules and policies to apply in a given case, and in applying them, a judge may examine: prior case law, the principles and policies behind the decisions, and their historical setting; statutes and the policies behind a legislature's passing a specific statute; society's values and custom; and data and principles from other disciplines.

D. *STARE DECISIS* AND LEGAL REASONING

1. Basic Steps in Legal Reasoning
Legal reasoning is briefly defined, and the "issue-rule-apply-conclude" format is outlined.

2. There Is No One "Right" Answer
Of course, there is no one "right" answer to every legal question.

E. THE COMMON LAW TODAY

1. Courts Interpret Statutes
Through the courts, the common law governs all areas *not* covered by statutory or administrative law, as well as interpretations of the application of statutes and rules.

2. *Restatements of the Law* Clarify and Illustrate the Common Law
The common law principles are summarized in the American Law Institute's *Restatements of the Law*, which do not have the force of law but are an important secondary source on which judges often rely.

ADDITIONAL BACKGROUND—

Restatement (Second) of Contracts

The American Law Institute (ALI), a group of American legal scholars, is responsible for the *Restatements*. These scholars also work with the National Conference of Commissioners on Uniform State Laws on some of the uniform state laws. Members include law educators, judges, and attorneys. Their goal is to promote uniformity in state law to encourage the fair administration of justice.

The ALI publishes summaries of common law rules on selected topics. Intended to clarify the rules, the summaries are published as the *Restatements*. Each *Restatement* is further divided into chapters and sections. Accompanying the sections are explanatory comments, examples illustrating the principles, relevant case citations, and other materials. The following is ***Restatement (Second) of Contracts***, Section 1 (that is, Section 1 of the second edition of the *Restatement of Contracts*) with excerpts from the Introductory Note to Chapter 1 and Comments accompanying the section.

Chapter 1
MEANING OF TERMS

* * * *

Introductory Note: A persistent source of difficulty in the law of contracts is the fact that words often have

different meanings to the speaker and to the hearer. Most words are commonly used in more than one sense, and the words used in this *Restatement* are no exception. It is arguable that the difficulty is increased rather than diminished by an attempt to give a word a single definition and to use it only as defined. But where usage varies widely, definition makes it possible to avoid circumlocution in the statement of rules and to hold ambiguity to a minimum.

In the *Restatement*, an effort has been made to use only words with connotations familiar to the legal profession, and not to use two or more words to express the same legal concept. Where a word frequently used has a variety of distinct meanings, one meaning has been selected and indicated by definition. But it is obviously impossible to capture in a definition an entire complex institution such as "contract" or "promise." The operative facts necessary or sufficient to create legal relations and the legal relations created by those facts will appear with greater fullness in the succeeding chapters.

§ 1. Contract Defined

A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.

Comment:

* * * *

c. Set of promises. A contract may consist of a single promise by one person to another, or of mutual promises by two persons to one another; or there may be, indeed, any number of persons or any number of promises. One person may make several promises to one person or to several persons, or several persons may join in making promises to one or more persons. To constitute a "set," promises need not be made simultaneously; it is enough that several promises are regarded by the parties as constituting a single contract, or are so related in subject matter and performance that they may be considered and enforced together by a court.

IV. Schools of Legal Thought

A. THE NATURAL LAW SCHOOL
Adherents of the *natural law* school believe that government and the legal system should reflect universal moral and ethical principles that are inherent in the nature of human life.

B. THE POSITIVIST SCHOOL
Followers of the *legal positivism* believe that there can be no higher law than a nation's positive law (the law created by a particular society at a particular point in time).

C. THE HISTORICAL SCHOOL
Those of the *historical school* emphasize legal principles that were applied in the past.

D. LEGAL REALISM
Legal realists believe that judges are influenced by their unique individual beliefs and attitudes, that the application of precedent should be tempered by each case's specific circumstances, and that extra-legal

sources should be considered in making decisions. This influenced the sociological school of jurisprudence, which views law as a tool to promote social justice.

V. Classifications of Law

- *Substantive law* defines, describes, regulates, and creates rights and duties. *Procedural law* includes rules for enforcing those rights.
- Other classifications include splitting law into federal and state divisions or private and public categories. One of the broadest classification systems divides law into national law and international law.

A. Civil Law and Criminal Law

Civil law regulates relationships between persons and between persons and their governments, and the relief available when their rights are violated. *Criminal law* regulates relationships between individuals and society, and prescribes punishment for proscribed acts.

B. Cyberlaw

Cyberlaw is an informal term that describes the body of case and statutory law dealing specifically with issues raised in the context of the Internet.

VI. How to Find Primary Sources of Law

A brief introduction to case reporting systems and legal citations is included in the text. Also discussed are publications collecting statutes and administrative regulations.

A. Finding Statutory and Administrative Law

Publications collecting statutes and administrative regulations are discussed in the text.

B. Finding Case Law

A brief introduction to case reporting systems and legal citations is also included.

VII. How to Read and Understand Case Law

To assist students in reading and analyzing the court opinions digested in the text, the format is dissected, terms are defined, and a sample case is annotated.

Additional Background—

West's *Federal Reporter*

West Publishing Company publishes federal court decisions unofficially in a variety of publications. West organizes these reports by court level and issues them chronologically. Opinions from the United States Court of Appeals, for example, are reported in **West's *Federal Reporter***. West publishes these decisions with headnotes condensing important legal points in the cases. The headnotes are assigned key numbers that cross-reference the points to similar points in cases reported in other West publications. The following are excerpts from *Ferguson v. Commissioner of Internal Revenue*, as published with headnotes in West's *Federal Reporter*.

Betty Ann FERGUSON, Petitioner-Appellant,

v.
COMMISSIONER OF INTERNAL REVENUE, Respondent-Appellee.

No. 90-4430

Summary Calendar.
United States Court of Appeals,
Fifth Circuit.

Jan. 22, 1991.

Taxpayer filed petition. The United States Tax Court, Korner, J., dismissed for lack of prosecution, and appeal was taken. The Court of Appeals held that court abused its discretion in refusing testimony of taxpayer, who refused, on religious grounds, to swear or affirm.

Reversed and remanded.

1. Constitutional Law 92K84(2)

Protection of free exercise clause extends to all sincere religious beliefs; courts may not evaluate religious truth. U.S.C.A. Const. Amend. 1. *Ferguson v. C.I.R.* 921 F.2d 588, 67 A.F.T.R.2d 91-459, 91-1 USTC P 50,052

2. Witnesses 410K227

Court abused its discretion in refusing testimony of witness who refused, on religious grounds, to swear or affirm, and who instead offered to testify accurately and completely and to be subject to penalties for perjury. U.S.C.A. Const. Amend. 1; Fed.Rules Evid.Rule 603, 28 U.S.C.A. *Ferguson v. C.I.R.* 921 F.2d 588, 67 A.F.T.R.2d 91-459, 91-1 USTC P 50,052

Betty Ann Ferguson, Metairie, La., pro se.

Peter K. Scott, Acting Chief Counsel, I.R.S., Gary R. Allen, David I. Pincus, William S. Rose, Jr., Asst. Attys. Gen., Dept. of Justice, Tax Div., Washington, D.C., for respondent-appellee.

Appeal from a Decision of the United States Tax Court.

Before JOLLY, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:

Betty Ann Ferguson appeals the Tax Court's dismissal of her petition for lack of prosecution after she refused to swear or affirm at a hearing. We find the Tax Court's failure to accommodate her objections inconsistent with both Fed.R.Evid. 603 and the First Amendment and reverse.

I.

This First Amendment case ironically arose out of a hearing in Tax Court. Although the government's brief is replete with references to income, exemptions, and taxable years, the only real issue is Betty Ann Ferguson's refusal to "swear" or "affirm" before testifying at the hearing. Her objection to oaths and

affirmations is rooted in two Biblical passages, Matthew 5:33-37 and James 5:12. * * *

Ms. Ferguson, proceeding pro se, requested that Judge Korner consider the following statement set forth by the Supreme Court of Louisiana in *Staton v. Fought*, 486 So.2d 745 (La.1986), as an alternative to an oath or affirmation:

> I, [Betty Ann Ferguson], do hereby declare that the facts I am about to give are, to the best of my knowledge and belief, accurate, correct, and complete.

Judge Korner abruptly denied her request, commenting that "[a]sking you to affirm that you will give true testimony does not violate any religious conviction that I have ever heard anybody had" and that he did not think affirming "violates any recognizable religious scruple." Because Ms. Ferguson could only introduce the relevant evidence through her own testimony, Judge Korner then dismissed her petition for lack of prosecution. She now appeals to this court.

II.

[1] The right to free exercise of religion, guaranteed by the First Amendment to the Constitution, is one of our most protected constitutional rights. The Supreme Court has stated that "only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion." *Wisconsin v. Yoder*, 406 U.S. 205, 215, 92 S.Ct. 1526, 1533, 32 L.Ed.2d 15 (1972). Accord *Hobbie v. Unemployment Appeals Comm'n of Florida*, 480 U.S. 136, 141, 107 S.Ct. 1046, 1049, 94 L.Ed.2d 190 (1987); and *Sherbert v. Verner*, 374 U.S. 398, 403, 83 S.Ct. 1790, 1793, 10 L.Ed.2d 965 (1963). The protection of the free exercise clause extends to all sincere religious beliefs; courts may not evaluate religious truth. *United States v. Lee*, 455 U.S. 252, 257, 102 S.Ct. 1051, 1055, 71 L.Ed.2d 127 (1982); and *United States v. Ballard*, 322 U.S. 78, 86-87, 64 S.Ct. 882, 886-887, 88 L.Ed. 1148 (1944). Fed.R.Evid. 603, applicable in Tax Court under the Internal Revenue Code, 26 U.S.C. § 7453, requires only that a witness "declare that [she] will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so." As evidenced in the advisory committee notes accompanying Rule 603, Congress clearly intended to minimize any intrusion on the free exercise of religion:

> The rule is designed to afford the flexibility required in dealing with religious adults, atheists, conscientious objectors, mental defectives, and children. Affirmation is simply a solemn undertaking to tell the truth; no special verbal formula is required. Accord Wright and Gold, *Federal Practice and Procedure* § 6044 (West 1990).

The courts that have considered oath and affirmation issues have similarly attempted to accommodate free exercise objections. In *Moore v. United States*, 348 U.S. 966, 75 S.Ct. 530, 99 L.Ed. 753 (1955) (per curiam), for example, the Supreme Court held that a trial judge erred in refusing the testimony of witnesses who would not use the word "solemnly" in their affirmations for religious reasons.

* * * *

[2] The government offers only two justifications for Judge Korner's refusal to consider the *Staton* statement. First, the government contends that the Tax Court was not bound by a Louisiana decision. This argument misses the point entirely; Ms. Ferguson offered *Staton* as an alternative to an oath or affirmation and not as a precedent.

The government also claims that the *Staton* statement is insufficient because it does not acknowledge that the government may prosecute false statements for perjury. The federal perjury statute, 18 U.S.C. §

1621, makes the taking of "an oath" an element of the crime of perjury. *Accord Smith v. United States*, 363 F.2d 143 (5th Cir.1966). However, Ms. Ferguson has expressed her willingness to add a sentence to the *Staton* statement acknowledging that she is subject to penalties for perjury. The government has cited a number of cases invalidating perjury convictions where no oath was given, but none of the cases suggest that Ms. Ferguson's proposal would not suffice as "an oath" for purposes of § 1621. See *Gordon*, 778 F.2d at 1401 n. 3 (statement by defendant that he understands he must accurately state the facts combined with acknowledgment that he is testifying under penalty of perjury would satisfy Fed.R.Civ.P. 43(d)).

The parties' briefs to this court suggest that the disagreement between Ms. Ferguson and Judge Korner might have been nothing more than an unfortunate misunderstanding. The relevant portion of their dialogue was as follows:

> MS. FERGUSON: I have religious objections to taking an oath.
> THE COURT: All right. You may affirm. Then in lieu of taking an oath, you may affirm.
> MS. FERGUSON: Sir, may I present this to you? I do not—
> THE COURT: Just a minute. The Clerk will ask you.
> THE CLERK: You are going to have to stand up and raise your right hand.
> MS. FERGUSON: I do not affirm either. I have with me a certified copy of a case from the Louisiana Supreme Court.
> THE COURT: I don't care about a case from the Louisiana Supreme Court, Ms. Ferguson. You will either swear or you will affirm under penalties of perjury that the testimony you are about to give is true and correct, to the best of your knowledge.
> MS. FERGUSON: In that case, Your Honor, please let the record show that I was willing to go under what has been acceptable by the State of Louisiana Supreme Court, the State versus—
> THE COURT: We are not in the state of Louisiana, Ms. Ferguson. You are in a Federal court and you will do as I have instructed, or you will not testify.
> MS. FERGUSON: Then let the record show that because of my religious objections, I will not be allowed to testify.

Ms. Ferguson contends that Judge Korner insisted that she use either the word "swear" or the word "affirm"; the government suggests instead that Judge Korner only required an affirmation which the government defines as "an alternative that encompasses all remaining forms of truth assertion that would satisfy [Rule 603]." Even Ms. Ferguson's proposed alternative would be an "affirmation" under the government's definition.

If Judge Korner had attempted to accommodate Ms. Ferguson by inquiring into her objections and considering her proposed alternative, the entire matter might have been resolved without an appeal to this court. Instead, however, Judge Korner erred not only in evaluating Ms. Ferguson's religious belief, and concluding that it did not violate any "recognizable religious scruple," but also in conditioning her right to testify and present evidence on what she perceived as a violation of that belief. His error is all the more apparent in light of the fact that Ms. Ferguson was proceeding pro se at the hearing.

We therefore REVERSE the decision of the Tax Court and REMAND this case for further proceedings not inconsistent with this opinion.

ADDITIONAL BACKGROUND—

Corpus Juris Secundum

Because the body of American case law is huge, finding relevant precedents would be nearly impracticable were it not for case digests, legal encyclopedias, and similar publications that classify decisions by subject. Like case digests, legal encyclopedias present topics alphabetically, but encyclopedias provide more detail. The legal encyclopedia **Corpus Juris Secundum** (or C.J.S.) covers the entire field of law. It has been cited or directly quoted more than 50,000 times in federal and state appellate court opinions. The following is an excerpt from C.J.S.—Section 47 of the category "Theaters & Shows" (86 C.J.S. *Theaters & Shows* § 47).

f. Assumption of Risk

A patron assumes the ordinary and natural risks of the character of the premises, devices, and form of amusement of which he has actual or imputed knowledge; but he does not assume the risk of injury from the negligence of the proprietor or third persons.

While it has been said that, strictly speaking, the doctrine of assumed risk is applicable only to the relationship of master and servant,[3] patrons of places of public amusement assume all natural and inherent risks pertaining to the character of the structure,[4] or to the devices located therein,[5] or to the form of amusement,[6] which are open and visible. Patrons of places of public amusement assume such risks as are incident to their going without compulsion to some part of the premises to which patrons are not invited and where they are not expected to be, and which risks

3. Cal.—Potts v. Crafts, 42 P.2d 87, 5 Cal.App.2d 83.

4. Mo.—King v. Ringling, 130 S.W. 482, 145 Mo.App. 285. 62 C.J. p 877 note 62.

Darkened motion picture theater

Ky.—Columbia Amusement Co. v. Rye, 155 S.W.2d 727, 288 Ky. 179.

N.J.—Falk v. Stanley Fabian Corporation of Delaware, 178 A. 740, 115 N.J.Law 141.

Tenn.—Smith v. Crescent Amusement Co., 184 S.W.2d 179, 27 Tenn.App. 632.

5. Cal.—Chardon v. Alameda Park Co., 36 P.2d 136, 1 Cal.App.2d 18.

Fla.—Payne v. City of Clearwater, 19 So.2d 406, 155 Fla. 9.

Mass.—Beaulieu v. Lincoln Rides, Inc., 104 N.E.2d 417, 328 Mass. 427.

Miss.—Blizzard v. Fitzsimmons, 10 So.2d 343, 193 Miss. 484.

Mo.—Toroian v. Parkview Amusement Co., 56 S.W.2d 134, 331 Mo. 700.

Ohio.—Pierce v. Gooding Amusement Co., App., 90 N.E.2d 585.

Tex.—Vance v. Obadal, Civ.App., 256 S.W.2d 139.

62 C.J. p 877 note 63

Particular amusement devices

(1) "Dodge Em" cars.—Connolly v. Palisades Realty & Amusement Co., 168 A. 419, 11 N.J.Misc. 841, affirmed 171 A. 795, 112 N.J.Law 502—Frazier v. Palisades Realty & Amusement Co., 168 A. 419, 11 N.J.Misc. 841, affirmed 171 A. 795, 112 N.J.Law 502—62 C.J. p 877 note 63 [b].

(2) Loop the loop.—Kemp v. Coney Island, Ohio App., 31 N.E.2d 93.

(3) Roller coaster.—Wray v. Fair-ield Amusement Co., 10 A.2d 600, 126 Conn. 221—62 C.J. p 877 note 63 [e].

6. Miss.—Blizzard v. Fitzsimmons, 10 So.2d 343, 193 Miss. 484.

Mo.—Page v. Unterreiner, App.,106 S.W.2d 528.

N.J.—Griffin v. De Geeter, 40 A.2d 579, 132 N.J.Law 381—Thurber v. Skouras Theatres Corporation, 170 A. 863, 112 N.J.Law 385.

N.Y.—Levy v. Cascades Operating Corpora-tion, 32 N.Y.S.2d 341, 263 App.Div. 882 —Saari v. State, 119 N.Y.S.2d 507, 203 Misc. 859—Schmidt v. State, 100 N.Y.S.2d 504, 198 Misc. 802.

Vt.—Dusckiewicz v. Carter, 52 A.2d 788, 115 Vt. 122.

62 C.J. p 877 note 63.

Other statements of rule

(1) A spectator at game assumes risk of such dangers incident to playing of game as are known to him or should be obvious to reasonable and prudent person in exercise of due care under circumstances.

Minn.—Modec v. City of Eveleth, 29 N.W.2d 453, 224 Minn. 556.

Neb.—Klause v. Nebraska State Board of Agriculture, 35 N.W.2d 104, 150 Neb. 466—Tite v. Omaha Coliseum Corporation, 12 N.W.2d 90, 144 Neb. 22.

(2) One participating in a race assumes the risk of injury from natural hazards necessarily incident to, or which inhere in, such a race, under maxim "volenti non fit injuria," which means that to which a person assents is not esteemed in law an injury.—Hotels El Rancho v. Pray, 187 P.2d 568, 64 Nev. 591.

(3) Patrons of a place of amusement assume the risk of ordinary dangers normally attendant thereon and also the risks ensuing from conditions of which they now or of which, in the particular circumstances, they are charged with knowledge, and which inhere therein.—Young v. Ross, 21 A.2d 762, 127 N.J.Law 211.

Liability of proprietor of sports arena

Generally, the proprietor of an establishment where contests of baseball, hockey, etc., are conducted, is not liable for injuries to its patrons.—Zeitz v. Cooperstown Baseball Cen-tennial, 29 N.Y.S.2d 56.

Risks of particular sports or entertainment

(1) Baseball.

Cal.—Quinn v. Recreation Park Ass'n, 46 P.2d 141, 3 Cal.2d 725—Brown v. San Francisco Ball Club, 222 P.2d 19, 99 Cal.App.2d 484—Ratcliff v. San Diego Baseball Club of Pacific Coast League, 81 P.2d 625, 27 Cal.App.2d 733.

Ind.—Emhardt v. Perry Stadium, 46 N.E.2d 704, 113 Ind.App. 197.

La.—Jones v. Alexandria Baseball Ass'n, App., 50 So.2d 93.

Mo.—Hudson v. Kansas City Baseball Club, 164 S.W.2d 318, 349 Mo. 1215—Grimes v. American League Baseball Co., App., 78 S.W.2d

N.Y.—Ingersoll v. Onondaga Hockey Club, 281 N.Y.S. 505, 245 App.Div.137—Jones v. Kane & Roach, 43 N.Y.S.2d 140, 187 Misc. 37—Blackball v. Albany Baseball & Amusement Co., 285 N.Y.S.2d 695, 157 Misc. 801—Zeitz v. Cooperstown Baseball Centennial, 29 N.Y.S.2d 56.

N.C.—Cates v. Cincinnati Exhibition Co., 1 S.E.2d 131, 215 N.C. 64.

Ohio.—Hummel v. Columbus Baseball Club, 49 N.E.2d 773, 71 Ohio App. 321—Ivory v. Cincinnati Baseball Club Co., 24 N.e.2d 837, 62 Ohio App. 514.

Okl.—Hull v. Oklahoma City Baseball Co., 163 P.2d 982, 196 Okl. 40.

Tex.—Williams v. Houston Baseball Ass'n, Civ.App., 154 S.W.2d 874—Keys v. Alamo City Baseball Co., Civ.App., 150 S.W.2d 368.

Utah.—Hamilton v. Salt Lake City Corp., 237 P.2d 841.

62 C.J. p 877 note 63 [a].

(2) Basketball.—Paine v. Young Men's Christian Ass'n, 13 A.2d 820, 91 N.H. 78.

(3) Golf. Mass.—Katz v. Gow, 75 N.E.2d 438, 321 Mass. 666.

N.J.—Young v. Ross, 21 A.2d 762, 127 N.J.Law 211.

(4) Diving.—Hill v. Merrick, 31 P.2d 663, 147 Or. 244.

(5) Hockey.

Minn.—Modec v. City of Eveleth, 29 N.W.2d 453, 224 Minn. 556.

N.Y.—Ingersoll v. Onondaga Hockey Club, 281 N.Y.S.2d 505, 245 App.Div. 137—Hammel v. Madison Square Garden Corporation, 279 N.Y.S. 815, 156 Misc. 311.

(6) Horse racing.

Nev.—Hotels El Rancho v. Pray, 187 P.2d 568, 64 Nev. 591.

N.Y.—Futterer v. Saratoga Ass'n for Improvement of Breed of Horses, 31 N.Y.S.2d 108, 262 App.Div. 675.

(7) Ice skating.

Neb.—McCullough v. Omaha Coliseum Corporation, 12 N.W.2d 639, 144 Neb. 92.

N.D.—Filler v. Stenvick, 56 N.W.2d 798.

Pa.—Oberheim v. Pennsylvania Sports & Enterprises, 55 A.2d 766, 358 Pa. 62.

(8) Square dancing.—Gough v. Wadhams Mills Grange No. 1015, P. of H., 109 N.Y.S.2d 374.

ADDITIONAL BACKGROUND—

United States Code

Until 1926, federal statutes were published in one volume of the Revised Statutes of 1875 and in each subsequent volume of the Statutes at Large. In 1926, these laws were rearranged into fifty subject areas and republished as the **United States Code**. In the United States Code, all federal laws of a public and permanent nature are compiled according to subject. Subjects are assigned titles and title numbers. Within each title, subjects are further subdivided, and each statute is given a section number. The following is the text of Section 1 of Title 15 of the United States Code (15 U.S.C. § 1).

TITLE 15. COMMERCE AND TRADE
CHAPTER 1—MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE

§ 1. Trusts, etc., in restraint of trade illegal; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

(July 2, 1890, c. 647, § 1, 26 Stat. 209; Aug. 17, 1937, c. 690, Title VIII, 50 Stat. 693; July 7, 1955, c. 281, 69 Stat. 282.)

(As amended Dec. 21, 1974, Pub.L. 93-528, § 3, 88 Stat. 1708; Dec. 12, 1975, Pub.L. 94-145, § 2, 89 Stat. 801.)

ADDITIONAL BACKGROUND—

State Codes:

Pennsylvania Consolidated Statutes

State codes may have any of several names—Codes, General Statutes, Revisions, and so on—depending on the preference of the states. Also arranged by subject, some codes indicate subjects by numbers. Others assign names. The following is the text of one of the state statutes whose citations are explained in the textbook—Section 1101 of Title 13 of the **Pennsylvania Consolidated Statutes** (13 Pa. C.S. § 1101).

PURDON'S PENNSYLVANIA CONSOLIDATED STATUTES ANNOTATED
DIVISION 1. GENERAL PROVISIONS
CHAPTER 11. SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF TITLE

§ 1101. Short title of title

This title shall be known and may be cited as the “Uniform Commercial Code.”

1984 Main Volume Credit(s)

1979, Nov. 1, P.L. 255, No. 86, § 1, effective Jan. 1, 1980.

California Commercial Code

The text of another of the state statutes whose citations are explained in the textbook follows—Section 1101 of the **California Commercial Code** (Cal. Com. Code § 1101).

WEST’S ANNOTATED CALIFORNIA CODES
COMMERCIAL CODE
DIVISION 1. GENERAL PROVISIONS
CHAPTER 1. SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE CODE

§ 1101. Short Title

This code shall be known and may be cited as Uniform Commercial Code.

1964 Main Volume Credit(s)

(Stats.1963, c. 819, § 1101.)

ADDITIONAL BACKGROUND—

Code of Federal Regulations

Created by Congress in 1937, the **Code of Federal Regulations** is a set of softcover volumes that contain the regulations of federal agencies currently in effect. Items are selected from those published in the Federal Register and arranged in a scheme of fifty titles, some of which are the same as those organizing the statutes in the United States Code (discussed above). Each title is divided into chapters, parts, and sections. The Code of Federal Regulations is completely revised every year. The following is the text of Section 230.504 of Title 17 of the Code of Federal Regulations (17 C.F.R. § 230.504).

TITLE 17—COMMODITY AND SECURITIES EXCHANGE
Chapter II—Securities and Exchange Commission
Part 230—General Rules and Regulations, Securities Act of 1933
REGULATION B—EXEMPTION RELATING TO FRACTIONAL UNDIVIDED INTERESTS IN OIL OR GAS RIGHTS
Regulation D—Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933

§ 230.504 Exemption for Limited Offerings and Sales of Securities Not Exceeding $1,000,000.

(a) Exemption.

Offers and sales of securities that satisfy the conditions in paragraph (b) of this Section by an issuer that is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act and that is not an investment company shall be exempt from the provisions of section 5 of the Act under section 3(b) of the Act.

(b) Conditions to be met—

(b)(1) General Conditions. To qualify for exemption under this § 230.504, offers and sales must satisfy the terms and conditions of §§ 230.501 and 230.502, except that the provisions of § 230.502(c) and (d) shall not apply to offers and sales of securities under this § 230.504 that are made:

(b)(1)(i) Exclusively in one or more states each of which provides for the registration of the securities and requires the delivery of a disclosure document before sale and that are made in accordance with those state provisions; or

(b)(1)(ii) In one or more states which have no provision for the registration of the securities and the delivery of a disclosure document before sale, if the securities have been registered in at least one state which provides for such registration and delivery before sale, offers and sales are made in the state of registration in accordance with such state provisions, and such document is in fact delivered to all purchasers in the states which have no such procedure before the sale of the securities.

(b)(2) Specific condition—

(b)(2)(i) Limitation on aggregate offering price. The aggregate offering price for an offering of securities under this § 230.504, as defined in § 230.501(c), shall not exceed $1,000,000, less the aggregate offering price for all securities sold within the twelve months before the start of and during the offering of securities under this § 230.504 in reliance on any exemption under section 3(b) of the Act or in violation of section 5(a) of the Act, provided that no more than $500,000 of such aggregate offering price is attributable to offers and sales of securities without registration under a state's securities laws.

Note 1.—The calculation of the aggregate offering price is illustrated as follows:

Example 1. If an issuer sells $500,000 worth of its securities pursuant to state registration on January 1, 1988 under this § 230.504, it would be able to sell an additional $500,000 worth of securities either pursuant to state registration or without state registration during the ensuing twelve-month period, pursuant to this § 230.504.

Example 2. If an issuer sold $900,000 pursuant to state registration on June 1, 1987 under this § 230.504 and an additional $4,100,000 on December 1, 1987 under § 230.505, the issuer could not sell any of its securities under this § 230.504 until December 1, 1988. Until then the issuer must count the December 1, 1987 sale towards the $1,000,000 limit within the preceding twelve months.

Note 2.—If a transaction under this § 230.504 fails to meet the limitation on the aggregate offering price, it does not affect the availability of this § 230.504 for the other transactions considered in applying such limitation. For example, if an issuer sold $1,000,000 worth of its securities pursuant to state registration on January 1, 1988 under this § 230.504 and an additional $500,000 worth on July 1, 1988, this § 230.504 would not be available for the later sale, but would still be applicable to the January 1, 1988 sale.

Note 3.—In addition to the aggregation principles, issuers should be aware of the applicability of the integration principles set forth in § 230.502(a).

(b)(2)(ii) Advice about the limitations on resale. Except where the provision does not apply by virtue of paragraph (b)(1) of this section, the issuer, at a reasonable time prior to the sale of securities, shall advise each purchaser of the limitations on resale in the manner contained in paragraph (d)(2) of § 230.502.

[53 FR 7869, March 10, 1988; 54 FR 11372, March 20, 1989]

AUTHORITY: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; Sec. 308(a)(2), 90 Stat. 57; Secs. 3(b), 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 892, 894, 895, 901; secs. 203(a), 1, 3, 8, 49 Stat. 704, 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 4, 5, 6(d), 78 Stat. 569, 570-574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3, 4, 5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 308(b), 90 Stat. 57; sec. 18, 89 Stat. 155; secs. 202, 203, 204, 91 Stat. 1494, 1498-1500; sec. 20(a), 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 38, 54 Stat. 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 79t(a), 77sss(a), 80a-37.

Source: Sections 230.490 to 230.494 contained in Regulation C, 12 FR 4076, June 24, 1947, unless otherwise noted.

Note.—In §§ 230.400 to 230.499, the numbers to the right of the decimal point correspond with the respective rule number in Regulation C, under the Securities Act of 1933.

ADDITIONAL BACKGROUND—

United States Code Annotated

Published by West Publishing Company, the **United States Code Annotated** contains the complete text of laws enacted by Congress that are included in the United States Code (discussed above), together with case notes (known as annotations) of judicial decisions that interpret and apply specific sections of the statutes. Also included are the text of presidential proclamations and executive orders, specially prepared research aids, historical notes, and library references. The following are excerpts from the materials found at Section 1 of Title 15 of the United States Code Annotated (15 U.S.C.A. § 1), including the historical notes and selected references.

TITLE 15. COMMERCE AND TRADE
CHAPTER 1—MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE

§ 1. Trusts, etc., in restraint of trade illegal; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by

both said punishments, in the discretion of the court.

(July 2, 1890, c. 647, § 1, 26 Stat. 209; Aug. 17, 1937, c. 690, Title VIII, 50 Stat. 693; July 7, 1955, c. 281, 69 Stat. 282.)

(As amended Dec. 21, 1974, Pub.L. 93-528, § 3, 88 Stat. 1708; Dec. 12, 1975, Pub.L. 94-145, § 2, 89 Stat. 801.)

HISTORICAL AND STATUTORY NOTES

Effective Date of 1975 Amendment. Section 4 of Pub.L. 94-145 provided that: "The amendments made by sections 2 and 3 of this Act [to this section and section 45(a) of this title] shall take effect upon the expiration of the ninety-day period which begins on the date of enactment of this Act [Dec. 12, 1975]."

Short Title of 1984 Amendment. Pub.L. 98-544, § 1, Oct. 24, 1984, 98 Stat. 2750, provided: "That this Act [enacting sections 34 to 36 of this title and provisions set out as a note under section 34 of this title] may be cited as the 'Local Government Antitrust Act of 1984'."

Short Title of 1982 Amendment. Pub.L. 97-290, Title IV, § 401, Oct. 8, 1982, 96 Stat. 1246, provided that "This title [enacting section 6a of this title and section 45(a) (3) of this title] may be cited as the 'Foreign Trade Antitrust Improvements Act of 1982'."

Short Title of 1980 Amendment. Pub.L. 96-493, § 1, Dec. 2, 1980, 94 Stat. 2568, provided: "That this Act [enacting section 26a of this title] may be cited as the 'Gasohol Competition Act of 1980'."

Short Title of 1975 Amendment. Section 1 of Pub.L. 94-145 provided: "That this Act [which amended this section and section 45(a) of this title and enacted provisions set out as a note under this section] may be cited as the 'Consumer Goods Pricing Act of 1975'."

Short Title of 1974 Amendment. Section 1 of Pub.L. 93-528 provided: "That this Act [amending this section, and sections 2, 3, 16, 28, and 29 of this title, and section 401 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, and enacting provisions set out as notes under sections 1 and 29 of this title] may be cited as the 'Antitrust Procedures and Penalties Act'."

Short Title. Pub.L. 94-435, Title III, § 305(a), Sept. 30, 1976, 90 Stat. 1397, inserted immediately after the enacting clause of Act July 2, 1890, c. 647, the following: "That this Act [sections 1 to 7 of this title] may be cited as the 'Sherman Act'."

Legislative History. For legislative history and purpose of Act July 7, 1955, see 1955 U.S. Code Cong. and Adm.News, p. 2322.

For legislative history and purpose of Pub.L. 93-528, see 1974 U.S. Code Cong. and Adm. News, p. 6535. See, also, Pub.L. 94-145, 1975 U.S. Code Cong. and Adm. News, p. 1569.

REFERENCES

CROSS REFERENCES

Antitrust laws inapplicable to labor organizations, see § 17 of this title.

Carriers relieved from operation of antitrust laws, see § 5(11) of Title 49, Transportation.

Combinations in restraint of import trade, see § 8 of this title.

Conspiracy to commit offense or to defraud United States, see § 371 of Title 18, Crimes and Criminal Procedure.

Discrimination in price, services or facilities, see § 13 of this title.

Fishing industry, restraints of trade in, see § 522 of this title.

Misdemeanor defined, see § 1 of Title 18, Crimes and Criminal Procedure.

Monopolies prohibited, see § 2 of this title.

Trusts in territories or District of Columbia prohibited, see § 3 of this title.

FEDERAL PRACTICE AND PROCEDURE

1990 Pocket Part Federal Practice and Procedure

Adding new parties, see Wright & Miller: Civil § 1504.

Adequacy of representation of members in class actions instituted under sections 1 to 7 of this title, see Wright, Miller & Kane: Civil 2d § 1765.

Answers to interrogatories with respect to justification for unlawful activity, see Wright & Miller: Civil § 2167.

Applicability of rule relating to summary judgment, see Wright, Miller & Kane: Civil 2d § 2730.

Applicability of standards developed by federal courts under sections 1 to 7 of this title to certain intrastate transactions, see Wright, Miller, Cooper & Gressman: Jurisdiction § 4031.

Authority of district court to award injunctive relief in actions to restrain antitrust violations, see Wright & Miller: Civil § 2942.

Capacity of unincorporated association to sue and be sued, see Wright & Miller: Civil § 1564.

Discretion of court in taxing costs, see Wright, Miller & Kane: Civil 2d § 2668.

Elements of offense to be alleged directly and with certainty, see Wright: Criminal 2d § 126.

Joinder of claims, see Wright & Miller: Civil § 1587.

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CODE OF FEDERAL REGULATIONS

1973 Main Volume Code of Federal Regulations

Advisory opinions and rulings of particular trade practices, see 16 CFR 15.1 et seq.

Common sales agency, see 16 CFR 15.46.

Compliance with state milk marketing orders, see 16 CFR 15.154.

Guides and trade practice rules for particular industries, see 16 CFR subd. B, parts 17 to 254.

LAW REVIEW COMMENTARIES

Abolishing the act of state doctrine. Michael J. Bazyler, 134 U.Pa.L.Rev. 325 (1986).

Affecting commerce test: The aftermath of McLain. Richard A. Mann, 24

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ANNOTATIONS

1. Common law

Congress did not intend text of sections 1 to 7 of this title to delineate their full meaning or their application in concrete situations, but, rather, Congress expected courts to give shape to their broad mandate by drawing on common-law tradition. National Society of Professional Engineers v. U.S., U.S.Dist.Col.1978, 98 S.Ct. 1355, 435 U.S. 679, 55 L.Ed.2d 637.

This section has a broader application to price fixing agreements than the common law prohibitions or sanctions. U.S. v. Socony-Vacuum Oil Co., Wis.1940, 60 S.Ct. 811, 310 U.S. 150, 84 L.Ed. 1129, rehearing denied 60 S.Ct. 1091, 310 U.S. 658, 84 L.Ed. 1421.

Effect of §§ 1 to 7 of this title was to make contracts in restraint of trade, void at common law, unlawful in positive sense and created civil action for damages in favor of injured party. Denison Mattress Factory v. Spring-Air Co., C.A.Tex.1962, 308 F.2d 403.

Combinations in restraint of trade or tending to create or maintain monopoly gave rise to actions at common law. Rogers v. Douglas Tobacco Bd. of Trade, Inc., C.A.Ga.1957, 244 F.2d 471.

Federal statutory law on monopolies did not supplant common law but incorporated it. Mans v. Sunray DX Oil Co., D.C.Okl.1971, 352 F.Supp. 1095.

Common-law principle that manufacturer can deal with one retailer in a community or area and refuse to sell to any other has not been modified by §§ 1 to 7 of this title or any other act of Congress. U.S. v. Arnold, Schwinn & Co., D.C.Ill.1965, 237 F.Supp. 323, reversed on other grounds 87 S.Ct. 1856, 388 U.S. 365, 18 L.Ed.2d 1249, on remand 291 F.Supp. 564, 567.

This section is but an exposition of common law doctrines in restraint of trade and is to be interpreted in the light of common law. U.S. v. Greater Kansas City Chapter Nat. Elec. Contractors Ass'n, D.C.Mo.1949, 82 F.Supp. 147.

CASE SYNOPSIS—

A Sample Case:
Rosa and Raymond Parks Institute for Self Development v. Target Corp.

In December 1955, on a bus in Montgomery, Alabama, Rosa Parks refused to give up her seat to a white man in violation of the city's segregation law. This act, which sparked the modern civil rights movement, is featured on mementoes offered for sale by Target Corp. The Rosa and Raymond Parks Institute for Self Development owns Parks's name and likeness. The Institute filed a suit in a federal district court against Target, alleging misappropriation in violation of the Institute's right of publicity. The court dismissed the complaint. The Institute appealed.

The U.S. Court of Appeals for the Eleventh Circuit affirmed the dismissal. Target's items are protected by Michigan's qualified privilege protecting matters of public interest. The state's common-law right of publicity prohibits the commercial use of a person's name or likeness without his or her consent. But this right "must yield to the qualified privilege to communicate on matters of public interest" such as Parks and her role in the modern Civil Rights Movement.

.....

Notes and Questions

What is "the public interest"? How does that meaning apply to the* Rosa *case? Public interest has two meanings that could fit into the theoretical underpinnings of the *Rosa* case. The first definition is common benefit, or the general benefit of the public. A law, for example, may be for, or contrary to, the public interest, in this meaning.

The second definition relates to the level of interest in a matter. Something in the public interest would be information about a topic that is subject to a high level of general interest shown by the public toward the issue. For example, the level of interest in the earnings of corporate officers, particularly chief executive officers, is generally high, making information about the topic in the public interest.

In the *Rosa* case, both of these definitions apply. Dissemination of information about the modern Civil Rights movement and Rosa Parks's role accrues to the public interest—the public's benefit—in terms of history and as an example of what can be accomplished through dedicated effort. And the level of interest on the part of the public in Parks and the modern Civil Rights movement tends to be high.

TEACHING SUGGESTIONS

1. Emphasize that the law is not simple—there are no simple solutions to complex problems. Legal principles are presented in this course as "black letter law"—that is, in the form of basic principles generally accepted by the courts or expressed in statutes. In fact, the law is not so concrete and static. One of the pur-

poses of this course is to acquaint students with legal problems and issues that occur in society in general and in business in particular. The limits of time and space do not allow all of the principles to be presented against the background of their development and the reasoning in their application. By the end of the course, students should be able to recognize legal problems ("spot the issues") when they arise. In the real world, this may be enough to seek professional legal assistance. In this course, students should also be able to recognize the competing interests involved in an issue and reason through opposing points of view to a decision.

2. Point out that the law assumes everyone knows it, or, as it's often phrased, "Ignorance of the law is no excuse." Of course, the volume and expanding proliferation of statutes, rules, and court decisions is beyond the ability of anyone to know it all. But pointing out the law's presumption might encourage students to study. Also, knowing the law allows business people to make better business decisions.

3. As Oliver Wendell Holmes noted, "The life of the law has not been logic"—that is, the law does not respond to an internal logic. It responds to social change. Emphasize that laws (and legal systems) are man-made, that they can, and do, change over time as society changes. ***To what specific social forces does law respond? Are the changes always improvements?***

4. One method of introducing the subject matter of each class is to give students a hypothetical at the beginning of the class. The hypothetical should illustrate the competing interests involved in some part of the law in the assigned reading. Students should be asked to make a decision about the case and to explain the reasons behind their decision. Once the law has been discussed, the same hypothetical can be considered from an ethical perspective.

5. You might want to remind your students that the facts in a case should be accepted as given. For example, under some circumstances, an oral contract may be enforceable. If there is a statement in a case about the existence of oral contract, it should be accepted that there was an oral contract. Arguing with the statement ("How could you prove that there was an *oral* contract?" for instance) will only undercut their learning. Once they have learned the principle for which a case is presented, then they can ask, "What if the facts were different?"

Cyberlaw Link

Ask your students, at this early stage in their study of business law, what they feel are the chief legal issues in developing a Web site or doing business online. ***What are the legal risks involved in transacting business over the Internet?*** As their knowledge of the law increases over the next few weeks, this question can be reconsidered.

DISCUSSION QUESTIONS

1. ***If justice is defined as the fair, impartial consideration of opposing interests, are law and justice the same thing?*** No. There can be law without justice—as happened in Nazi-occupied Europe, for example. There cannot be justice without law.

2. ***Which of the schools of legal thought matches the U.S. system?*** None of the approaches mentioned in these sections is an exact model of the American legal system. They represent frameworks that can be used in evaluating the moral and ethical considerations that are an integral part of the law.

3. ***What is the common law?*** Students may most usefully understand common law to be case law—that is, the body of law derived from judicial decisions. The body of common law originated in England. The term common law is sometimes used to refer to the entire common law system to distinguish it from the civil law system.

4. ***What is the supreme law of the land?*** The federal constitution is the supreme law of the land. ***What are statutes?*** Laws enacted by Congress or a state legislative body. ***What are ordinances?*** Laws enacted by local legislative bodies. ***What are administrative rules?*** Laws issued by administrative agencies under the authority given to them in statutes.

5. ***What is the Uniform Commercial Code?*** A uniform law drafted by the National Conference of Commissioners on Uniform State Laws and the American Law Institute, governing commercial transactions (sales of goods, commercial paper, bank deposits and collections, letters of credit, bulk transfers, warehouse receipts, bills of lading, investment securities, and secured transactions). Uniform laws are often adopted in whole or in substantial part by the states. The UCC has been adopted by all states (except Louisiana which has not adopted Article 2).

6. ***Discuss the differences within the classification of law as civil law and criminal law.*** Civil law concerns rights and duties of individuals between themselves; criminal law concerns offenses against society as a whole. (Civil law is a term that is also used to refer to a legal system based on a code rather than on case law.)

7. ***Discuss the differences between remedies at law and in equity.*** Remedies at law were once limited to payments of money or property (including land) as damages. Remedies in equity were available only when there was no adequate remedy at law. Today, in most states, either or both may be granted in the same action. Remedies in equity are still discretionary, guided by equitable principles and maxims. Remedies at law still include payments of money or property as damages. Today, the major practical difference between actions at law and actions in equity is the right to demand a jury trial in an action at law.

8. ***Identify and describe remedies available in equity.*** Three are discussed briefly in the text Specific performance is available only when a dispute involves a contract. The court may order a party to perform what was promised. An injunction orders a person to do or refrain from doing a particular act. Rescission undoes an agreement, and the parties are returned to the positions they were in before the agreement.

9. ***What is the primary function of law?*** The primary function of law is to simultaneously maintain stability and permit change. The law does this by providing for dispute resolution, the preservation of political, economic, and social institutions, and the protection of property.

10. ***What is* stare decisis*? Why is it important?*** *Stare decisis* is a doctrine that prescribes following earlier judicial decisions in deciding a current case if the facts and questions are similar. Courts attempt to be consistent with their own prior decisions and with the decisions of courts superior to them. *Stare decisis* is important because part of the function of law is to maintain stability. If the application of the law was unpredictable, there would be no consistent rules to follow and no stability.

ACTIVITY AND RESEARCH ASSIGNMENTS

1. Have students research the laws of other common law jurisdictions (England, India, Canada), other legal systems (civil law systems, contemporary China, Moslem nations), and ancient civilizations (the Hebrews, the Babylonians, the Romans), and compare the laws to those of the United States. In looking at other legal systems, have students consider how international law might develop, given the differences in legal systems, laws, traditions, and customs.

2. Assign specific cases and statutes for students to find. If legal materials are not easily available, assign a list of citations for students to decipher.

3. Ask students to read newspapers and magazines, listen to radio news, watch television news, and surf the World Wide Web for developments in the law—new laws passed by Congress or signed by the president, laws interpreted by the courts, proposals for changes in the law. The omnipresent effect of law on society should be easy to see.

EXPLANATIONS OF SELECTED FOOTNOTES IN THE TEXT

Footnote 4: In ***Brown v. Board of Education of Topeka***, the United States Supreme Court unanimously held that the separate but equal concept had no place in education. The case involved four consolidated cases focusing on the permissibility of local governments conducting school systems that segregated students by race. In each case blacks sought admission to public schools on a nonsegregated basis, and in each case the lower court based its decision on the separate but equal doctrine. The Court interpreted the principles of the U.S> Constitution's Fourteenth Amendment as they should apply to modern society and looked at the effects of segregation. The justices found that segregation of children in public schools solely on the basis of race deprives the children of the minority group of equal educational opportunities. To separate black children "from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."

Footnote 5: In ***Plessy v. Ferguson***, the United States Supreme Court adopted the doctrine of separate but equal. A Louisiana state statute required that all railway companies provide separate but equal accommodations for black and white passengers, imposing criminal sanctions for violations. Plessy, who alleged his ancestry was seven-eighths Caucasian and one-eighth African, attempted to use the coach for whites. The Court said that the U.S. Constitution's Thirteenth and Fourteenth Amendments (the Civil War Amendments) "could not have been intended to abolish distinctions based on color, or to enforce social . . . equality, or a commingling of the two races upon terms unsatisfactory to either." According to the Court, laws requiring racial separation did not necessarily imply the inferiority of either race. In a lone dissent, Justice Harlan expressed the opinion that the Civil War Amendments had removed "the race line from our governmental systems," and the Constitution was thus "color-blind."

BUSINESS ACTIVITIES AND THE LEGAL ENVIRONMENT

- Basic knowledge of how government regulations and laws affect business activities is beneficial—if not essential.

- Business people must also develop critical thinking and legal reasoning skills in order to evaluate how various laws apply to a given situation and to determine the best course of action.

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

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

- **Ethics:** The moral principles and values that govern what constitutes right or wrong behavior.

    - Business decision makers need to consider whether a decision is both legal *and* ethical.

SOURCES OF AMERICAN LAW (1 of 3)

- *Primary sources of law:* Sources that establish the law such as constitutions, statutes, and regulations.

- *Secondary sources of law:* Sources that summarize and clarify the primary sources of law such as treatises and legal encyclopedias.

- U.S. law primarily takes the form of

  (1) **constitutions** that set forth the fundamental rights of the people living within the United States or a given state, describe and empower the various branches of government, and prescribe limitations on that power;

  - The U.S. Constitution is the supreme law of the land and the basis of all law in the United States. If challenged, any law that violates the Constitution will be declared unconstitutional and will not be enforced, regardless of its source.

SOURCES OF AMERICAN LAW (2 of 3)

(2) **statutes** that are passed by Congress and state legislatures and **ordinances** passed by local governing bodies;

- A given state statute may be based on a **uniform law** (*e.g.*, the Uniform Commercial Code) or on a **model act** (*e.g.*, the Model Business Corporations Act). However, each state is free to depart from the uniform law or model act as it sees fit.

(3) **regulations and rulings** issued by federal, state, and local **administrative agencies** (entities that are established to perform a specific function); and

- **Executive agencies** such as the U.S. Food and Drug Administration are contained within cabinet departments and are subject to the authority of the president, who has the power to appoint and remove their officers.

- **Independent regulatory agencies** such as the Federal Trade Commission and the Securities and Exchange Commission have officers that serve for fixed terms and cannot be removed without just cause.

SOURCES OF AMERICAN LAW (3 of 3)

(4) **case law and common law doctrines.**

- **Case law:** The doctrines and principles announced in cases that govern all areas not covered by statutory or administrative law.

- **Common law:** The body of law developed from custom or judicial decisions in English and U.S. courts that is not attributable to a legislature.

HIERARCHY AMONG PRIMARY SOURCES OF AMERICAN LAW

- Laws emanating from the various primary sources of American law are enforced according to the following hierarchy:

  (1) The **United States Constitution** takes precedence over

  (2) **federal statutory law**, which takes precedence over

  (3) a **state constitution**, which takes precedence over

  (4) **state statutory law**, which takes precedence over

  (5) a **local ordinance**, which takes precedence over

  (6) **administrative regulations and rulings**, which take precedence over

  (7) **common law**.

THE COMMON LAW TRADITION (1 of 2)

- **Common law:** The body of law developed from custom or judicial decisions in English and U.S. courts that is not attributable to a legislature.

- From their origin in eleventh-century England, common-law courts were typically classified as either "courts of law" or "courts of equity."

  - **Courts of law** could grant very limited kinds of **remedies** (the relief given to an innocent party to enforce a right or compensate for the violation of a right). They had the power to award one or more of the following items as compensation: land, items of value, and money.

  - By contrast, **courts of equity** had the power to award any kind of non-monetary relief, such as ordering a person to do something (a.k.a. "specific performance") or to cease doing something (a.k.a. "injunction").

- The courts of law and equity have ***merged*** in most of the United States. Nonetheless, U.S. courts still recognize **legal remedies** and **equitable remedies**.

- A party can request both legal and equitable remedies in the same action, and the trial court judge may grant either or both forms of relief.

THE COMMON LAW TRADITION (2 of 2)

- **Equitable Maxims:** A party's right to receive equitable relief and a court's power to grant it depends upon the following:
  - Whoever seeks equity must do equity *(treat others fairly)*;
  - Where there is equal equity, the law must prevail *(the law will determine the outcome)*;
  - One seeking the aid of an equity court must come to the court with clean hands *(have acted fairly and honestly)*;
  - Equity will not suffer a wrong to be without a remedy *(equitable relief will be awarded when there is no legal remedy)*;
  - Equity regards substance rather than form *(fairness and justice are more important than legal technicalities)*; and
  - Equity aids the vigilant, not those who rest on their rights *(neglect their rights for an unreasonable period of time)*.

STARE DECISIS AND THE COMMON LAW TRADITION (1 of 2)

- ***Stare Decisis*:** A common law doctrine under which judges are obligated to follow the **precedents** established in prior decisions. It helps courts be more efficient and makes the law more stable and predictable.
  - **Precedent:** A court decision that furnishes an example or authority for deciding subsequent cases involving identical or similar legal principles and facts.
- *Stare decisis* has two aspects:
  - A court should not overturn its own precedents unless there is a compelling reason to do so.
  - Decisions made by a higher court are binding on lower courts.
- **Binding Authority:** Any source of law a court must follow when deciding a case, including constitutions, statutes, and regulations that govern the issue being decided.
  - A *controlling precedent* is a type of binding authority that requires a court to follow prior court decisions in its jurisdiction.

STARE DECISIS AND THE COMMON LAW TRADITION (2 of 2)

- **Persuasive Authority:** Any primary or secondary source of law that a court may consult for guidance but that is not binding on the court.
  - Sources may include precedents from other jurisdictions; legal principles and policies underlying previous court decisions or existing statutes; issues of fairness, social values and customs, and *public policy* (governmental policy based on widely held societal values); and unpublished opinions (those not intended for publication in a printed legal reporter).
- Pervasive authority is used in *cases of first impression*, or those that have no precedent.
  - A prior judicial decision is a *binding* precedent only when the subsequent court is applying the same law as the prior court; otherwise, the prior decision is only *persuasive* authority.
- **Departing from Precedent:** The highest court in a jurisdiction can depart from precedent if it decides that the precedent is incorrect, or that technological or social changes have rendered the precedent inapplicable.

LEGAL REASONING

- **Legal Reasoning:** The process of reasoning by which a judge harmonizes his or her opinion with the judicial decisions in previous cases.

- **IRAC method:** The legal reasoning process that is used to decide cases regardless of their length and complexity. IRAC is an acronym derived from the first letters of the words *Issue*, *Rule*, *Application*, and *Conclusion*. The following questions are used to apply this method:

  - 1. **Issue**—What are the key facts and issues?

  - 2. **Rule**—What rule of law applies to the case?

  - 3. **Application**—How does the rule of law apply to the particular facts and circumstances of this case?

  - 4. **Conclusion**—What conclusion should be drawn?

- There is no one "right" answer to most legal questions. Good arguments can usually be made to support either side of a legal controversy.

THE COMMON LAW TODAY

- The common law governs all areas not covered by statutory law or administrative laws.
- Courts interpret statutes and regulations.
- Judges interpret and apply the law but do not make laws**.**
- ***Restatements of the Law*:** The American Law Institute (ALI) publishes compilations called *Restatements of the Law* that generally summarize the common law rules followed by most states.
  - There are *Restatements* in the areas of contracts, torts, agency, trusts, property, restitution, security, judgments, and conflict of laws.
  - The Restatements are *secondary sources of law* and are an important source of legal analysis and opinion. Many *Restatements* are now in their second, third, or fourth editions.

SCHOOLS OF LEGAL THOUGHT (1 of 2)

- **Jurisprudence:** The study of law including the different schools of legal philosophy and how each can affect judicial decision making.

  - **Natural Law Theory** states that a higher, or universal, law exists that applies to all human beings and that written laws should reflect the principles inherent in natural law. If they do not, then they lose their legitimacy and do not need to be obeyed.

  - **Legal Positivism** holds that there is no law higher than the laws created by a national government and that laws must be obeyed to prevent anarchy even if they are unjust. Legal positivism is the basis for *positive*—or *national—law*.

  - The **Historical School** emphasizes the evolutionary process of law by concentrating on the origin and history of the legal system. It looks to the past to determine what the principles of contemporary law should be.

SCHOOLS OF LEGAL THOUGHT (2 of 2)

- **Legal Realism** is based on the idea that law is just one of many institutions in society and that it is shaped by social forces and needs. Because of these factors, judges should take economic and social realities into account when deciding cases.

- The **Sociological School** views law as a tool for promoting social justice.

CLASSIFICATIONS OF LAW

- **Substantive vs. Procedural Law**
  - **Substantive law** consists of all laws that define, describe, regulate, and create legal rights and obligations.
  - **Procedural law** consists of all laws that outline the methods of enforcing the rights established by substantive law.
- **Civil vs. Criminal Law**
  - **Civil law** spells out the rights and duties that exist between persons and between persons and their governments, as well as the relief available when a person's rights are violated.
  - **Criminal law** is concerned with wrongs committed *against the public as a whole*.
    - Criminal acts are defined and prohibited by local, state, or federal government statutes.
- **Cyberlaw:** An informal term that refers to all laws governing electronic communications and transactions—particularly those conducted via the internet.

FINDING PRIMARY SOURCES OF LAW (1 of 4)

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

- **Statutory Law**

  - Shortly after a law is passed either by Congress or by a state legislature, it is *uncodified* and reported in the form in which it passed.

  - Uncodified statutes passed by Congress are reported in *United States Statutes at Large*. Uncodified state statutes are collected in similar state publications.

  - Most laws are referenced by their *codified* form—or the form in which they appear in the federal and state codes—and are compiled by subject.

  - Codified statutes passed by Congress are reported in the *United States Code*, which has a number of "Titles," roughly corresponding to major subject matter areas (*e.g.*, the Internal Revenue Code).

  - Codified statutes passed by a state legislature are typically reported by subject in that state's code (*e.g.*, *California Commercial Code*).

FINDING PRIMARY SOURCES OF LAW (2 of 4)

- **Federal Administrative Law**
  - Rules and regulations adopted by federal agencies appear first in the *Federal Register*, which is published daily.
  - These are eventually incorporated into the *Code of Federal Regulations* (C.F.R.), which is divided into titles just like the U.S.C.
- **Case Law**
  - There are two types of courts in the United States, federal courts and state courts. Both systems consist of several levels, or tiers, of courts.
  - *Trial courts* are those in which evidence is presented and testimony is given. These courts are on the bottom tier.
  - Decisions from a trial court can be appealed to a higher court, which is typically an *appellate court* (intermediate court of appeals).
  - Appellate court decisions may be appealed to an even higher court, such as a state supreme court or the U.S. Supreme Court.

FINDING PRIMARY SOURCES OF LAW (3 of 4)

- **State Court Decisions**
  - Decisions from state *trial* courts are typically filed in the office of the clerk of the court and are available for public inspection.
  - Written decisions of the *appellate*, or reviewing, courts, are published and distributed in print and online.
    - **Official Reporters:** The reported appellate decisions are published in volumes called *reports* or *reporters*, which are numbered consecutively and published by each state.
    - **Unofficial Reporters:** Unofficial reports are published by nongovernment entities.
    - **Regional Reporters:** State court opinions appear in regional units of the West's National Reporter System, published by Thomson Reuters.
      - Many states use the National Reporter System instead of their own state reporters because it reports cases more quickly and distributes them more widely.

FINDING PRIMARY SOURCES OF LAW (4 of 4)

Federal Court Decisions

- Federal district (trial) court decisions are published unofficially in the *Federal Supplement* ("F. Supp." or "F. Supp. 2d").

- Opinions from the circuit courts of appeals (reviewing courts) are reported unofficially in the *Federal Reporter* (F., F.2d, or F.3d).

- The ***Bankruptcy Reporter*** ("Bankr" or "B.R.") reports bankruptcy decisions from all federal courts.

- **U.S. Supreme Court:** All opinions of the U.S. Supreme Court are published in *United States Reports* ("U.S.") by the federal government. Unofficial reports of Supreme Court decisions can be found in the *Supreme Court Reporter* ("S. Ct.") and the *United States Reports: Lawyers Edition* ("L. Ed." & "L. Ed. 2d").

- **Unpublished Opinions**: Many court opinions that are not yet published or that are not intended for publication are accessible through Thomson Reuters Westlaw®, an online legal database. Federal appellate court decisions that are designated as unpublished may appear in the *Federal Appendix* (Fed. Appx.) of the National Reporter System.

CASE TERMINOLOGY (1 of 2)

- **Plaintiff/Petitioner:** The party who initiates a lawsuit.
- **Defendant/Respondent:** The party against whom the lawsuit is brought.
- **Appellant/Petitioner:** The party who takes an appeal from one court to another.
- **Appellee/Respondent:** The party against whom an appeal is taken.
- **Damages:** A monetary award sought as a remedy for a breach of contract or a tortious act.
- **Statute of limitations:** A federal or state statute setting the maximum time period during which a certain action can be brought or certain rights enforced.

CASE TERMINOLOGY (2 of 2)

- **Judge/Justice:** The terms *judge* and *justice* are usually synonymous and represent two designations given to judges in various courts.

- **Opinion:** The court's reasons for its decision, the rules of law that apply, and the judgment.

  - **Unanimous Opinion:** An opinion that represents the view of all the judges who heard a case.

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

  - **Concurring Opinion:** A court opinion by one or more judges who agree with the majority opinion but not the legal reasoning behind the opinion.

  - **Dissenting Opinion:** An opinion by one or more judges who disagree with the majority's opinion.

  - **Plurality Opinion:** An opinion that has the support of the largest number of judges, but less than a majority of them.

  - ***Per Curiam* Opinion:** A unanimous opinion that does not indicate which judge wrote it.