

NINTH EDITION


# LEGAL ENVIRONMENT OF BUSINESS

HENRY CHEESEMAN



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# LEGAL ENVIRONMENT OF BUSINESS

NINTH EDITION

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## Dedication



*To my wife, Jin Du, and to our new twins*

*Ziva and Xavier*

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# PREFACE

## New to the Ninth Edition

This ninth edition of *Legal Environment of Business* is a significant revision of Professor Cheeseman's legal environment textbook that includes many new cases and features.

## New U.S. Supreme Court Cases

Seven new U.S. Supreme Court cases, including:

- *Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.* (Title VII applies to prevent religious employment discrimination against a Muslim female job applicant who was not hired because she wore a head scarf, which would have violated the clothing store's policy against sales personnel wearing head caps.)
- *Salman v. United States* (In a situation where an investment banker who gave insider trading tips of impending mergers to his brother who traded on the information and in turn tipped another person who also traded on the information, the last tippee can be held liable for illegal tippee trading even though the tipper did not personally receive money or property from the last tippee.)
- *OBB Personenverkehr AG v. Sachs* (A U.S. citizen who purchased a rail pass from an internet seller in Massachusetts to use in Europe and was seriously injured when she fell at a train station in Innsbruck, Austria, is barred from suing the Austrian railroad in U.S. district court based on sovereign immunity.)
- *Michigan v. Environmental Protection Agency* (The EPA acted unreasonably when it did not consider cost when it ordered power plants to spend \$9 billion per year to reduce hazardous air pollutants that would yield benefits of reduced air pollution by only \$6 million per year.)
- *Obergefell v. Hodges* (The U.S. Supreme Court held that same-sex couples may exercise the fundamental right to marry and held that state laws that did not permit or recognize same-sex marriages violated the Due Process and Equal Protection clauses to the U.S. Constitution.)
- *Tyson Foods, Inc. v. Bouaphakeo* (Class certified to bring a class action lawsuit against an employer to recover overtime pay.)
- *Goodyear Tire & Rubber Company v. Haeger* (Calculation of an award of lawyer's fees to a plaintiff as a sanction against a defendant for not disclosing evidence.)



### CASE 5.2 U.S. SUPREME COURT CASE *Due Process and Equal Protection Clauses*

#### Obergefell v. Hodges

135 S.Ct. 2584, 2015 U.S. Lexis 4250 (2015)  
Supreme Court of the United States

"Petitioners ask for equal dignity in the eyes of the law. The Constitution grants them that right."

—Kennedy, Justice

#### Facts

Michigan, Kentucky, Ohio, and Tennessee define marriage as a union between one man and one woman. State officials enforced these laws and refused to marry same-sex couples. Ohio, Tennessee, and

*due process of law.*" This analysis compels the conclusion that same-sex couples may exercise the right to marry. The right to marry thus dignifies couples who wish to define themselves by their commitment to each other. Same-sex couples have the same right as opposite-sex couples to enjoy intimate association.

*The right of same-sex couples to marry that is part of the liberty promised by the Four-*



### CASE 19.3 U.S. SUPREME COURT CASE *Religious Accommodation*

#### Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.

135 S.Ct. 2028, 2015 U.S. Lexis 3718 (2015)  
Supreme Court of the United States

"Title VII requires otherwise-neutral policies to give way to the need for an accommodation."

—Scalia, Justice

#### Facts

Abercrombie & Fitch Stores, Inc. operates clothing stores. Consistent with the image Abercrombie seeks to project, the company imposes a Look Policy that governs its employees' dress. The Look Policy prohib-

#### Language of the U.S. Supreme Court

*Abercrombie's primary argument is that an applicant cannot show disparate treatment without first showing that an employer has actual knowledge of the applicant's need for an accommodation. We disagree. An employer who acts with the motive of avoiding accommodation may violate Title VII even if he has no more than an unsub-*

## New State and Federal Court Cases

Twenty new state and federal court cases, including:

- *Carter’s of New Bedford, Inc. v. Nike, Inc.* (A forum-selection clause was enforced that required a Massachusetts resident to bring a lawsuit against Nike in Oregon.)
- *DeCormier v. Harley-Davidson Motor Company Group, Inc.* (An exculpatory clause signed by a rider prior to participating at a Harley-Davidson motorcycle course was enforceable to prevent recovery of damages for injuries suffered by the rider in an accident.)
- *Federal Trade Commission v. Bronson Partners, LLC* (Several companies and their owners were found to have engaged in deceptive advertising for making miraculous and unverifiable weight loss claims about their products.)
- *Geshke v. Crocs, Inc.* (Crocs footwear does not present a heightened risk of danger to wearers riding escalators, so no breach of the implied warranty of merchantability occurred when a person wearing the footwear was injured while using an escalator.)
- *Kolodziej v. Mason* (A lawyer who, during an NBC interview, stated a \$1 million challenge to anyone who could prove his theory of a case he was involved in was wrong, made the challenge in jest and it did not constitute an offer.)



### CASE 20.5 FEDERAL COURT CASE *General Duty Standard*

#### SeaWorld of Florida, LLC v. Perez, Secretary, United States Department of Labor

748 F.3d 1202, 2014 U.S. App. Lexis 6660 (2014)  
United States Court of Appeals for the District of Columbia

“The remedy imposed for SeaWorld’s violations does not change the essential nature of its business.”  
—Rogers, Circuit Judge

whales unless they are protected by physical barriers or decking systems, and imposed a \$12,000 fine. SeaWorld petitioned for review.

#### Facts

SeaWorld of Florida, LLC, operates a theme park in Orlando, Florida, that is designed to entertain and educate paying customers by displaying and studying marine animals. Dawn Brancheau, a 15-year veteran trainer at SeaWorld, was interacting with Tilikum, a killer whale, during a performance before an audience in a pool at Sea-

#### Issue

Did SeaWorld violate the general duty clause?

#### Language of the Court

*The remedy imposed for SeaWorld’s violations does not change the essential nature of its business. There will still be human interactions and*



### CASE 9.5 STATE COURT CASE *Exculpatory Agreement*

#### DeCormier v. Harley-Davidson Motor Company Group, Inc.

446 S.W.3d 668, 2014 Mo. Lexis 215 (2014)  
Supreme Court of Missouri

“While exculpatory agreements will be strictly construed, this court will enforce exculpatory agreements to protect a party from liability for their own negligence.”  
—Breckenridge, Judge

instructors should not have directed her to perform motorcycle exercises at the time of her accident. Harley-Davidson and Gateway filed a motion for summary judgment, alleging that the exculpatory clause signed by DeCormier before participating in the course released them from liability. The circuit court granted summary judgment in favor of Harley-Davidson and Gateway. DeCormier appealed the decision.

#### Facts

Cynthia DeCormier participated in the Rider’s Edge New Riders Course, an instructional course for new motorcycle riders sponsored by Harley-Davidson Motor Company Group, Inc. and conducted by St. Louis Motorcycle, Inc. d/b/a/ Gateway Harley-

#### Issue

Is the exculpatory clause signed by plaintiff DeCormier enforceable?

- *McKee v. Isle of Capri Casinos, Inc.* (A patron playing a slot machine at a casino won \$1.85; even though the machine malfunctioned and the screen showed \$41,797,550, the casino’s gambling contract, which stated that a “malfunction voids all pays,” was enforced.)
- *SeaWorld of Florida, LLC v. Perez, Secretary, United States Department of Labor* (SeaWorld was held to have violated the general duty clause of the Occupation Safety and Health Act when a killer whale caused the death of a trainer during a water performance.)
- *United States v. Apple, Inc.* (Apple, which orchestrated a conspiracy among five major publishing companies to enter a price-fixing agreement to raise the retail price of digital books sold on Apple’s iBookstore engaged in a *per se* price-fixing in violation of antitrust law.)



## Ethics

### Nondisclosure of Evidence by Wal-Mart

“Rather, any prejudice that the jury may have harbored was due to Wal-Mart’s initial refusal to produce evidence of or admit the evidence of the grease spill.”  
—Rice, Justice

Holly Averyt, a commercial truck driver, slipped in grease while making a delivery to Wal-Mart store number 980 in Greeley, Colorado. Averyt ruptured a disc in her spine and injured her shoulder and neck. These injuries left her unable to perform many daily functions. Averyt sued Wal-Mart Stores, Inc., alleging claims of negligence and premises liability. Averyt’s attorney sought evidence from Wal-Mart documenting the grease spill, but Wal-Mart denied the existence of the grease spill and did not turn over documents to Averyt. At trial, Averyt’s

spill and disclosed documents that confirmed the existence of the spill, including documents from three companies that were involved in cleaning up the spill. Wal-Mart ceased to deny the existence of the grease spill but instead asserted that it had exercised reasonable care to clean up the spill. The jury found in Averyt’s favor and the court awarded her \$11 million in damages. On appeal, the Colorado Supreme Court upheld Wal-Mart’s liability and the award of damages. The court stated, “Any prejudice that the jury may have harbored was due to Wal-Mart’s initial refusal to produce evidence of or admit the evidence of the grease spill. We do not find that the jury’s award was the result of unfair prejudice.” *Averyt v. Wal-Mart Stores, Inc.*, 265 P3d 456, 2011 Colo. Lexis 857 (Supreme Court of Colorado, 2011)

## New Special Features on Critical Legal Thinking, Ethics, and Information Technology

Twenty new special features, including:

- Ethics: *Nondisclosure of Evidence by Wal-Mart*
- Information Technology: *“Google” Trademark is Not a Generic Name*



- Critical Legal Thinking: *Volkswagen Emissions Scandal*
- Information Technology: *Initial Coin Offering (ICO)*
- Critical Legal Thinking: *Are FedEx Drivers Independent Contractors?*
- Critical Legal Thinking: *Interest Rates of Over 1,000% Per Year on Consumer Loans is Unconscionable*
- Information Technology: *Regulation Crowdfunding*
- Information Technology: *Social Media Posting and Photographs are Discoverable Evidence*



## Information Technology

### Social Media Postings and Photographs are Discoverable Evidence

"There is no better portrayal of what an individual's life was like than those photographs the individual has chosen to share through social media."

—Gross, Judge

Maria Nucci claimed that when she was in a store owned by Target Corporation she slipped and fell on a foreign substance on the floor of the store. Nucci sued Target to recover damages for her alleged injuries. Nucci claimed that she was seriously injured, experiences pain from the injury, suffers emotional pain and suffering, and suffers

social media accounts for the two years prior to the date of the incident to the present. The trial court issued an order compelling discovery of the photographs from Nucci's social media sites. In upholding the order, the court of appeals stated, "The information sought, photographs of Nucci posted on Nucci's social media sites, is highly relevant. If a photograph is worth a thousand words, there is no better portrayal of what an individual's life was like than those photographs the individual has chosen to share through social media." *Nucci v. Target Corporation*, 162 So.3d 146, 2015 Fla. App. Lexis 153 (District Court of Appeal of Florida 2015)

To improve student results, we recommend pairing the text content with **MyLab Business Law**, which is the teaching and learning platform that empowers you to reach every student. By combining trusted author content with digital tools and a flexible platform, MyLab personalizes the learning experience and will help your students learn and retain key course concepts while developing skills that future employers are seeking in their candidates.

From Mini Sims to Dynamic Study Modules, MyLab Business Law helps you teach your course, your way. Learn more at [www.pearson.com/mylab/business-law](http://www.pearson.com/mylab/business-law).

## Solving Teaching and Learning Challenges

### Developing Skills for Your Career

If you haven't yet decided on a major, you may be thinking that this section isn't relevant to you. Let me assure you it is. Whether or not you plan on a career in business, the lessons you learn in this course will help you (in business and/or in your life in many ways). Moreover, it is only through the aggregate of your educational experience that you will have the opportunity to develop many of the skills that employers have identified as critical

to success in the workplace. In this course, and specifically in this text, you'll have the opportunity to develop and practice these skills through features such as Critical Thinking Legal Questions and Information Technology Law cases.



## Critical Legal Thinking

### Checks and Balances

Certain **checks and balances** are built into the U.S. Constitution to ensure that no one branch of the federal government becomes too powerful. Following are several of these major checks and balances.

- The *judicial* branch has authority to examine the acts of the other two branches of government and determine whether those acts are constitutional.<sup>4</sup>
- The *executive* branch can enter into treaties with foreign governments only with the advice and consent of the Senate.
- The *legislative* branch is authorized to create federal courts and determine their jurisdiction and to enact statutes that change judicially made law.

goes back to Congress, where a vote of two-thirds of both the Senate and the House of Representatives is required to override the president's veto.

- The president nominates individuals to be federal judges but a majority vote of the U.S. Senate is required to *confirm* the nominee as a federal judge.
- A president can be removed from office following impeachment and conviction for treason, bribery, or other crimes. The process starts in the House of Representatives, which can approve articles of impeachment by a majority vote. The Senate tries the case, where a two-thirds vote is required for conviction. If convicted, the president is removed from office.

## Instructor Resources

Business Law comes with the following teaching resources:

Supplements available to instructors at <a href="http://www.pearsonhighered.com">www.pearsonhighered.com</a>	Features of the Supplement
Instructor's Manual  Jeff Penley, J.D., Senior Professor of Business Law and Ethics Catawba Valley Community College Hickory, North Carolina 28602	<ul style="list-style-type: none"> <li>• Chapter-by-chapter summaries</li> <li>• Examples and activities not in the main book</li> <li>• Teaching outlines</li> <li>• Teaching tips</li> <li>• Solutions to all questions and problems in the book</li> </ul>
Case Solutions  Henry Cheeseman, Professor Emeritus, Marshall School of Business, University of Southern California	Solutions to the end-of-chapter content.
Test Bank  William J. Kresse, JD, MS, CPA/CFF, CFE, CGMA, Esq. College of Business Governors State University University Park, Illinois, USA	4,000 multiple-choice, true/false, short-answer, and graphing questions with these annotations: <ul style="list-style-type: none"> <li>• Difficulty level (1 for straight recall, 2 for some analysis, 3 for complex analysis)</li> <li>• Type (Multiple-choice, true/false, short-answer, essay)</li> <li>• Topic (The term or concept the question supports)</li> <li>• Learning outcome</li> <li>• AACSB learning standard (Written and Oral Communication; Ethical Understanding and Reasoning; Analytical Thinking; Information Technology; Interpersonal Relations and Teamwork; Diverse and Multicultural Work; Reflective Thinking; Application of Knowledge)</li> <li>• Page number in the text</li> </ul>
Computerized TestGen	TestGen allows instructors to: <ul style="list-style-type: none"> <li>• Customize, save, and generate classroom tests</li> <li>• Edit, add, or delete questions from the Test Item Files</li> <li>• Analyze test results</li> <li>• Organize a database of tests and student results.</li> </ul>
PowerPoint Presentation Dr. Julie Boyles, Assistant Professor, University Studies Portland State University	Slides include the graphs, tables, and equations in the textbook.  PowerPoints meet accessibility standards for students with disabilities. Features include, but not limited to: <ul style="list-style-type: none"> <li>• Keyboard and Screen Reader access</li> <li>• Alternative text for images</li> <li>• High color contrast between background and foreground colors.</li> </ul>

Legal Environment of Business, Ninth Edition, is available as an eBook and can be purchased at most eBook retailers.

# ABOUT THE AUTHOR

Henry R. Cheeseman is professor emeritus of the Marshall School of Business of the University of Southern California (USC), Los Angeles, California.

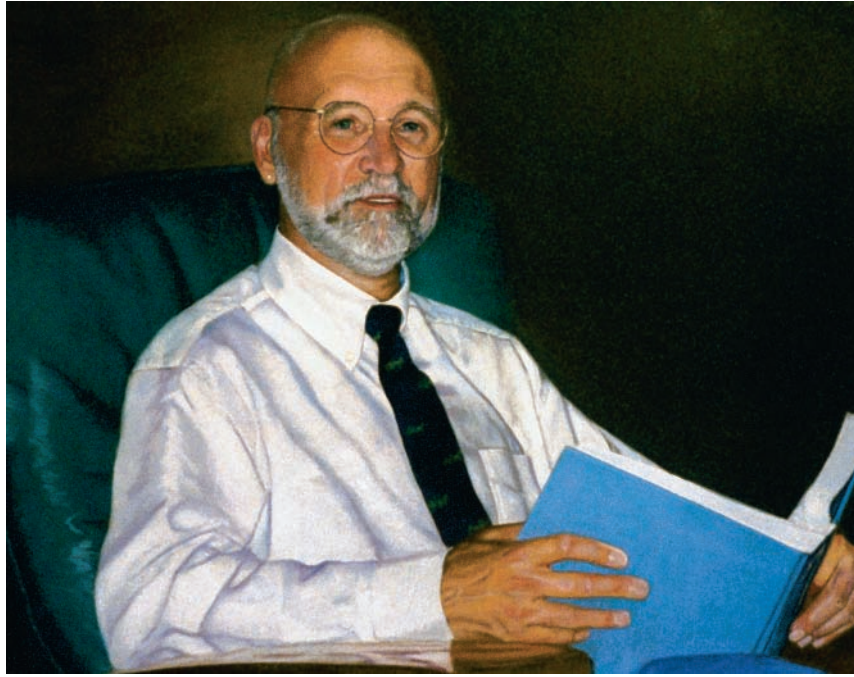
Professor Cheeseman earned a bachelor's degree in finance from Marquette University, both a master's in business administration (MBA) and a master's in business taxation (MBT) from the University of Southern California, a juris doctor (JD) degree from the University of California at Los Angeles (UCLA) School of Law, a master's degree with an emphasis on law and economics from the University of Chicago, and a master's in law (LLM) degree in financial institutions law from Boston University.

Professor Cheeseman was director of the Legal Studies in Business Program at the University of Southern California. He taught business law, legal environment, and ethics courses in both the Master of Business Administration (MBA) and undergraduate programs of the Marshall School of Business of the University of Southern California. At the MBA level, he developed and taught courses on corporate governance, securities regulation, mergers and acquisitions, and bankruptcy law. At the undergraduate level, he taught courses on business law, the legal environment of business, ethics, business organizations, cyberlaw, and intellectual property.

Professor Cheeseman received the Golden Apple Teaching Award on many occasions by being voted by the students as the best professor at the Marshall School of Business of the University of Southern California. He was named a fellow of the Center for Excellence in Teaching at the University of Southern California by the dean of the Marshall School of Business. The USC's Torch and Tassel Chapter of the Mortar Board, a national senior honor society, tapped Professor Cheeseman for recognition of his leadership, commitment, and excellence in teaching.

Professor Cheeseman writes leading business law and legal environment textbooks that are published by Pearson Education, Inc. These textbooks include *Business Law*; *Contemporary Business Law*; and *Legal Environment of Business*.

Professor Cheeseman is an avid traveler and amateur photographer. All of the photographs that appear in this textbook (except the book cover photo) were taken by Professor Cheeseman.



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### My Relatives

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## **Author's Personal Statement**

While writing the preface and acknowledgments, I have thought about the thousands of hours I have spent researching, writing, and preparing this manuscript. I've loved every minute, and the knowledge gained has been sufficient reward for the endeavor. I hope this book and its supplementary materials will serve you as well as they have served me.

*With joy and sadness,  
emptiness and fullness,  
honor and humility,  
I surrender the fruits of this labor.*

**Henry R. Cheeseman**

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PART

I

# Legal Environment, Judicial System, Dispute Resolution, and Business Ethics



# Legal Heritage and the Information Age

## U.S. CAPITOL, WASHINGTON DC

The U.S. Congress, which is a bicameral system made up of the U.S. Senate and the U.S. House of Representatives, creates federal law by enacting statutes. Each state has two senators and is allocated a certain number of representatives based on population. The U.S. Senate and U.S. House of Representatives are based in the Capitol building.



## Learning Objectives and Chapter Contents

### Introduction to Legal Heritage and the Information Age

#### What Is Law?

- 1.1** Define *law*.  
**CONTEMPORARY ENVIRONMENT** • *Functions of the Law*

#### Flexibility of the Law

- 1.2** Describe the flexibility of the law  
**CRITICAL LEGAL THINKING** • *Brown v. Board of Education*

#### Schools of Jurisprudential Thought

- 1.3** List and describe the schools of judicial thought.  
**GLOBAL LAW** • *Command School of Jurisprudence of Cuba*

#### History of American Law

- 1.4** Learn the history and development of American law.  
**LANDMARK LAW** • *Adoption of English Common Law in the United States*  
**GLOBAL LAW** • *Civil Law System of France and Germany*

### Sources of Law in the United States

- 1.5** List and describe the sources of law in the United States.  
**CONTEMPORARY ENVIRONMENT** • *How a Bill Becomes Law*

### Doctrine of *Stare Decisis*

- 1.6** Describe the doctrine of *stare decisis*.

### Law in the Information Age

- 1.7** Describe how existing laws are being applied to the digital environment and how new laws are being enacted that specifically address issues of the information age.

### Critical Legal Thinking

- 1.8** Learn what critical legal thinking is and how to apply it to analyzing legal cases.

### Developing Skills for Your Career

- 1.9** Learn how the material, cases, and lessons of this book will apply to your future career.



“Where there is no law, there is no freedom.”

—John Locke (1632–1704)  
*Second Treatise of Government, Sec. 57*

## Introduction to Legal Heritage and the Information Age

In the words of Judge Learned Hand, “Without law we cannot live; only with it can we insure the future which by right is ours. The best of men’s hopes are enmeshed in its success.”<sup>1</sup> Every society makes and enforces laws that govern the conduct of the individuals, businesses, and other organizations that function within it.

Although the law of the United States is based primarily on English common law, other legal systems, such as Spanish and French civil law, also influence it. The sources of law in this country are the U.S. Constitution, state constitutions, federal and state statutes, ordinances, administrative agency rules and regulations, executive orders, and judicial decisions by federal and state courts.

Businesses that are organized in the United States are subject to its laws. They are also subject to the laws of other countries in which they operate. Businesses organized in other countries must obey the laws of the United States when doing business here. In addition, businesspeople owe a duty to act ethically in the conduct of their affairs, and businesses owe a responsibility not to harm society.

This chapter discusses the nature and definition of law, theories about the development of law, the history and sources of law in the United States, and the application of the law to the information age.

*Human beings do not ever make laws; it is the accidents and catastrophes of all kinds happening in every conceivable way that make law for us.*

Plato (427–347 BCE)  
*Laws IV, 709*

## What is Law?

### 1.1 Define law.

The law consists of rules that regulate the conduct of individuals, businesses, and other organizations in society. It is intended to protect persons and their property against unwanted interference from others. In other words, the law forbids persons from engaging in certain undesirable activities. Consider the following passage:

*Hardly anyone living in a civilized society has not at some time been told to do something or to refrain from doing something, because there is a law requiring it, or because it is against the law. What do we mean when we say such things?*

*At the end of the 18th century, Immanuel Kant wrote of the question “What is law?” that it “may be said to be about as embarrassing to the jurist as the well-known question ‘What is truth?’ is to the logician.”<sup>2</sup>*

*A lawyer without history or literature is a mechanic, a mere working mason: if he possesses some knowledge of these, he may venture to call himself an architect.*

Sir Walter Scott  
*Guy Mannering, Ch. 37 (1815)*

## Definition of Law

The concept of law is broad. Although it is difficult to state a precise definition, *Black’s Law Dictionary* gives one that is sufficient for this text:

*Law, in its generic sense, is a body of rules of action or conduct prescribed by controlling authority, and having binding legal force. That which must be obeyed and followed by citizens subject to sanctions or legal consequences is a law.<sup>3</sup>*

### law

That which must be obeyed and followed by citizens, subject to sanctions or legal consequences; a body of rules of action or conduct prescribed by controlling authority and having binding legal force.

The following feature discusses the functions of the law.



# Contemporary Environment

## Functions of the Law

The law is often described by the function it serves in a society. The primary *functions* served by the law in this country are the following:

1. Keeping the peace

**Example** Some laws make certain activities crimes.

2. Shaping moral standards

**Example** Some laws discourage drug and alcohol abuse.

3. Promoting social justice

**Example** Some laws prohibit discrimination in employment.

4. Maintaining the status quo

**Example** Some laws prevent the forceful overthrow of the government.

5. Facilitating orderly change

**Example** Laws are enacted only after considerable study, debate, and public input.

6. Facilitating planning

**Example** Well-designed commercial laws allow businesses to plan their activities, allocate their productive resources, and assess the risks they take.

7. Providing a basis for compromise

**Example** Laws allow for the settlement of cases prior to trial. Approximately 95 percent of all lawsuits are settled in this manner.

8. Maximizing individual freedom

**Example** The rights of freedom of speech, religion, and association are granted by the First Amendment to the U.S. Constitution.

*Commercial law lies within a narrow compass, and is far purer and freer from defects than any other part of the system.*

Henry Peter Brougham  
House of Commons,  
February 7, 1828

### CONCEPT SUMMARY

#### FUNCTIONS OF THE LAW

- |                            |                                   |
|----------------------------|-----------------------------------|
| 1. Keep the peace          | 5. Facilitate orderly change      |
| 2. Shape moral standards   | 6. Facilitate planning            |
| 3. Promote social justice  | 7. Provide a basis for compromise |
| 4. Maintain the status quo | 8. Maximize individual freedom    |

### Fairness of the Law

*The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges.*

Anatole France (1844–1924)

The U.S. legal system is one of the most comprehensive, fair, and democratic systems of law ever developed and enforced. Nevertheless, some misuses and oversights of our legal system—including abuses of discretion and mistakes by judges and juries, unequal applications of the law, and procedural mishaps—allow some guilty parties to go unpunished.

**Example** In *Standefer v. United States*,<sup>4</sup> Chief Justice Warren Burger of the U.S. Supreme Court stated, “This case does no more than manifest the simple, if discomforting, reality that different juries may reach different results under any criminal statute. That is one of the consequences we accept under our jury system.”

### Flexibility of the Law

#### 1.2 Describe the flexibility of the Law

United States law evolves and changes along with the norms of society, technology, and the growth and expansion of commerce in the United States and the world. The following quote by Judge Jerome Frank discusses the value of the adaptability of law:

*Law must be stable and yet it cannot stand still.*

Roscoe Pound  
*Interpretations of Legal History*  
(1923)

*The law always has been, is now, and will ever continue to be, largely vague and variable. And how could this be otherwise? The law deals with human relations in their most complicated aspects. The whole confused, shifting helter-skelter of life parades before it—more confused than ever, in our kaleidoscopic age.*

*The constant development of unprecedented problems requires a legal system capable of fluidity and pliancy. Our society would be straightjacketed were not the courts, with the able assistance of the lawyers, constantly overhauling the law and adapting it to the realities of ever-changing social, industrial, and political conditions; although changes cannot be made lightly, yet rules of law must be more or less impermanent, experimental and therefore not nicely calculable.*

*Much of the uncertainty of law is not an unfortunate accident; it is of immense social value.<sup>5</sup>*

A landmark U.S. Supreme Court case—*Brown v. Board of Education*—is discussed in the feature below. This case shows the flexibility of the law because the U.S. Supreme Court overturned a past decision of the Court.

## Schools of Jurisprudential Thought

### 1.3 List and describe the schools of judicial thought.

The philosophy or science of the law is referred to as **jurisprudence**. There are several different philosophies about how the law developed, ranging from the classical natural theory to modern theories of law and economics and critical legal studies. Legal philosophies are discussed on the following two pages.

### Critical Legal Thinking

Are there any benefits for the law being “vague and variable”? Are bright-line tests possible for the law? Explain the statement, “Much of the uncertainty of law is not an unfortunate accident; it is of immense social value.”

### WEB EXERCISE

To view court documents related to *Brown v. Board of Education*, go to [www.loc.gov/exhibits/brown/brown-brown.html](http://www.loc.gov/exhibits/brown/brown-brown.html).

### jurisprudence

The philosophy or science of law.



## Critical Legal Thinking

### Brown v. Board of Education

**“We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place.”**

—Warren, Justice

Slavery was abolished by the Thirteenth Amendment to the Constitution in 1865. The Fourteenth Amendment, added to the Constitution in 1868, contains the Equal Protection Clause, which provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” The original intent of this amendment was to guarantee equality to freed African Americans. But equality was denied to African Americans for a century. This included discrimination in housing, transportation, education, jobs, service at restaurants, and other activities.

In 1896, the U.S. Supreme Court decided the case *Plessy v. Ferguson*.<sup>6</sup> In that case, the state of Louisiana had a law that provided for separate but equal accommodations for African American and White railway passengers. The Supreme Court held that the “separate but equal” state law did not violate the Equal Protection Clause of the Fourteenth Amendment. The “separate but equal” doctrine was then applied to all areas of life, including public education.

It was not until 1954 that the U.S. Supreme Court decided a case that challenged the “separate but equal”

doctrine as it applied to public elementary and high schools. In *Brown v. Board of Education*, a unanimous Supreme Court, in an opinion written by Chief Justice Earl Warren, reversed prior precedent and held that the separate but equal doctrine violated the Equal Protection Clause of the Fourteenth Amendment to the Constitution. In its opinion, the Court stated:

*Today, education is perhaps the most important function of state and local governments. We conclude that in the field of public education the doctrine of “separate but equal” has no place. Separate educational facilities are inherently unequal.*

After *Brown v. Board of Education* was decided, it took court orders as well as U.S. army enforcement to integrate many of the public schools in this country. *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 1954 U.S. Lexis 2094 (Supreme Court of the United States, 1954).

### Critical Legal Thinking Questions

It has been said that the U.S. Constitution is a “living document”—that is, one that can adapt to changing times. Do you think this is a good policy? Or should the U.S. Constitution be interpreted narrowly and literally, as originally written?

**WASHINGTON MEMORIAL,  
WASHINGTON DC**

*Washington DC is the capital  
of the United States of America.*

*It is the seat of the federal  
government in this country.*

*The U.S. Congress, the  
President of the United States,  
the U.S. Supreme Court, and  
most federal government  
agencies are located  
at the capital.*



*The law is not a series of  
calculating machines where  
definitions and answers  
come tumbling out when the  
right levers are pushed.*

William O. Douglas  
*Dissent, A Safeguard of  
Democracy (1948)*

### **Natural Law School**

The **Natural Law School** of jurisprudence postulates that the law is based on what is “correct.” Natural law philosophers emphasize a **moral theory of law**—that is, law should be based on morality and ethics. Natural law is “discovered” by humans through the use of reason and choosing between good and evil.

**Examples** Documents such as the U.S. Constitution, the Magna Carta, and the United Nations Charter reflect this theory.

### **Historical School**

The **Historical School** of jurisprudence believes that the law is an aggregate of social traditions and customs that have developed over the centuries. It believes that changes in the norms of society will gradually be reflected in the law. To these legal philosophers, the law is an evolutionary process.

**Example** Historical legal scholars look to past legal decisions (precedent) to solve contemporary problems.

### **Analytical School**

The **Analytical School** of jurisprudence maintains that the law is shaped by logic. Analytical philosophers believe that results are reached by applying principles of logic to the specific facts of a case. The emphasis is on the logic of the result rather than on how the result is reached.

**Example** If the U.S. Constitution would have freed the slaves or granted females the right to vote, it would probably not have been ratified by the states in 1788.

## Sociological School

The **Sociological School** of jurisprudence asserts that the law is a means of achieving and advancing certain sociological goals. The followers of this philosophy, known as *realists*, believe that the purpose of law is to shape social behavior. Sociological philosophers are unlikely to adhere to past law as precedent.

**Examples** Laws that make discrimination in employment illegal and laws that impose penalties for drunk driving reflect this theory.

*Even when laws have been written down, they ought not always to remain unaltered.*

Aristotle (384–322 BCE)

## Command School

The philosophers of the **Command School** of jurisprudence believe that the law is a set of rules developed, communicated, and enforced by the ruling party rather than a reflection of the society's morality, history, logic, or sociology. This school maintains that law changes when the ruling class changes.

**Example** During certain military conflicts, such as World War II and the Vietnam War, the federal government has enacted draft laws that require men of a certain age to serve in the military if they meet certain physical and other requirements.

## Critical Legal Studies School

The **Critical Legal Studies School** proposes that legal rules are unnecessary and are used as an obstacle by the powerful to maintain the status quo. Critical legal theorists argue that legal disputes should be solved by applying arbitrary rules that are based on broad notions of what is “fair” in each circumstance. Under this theory, subjective decision making by judges would be permitted.

**Example** This school postulates that rape laws often make it difficult for women to prove legally that they have been raped because these laws have mostly been drafted from a male's perspective. Therefore, says this school, these laws should be ignored and the judge should be free to decide whether rape has occurred in his or her subjective decision-making.

## Law and Economics School

The **Law and Economics School** believes that promoting market efficiency should be the central goal of legal decision making. This school is also called the **Chicago School**, named after the University of Chicago, where it was first developed.

**Example** Proponents of the law and economics theory suggest that the federal government's policy of subsidizing housing—by a law that permits a portion of interest paid on mortgage loans to be deducted from an individual borrower's federal income taxes and laws that created government-sponsored enterprises (Fannie Mae and Freddie Mac) that purchase low-rate interest mortgages made by banks and other lending institutions—provide incentives so that too many homes are built. If these laws did not exist, then the free market would determine the exact number of homes that should be built.

**CONCEPT SUMMARY****SCHOOLS OF JURISPRUDENTIAL THOUGHT**

School	Philosophy
Natural Law	Postulates that law is based on what is “correct.” It emphasizes a moral theory of law—that is, law should be based on morality and ethics.
Historical	Believes that law is an aggregate of social traditions and customs.
Analytical	Maintains that law is shaped by logic.
Sociological	Asserts that the law is a means of achieving and advancing certain sociological goals.
Command	Believes that the law is a set of rules developed, communicated, and enforced by the ruling party.
Critical Legal Studies	Maintains that legal rules are unnecessary and that legal disputes should be solved by applying arbitrary rules based on fairness.
Law and Economics	Believes that promoting market efficiency should be the central concern of legal decision making.

The following feature discusses the Command School of jurisprudence of Cuba.



## Global Law

### Command School of Jurisprudence of Cuba



#### **HAVANA, CUBA**

*Cuba is an island nation located in the Caribbean Sea less than 100 miles south of Key West, Florida. In 1959, Fidel Castro led a revolution that displaced the existing dictatorial government. Castro installed a communist government that expropriated and nationalized much private property. The communist government installed a one-party rule over the country and installed a command economy and system of jurisprudence. Under a state-controlled planned economy based on socialist principles, the production of goods and food items in Cuba fell substantially, and major shortages of houses, medical supplies, and other goods and services occurred. After more than five decades of a command economy, Cuba is permitting limited free-market measures, but 90 percent of workers are still employed by the government.*

## History of American Law

### 1.4 Learn the history and development of American law.

When the American colonies were first settled, the English system of law was generally adopted as the system of jurisprudence. This was the foundation from which American judges developed a common law in America.

### English Common Law

**English common law** was law developed by judges who issued their opinions when deciding cases. The principles announced in these cases became *precedent* for later judges deciding similar cases. The English common law can be divided into cases decided by the *law courts*, *equity courts*, and *merchant courts*.

**Law Courts** Prior to the Norman Conquest of England in 1066, each locality in England was subject to local laws, as established by the lord or chieftain in control of a local area. There was no countrywide system of law. After 1066, William the Conqueror and his successors to the throne of England began to replace the various local laws with one uniform system of law. To accomplish this, the king or queen appointed loyal followers as judges in all local areas. These judges were charged with administering the law in a uniform manner, in courts that were called **law courts**. Law at that time tended to emphasize the form (legal procedure) over the substance (merit) of a case. The only relief available at law courts was a monetary award for damages.

**Chancery (Equity) Courts** Because of some unfair results and limited remedies available in the law courts, a second set of courts—the **Court of Chancery (or equity court)**—was established. These courts were under the authority of the Lord Chancellor. Persons who believed that the decision of a law court was unfair or believed that the law court could not grant an appropriate remedy could seek relief in the Court of Chancery. Rather than emphasize legal procedure, the chancery court inquired into the merits of the case. The chancellor’s remedies were called *equitable remedies* because they were shaped to fit each situation. Equitable orders and remedies of the Court of Chancery took precedence over the legal decisions and remedies of the law courts.

**Merchant Courts** As trade developed during the Middle Ages, merchants who traveled about England and Europe developed certain rules to solve their commercial disputes. These rules, known as the “law of merchants,” or the **Law Merchant**, were based on common trade practices and usage. Eventually, a separate set of courts was established to administer these rules. This court was called the **Merchant Court**. In the early 1900s, the Merchant Court was absorbed into the regular law court system of England.

The following feature discusses the adoption of English common law in the United States.

#### English common law

Law developed by judges who issue their opinions when deciding a case. The principles announced in these cases became precedent for later judges deciding similar cases.

*Two things most people should never see made: sausages and laws.*

An old saying



## Landmark Law

### Adoption of English Common Law in America

All the states—except Louisiana—of the United States of America base their legal systems primarily on the English common law. In the United States, the law, equity, and merchant courts have been merged. Thus, most U.S. courts permit the aggrieved party to seek both legal and equitable orders and remedies.

The importance of common law to the American legal system is described in the following excerpt from Justice Douglas’s opinion in the 1841 case *Penny v. Little*:

*The common law is a beautiful system, containing the wisdom and experiences of ages. Like the people*

*(continued)*