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BUSINESS LAW TODAY

STANDARD EDITION
TEXT & SUMMARIZED CASES

Roger LeRoy Miller



BUSINESS LAW TODAY SERIES

13th EDITION

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STANDARD EDITION
TEXT & SUMMARIZED CASES

Roger LeRoy Miller

Institute for University Studies

Arlington, Texas



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The present world landscape poses numerous challenges for students planning careers in the business world. It also offers limitless opportunities. To take advantage of those opportunities, prospective entrepreneurs—whether they aspire to work on Wall Street or Main Street—need to have a solid understanding of business law and the legal environment of corporate America. The most up-to-date text on the market, *Business Law Today: Standard Edition*, Thirteenth Edition, provides the perfect platform to achieve this goal.

Instructors have come to rely on the coverage, accuracy, and applicability of *Business Law Today*. This best-selling text engages your students, solidifies their understanding of legal concepts, and provides the best teaching tools available. Working on this edition, my objective was to make its pages more interesting, to the point, and visually compelling than ever before. I put particular focus on pedagogical devices within the text that focus on legal, ethical, and corporate issues, while never losing sight of the course's core curriculum.

The Thirteenth Edition incorporates the latest legal developments, from United States Supreme Court decisions to state-level legislation. It also includes nearly forty new and updated features and more than thirty new cases from 2019 and 2020, over one hundred new *Examples* and *Case Examples*, along with an extensive array of exhibits, *Focus Questions*, margin definitions, and case problems.

New and Updated Features

The Thirteenth Edition of *Business Law Today: Standard Edition* is filled with stimulating new and updated features designed to cover current high-interest legal topics.

1. **Entirely new *Cybersecurity and the Law*** features shed light on the risks that go with the many rewards offered by technology in the global marketplace. These features recount how some of the most important brands in corporate America are protecting themselves and their customers from the threats lurking in cyberspace. Some topics include:
 - *Should Apple Help Law Enforcement?* (Chapter 2)
 - *Counter Strike: Global Offensive* (Chapter 9)
 - *The CLOUD Act* (Chapter 29)
2. **Entirely new hypotheticals in selected chapter introductions** provide a real-world link that generates student interest and highlights specific legal concepts that will be discussed in the chapter. These hypotheticals—often based on real cases or business situations—help to introduce and illustrate legal issues facing managers, companies, and even industries.
3. ***Business Web Log*** features underscore the importance of the text material to real-world businesses. Each of these features discusses a major U.S. company that is engaged in a dispute involving a topic covered in the chapter. Some topics include
 - *Samsung and Forced Arbitration* (Chapter 4)
 - *Johnson & Johnson Faces Continuing Lawsuits over Its Talcum Powder* (Chapter 6)
 - *Online Competition, Bankruptcy, and the “Retail Apocalypse”* (Chapter 22)

4. *Adapting the Law to the Online Environment* features examine cutting-edge cyberlaw topics, such as:
 - *The Problem of “Contract Cheating”* (Chapter 13)
 - *Open Banking* (Chapter 20)
 - *Big Tech’s Monopoly Problem* (Chapter 31)
5. *Business Law Analysis* features appear in numerous chapters of the text. These features are useful tools to help students master the legal analysis skills that they will need to answer questions and case problems in the book, on exams, and in everyday business situations. Topics include:
 - *The Impact of Patent Time Limits* (Chapter 7)
 - *Deciding If a Court Would Impose a Quasi Contract* (Chapter 10)
 - *Workers’ Compensation Claims* (Chapter 24)
6. *Ethical Issue* features focus on the ethical aspects of a topic being discussed in order to emphasize that ethics is an integral part of a business law course. Examples include:
 - *Even Though Corporation Can Restrict the Speech of Their Employees, Should They Do So?* (Chapter 2)
 - *Does the Gig Economy Take Advantage of Independent Contractors?* (Chapter 23)
 - *Does Corporate America Need Board Of Director Gender Quotas?* (Chapter 30)
7. *Managerial Strategy* features emphasize the management aspects of business law and the legal environment. Topics include:
 - *The Power of Precedents* (Chapter 1)
 - *The Stakeholder Capitalism Movement* (Chapter 3)
 - *Can a Person Who Is Not a Member of a Protected Class Sue for Discrimination?* (Chapter 28)
8. *Landmark in the Law* features discuss a landmark case, statute, or development that has significantly affected business law. Examples include:
 - *Palsgraf v. Long Island Railroad Co.* (Chapter 5)
 - *The Digital Millennium Copyright Act* (Chapter 8)
 - *Federal Trade Commission Rule 433* (Chapter 18)

Making Ethical Business Decisions—The IDDR Approach

The Thirteenth Edition of *Business Law Today* boasts its own framework for helping students (and businesspersons) make ethical decisions—the **IDDR Approach**, which is presented in Chapter 3. This systematic approach provides students with a clear step-by-step process to analyze the legal and ethical implications of decisions that are in everyday business operations. The IDDR Approach uses four logical steps:

- **Step 1: Inquiry**
- **Step 2: Discussion**
- **Step 3: Decision**
- **Step 4: Review**

Students can remember the first letter of each step easily by using the phrase “I Desire to Do Right.” Material in **Chapter 3 (Ethics in Business)** details the goals of each IDDR step and then provides a Sample Scenario to show students how to apply this new approach to ethical decision making. The text now focuses on real-life application of ethical principles.

After Chapter 3, to reinforce the application of the IDDR Approach, students are asked to use its various steps when answering each chapter's *A Question of Ethics*. In addition, the Thirteenth Edition retains the *Ethical Issue* feature in most chapters, several of which have been refreshed with timely topics involving the ever-evolving technologies and trends in business.

New Cases and Case Problems

The Thirteenth Edition of *Business Law Today* has new cases and case problems from 2019 and 2020 in nearly every chapter. The new cases have been carefully selected to illustrate important points of law and to be of high interest to students and instructors. I have made it a point to find recent cases that enhance learning and are straightforward enough for business law students to understand. At the end of each chapter, additional scenarios are presented as case problems that require students to apply concepts learned from the text.

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

Each case concludes with a section, called *Critical Thinking*, which includes at least one question. Each question is labeled *Ethical*, *Economic*, *Legal Environment*, *Political*, *Social*, or *What If the Facts Were Different?* In addition, *Classic Cases* include an *Impact of This Case on Today's Law* section that clarifies how the case has affected the legal environment. Suggested answers to all case-ending questions can be found in the *Answers Manual* for this text.

Many New Highlighted and Numbered Case Examples

Many instructors use cases and examples to illustrate how the law applies to business. This edition of *Business Law Today* offers hundreds of new 2019 and 2020 highlighted and consecutively numbered *Examples* and *Case Examples*. *Examples* illustrate how the law applies in a specific situation, and *Case Examples* present the facts and issues of an actual case and then describe the court's decision and rationale.

In addition, this edition presents *Spotlight Case Examples*, which deal with especially high-interest cases, and *Classic Case Examples*, which discuss older, landmark decisions. The numbered *Examples* and *Case Examples* features are integrated throughout the text to help students better understand how courts apply legal principles in the real world.

Critical Thinking and Legal Reasoning Elements

For this edition of *Business Law Today*, I have included a discussion of legal reasoning in Chapter 1. The *Business Law Analysis* features that can be found throughout the text emphasize legal reasoning skills as well. *Critical Thinking* questions conclude most of the features and cases in this text. At the end of each chapter, a *Debate This* question requires students to think critically about the rationale underlying the law on a particular topic.

Answers to all *Critical Thinking* questions, as well as to the *Business Scenarios and Case Problems* at the end of every chapter, are presented in the Thirteenth Edition's *Answers Manual*. In addition, the answers to one case problem in each chapter, called the *Business Case Problem with Sample Answer*, appear in Appendix E.

The chapter-ending materials also include a separate section of questions that focus on critical thinking and writing. This section always includes a *Time-Limited Group Assignment* and may also include a *Critical Legal Thinking* question requiring students to think critically

about some aspect of the law discussed in the chapter or a *Business Law Writing* question requiring students to compose a written response.

Other Pedagogical Devices within Each Chapter

- *Focus Questions* (questions listed at the beginning of each chapter and repeated in the margins of the text provide a framework of main chapter concepts for the student).
- *Margin definitions* of each boldfaced *Key Term*.
- *Know This* (margin features).
- *Exhibits* (in most chapters).
- *Photographs* (with critical-thinking questions).

Chapter-Ending Pedagogy

- *Practice and Review* (in every chapter).
- *Debate This* (a statement or question at the end of *Practice and Review*).
- *Key Terms* (with appropriate page references to their margin definitions).
- *Chapter Summary* (in table format).
- *Issue Spotters* (in every chapter with answers in *Appendix D*).
- *Business Scenarios and Case Problems* (including in every chapter, a *Business Case Problem with Sample Answer* that is answered in *Appendix E*; in selected chapters, a *Spotlight Case Problem*; and in every chapter, a *A Question of Ethics* that applies this textbook's unique *IDDR Approach* to business ethics).
- *Critical Thinking and Writing Assignments* (including a *Time-Limited Group Assignment* in every chapter, and a *Business Law Writing* or a *Critical Legal Thinking* question in selected chapters).

Unit-Ending Pedagogy

Each of the seven units in the Thirteenth Edition of *Business Law Today* concludes with a *Task-Based Simulation*. This feature presents a hypothetical business situation and then asks a series of questions about how the law applies to various actions taken by the firm. To answer the questions, the student must apply the laws discussed throughout the unit. (Answers are provided in the *Answers Manual*.)

Supplements

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

MindTap Business Law for Business Law Today, Thirteenth Edition

Today's leading digital platform, *MindTap*, gives you complete control of your course—equipping you to craft unique learning experiences that challenge students, build confidence and elevate performance.

Use MindTap as-is or customize it to meet your specific needs. You can even integrate it easily into your institution's Learning Management System (LMS).

A streamlined learning path and redesigned assessments minimize reader distraction, while dual-pane assignments for students pair readings side-by-side with assessments. MindTap presents complex concepts using a blend of engaging narrative and media assets clearly linked to assessments. So, students can start applying concepts to real-world situations from the beginning of your course with content that progresses from understanding core concepts to critical thinking and, ultimately, application.

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Gain actionable insights into student engagement with MindTap's twelve distinct metrics. Identify topics troubling your entire class and instantly communicate with struggling students. You can track your class' performance down to the learning objective and curate your lectures in real-time to respond to distinct class-wide needs. Students can track their scores and take the guesswork out of studying with performance reports and personalized study materials that help them progress toward their goals.

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Only MindTap gives you complete control of your course. You have the flexibility to reorder textbook chapters, add your own notes and embed a variety of content, including OER. Personalize course content to your students' needs by editing question text or answer choices. They can even read your notes, add their own and highlight key text to aid their progress.

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MindTap is not simply a comprehensive tool—it's a network of support from a personalized team eager to further your success. We're ready to help—from setting up your course to tailoring MindTap resources to meet your specific objectives. You'll be ready to make an impact from day one. And, we'll be right here to help you and your students throughout the semester—and beyond.

MindTap Table of Contents

Why Does [Topic] Matter to Me?

Immediately engage students with new activities that connect the upcoming chapter to an authentic, real-world scenario designed to pique engagement and emphasize relevance. Use these activities to ensure students read material before class and to trigger lively in-class discussion.

Chapter-Level Ebook

Immediately engage students with a dynamic eBook that brings the value, concepts and applications of the printed text to life. Students open an active learning experience as each chapter provides opportunities to interact with content using the approach that's best for the individual learner.

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Easily add multimedia instruction to your course to supplement textbook learning. MindTap's Learn It activities offer small sections of instruction in the form of narrative, images, and/or Quick Lesson Videos that highlight the most important concepts in each chapter. Learn It activities reinforce the text's instruction and even approach concepts in a different way to promote student choice and autonomy with personalizing learning. You can assign Learn It activities to ensure that students have read and understand key concepts before class.

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Use MindTap's Check Your Understanding quizzes to assess student performance and immediately identify class-wide learning needs.

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- **Case Problem Analyses** offer a multi-step activity that asks students to identify the facts in a scenario through a series of questions that promote a

critical-thinking process so that students can arrive at the decision of the court. In the second part, the facts are changed, and students apply the same critical-thinking process on their own.

- **Brief Hypotheticals** help students spot the issue and apply the law in the context of a short, fictional scenario.

Additional Resources (found at the part level)

- **Business Cases** develop students' skills to apply critical-thinking and legal reasoning through relevant real-world business scenarios.
- **Quick Lesson Videos** highlight the most important concepts in each chapter.
- **PowerPoint Slides** edited for student use offer visual outlines of each chapter.

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The *Instructor's Companion Website* is an all-in-one resource for class preparation, presentation, and testing. Accessible through www.cengage.com/login with your faculty account, you will find available for download:

- **Instructor's Manual.** Includes activities and assessments for each chapter and their correlation to specific learning objectives, an outline, key terms with definitions, a chapter summary, and several ideas for engaging with students with discussion questions, ice breakers, case studies, and social learning activities that may be conducted in an on-ground, hybrid, or online modality.

- **Answers Manual.** Provides answers to all questions presented in the text, including the *Focus Questions*, the questions in each case and feature, the *Issue Spotters*, the *Business Scenarios and Case Problems*, *Critical Thinking and Writing Assignments*, and the unit-ending *Task-Based Simulation* features.
- **Test Bank.** A comprehensive test bank, offered in Blackboard, Moodle, Desire2Learn, and Canvas formats, contains learning objective-specific true-false, multiple-choice and essay questions for each chapter. Import the test bank into your LMS to edit and manage questions, and to create tests.
- **PowerPoint Slides.** Presentations are closely tied to the Instructor Manual, providing ample opportunities for generating classroom discussion and interaction. They offer ready-to-use, visual outlines of each chapter, which may be easily customized for your lectures.
- **Guide to Teaching Online.** Presents technological and pedagogical considerations and suggestions for teaching the Business Law course when you can't be in the same room with students.
- **Transition Guide.** Highlights all of the changes in the text and in the digital offerings from the previous edition to this edition.
- **Educator Guide.** Walks you through what the unique activities are in the MindTap, where you'll find them and how they're built for easier curriculum integration.



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Roger LeRoy Miller

Dedication

To Lorraine,

The journey continues to more delightful times.
It's nice to be part of it with you.

R.L.M.



1

Law and Legal Reasoning

Focus Questions

The four Focus Questions below are designed to help improve your understanding. After reading this chapter, you should be able to answer the following questions:

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

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

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

Clarence Darrow
1857–1938
(American lawyer)

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

In this introductory chapter, we look at how business law and the legal environment affect business decisions. For instance, suppose that Mototron, Inc., plans to introduce a driverless car equipped with lidar, a radar system that relies on lasers, and artificially intelligent cameras. Even if its technicians put the vehicles through two million miles of testing on closed courses and deem them low risk, Mototron cannot simply start selling rides to consumers. The company must first test the cars on public roads, which requires permission from state governments. It must also establish safety rules with federal regulators and negotiate sustainable insurance rates. At each step, Mototron will have to adjust

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

Although the law has various definitions, all of them are based on the general observation that **law** consists of

its bottom line to take account of the legal costs of introducing cutting-edge but potentially dangerous technology into the American marketplace.

Our goal in this text is not only to teach you about specific laws, but also to teach you how to think about the law and legal environment, and to develop your critical-thinking and legal reasoning skills. The laws may change, but the ability to analyze and evaluate the legal (and ethical) ramifications of situations as they arise is an invaluable and lasting skill.

1-1 Business Activities and the Legal Environment

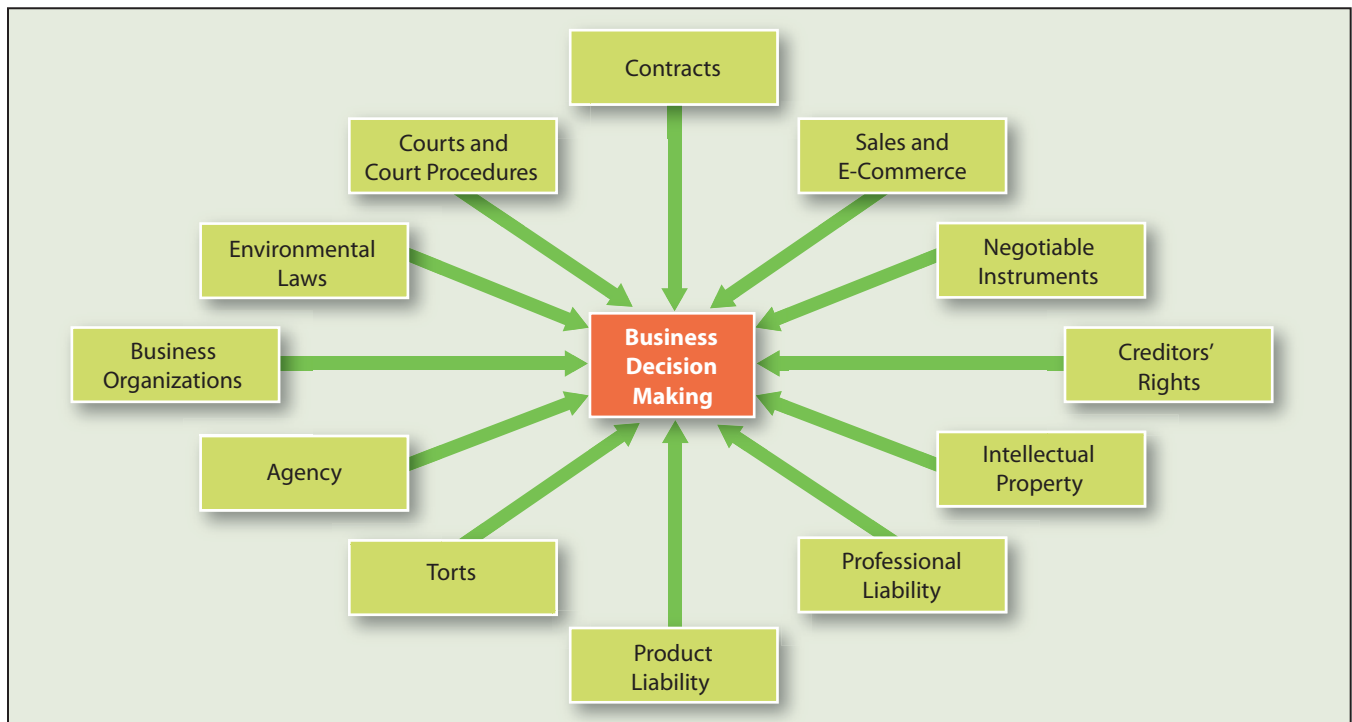
Laws and government regulations affect almost all business activities—from hiring and firing decisions to workplace safety, the manufacturing and marketing of products, business financing, and more. To make good business decisions, businesspersons need to understand the laws and regulations governing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

Realize also that in today's business world, simply being aware of what conduct can lead to legal **liability** is not enough. Businesspersons must develop critical-thinking and legal reasoning skills so that they can evaluate how various laws might apply to a given situation and determine the best course of action. Businesspersons are also pressured to make ethical decisions. Thus, the study of business law necessarily involves an ethical dimension.

As you will note, each chapter in this text covers a specific area of the law and shows how the legal rules in that area affect business activities. Although compartmentalizing the law in this fashion facilitates learning, it does not indicate the extent to which many different laws may apply to just one transaction. Exhibit 1-1 illustrates the various areas of the law that may influence business decision making.

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

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



Example 1.1 Soon after it launched, YouTube faced a potentially catastrophic \$1 billion copyright infringement lawsuit. Entertainment conglomerate Viacom claimed that the video-hosting platform was not taking sufficient steps to remove unlicensed use of Viacom’s content on its site. A federal judge ensured YouTube’s survival by ruling that the company was in compliance with federal copyright law as long as it responded reasonably to “take-down” requests from Viacom and other content providers.

Not surprisingly, with five hundred hours of video uploaded to its site each minute, YouTube has remained under constant legal pressure ever since. Liberal *and* conservative groups have sued the company for discriminating against their political viewpoints. It has faced regulatory scrutiny for, among other things, failing to protect users from sexual and racist harassment and hosting misleading election-related video content. At one point, the Federal Trade Commission fined the company \$170 million for collecting personal information from children without their parents’ consent. ■

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

Focus Question 1

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

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

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

1–2 Sources of American Law

There are numerous sources of American law. A source that establishes the law on a particular issue is called a **primary source of law**. Primary sources include the following:

- The U.S. Constitution and the constitutions of the various states.
- Statutory law—including laws passed by Congress, state legislatures, and local governing bodies.
- Regulations created by administrative agencies, such as the federal Food and Drug Administration.
- Case law (court decisions).

We describe each of these important primary sources of law in the following pages. (See the appendix at the end of this chapter for a discussion of how to find statutes, regulations, and case law.)

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

1–2a Constitutional Law

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

The U.S. Constitution is the basis of all law in the United States. It provides a framework for statutes and regulations, and thus is the supreme law of the land. A law in violation of the U.S. Constitution, if challenged, will be declared unconstitutional and will not be enforced, no matter what its source.

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

1–2b Statutory Law

Laws enacted by legislative bodies at any level of government, such as the statutes passed by Congress or by state legislatures, make up the body of law generally referred to as **statutory law**. When a legislature passes a statute, that statute ultimately is included in the federal code of laws or the relevant state code of laws.

Whenever a particular statute is mentioned in this text, we usually provide a footnote showing its **citation** (a reference to a publication in which a legal authority—such as a statute or a court decision—or other source can be found). In the appendix following this chapter, we explain how you can use these citations to find statutory law.

Local Ordinances Statutory law also includes local ordinances. An **ordinance** is a regulation passed by a municipal or county governing unit to deal with matters not covered by federal or state law. Ordinances commonly have to do with city or county land use (zoning ordinances), building and safety codes, and other matters affecting only the local governing unit.

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

Example 1.2 The tension between federal, state, and local laws is evident in the national debate over so-called sanctuary cities—cities that limit their cooperation with federal immigration authorities. Normally, law enforcement officials are supposed to alert federal immigration authorities when they come into contact with an undocumented immigrant. Then, immigration officials request the state and local authorities to detain the individual for possible deportation.

But a number of cities across the United States have adopted either local ordinances or explicit policies that do not follow this procedure. Police in these cities often do not ask or report the immigration status of individuals with whom they come into contact. Other places refuse to detain undocumented immigrants who are accused of low-level offenses. ■

Uniform Laws During the 1800s, the differences among state laws frequently created difficulties for businesspersons conducting trade and commerce among the states. To counter these problems, a group of legal scholars and lawyers formed the National Conference of Commissioners on Uniform State Laws (NCCUSL, online at www.uniformlaws.org) in 1892 to draft **uniform laws** (“model statutes”) for the states to consider adopting. The NCCUSL still exists today and continues to issue uniform laws.

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

The Uniform Commercial Code (UCC) One of the most important uniform acts is the Uniform Commercial Code (UCC), which was created through the joint efforts of

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

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

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



Michael Dwyer/Alamy

How have local “sanctuary cities” frustrated federal immigration procedures?

Uniform Laws Model laws developed by the National Conference of Commissioners on Uniform State Laws for the states to consider enacting into statute.

the NCCUSL and the American Law Institute.¹ The UCC was first issued in 1952 and has been adopted in all fifty states,² the District of Columbia, and the Virgin Islands.

The UCC facilitates commerce among the states by providing a uniform, yet flexible, set of rules governing commercial transactions. Because of its importance in the area of commercial law, we cite the UCC frequently in this text. From time to time, the NCCUSL revises the articles contained in the UCC and submits the revised versions to the states for adoption.

1–2c Administrative Law

Administrative Law The body of law created by administrative agencies in order to carry out their duties and responsibilities.

Administrative Agency A federal, state, or local government agency created by the legislature to perform a specific function, such as to make and enforce rules pertaining to the environment.

Another important source of American law is **administrative law**, which consists of the rules, orders, and decisions of administrative agencies. An **administrative agency** is a federal, state, or local government agency established to perform a specific function.

Rules issued by various administrative agencies affect almost every aspect of a business's operations. Regulations govern a business's capital structure and financing, its hiring and firing procedures, its relations with employees and unions, and the way it manufactures and markets its products.

Federal Agencies At the national level, numerous *executive agencies* exist within the cabinet departments of the executive branch. The Food and Drug Administration, for example, is an agency within the U.S. Department of Health and Human Services. Executive agencies are subject to the authority of the president, who has the power to appoint and remove their officers.

There are also major *independent regulatory agencies* at the federal level, including the Federal Trade Commission, the Securities and Exchange Commission, and the Federal Communications Commission. The president's power is less pronounced in regard to independent agencies, whose officers serve for fixed terms and cannot be removed without just cause.

State and Local Agencies There are administrative agencies at the state and local levels as well. Commonly, a state agency (such as a state pollution-control agency) is created as a parallel to a federal agency (such as the Environmental Protection Agency).

Just as federal statutes take precedence over conflicting state statutes, so do federal agency regulations take precedence over conflicting state regulations. Because the rules of state and local agencies vary widely, we focus here exclusively on federal administrative law.

Agency Creation Because Congress cannot possibly oversee the actual implementation of all the laws it enacts, it delegates such tasks to agencies. Congress creates an administrative agency by enacting **enabling legislation**, which specifies the name, composition, purpose, and powers of the agency being created.

Example 1.3 The Federal Trade Commission (FTC) was created in 1914 by the Federal Trade Commission Act.³ This act prohibits unfair and deceptive trade practices. It also describes the procedures the agency must follow to charge persons or organizations with violations of the act, and it provides for judicial review (review by the courts) of agency orders.

Other portions of the act grant the agency powers to “make rules and regulations for the purpose of carrying out the Act,” and to conduct investigations of business practices. In addition, the FTC can obtain reports from interstate corporations concerning their business practices, investigate possible violations of the act, publish findings of its investigations, and recommend new legislation. The act also empowers the FTC to hold trial-like hearings and to **adjudicate** (resolve judicially) certain kinds of disputes involving its regulations.

Enabling Legislation A statute enacted by Congress that authorizes the creation of an administrative agency and specifies the name, composition, purpose, and powers of the agency being created.

Adjudicate To render a judicial decision. Adjudication is the trial-like proceeding in which an administrative law judge hears and resolves disputes involving an administrative agency's regulations.

1. This institute was formed in the 1920s and consists of practicing attorneys, legal scholars, and judges.

2. Louisiana has adopted only Articles 1, 3, 4, 5, 7, 8, and 9.

3. 15 U.S.C. Sections 45–58.

Note that the powers granted to the FTC incorporate functions associated with the legislative branch of government (rulemaking), the executive branch (investigation and enforcement), and the judicial branch (adjudication). Taken together, these functions constitute the **administrative process**, which is the administration of law by administrative agencies. The administrative process involves rulemaking, enforcement, and adjudication. ■

Rulemaking A major function of an administrative agency is **rulemaking**—formulating new regulations or amending old ones. When Congress enacts an agency’s enabling legislation, it confers the power to make **legislative rules**, or substantive rules, which are legally binding on all businesses.

The Administrative Procedure Act (APA)⁴ imposes strict procedural requirements that agencies must follow in legislative rulemaking and other functions.

Example 1.4 The Occupational Safety and Health Act authorized the Occupational Safety and Health Administration (OSHA) to develop and issue rules governing safety in the workplace. When OSHA wants to formulate rules regarding safety in the steel industry, it has to follow specific procedures outlined by the APA. If an agency fails to follow the APA’s rulemaking procedures, the resulting rule may not be binding. ■

Legislative Rules. Legislative rulemaking under the APA typically involves the following three steps (referred to as *notice-and-comment rulemaking*).

1. *Notice of the proposed rulemaking.* The notice must be published in the *Federal Register*, a daily publication of the U.S. government.
2. *A comment period.* The agency must allow ample time for interested parties to comment in writing on the proposed rule. The agency takes these comments into consideration when drafting the final version of the regulation.
3. *The final rule.* Once the agency has drafted the final rule, it is published in the *Federal Register*. (See the appendix at the end of this chapter for an explanation of how to find agency regulations.)

Interpretive Rules. Administrative agencies also issue **interpretive rules** that are not legally binding but simply indicate how an agency plans to interpret and enforce its statutory authority. The APA does not apply to interpretive rulemaking. **Example 1.5** The Equal Employment Opportunity Commission periodically issues interpretive rules indicating how it plans to interpret the provisions of certain statutes, such as the Americans with Disabilities Act. These informal rules provide enforcement guidelines for agency officials. ■

Enforcement and Investigation Agencies often enforce their own rules and have both investigatory and prosecutorial powers. Agencies investigate a wide range of activities, including coal mining, automobile manufacturing, and the industrial discharge of pollutants into the environment.

In an investigation, an agency can request that individuals or organizations hand over specified books, papers, electronic records, or other documents. In addition, agencies may conduct on-site inspections, although a search warrant is normally required for such inspections.⁵ Sometimes, a search of a home, an office, or a factory is the only means of obtaining evidence needed to prove a regulatory violation.

After investigating a suspected rule violation, an agency may decide to take action against an individual or a business. Most administrative actions are resolved through negotiated

Administrative Process The procedure used by administrative agencies in fulfilling their three basic functions: rulemaking, enforcement, and adjudication.



Terny/J/Stock/Getty Images Plus

Which federal agency oversees worker safety?

Rulemaking The process by which an administrative agency formally adopts a new regulation or amends an old one.

Legislative Rules Administrative agency rules that carry the same weight as congressionally enacted statutes.

Interpretive Rules Nonbinding rules or policy statements issued by an administrative agency that explain how it interprets and intends to apply the statutes it enforces.

4. 5 U.S.C. Sections 551–706.

5. In some heavily regulated industries, such as the sale of firearms or liquor, agencies can conduct searches without obtaining a warrant.

Administrative Law Judge

(ALJ) One who presides over an administrative agency hearing and has the power to administer oaths, take testimony, rule on questions of evidence, and make determinations of fact.

settlement at their initial stages without the need for formal adjudication. If a settlement cannot be reached, though, the agency may issue a formal complaint and proceed to adjudication.

Adjudication Agency adjudication involves a trial-like hearing before an **administrative law judge (ALJ)**. Hearing procedures vary widely from agency to agency. After the hearing, the ALJ renders a decision in the case. The ALJ can fine the charged party or prohibit the party from carrying on some specified activity.

Either the agency or the charged party may appeal the ALJ's decision to the commission or board that governs the agency. If the party fails to get relief there, appeal can be made to a federal court. Courts give significant weight (deference) to an agency's judgment and interpretation of its rules, though, and typically uphold the ALJ's decision unless it is unreasonable. If neither side appeals the case, the ALJ's decision becomes final.

**Ethical Issue****Do administrative agencies exercise too much authority?**

Administrative agencies, such as the Federal Trade Commission, combine in a single governmental entity functions normally divided among the three branches of government. They create rules, conduct investigations, and prosecute and pass judgment on violators. Yet administrative agencies' powers often go unchecked by the other branches. Some businesspersons have suggested that it is unethical for agencies—which are not even mentioned in the U.S. Constitution—to wield so many powers.

Although agency rulemaking must comply with the requirements of the Administrative Procedure Act (APA), the act applies only to legislative, not interpretive, rulemaking. In addition, the APA is largely procedural and aimed at preventing arbitrariness. It does little to ensure that the rules passed by agencies are fair or correct—or even cost-effective. On those rare occasions when an agency's ruling is challenged and later reviewed by a court, the court cannot reverse the agency's decision unless the agency exceeded its authority or acted arbitrarily. Courts typically are reluctant to second-guess an agency's rules, interpretations, and decisions. Moreover, once an agency has final regulations in place, it is difficult to revoke or alter them.

Case Law The rules of law announced in court decisions. Case law interprets statutes, regulations, and constitutional provisions, and governs all areas not covered by statutory or administrative law.

1-2d Case Law and Common Law Doctrines

The rules of law announced in court decisions constitute another basic source of American law. These rules of law include *interpretations* of constitutional provisions, of statutes enacted by legislatures, and of regulations created by administrative agencies.

Today, this body of judge-made law is referred to as **case law**. Case law—the doctrines and principles announced in cases—governs all areas not covered by statutory law or administrative law and is part of our common law tradition. We look at the origins and characteristics of the common law tradition in some detail in the discussion that follows.

1-3 The Common Law

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

1–3a Early English Courts

After the Normans conquered England in 1066, William the Conqueror and his successors began the process of unifying the country under their rule. One of the means they used to do this was the establishment of the king's courts, or *curiae regis*. Before the Norman Conquest, disputes had been settled according to the local legal customs and traditions in various regions of the country. The king's courts sought to establish a uniform set of rules for the country as a whole. What evolved in these courts was the beginning of the **common law**—a body of general rules that applied throughout the entire English realm. Eventually, the common law tradition became part of the heritage of all nations that were once British colonies, including the United States.

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

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

1–3b Stare Decisis

The practice of deciding new cases with reference to former decisions, or precedents, eventually became a cornerstone of the English and U.S. judicial systems. The practice forms a doctrine called **stare decisis**⁶ (a Latin phrase meaning “to stand on decided cases”).

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

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

Controlling Precedents Precedents that must be followed within a jurisdiction are known as controlling precedents. Controlling precedents are binding authorities. A **binding authority** is any source of law that a court must follow when deciding a case. Binding authorities include constitutions, statutes, and regulations that govern the issue being decided, as well as court decisions that are controlling precedents within the jurisdiction. United States Supreme Court case decisions, no matter how old, remain controlling until they are overruled by a subsequent decision of the Supreme Court, by a constitutional amendment, or by congressional legislation.

Stare Decisis and Legal Stability The doctrine of *stare decisis* helps the courts to be more efficient because if other courts have carefully reasoned through a similar case, their legal

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

Focus Question 2

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

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

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

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

Know This

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

6. Pronounced *stahr-ee dih-si-sis*.