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FIFTH EDITION

INTRODUCTION TO

Business Law

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Fifth Edition**

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Looking for more examples for class? Find all of the latest developments on our blog at bizlawupdate.com. To be notified when we post updates, just “like” our Facebook page at Beatty Business Law or follow us on Twitter @bizlawupdate.

NOTE FROM THE AUTHORS

New to This Edition

Cyberlaw and Privacy

We all face profound issues about how to maintain privacy in a digital world. Yes, we want to use the Internet, but we also want to protect our personal data. The cyberlaw chapter now includes a thorough discussion of privacy both on- and offline. It is essential information for anyone who has ever connected to the Internet or worried that private data could become public. This chapter has been moved to the Torts unit.

International Law

In a global world, students clamor for more international law, and many schools require coverage of international issues in every course. The international law chapter has been completely rewritten to provide students with an understanding of the basic structure and impact of international law. It includes a discussion of (1) how international law is created, (2) major treaties and other sources of international law, (3) the world’s different legal systems, (4) the application of U.S. law overseas, and (5) the enforceability of foreign laws and treaties in the United States.

A Focus on Students

We have increased coverage of topics that are of particular interest to students, such as social media and technology. Also, the bankruptcy chapter includes a new section on student loans. The crime chapter explores the application of constitutional standards of privacy to new technology such as DNA tests, digital cameras, social media, cellphones, and computers. The consumer law chapter looks at the legal issues raised when students spend money through direct debit and ATM cards.

Enhanced Digital Content—*MindTap*TM

Our goal – and yours – is for the students to learn the material. With that goal in mind, we have created a *MindTap*TM product for this book. *MindTap*TM is a fully online, highly personalized learning experience that is easy to use and benefits both instructors and students. The *MindTap* for our book contains a prebuilt Learning Path consisting of four different activities: Worksheets that test basic knowledge of the chapter, Brief Hypotheticals that require students to apply what they have learned, Video Activities that reinforce course concepts, and Case Problem Blueprints that require critical thinking skills. **As an assurance to you, we (the authors) have reviewed every question in the *MindTap* product to ensure that it meets the high standards of our book.**

When students are assigned (and required) to complete the *MindTap* Worksheet questions prior to class, they will be **prepared** for class discussions, and you will know the topics with which they struggle. Recent research indicates that students who are pretested in this way learn the material more fully and perform better on final exams.

MindTap guides students through their course with ease and engagement. Instructors can personalize the prebuilt Learning Path by customizing Cengage Learning resources and adding their own content via apps that integrate into the *MindTap* framework seamlessly with Learning Management Systems.

We recognize that the online experience is as important to the students—and you—as the book itself. Each and every item in the Learning Path is assignable and gradable. This gives instructors the knowledge of class standings and concepts that may be difficult. Additionally, students gain knowledge about where they stand—both individually and compared to the highest performers in class.

To view a demo video and learn more about *MindTap*, please visit www.cengage.com/mindtap/.

The Beatty/Samuelson Difference

Our goal in writing this book was to capture the passion and excitement, the sheer enjoyment, of the law. Business law is notoriously complex, and as authors we are obsessed with accuracy. Yet this intriguing subject also abounds with human conflict and hard-earned wisdom, forces that we wanted to use to make this book sparkle.

Once we have the students' attention, our goal is to provide the information they will need as business people and as informed citizens. Of course, we present the *theory* of how laws work, but we also explain when *reality* is different. To take some examples, traditionally business law textbooks have simply taught students that shareholders elect the directors of public companies. Even Executive MBA students rarely understand the reality of corporate elections. But our book explains the truth of corporate power. The practical contracts chapter focuses not on the theory of contract law but also on the real-life issues involved in making an agreement: Do I need a lawyer? Should the contract be in writing? What happens if the contract has an unclear provision or an important typo? What does all that boilerplate mean anyway?

Nobel laureate Paul Samuelson famously said, “Let those who will write the nation’s laws, if I can write its textbooks.” As authors, we never forget the privilege—and responsibility—of educating a generation of business law students. Our goal is to write a business law text like no other—a book that is authoritative, realistic, and yet a pleasure to read.

Strong Narrative. The law is full of great stories, and we use them. Your students and ours should come to class curious and excited. Look at Chapter 5, on dispute resolution. No tedious list of next steps in litigation, this chapter teaches the subject by tracking a double-indemnity lawsuit. An executive is dead. Did he drown accidentally, obligating the insurance company to pay? Or did the businessman commit suicide, voiding the policy? The student follows the action from the discovery of the body, through each step of the lawsuit, to the final appeal.

Every chapter begins with a story, either fictional or real, to illustrate the issues in the chapter. Over the years, we have learned how much more successfully we can teach when our students are intrigued. They only learn when they want to learn.

Context. Many of our students were not yet born when Bill Clinton was elected president. They come to college with varying levels of preparation; many arrive from other countries. We have found that to teach business law most effectively we must provide its context. In the chapter on employment discrimination, we provide a historical perspective to help students understand how the laws developed. Only with this background can students grasp the importance and impact of our laws.

Student Reaction. Students have responded enthusiastically to our approach. One professor asked a student to compare our book with the one that the class was then using. This was the student’s reaction: “I really enjoy reading the [Beatty/Samuelson] textbook,

and I have decided that I will give you this memo ASAP, but I am keeping the book until Wednesday so that I may continue reading. Thanks! :-)"

This text has been used in courses for undergraduates, MBAs, and Executive MBAs, with students ranging in age from 18 to 55. This book works, as some unsolicited comments indicate:

- From Amazon:
 - “Glad I purchased this. It really helps put the law into perspective and allows me as a leader to make intelligent decisions. Thanks.”
 - “I enjoyed learning business law and was happy my college wanted this book. THUMBS UP!”
- From undergraduates:
 - “This is the best textbook I have had in college, on any subject.”
 - “The textbook is awesome. A lot of the time I read more than what is assigned—I just don’t want to stop.”
 - “I had no idea business law could be so interesting.”
- From MBA students:
 - “Actually enjoyed reading the text book, which is a rarity for me.”
 - “The law textbook was excellent through and through.”
- From a Fortune 500 vice president, enrolled in an Executive MBA program:
 - “I really liked the chapters. They were crisp, organized, and current. The information was easy to understand and enjoyable.”
- From business law professors:
 - “The clarity of presentation is superlative. I have never seen the complexity of contract law made this readable,”
 - “With your book, we have great class discussions.”
- From a state supreme court justice:
 - “This book is a valuable blend of rich scholarship and easy readability. Students and professors should rejoice with this publication.”

Current. This fifth edition contains more than 30 new cases. Almost all were reported within the last two or three years, and many within the last 12 months. We never include a new court opinion merely because it is recent. Yet the law evolves continually, and our willingness to toss out old cases and add important new ones ensures that this book—and its readers—remain on the frontier of legal developments.

Authoritative. We insist, as you do, on a law book that is indisputably accurate. A professor must teach with assurance, confident that every paragraph is the result of exhaustive research and meticulous presentation. Dozens of tough-minded people spent thousands of hours reviewing this book, and we are delighted with the stamp of approval we have received from trial and appellate judges, working attorneys, scholars, and teachers.

We reject the cloudy definitions and fuzzy explanations that can invade judicial opinions and legal scholarship. To highlight the most important rules, we use bold print, and then follow with vivacious examples written in clear, forceful English.

We cheerfully venture into contentious areas, relying on very recent decisions. Can a creditor pierce the veil of an LLC? Are stop and frisk policies constitutional? Are employees protected against bullying in the workplace? Where there is doubt about the current (or future) status of a doctrine, we say so. We want you to have absolute trust in this book.

Humor. Throughout the text, we use humor—judiciously—to lighten and enlighten. Not surprisingly, students have applauded this—but is it appropriate? How dare we employ levity in this venerable discipline? We offer humor because we take law seriously. We

revere the law for its ancient traditions, its dazzling intricacy, its relentless though imperfect attempt to give order and decency to our world. Because we are confident of our respect for the law, we are not afraid to employ some levity. Leaden prose masquerading as legal scholarship does no honor to the field.

Humor also helps retention. Research shows that the funnier or more bizarre the example, the longer students will remember it. Students are more likely to remember a contract problem described in a fanciful setting, and from that setting recall the underlying principle. By contrast, one widget is hard to distinguish from another.

Features

We chose the features for our book with great care. Each feature responds to an essential pedagogical goal. Here are some of those goals and the matching feature.

Exam Strategy

GOAL: To help students learn more effectively and to prepare for exams. In developing this feature, we asked ourselves: What do students want? The short answer is—a good grade in the course. How many times a semester does a student ask you, “What can I do to study for the exam?” We are happy to help them study and earn a good grade because that means that they will also be learning.

Several times per chapter, we stop the action and give students a two-minute quiz. In the body of the text, again in the end-of-chapter review, and also in the Instructor’s Manual, we present a typical exam question. Here lies the innovation: We guide the student in analyzing the issue. We teach the reader—over and over—how to approach a question: to start with the overarching principle, examine the fine point raised in the question, apply the analysis that courts use, and deduce the right answer. This skill is second nature to lawyers but not to students. Without practice, too many students panic, jumping at a convenient answer, and leaving aside the tools they have spent the course acquiring. Let’s change that. Students love the Exam Strategy feature.

You Be the Judge

GOAL: Get them thinking independently. When reading case opinions, students tend to accept the court’s “answer.” Judges, of course, try to reach decisions that appear indisputable, when in reality they may be controversial—or wrong. From time to time, we want students to think through the problem and reach their own answer. Most chapters contain a “You Be the Judge” feature, providing the facts of the case and conflicting appellate arguments. The court’s decision, however, appears only in the Instructor’s Manual. Since students do not know the result, discussions are more complex and lively. Students disagree with the court at least half the time. They are thinking.

Ethics

GOAL: Make ethics real. We ask ethical questions about cases, legal issues, and commercial practices. Is it fair for one party to void a contract by arguing, months after the fact, that there was no consideration? What is wrong with bribery? We believe that asking the questions and encouraging discussion reminds students that ethics is an essential element of justice and of a satisfying life.

Cases

GOAL: Bring case law alive. Each case begins with a summary of the facts followed by a statement of both the issue and the decision. Next comes a summary of the court’s opinion. We have written this ourselves, to make the judges’ reasoning accessible to all readers, while retaining the court’s focus and the decision’s impact.

In the principal cases in each chapter, we provide the state or federal citation, unless it is not available, in which case we use the LEXIS and Westlaw citations. We also give students a brief description of the court.

End-of-Chapter Exam Review and Questions

GOAL: Encourage students to practice! At the end of the chapters, we provide a list of review points and several additional Exam Strategy exercises in the Question/Strategy/Result format. We also challenge the students with 25 or more problems—Matching, True/False, Multiple-Choice, Case Questions, and Discussion Questions. The questions include the following:

- **You Be the Judge Writing Problem.** The students are given appellate arguments on both sides of the question and must prepare a written opinion.
- **Ethics.** This question highlights the ethical issues of a dispute and calls upon the student to formulate a specific, reasoned response.
- **CPA Questions.** For topics covered by the CPA exam, administered by the American Institute of Certified Public Accountants, the Exam Review includes questions from previous CPA exams.

Answers to all the odd-numbered questions are available in Appendix C of the book.

Author Transition

Jeffrey Beatty fought an unremitting 10-year battle against a particularly aggressive form of leukemia, which, despite his great courage and determination, he ultimately lost. Jeffrey, a gentleman to the core, was an immensely kind, funny, and thoughtful human being, someone who sang and danced, and who earned the respect and affection of colleagues and students alike. In writing these books, he wanted students to see and understand the impact of law in their everyday lives as well as its role in supporting human dignity, and what's more, he wanted students to laugh.

Jeffrey was a hard act to follow. We feel immensely grateful to have found a worthy successor in Patricia Sánchez Abril. A tenured member of the faculty at the University of Miami School of Business Administration, Patricia is a devoted teacher who has won awards for her teaching in both the undergraduate and graduate programs. She has also published widely in scholarly journals and has won awards for her scholarship. In 2011, the Academy of Legal Studies in Business honored her with its Distinguished Junior Faculty Award and in 2014 awarded her the Outstanding Distinguished Proceedings Paper award.

TEACHING MATERIALS

For more information about any of these ancillaries, contact your Cengage/South-Western Legal Studies in Business Sales Representative for more details, or visit the Beatty *Introduction to Business Law* website at www.cengagebrain.com.

MindTap. *MindTap*[™] is a fully online, highly personalized learning experience combining readings, multimedia, activities, and assessments into a singular Learning Path. Instructors can personalize the Learning Path by customizing Cengage Learning resources and adding their own content via apps that integrate into the *MindTap* framework seamlessly with Learning Management Systems. To view a demo video and learn more about *MindTap*, please visit www.cengage.com/mindtap/.

Instructor's Manual. The Instructor's Manual, available on the Instructor's Support Site at www.cengagebrain.com/, includes special features to enhance class discussion and student progress:

- Exam Strategy Problems. If your students would like more of these problems, there is an additional section of Exam Strategy problems in the Instructor's Manual.
- Dialogues. These are a series of questions-and-answers on pivotal cases and topics.
- The questions provide enough material to teach a full session. In a pinch, you could walk into class with nothing but the manual and use the Dialogues to conduct an exciting class.
- Action learning ideas: interviews, quick research projects, drafting exercises, classroom activities, commercial analyses, and other suggested assignments that get students out of their chairs and into the diverse settings of business law.
- A chapter theme and a quote of the day.
- Current Focus. This feature offers updates of text material.
- Additional cases and examples.
- Answers to You Be the Judge cases from the text and to the Exam Review questions found at the end of each chapter.

Test Bank. The test bank offers hundreds of essay, short-answer, and multiple-choice problems, and may be obtained online at www.cengagebrain.com.

Cognero Testing Software—Computerized Testing Software. This testing software contains all of the questions in the printed test bank. This easy-to-use test creation software program is compatible with Microsoft Windows. Instructors can add or edit questions, instructions, and answers; they can also select questions by previewing them on the screen, selecting them randomly, or selecting them by number. Cognero gives instructors the ability to create and administer quizzes online, whether over the Internet, a local area network (LAN), or a wide area network (WAN). The Cognero testing software is available online.

Microsoft PowerPoint Lecture Review Slides. PowerPoint slides are available for use by instructors for enhancing their lectures. Download these slides at www.cengagebrain.com.

Business Law Digital Video Library. This dynamic online video library features more than 90 video clips that spark class discussion and clarify core legal principles. Access to the Business Law Digital Video Library is available as an optional package with each new student text at no additional charge. Students with used books can purchase access to the video clips online. For more information about the Business Law Digital Video Library, visit www.cengage.com/blaw/dvl.

Interaction with the Authors. This is our standard: Every professor who adopts this book must have a superior experience. We are available to help in any way we can. Adopters of this text often call us or email us to ask questions, obtain a syllabus, offer suggestions, share pedagogical concerns, or inquire about ancillaries. One of the pleasures of working on

this project has been our discovery that the text provides a link to so many colleagues around the country. We value those connections, are eager to respond, and would be happy to hear from you.

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For Jeffrey, best of
colleagues and dearest of
friends.
S.S.S.



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The Legal Environment

INTRODUCTION TO LAW

The Pagans were a motorcycle gang with a reputation for violence. Two of its rougher members, Rhino and Backdraft, entered a tavern called the Pub Zone, shoving their way past the bouncer. The pair wore gang insignia, in violation of the bar's rules. For a while, all was quiet, as the two sipped drinks at the bar. Then they followed an innocent patron toward the men's room, and things happened fast.

"Wait a moment," you may be thinking, "are we reading a chapter on business law or one about biker crimes in a roadside tavern?" Both.

Law is powerful, essential, and fascinating. We hope this book will persuade you of all three ideas. Law can also be surprising. Later in the chapter we will return to the Pub Zone (with armed guards) and follow Rhino and Backdraft to the back of the pub. Yes, the pair engaged in street crime, which is hardly a focus of this text.

However, their criminal acts will enable us to explore one of the law's basic principles, negligence. Should a pub owner pay money damages to the victim of gang violence? The owner herself did nothing aggressive. Should she have prevented the harm? Does her failure to stop the assault make her liable?

We place great demands on our courts, asking them to make our large, complex, and sometimes violent society into a safer, fairer, more orderly place. The Pub Zone case is a good example of how judges reason their way through the convoluted issues involved. What began as a gang incident ends up as a matter of commercial liability. We will traipse after Rhino and Backdraft because they have a lesson to teach anyone who enters the world of business.

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**Law is
powerful, essential,
and fascinating.**

1-1 THREE IMPORTANT IDEAS ABOUT LAW

1-1a Power

A driver is seriously injured in an automobile accident, and the jury concludes that the car had a design defect. The jurors award her *\$29 million*. A senior vice president congratulates himself on a cagey stock purchase but is horrified to receive, not profits, but a prison sentence. A homeless person, ordered by local police to stop panhandling, ambles into court and walks out with an order permitting him to beg on the city's streets. The strong hand of the law touches us all. To understand something that powerful is itself power.

Suppose, some years after graduation, you are a mid-level manager at Sublime Corp., which manufactures and distributes video games. You are delighted with this important position in an excellent company—and especially glad that you bring legal knowledge to the job. Sarah, an expert at computer-generated imagery, complains that Rob, her boss, is constantly touching her and making lewd comments. That is sexual harassment, and your knowledge of *employment law* helps you respond promptly and carefully.

You have dinner with Jake, who has his own software company. Jake wants to manufacture an exciting new video game in cooperation with Sublime, but you are careful not to create a binding deal (*contract law*). Jake mentions that a similar game is already on the market. Do you have the right to market one like it? That answer you already know (*intellectual property law*).

LuYu, your personnel manager, reports that a silicon chip worker often seems drowsy; she suspects drug use. Does she have the right to test him (*constitutional law* and *employment law*)? On the other hand, if she fails to test him, could Sublime Corp. be liable for any harm the worker does (*tort law* and *agency law*)?

In a mere week, you might use your legal knowledge a dozen times, helping Sublime to steer clear of countless dangers. During the coming year, you encounter many other legal issues, and you and your corporation benefit from your skills.

It is not only as a corporate manager that you will confront the law. As a voter, investor, juror, entrepreneur, and community member, you will influence and be affected by the law. Whenever you take a stance about a legal issue, whether in the corporate office, the voting booth, or as part of local community groups, you help to create the social fabric of our nation. Your views are vital. This book will offer you knowledge and ideas from which to form and continually reassess your legal opinions and values.

1-1b Importance

We depend upon laws for safe communities, functioning economies, and personal liberties. An easy way to gauge the importance of law is to glance through any newspaper and read about nations that lack a strong system of justice. Notice that these countries cannot ensure physical safety and personal liberties. They also fail to offer economic opportunity for most citizens. We may not always like the way our legal system works, but we depend on it to keep our society functioning.

1-1c Fascination

Law is intriguing. When the jury awarded \$29 million against an auto manufacturer for a defective car design, it certainly demonstrated the law's power. But was the jury's decision right? Should a company have to pay that much for one car accident? Maybe the jury was reacting emotionally. Or perhaps the anger caused by terrible trauma *should* be part of a court case. These are not abstract speculations for philosophers. Verdicts such as this may cause each of us to pay more for our next automobile. Then again, we may be driving safer cars.

1-2 SOURCES OF CONTEMPORARY LAW

It would be nice if we could look up “the law” in one book, memorize it, and then apply it. But the law is not that simple. Principles and rules of law come from many different sources. Why is this so?

We inherited a complex structure of laws from England. Additionally, ours is a nation born in revolution and created, in large part, to protect the rights of its people from the government. Our country’s Founders created a national government but insisted that the individual states maintain control in many areas. As a result, each state has its own government with exclusive power over many important areas of our lives. What the Founders created was **federalism**: a double-layered system of government, with the national government and state governments each exercising important but limited powers. To top it off, the Founders guaranteed many rights to the people alone, ordering national and state governments to keep clear. They achieved all of this in one remarkable document: the United States Constitution.

Federalism

A double-layered system of government, with the national and state governments each exercising important but limited powers

1-2a United States Constitution

America’s greatest legal achievement was the writing of the **United States Constitution** in 1787. It is the supreme law of the land, and any law that conflicts with it is void. This federal Constitution does three basic things. First, it establishes the national government of the United States, with its three branches. Second, it creates a system of checks and balances among the branches. And, third, the Constitution guarantees many basic rights to the American people.

U.S. Constitution

The supreme law of the United States

Branches of Government

The Founders sought a division of government power. They did not want all power centralized in a monarch or anyone else. And so the Constitution divides legal authority into three pieces: legislative, executive, and judicial power.

Legislative power gives the ability to create new laws. In Article I, the Constitution gives this power to the Congress, which is comprised of two chambers—a Senate and a House of Representatives.

The House of Representatives has 435 voting members. A state’s voting power is based on its population. Large states (Texas, California, Florida) send dozens of representatives to the House. Some small states (Wyoming, North Dakota, Delaware) send only one. The Senate has 100 voting members—two from each state.

Executive power is the authority to enforce laws. Article II of the Constitution establishes the president as commander-in-chief of the armed forces and the head of the executive branch of the federal government.

Judicial power gives the right to interpret laws and determine their validity. Article III places the Supreme Court at the head of the judicial branch of the federal government. Interpretive power is often underrated, but it is often as important as the ability to create laws in the first place. For instance, the Supreme Court ruled that privacy provisions of the Constitution protect a woman’s right to abortion, although neither the word “privacy” nor “abortion” appears in the text of the Constitution.¹ And at times, courts void laws altogether. For example, in 1995, the Supreme Court ruled that the Gun-Free School Zones Act of 1990 was unconstitutional because it exceeded Congressional power over interstate commerce.²

¹Roe v. Wade, 410 U.S. 113 (1973).

²United States v. Alfonso Lopez, Jr., 514 U.S. 549 (1995).

Checks and Balances

The authors of the Constitution were not content to divide government power three ways. They also wanted to give each part of the government the power over the other two branches. Many people complain about “gridlock” in Washington, but the government is sluggish by design. The Founders wanted to create a system that, without broad agreement, would tend towards inaction. The president can veto congressional legislation. Congress can impeach the president. The Supreme Court can void laws passed by Congress. The president appoints judges to the federal courts, but these nominees do not serve unless approved by the Senate.

Many of these checks and balances will be examined in more detail later in the text.

Fundamental Rights

The Constitution also grants many of our most basic liberties. For the most part, they are found in the amendments to the Constitution. The First Amendment guarantees the rights of free speech, free press, and the free exercise of religion. The Fourth, Fifth, and Sixth Amendments protect the rights of any person accused of a crime. Other amendments ensure that the government treats all people equally and that it pays for any property it takes from a citizen.

By creating a limited government of three branches and guaranteeing basic liberties to all citizens, the Constitution has become one of the most important documents ever written.

1-2b Statutes

The second important source of law is statutory law. The Constitution gave to the United States Congress the power to pass laws on various subjects. These laws are called **statutes**, and they can cover absolutely any topic at all, so long as they do not violate the Constitution.

Almost all statutes are created by the same method. An idea for a new law—on taxes, health care, texting while driving, or anything else—is first proposed in the Congress. This idea is called a *bill*. The House and Senate then independently vote on the bill. To pass Congress, the bill must get approval from a simple majority of each of these chambers.

If Congress passes a bill, it goes to the White House. If the president signs it, a new statute is created. It is no longer a mere idea; it is the law of the land. If a president *veto*es a bill, it does not become a statute unless Congress overrides the veto. To do that, both the House and the Senate must approve the bill by a two-thirds majority. At this point, it becomes a statute without the president’s signature.

Statute

A law passed by Congress or by a state legislature

1-2c Common Law

Binding legal ideas often come from the courts. Judges generally follow *precedent*. When courts decide a case, they tend to apply the same legal rules that other courts have used in similar cases. **The principle that precedent is binding on later cases is *stare decisis*, which means “let the decision stand.”** *Stare decisis* makes the law predictable, and this in turn enables businesses and private citizens to plan intelligently.

It is important to note that precedent is only binding on *lower* courts. If the Supreme Court, for example, decided a case in one way in 1965, it is under no obligation to follow precedent if the same issue arises in 2020.

Sometimes, this is quite beneficial. In 1896, the Supreme Court decided (unbelievably) that segregation—separating people by race in schools, hotels, public transportation, and so on—was legal. In 1954, on the exact same issue, the Court changed its mind.

In other circumstances, it is more difficult to see the value in breaking with an established rule.

Stare decisis

The principle that precedent is binding on later cases

1-2d Court Orders

Judges have the authority to issue court orders that place binding obligations on specific people or companies. An injunction, for example, is a court order to stop doing something. A judge might order a stalker to stay more than 500 yards away from an ex-boyfriend or girlfriend. Courts have the authority to imprison or fine those who violate their orders.

1-2e Administrative Law

In a society as large and complex as ours, the executive and legislative branches of government cannot oversee all aspects of commerce. Congress passes statutes about air safety, but United States senators do not stand around air traffic towers, serving coffee to keep everyone awake. The executive branch establishes rules concerning how foreign nationals enter the United States, but presidents are reluctant to sit on the dock of the bay, watching the ships come in. Administrative agencies do this day-to-day work.

Senators do not stand around air traffic towers, serving coffee to keep everyone awake.

Most government agencies are created by Congress. Familiar examples include the Environmental Protection Agency (EPA), the Securities and Exchange Commission (SEC), and the Internal Revenue Service (IRS), whose feelings are hurt if it does not hear from you every April 15. Agencies have the power to create laws called *regulations*.

1-3 CLASSIFICATIONS OF LAW

We have seen where laws come from. Now we need to classify them. First, we will distinguish between criminal and civil law. Then we will take a look at the intersection between law and morality.

1-3a Criminal and Civil Law

Criminal law

Concerns behavior so threatening that society prohibits it

It is a crime to embezzle money from an employer, to steal a car, and to sell cocaine. **Criminal law concerns behavior so threatening that society outlaws it altogether. Most criminal laws are statutes, passed by Congress or a state legislature.** The government itself prosecutes the wrongdoer, regardless of what the bank president or car owner wants. A district attorney, paid by the government, brings the case to court. The injured party, for example the owner of the stolen car, is not in charge of the case, although she may appear as a witness. The government will seek to punish the defendant with a prison sentence, a fine, or both. If there is a fine, the money goes to the state, not to the injured party.

Civil law

Regulates the rights and duties between parties

Civil law is different, and most of this book is about civil law. **Civil law regulates the rights and duties between parties.** Tracy agrees in writing to lease you a 30,000-square-foot store in her shopping mall. She now has a legal duty to make the space available. But then another tenant offers her more money, and she refuses to let you move in. Tracy has violated her duty, but she has not committed a crime. The government will not prosecute the case. It is up to you to file a civil lawsuit. Your case will be based on the common law of contracts. You will also seek equitable relief—namely, an injunction ordering Tracy not to lease to anyone else. You should win the suit, and you will get your injunction and some money damages. But Tracy will not go to jail.

Some conduct involves both civil and criminal law. Suppose Tracy is so upset over losing the court case that she becomes drunk and causes a serious car accident. She has committed the crime of driving while intoxicated, and the state will prosecute. Tracy may be fined or imprisoned. She has also committed negligence, and the injured party will file a lawsuit against her, seeking money.

1-3b Law and Morality

Law is different from morality, yet the two are obviously linked. There are many instances when the law duplicates what all of us would regard as a moral position. It is negligence to drive too fast in a school district, and few would dispute the moral value of that law. And similarly with contract law: If the owner of land agrees in writing to sell property to a buyer at a stated price, the seller must go through with the deal, and the legal outcome matches our moral expectations.

On the other hand, we have had laws that we now clearly regard as immoral. Seventy-five years ago, a factory owner could legally fire a worker for any reason at all—including, for example, her religion. It is immoral to fire a worker because she is Jewish—and today, the law prohibits it. Finally, there are legal issues where the morality is not so clear. Suppose you serve alcohol to a guest who becomes intoxicated and then causes an automobile accident, seriously injuring a pedestrian. Should you, the social host, be liable? This is an issue of tort liability, which we examine in Chapter 9. As with many topics in this book, the problem has no easy answer. As you learn the law, you will have an opportunity to re-examine your own moral beliefs. One of the goals of Chapter 2, on ethics, is to offer you new tools for that task. But our ethics discussion does not end there. Throughout the text, you will find ethics questions and features, like the one that follows, which ask you to grapple with the moral dimensions of legal questions.

Ethics

It was a cold winter's day. In one of New York City's dank, dark subway stations, dozens of people waited for the next train. All of a sudden, a man was shoved onto the subway tracks. He screamed but since no one helped, he was crushed to death by an oncoming train.³

Some of the bystanders were so busy on their smartphones, they did not even hear the man's screams for help. Use of technology has changed our awareness of our surroundings and our sense of civility and duty to those around us.

Other witnesses pulled out their phones to capture images and videos of the last minutes of the victim's life. One man sold his picture of the episode to the *New York Post*, which published it on the cover the next day. Others shared their videos on YouTube.

What are the moral obligations of each of these groups of witnesses? Who has acted most unethically (if anyone)? Remember that the decision to help (or not) is one that is made in a split second. What would you have done?

³Christine Rosen, "The Gadget and the Bad Samaritan," *The Wall Street Journal*, Oct. 26-27, 2013.

1-4 WORKING WITH THE BOOK'S FEATURES

In this section, we introduce a few of the book's features and discuss how you can use them effectively. We will start with cases.

1-4a Analyzing a Case

A law case is the decision a court has made in a civil lawsuit or criminal prosecution. Cases are the heart of the law and an important part of this book. Reading them effectively takes practice. This chapter's opening scenario is fictional, but the following real case involves a similar situation. Who can be held liable for the assault? Let's see.

KUEHN V. PUB ZONE

364 N.J. Super. 301
Superior Court of New Jersey, 2003

CASE SUMMARY

Facts: Maria Kerkoulas owned the Pub Zone bar. She knew that several motorcycle gangs frequented the tavern. From her own experience tending bar, and conversations with city police, she knew that some of the gangs, including the Pagans, were dangerous and prone to attack customers for no reason. Kerkoulas posted a sign prohibiting any motorcycle gangs from entering the bar while wearing “colors”; that is, insignia of their gangs. She believed that gangs without their colors were less prone to violence, and experience proved her right.

Rhino, Backdraft, and several other Pagans, all wearing colors, pushed their way past the tavern's bouncer and approached the bar. Although Kerkoulas saw their colors, she allowed them to stay for one drink. They later moved towards the back of the pub, and Kerkoulas believed they were departing. In fact, they followed a customer named Karl Kuehn to the men's room, where, without any provocation, they savagely beat him. Kuehn was knocked unconscious and suffered brain hemorrhaging, disc herniation, and numerous fractures of facial bones. He was forced to undergo various surgeries, including eye reconstruction.

Although the government prosecuted Rhino and Backdraft for their vicious assault, our case does not concern that prosecution. Kuehn sued the Pub Zone, and that is the case we will read. The jury awarded him \$300,000 in damages. However, the trial court judge overruled the jury's verdict. He granted a judgment for the Pub Zone,

meaning that the tavern owed nothing. The judge ruled that the pub's owner could not have foreseen the attack on Kuehn and had no duty to protect him from an outlaw motorcycle gang. Kuehn appealed, and the appeals court's decision follows.

Issue: *Did the Pub Zone have a duty to protect Kuehn from the Pagans' attack?*

Decision: Yes, the Pub Zone had a duty to protect Kuehn. The decision is reversed, and the jury's verdict is reinstated.

Reasoning: Whether a duty exists depends on the foreseeability of the harm, its potential severity, and the defendant's ability to prevent the injury. A court should also evaluate society's interest in the dispute.

A business owner generally has no duty to protect a customer from acts of a third party unless experience suggests that there is danger. However, if the owner could in fact foresee injury, she is obligated to take reasonable safety precautions.

Kerkoulas knew that the Pagans engaged in random violence. She realized that when gang members entered the pub, they endangered her customers. That is why she prohibited bikers from wearing their colors—a reasonable rule. Regrettably, the pub failed to enforce the rule. Pagans were allowed to enter wearing their colors, and the pub did not call the police. The pub's behavior was unreasonable, and it is liable to Kuehn.

Analysis

Let's take it from the top. The case is called *Kuehn v. Pub Zone*. Karl Kuehn is the **plaintiff**, the person who is suing. The Pub Zone is being sued and is called the **defendant**. In this example, the plaintiff's name happens to appear first, but that is not always true. When a defendant loses a trial and files an appeal, *some* courts reverse the names of the parties for the appeal case.

The next lines give the legal citation, which indicates where to find the case in a law library or online.

The *Facts* section provides a background to the lawsuit, written by the authors of this text. The court's own explanation of the facts is often many pages long and may involve complex matters irrelevant to the subject covered in this book, so we relate only what is necessary. This section will usually include some mention of what happened at the trial court. Lawsuits always begin in a trial court. The losing party often appeals to a court of appeals, and it is usually an appeals court decision that we are reading. The trial judge ruled in favor of Pub Zone, but in the appellate decision we are reading, Kuehn won.

The *Issue* section is very important. It tells you what the court had to decide—and why you are reading the case.

The *Decision* section describes the court's answer to the issue posed. A court's decision is often referred to as its **holding**. The court rules that the Pub Zone did have a duty to Kuehn. The court **reverses** the trial court's decision, meaning it declares the lower court's ruling wrong and void. The judges reinstate the jury's verdict. In other cases, an appellate court may **remand** the case; that is, send it back down to the lower court for a new trial or some other action. If this court had agreed with the trial court's decision, the judges would have **affirmed** the lower court's ruling, meaning to uphold it.

The *Reasoning* section explains why the court reached its decision. The actual written decision may be three paragraphs or 75 pages. Some judges offer us lucid prose, while others seem intent on torturing the reader. Judges frequently digress and often discuss matters that are irrelevant to the issue on which this text is focusing. For those reasons, we have taken the court's explanation and cast it in our own words. If you are curious about the full opinion, you can always look it up using the legal citation.

Let us examine the reasoning. The court points out that a defendant is liable only if he has a duty to the plaintiff. Whether there is such a duty depends on the foreseeability of the injury and other factors. The judges are emphasizing that courts do not reach decisions arbitrarily. They attempt to make thoughtful choices, consistent with earlier rulings, which make good sense for the general public.

The court also points out what it is *not* deciding. The court is *not* declaring that all businesses must guarantee the safety of their patrons against acts by third parties. If an owner had no reason to foresee injury from a third party, the owner is probably not liable for such harm. However, if experience indicated that the third party presented serious danger, the owner was obligated to act reasonably. The judges note that Kerkoulas knew the Pagans could be violent and had taken reasonable precautions by prohibiting gang colors. However, the pub failed to enforce its sensible rule and failed even to telephone the police. By the very standard the pub had created, its conduct was unreasonable. The court therefore concludes that the Pub Zone was liable for the Pagans' injury to Kuehn, and the judges reinstate the jury's verdict for the injured man.

Plaintiff

The person who is suing

Defendant

The person being sued

Holding

A court's decision

Reverse

To declare the lower court's ruling wrong and void

Remand

To send a case back down to a lower court

Affirm

To uphold a lower court's ruling