# *Business Law 11th edition Cheeseman Solutions Manual*

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# Chapter 1

# Legal Heritage and the Information Age

## Answer to Critical Legal Thinking Case

### 1.1 School of Jurisprudential Thought

Yes, the race-conscious admissions program at the University of Texas is lawful under the Equal Protection Clause of the U.S. Constitution. The U.S. Supreme Court held that the University's admissions policy was narrowly tailored to advance raced-based differences in university admissions. The Supreme Court stated that the University's affirmative action admissions process must be tailored to ensure that race plays no greater role than is necessary to meet the University's compelling interest to diversify its student body.

The Supreme Court stated, "A university may institute a race-conscious admissions program as a means of obtaining the educational benefits that flow from student body diversity. Enrolling a diverse student body promotes cross-racial understanding, helps to break down racial stereotypes, and enables students to better understand persons of different races. Equally important, student body diversity promotes learning outcomes, and better prepares students for an increasingly diverse workforce and society."

The Supreme Court stated that admissions officers can consider race as a positive feature of a minority student's application. However, a university may not use quotas, such as setting aside a predetermined number of admissions or percent of admissions, based on race. The Court held that using race as one factor of many factors to be considered in a holistic view of college applications is narrowly tailored and does not violate the Equal Protection Clause of the U.S. Constitution. The Supreme Court affirmed the judgment of the U.S. court of appeals.

The decision of the U.S. Supreme Court is highly correlated to the goals of the Sociological School of jurisprudence, which asserts that the law is a means of achieving and advancing certain sociological goals. The followers of this philosophy believe that the purpose of law is to shape social behavior. The use of a holistic approach of university admissions that

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considers race as one of many factors to be considered in the admissions process, with a goal of attaining diversity of a university student body, helps achieve a social goal. *Fisher v. University of Texas at Austin*, 136 S.Ct. 2198, 2016 U.S. Lexis 4059 (Supreme Court of the United States, 2016)

### 1.2 Fairness of the Law

Many students will react that the statute is unfair as it does not afford women equal status in the workplace. In light of today's standards, that position is well founded. However, it is a useful exercise to consider arguments for the opposite position in the context of the time period. In enacting such a statute, the legislature presumably entertained the view that women had special needs, were subject to certain weaknesses, and therefore the demands made on them had to be accommodated in the workplace. That these premises, i.e., special needs and presumed weaknesses, might be false does not necessarily preclude one from acting morally. Moralists might label this ignorance as excusable in that it is "invincible," i.e., an ignorance that cannot be destroyed or offers no moral reason for doing so. Of course, modern experience and knowledge require that we question these premises. It almost certainly would not be lawful today. Not only have the items relevant to the test of equal protection broadened under present constitutional interpretations, but also Title VII of the Civil Rights Act of 1964 prohibits any discrimination on the basis of sex in the "terms, conditions and benefits of employment." *W. C. Ritchie & Co. v. Wayman, Attorney for Cook Country, Illinois*, 91 N.E. 695, 1910 Ill. Lexis 1958 (Supreme Court of Illinois)

## Answers to Ethics Cases

### 1.3 Ethics Case

Yes, the hunting, fishing, and gathering rights granted to the Mille Lacs Band of the Ojibwe Indians by the federal government in the 1837 treaty are valid and enforceable. The U.S. Supreme Court held that these rights were not extinguished when the state of Minnesota was admitted as a state in 1858. The state of Minnesota argued that the Ojibwe's rights under the treaty were extinguished when Minnesota was admitted to the Union. There is no clear evidence of federal congressional intent to extinguish the treaty rights of the Ojibwe Indians when

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Minnesota was admitted as a state in 1858. The language admitting Minnesota as a state made no mention of Indian treaty rights. It was illegal for the state of Minnesota to try to extinguish clearly delineated legal rights granted to the Ojibwe Native Americans more than 150 years before. The hunting, fishing, and gathering rights guaranteed to the Ojibwe Indians in the 1837 treaty are still valid and enforceable.

The state of Minnesota did not ethically when it tried to abolish the hunting, fishing, and gathering rights guaranteed to the Ojibwe Indians by treaty. The Ojibwe relied on the promises of the treaty, which must be kept by the government. *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 119 S.Ct. 1187, 1999 U.S. Lexis 2190 (Supreme Court of the United States)

### 1.4 Ethics Case

The better case is made by the dissent. The law has not been progressive in this instance. It is likely that legislators entertained an unconscious premise that women should not be required to fight a war. This speculation might be supported by the fact that the majority of the Supreme Court summoned a technical legal point to justify their ruling. The Court held that Congress was the proper party to articulate the public policy that women should not fight at the front, thereby removing themselves from any further consideration of the substantive issue, i.e., whether equality was being served as a matter of fairness. *Rostker, Director of the Selective Service v. Goldberg*, 453 U.S. 57, 101 S.Ct. 2646, 1981 U.S. Lexis 126 (Supreme Court of the United States)

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# Chapter 2
# Courts and Jurisdiction

## Answers to Critical Legal Thinking Cases

### 2.1 Personal Jurisdiction

No, defendants Live Siri Art, Inc. and Siri Galliano are not subject to lawsuit in New York pursuant to New York's long-arm statute. This is because defendant Live Siri Art, Inc, a California corporation, and defendant Siri Galliano, a California resident, did not have the requisite minimum contacts with the state of New York to make them subject to a lawsuit brought by plaintiff Richtone Design Group LLC (Richtone), a New York LLC, in a New York court pursuant to the New York long-arm statute. Assuming that the defendants did violate the plaintiff's copyright by selling Richtone's pilates manuals in New York using a website and made $1,000 in more than a decade doing so, this is but de minimis contact that does not arise to the minimum contact required by due process to subject them to a lawsuit in New York. The U.S. district court dismissed plaintiff Richtone's New York lawsuit against the California defendants for lack of personal jurisdiction. *Richtone Design Group, LLC v. Live Art*, *Inc.,* 2013 U.S. Dist. Lexis 157781 (United States District Court for the Southern District of New York, 2013)

### 2.2 Service of Process

Yes, May Facebook, Inc. may use alternative service of process by sending email notices to the defendants' websites. Facebook sued the defendants for trademark infringement, cybersquatting,

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and false designation of origin by their use of typosquatting schemes whereby the defendants register internet domain names that are confusingly similar to facebook.com (e.g., facebock.com) so that potential users of Facebook's website who enter a typographical error are diverted to the typesquatter's website, which is designed to look strikingly similar in appearance to Facebook's website, to trick users into thinking that they are using Facebook's website. Facebook has introduced evidence that it has not been able to serve the defendants personally, by mail, or by telephone. The U.S. district court granted Facebook's motion to be permitted to serve these defendants by sending an email notice to the defendants' websites. The U.S. district court stated "Here, service by email is reasonably calculated to provide actual notice." The U.S. district court issued an order permitting Facebook to serve the defendants by email. *Facebook, Inc. v. Banana Ads LLC.* 2012 U.S. Dist. Lexis 65834 (United States District Court for the Northern District of California, 2012)

### 2.3 Standing to Sue

Michigan law, and not Ohio law, applies in this case. The court noted that because the accident took place in Michigan, there is a presumption that Michigan law applies absent any other jurisdiction having more substantial contacts. Plaintiff Bertram, however, contended that Ohio law should apply, because all of the parties were residents of Ohio at the time of the accident and all consequences flowing from his injury occurred in Ohio. The court disagreed. The court stated, "Because the snowmobiling accident took place in Michigan, the place where the conduct causing Bertram's injury occurred in Michigan and Michigan has enacted specific legislation involving the risks of snowmobiling, we find that Michigan law clearly controls in this case. While all parties are residents of and have their relationships in the State of Ohio, we are not

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persuaded by Bertram's argument that this issue should control." The Court of Appeals of Ohio held that the law of the state of Michigan, where the accident occurred, and not the law of the state of Ohio, the state of the residence of the parties, applied. The court applied the Michigan assumption of the risk statute and granted summary judgment to the three defendant friends of plaintiff Bertram. *Bertram v. Norden, et al.,* 823 N.E.2d 478, 2004 Ohio App. Lexis 550 (Court of Appeals of Ohio, 2004)

### 2.4 Long-Arm Statute

Yes, the Missouri court has personal jurisdiction over the Illinois casino based on Missouri's long-arm statute. Although the Casino Queen casino is located in Illinois, it could reasonably foresee its pervasive advertising directed at Missouri residents would entice those residents, such a Mark Myers, to cross the state line into Illinois to participate in gambling at the Illinois casino. If an Illinois defendant can reasonably foresee that his or her negligent actions have consequences felt in Missouri, personal jurisdiction is authorized under the Missouri long-arm statute. The U.S. court of appeals held that Casino Queen, which operated a casino in Illinois, is subject to personal jurisdiction in courts in Missouri under Missouri's long-arm statute. The court of appeals stated, "While Myers's injuries did not arise out of Casino Queen's advertising in a strict proximate cause sense, his injuries are nonetheless related to Casino Queen's advertising activities because he was injured after responding to the solicitation." The court of appeals ruled that Casino Queen must stand trial in a Missouri court and defend the charges brought against it by Myers. *Myers v. Casino Queen, Inc.,* 689 F.3d 904, (United States Court of Appeals for the Eighth Circuit, 2012)

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## 2.5 Standing to Sue

No. The U.S. District Court held that Phoenix of Broward, Inc. (Phoenix), a franchisee of Burger King did not have standing to sue McDonald's and dismissed the case. In deciding the case the court noted that the goal of standing is to determine whether the plaintiff is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers. It was Simon Marketing, Inc. (Simon), who McDonald's hired to operate the promotional games, who committed fraud by steering cash prizes of up to $1 million to its conspirators. McDonald's may have been negligent in allowing this to happen. Thus, McDonald's customers who did not have a chance to win the cash prizes because of the fraud would have standing to sue Simon and McDonald's. However, the court held that Phoenix of Broward, Inc. (Phoenix), a franchisee of Burger King, did not have standing to sue McDonald's. The court stated, "In this case, the harm caused by McDonald's allegedly false advertisements more directly affects the customers who were denied the opportunity to compete for the high-value prizes criminally co-opted by Jacobson. While these customers do not have standing to sue under the Lanham Act, they could and did vindicate the public interest by suing McDonald's for fraud. Thus, there is no need to empower Phoenix to act as a private attorney general in this case." *Phoenix of Broward, Inc. v. McDonald's Corporation,* 441 F.Supp.2d 1241, 2006 U.S. Dist. Lexis 55112 (United States District Court for the Northern District of Georgia, 2006)

## 2.6 U.S. Supreme Court Decision

This is a plurality decision of the U.S. Supreme Court and does not create precedent for further cases. This is because although 5 justices upheld the Salinas's verdict of guilty, 3 did so for one reason and 2 did so for a different reason. If the 5 justices would have agreed to the verdict of

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guilty based on the same reason as to why the evidence of the defendant's silence at the precustodical hearing could be admitted at trial, then it would have been a majority opinion, and a majority opinion would have become precedent. However, in this case, 5 justices upheld the guilty verdict, but 3 for one reason and 2 justices for another reason, with 4 justices dissenting, created a plurality decision that does not create precedent. *Salinas v. Texas,* 133 S.Ct. 2174, 2012 U.S. Lexis 4697 (Supreme Court of the United States, 2012)

## Answers to Ethics Cases

### 2.7 Ethics Case

Yes, the Maryland court has personal jurisdiction over the Florida defendant Ladawn Banks. Chanel is engaged in the business of manufacturing and distributing throughout the world various luxury goods, including handbags, wallets, and numerous other products under the federally registered trademark "Chanel" and monogram marks. Chanel alleged that Banks owned and operated the fully interactive website www.lovenamebrands.com, through which she sold handbags and wallets bearing counterfeit trademarks identical to the registered Chanel marks. According to Chanel, although defendant Banks is a resident of Florida, she conducted business in Maryland via several interactive websites. The *Zippo* court distinction between interactive, semi-interactive, and passive websites is particularly relevant. Defendant's website at issue in this case was highly interactive and provided a platform for the commercial exchange of information, goods, and funds. Thus, the Maryland court, under its long-arm statute, has personal jurisdiction over the Florida defendant Banks in this matter. The court granted default judgment

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to Chanel, assessed damages of $133,712 against Banks, and issued a permanent injunction prohibiting Banks from infringing on Chanel's trademarks.

Regarding the issue of ethics, if defendant Ladawn Banks operated the website www.lovenamebrands.com and sold knock-off handbags and wallets bearing counterfeit trademarks identical to the registered Chanel marks, she has acted unethically. Stealing another party's rightful trademarks and selling knock-off goods bearing those trademarks is not only unethical but it also constitutes illegal trademark infringement. *Chanel, Inc. v. Banks,* 2010 U.S. Dist. Lexis 135374 (United States District Court for Maryland, 2010)

### 2.8 Ethics Case

No, Hertz Corporation is not a citizen of California and therefore is not subject to plaintiff Melinda Friend's—a California citizen—suit in California state court. A corporation is a citizen of the state in which it is incorporated and in which it has its principal place of business. Hertz Corporation is incorporated in the state of Delaware and has its headquarters office in the state of New Jersey. Hertz is not incorporated in California nor does it have its principal place of business in California. The U.S. Supreme Court stated, "We conclude that the phrase 'principal place of business' refers to the place where the corporation's high level officers direct, control, and coordinate the corporation's activities. We believe that the 'nerve center' will typically be found at a corporation's headquarters. The metaphor of a corporate 'brain,' while not precise, suggests a single location." Here, that location for Hertz was Hertz's headquarters office in New Jersey. Because Hertz was not a citizen of California, and plaintiff Friend was a resident of California, there was diversity of citizenship and Hertz can legally have Friend's lawsuit moved from California state court to the U.S. district court in California.

It was probably not unethical for Hertz to deny citizenship in California even though it has

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such a large presence in California with its 270 rental car locations and more than 2,000 employees in California. Finding diversity in this case does not mean that Friend cannot sue Hertz in California. Friend will get her day in court against Hertz, but it will be in a U.S. district court in California and not in a California state court. *Hertz Corporation v. Friend,* 130 S.Ct. 1181, 2010 U.S. Lexis 1897 (Supreme Court of the United States, 2010)

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# Instructor's Resource Manual

Revised by Lisa McCormick

# Business Law

*Eleventh Edition*

**Henry R. Cheeseman**




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# 1 LEGAL HERITAGE AND THE INFORMATION AGE

*"Where there is no law, there is no freedom."*

John Locke (1632-1704)
Second Treastise of Government, Sec. 57

## I. Teacher to Teacher Dialogue

Business Law is a course that examines the intersection of business and the law. Having said that, we need to discuss what Business Law is not. A Business Law course is not a law school course. We are not training attorneys in this course. This is important to remember for everyone, especially attorneys who are teaching this course. Business Law is a business course, which focuses on the law and the relationship between business and the law. Our goal is to give students an understanding of the foundations of the legal system and structure, how laws relate to business, and examine where the law and business intersect.

It is your decision how in depth you would like to go with these discussions. But, let me caution you. There are topics in this course that can best be described as dry. And, this first chapter which encompasses the fundamentals of the legal system, the schools of judicial thought, the sources of law in the United States, and how new laws are enacted are perfect examples. It can be difficult to make these concepts exciting and give them life and theatrics. That is the reality. You must be conscious of it. To combat this, start each class with or select a point in each class where you discuss current events in the news that relate to Business Law. Now, you must research to find them. But this can be greatly helpful for student engagement purposes. Even if the news stories relate to a topic that has not been covered yet, this is a great way to introduce topics and give students a feel for the course. For example, there is a business declaring bankruptcy just about every day.

Ok. So, where do you begin? You begin with a plan and a thorough understanding of the course material.

## II. Learning Objectives

1.1 Define *law*.
1.2 Describe the flexibility of the law.
1.3 List and describe the schools of judicial thought.
1.4 Learn the history and development of American Law.


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1.5 List and describe the sources of law in the United States.
1.6 Describe the doctrine of *stare decisis.*
1.7 Describe how existing laws are being applied to the digital environment and how new laws are being enacted that specifically address issues of the information age.
1.8 Learn what critical legal thinking is and how to apply it to analyzing legal cases.
1.9 Learn how the material, cases, and lessons of the book will apply to your future career.

## III. Key Question Checklist

- What is law?
- What are the primary functions of law in the contemporary environment?
- What are the schools of jurisprudential thought?
- What is the history of American Law?
- What are the sources of law in the United States?
- What is *stare decisis*? Why was the doctrine developed? What would be the consequences if the doctrine of *stare decisis* was not followed?
- How are existing laws being applied to the digital environment? How are new laws being enacted that specifically address issues of the information age?
- What is critical thinking and how do we apply it to analyze legal cases?

## IV. Text Materials

The focus of Chapter 1 is to introduce students to the law, its history in the United States, jurisprudence which is the philosophy and science of the law, the sources of law in the United States, and the law and the information age.

### *What is Law?*

**1.1 Define *law*.**

**Laws consist of rules that regulate the conduct of individuals, businesses, and other organizations in society.**

**Definition of Law** – Is a body of rules of action or conduct prescribed by a controlling authority, having binding legal consequences. Laws must be obeyed and flowed by citizens or they will be subject to sanctions or legal consequences.

**Functions of the Law** – Laws are created to:
1. Keep the peace.
2. Shape moral standards.
3. Promote social justice.
4. Maintain status quo.
5. Facilitate orderly conduct.
6. Facilitate planning.
7. Provide a basis for compromise.
8. Maximize individual freedom.


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**Fairness of the Law** – The American legal system is a comprehensive and democratic system. It's fairness for all is an issue of debate. There are misuses and oversights of our legal system.

## *Flexibility of the Law*

**1.2 Describe the flexibility of the law.**

**Flexibility of the Law** – U.S. law has evolved and changed along with norms in society, technology, and the growth and expansion of commerce. The same general principles that we were established on still exist. The modifications exhibit the flexibility and maturity of our system to be able to adapt to the changing commercial, social, and ethical environments.

**Critical Legal Thinking** – The law in the U.S. is permitted to grow and change over time as our social values change as a society. Having some vagueness to the law allows the law to adapt more easily.

**Landmark U.S. Supreme Court Case: *Brown v. Board of Education***
This box discusses the application of law where the Supreme Court overturned the "separate but equal" doctrine that condoned separate schools for black children and white children.
**Critical Legal Thinking:** The states must treat all individuals in the same manner as others that are in similar positions or situations, without favoring residents or any other group. Equal application is the important idea here.
**Ethics:** Separate but equal cannot be applied when it comes to education, so the decision in *Plessy v. Ferguson* was wrong. The Plessy decision was based on the idea of granting political and civil equality to African Americans and leaving out social equality. The U.S. Constitution was drafted to reflect changing social, economic, technical, and intellectual ideas. This is what makes the Constitution unique, as it slowly adapts to the changing world around us.

## *Schools of Jurisprudential Thought*

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

**There are several different philosophies about how the law developed, ranging from the classical natural theory to modern theories of law and economics and critical legal studies.**

The different schools jurisprudential thought include:

-The **Natural Law School**, based on the moral theory of law.
-The **Historical School**, with its recognition of the social traditions and customs that have developed over time.
-The **Analytical School**, where law is shaped by logic.
-The **Sociological School**, where law is applied to advance sociological goals.
-The **Command School**, whose laws are established by the ruling party rather than the society as a whole.
-The **Critical Legal Studies School**, who claim that laws are there only to maintain the status quo.
-The **Chicago School**, or ***Law and Economics School***, which promotes market efficiency.


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## *History of American Law*

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

**English Common Law** – English common law, the primary basis for U.S. law, was based on judges issuing opinion when deciding a case. These opinions became the basis for precedent used by later judges deciding similar cases.

The historical underpinning of U.S. law can be further reinforced with some discussion of the tie-ins between the country's political history with that of the legal traditions of England and other countries. This portion of the chapter material can be used to introduce students to a broad overview of the roles that the world's major legal systems play in the world economy. For example, the role of the Law Merchant and its influence on international trade is critical to understanding most international rules on import/export laws today. The origins of the Law Merchant, in turn, are traceable in large part to the Roman civil law. In the end, the U.S. legal system represents the "Cuisinart" effect. There are ingredients from English common law, Roman civil law, and Judeo-Christian canon law all thoroughly processed into a bread of law. The individual ingredients are all present, but each is no longer independently identifiable.

> **Law Courts** – These were established following the Norman Conquest of England in 1066 to administer laws in a uniform method. Law Courts emphasized form over substance.
>
> **Chancery Courts** – These courts were established to serve when Law Courts provided inadequate remedies; they provided equitable solutions. These courts reviewed the merits of the case, rather than the procedural aspects.
>
> **Merchant Courts** – Law Merchant courts were developed as a separate entity to solve commercial disputes in the Middle Ages. They were not merged into the regular court system in England until the early 1900s.

**Landmark Law:** ***Adoption of English Common Law in America***
All the states of the United States of America except Louisiana base their legal systems primarily on the English common law. Currently, the law of the United States is a combination of law created by the judicial system and by congressional legislation.

**Global Law:** ***The Civil Law System of France and Germany***
The Romano-Germanic civil law system dates back to 450 B.C., when Rome adopted a set of laws based on civil codes that applied to all Romans. The sole source of civil law in a country is the application of code or statutes. Court decisions do not have the force of law.

## *Sources of Law in the United States*

**1.5 List and describe the sources of law in the United States.**

**Constitutions** – One of the goals of this chapter is to introduce students to the role of the U.S. Constitution and its pivotal role in the ultimate distribution of powers between the federal government and the states vis-à-vis the control of business conduct in the U.S. This section also explains the three branches of the federal government: the legislative, executive, and judicial branches.


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**Treaties** – The Constitution establishes that only the president, upon the advice and consent of the Senate, can enter into treaties with foreign powers.

**Federal Statutes** – Statutes are written laws that establish and enforce certain courses of conduct. Congress enacts federal statutes, whilst state legislatures enact state statutes. Ordinances are adopted by local governmental bodies.

**Contemporary Environment**
*How a Bill Becomes Law*
The U.S. Congress is composed of two chambers, the U.S. House of Representatives and the U.S. Senate. Thousands of bills are introduced in the U.S. Congress each year, but only a small percentage of them become law. First, a bill must be sponsored by a member of the U.S. House of Representative or the U.S. Senate. Then, it is referred to the appropriate committee for review and study. Bills that receive the vote of a committee are reported to the full chamber, where they are debated and voted on. If the bill receives majority vote from the full chamber, and a subsequent second chamber, then it is forwarded to the President's desk. The bill becomes law when it is signed by the President.

**State Statutes** – State legislatures enact state statutes. Such statutes are placed in code books. State statutes can be assessed in these hardcopy code books or online.

**Ordinances** – State legislatures often delegate lawmaking authority to local government bodies, including cities and municipalities, counties, school districts, water districts, and such. These governmental units are empowered to adopt ordinances. Ordinances are also codified.

**Executive Orders** – The executive branch of the government is empowered to issue executive orders.

**Regulations and Order of Administrative Agencies** – Agencies are created to interpret and enforce statutes enacted by both federal and state Congresses.

**Judicial Decisions** – Judges issue written decisions explaining their legal reasoning. Doctrine of *stare decisis* establishes past court decisions as a precedent for future decisions.

**Priority of Law in the United States** – The U.S. Constitution and treaties take precedence over all other laws, followed by federal statutes and federal regulations. Federal law takes precedence over conflicting state law, which has precedence over local laws. Similarly, state constitutions take precedence over state statutes and regulations.

## Doctrine of *Stare Decisis*

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

**Precedent**
A rule of law established in a court decision. Lower courts must follow the precedent established by higher courts.

Bases on the common law tradition, past court decisions become precedent for deciding future cases. Lower courts must follow the precedent established by higher courts.

**Stare Decisis**
Adherence to precedent is called the doctrine of *stare decisis.* Latin for "to stand by the decision."


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**Critical Legal Thinking** – This concept gives the law consistency so that citizens are treated fairly and similarly. Without stare decisis, our judges may have too much untampered authority.

## Law in the Digital Age

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

The electronic age arrived before new laws were written that were unique and specific for this environment. Courts have applied existing laws to the new digital environment by requiring interpretations and applications. In addition, new laws have been written that apply specifically to this new environment. The U.S. Congress has led the way, enacting many new federal statutes to regulate the digital environment.

**Ethics** – Apple agrees to pay $500 million to settle consumer fraud lawsuit. Many decisions made in business have an ethical component. This is a good opportunity to discuss the duty to act legally and ethically. In 2020, Apple agreed to pay at minimum $325 million and at maximum $500 million to users of iPhones who had their phones secretly slowed down.

## Critical Legal Thinking

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

**Critical Legal Thinking** – A method of thinking that consists of investigating, analyzing, evaluating, and interpreting information to solve a legal problem.

**Socratic method** – A process of asking a series of questions and answers and give-and-take inquiry and debate between a professor and students.

**IRAC method** – A method used to examine a law case. *IRAC* is an acronym that stands for *issue, rule, application, and conclusion.*

## Developing Skills for Your Career

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

**Explain how this course can be beneficial to a student's future career, even if they are not pursuing a career in law. Whatever career path a student may be taking, this class can help them develop career skills that are useful.**

### V. Key Terms and Concepts

- Administrative agencies—Agencies (such as the Securities and Exchange Commission and the Federal Trade Commission) that the legislative and executive branches of federal and state governments are empowered to establish.
- Administrative rules and regulations—Used by administrative agencies to enforce statutes. These rules and regulations have the force of law.
- Analytical School—School of jurisprudence maintains that the law is shaped by logic.
- Bills—Many bills are introduced each year at the U.S. Congress, out of which a few are passed as law.


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- *Brown v. Board of Education*—A landmark Supreme Court case in which a unanimous decision reversed prior precedent and held that the separate but equal doctrine violated the Equal Protection Clause of the Fourteenth Amendment to the Constitution. The decision led to the banning of school segregation.
- Chamber—The U.S. Congress is composed of two chambers, the U.S. House of Representatives and the U.S. Senate.
- Civil Law—A code of laws applicable to Romans. Also known as the Romano-Germanic civil law system.
- Code book—Federal statutes are organized by topic into code books.
- Codified law—Federal statutes that have been organized into code books.
- Command School—School of jurisprudence that believes that the law is a set of rules developed, communicated, and enforced by the ruling party rather than a reflection of the society's morality, history, logic, or sociology.
- Committee—Bills from either of the two chambers of the U.S. Congress are reviewed and studied by an appropriate committee. The committee may reject the bill, report it to the full chamber for a vote, not act on it, or send it to a subcommittee for further study.
- Common Law—Law developed by judges who issue their opinions when deciding a case. The principles announced in these cases become precedent for later judges deciding similar cases.
- Conference committee—Committee made up of members of both the U.S. House of Representatives and the U.S. Senate.
- Constitution of the United States of America—The supreme law of the United States.
- Court of Chancery—Court that granted relief based on fairness. Also called equity court.
- Critical Legal Studies School—School of Jurisprudence that proposes legal rules are unnecessary and are used as an obstacle by the powerful to maintain the status quo.
- Critical legal thinking—A method of thinking that consists of investigating, analyzing, evaluating, and interpreting information to solve a legal issue or case.
- English common law—Law developed by judges who issued their opinions when deciding a case. The principles announced in these cases became precedent for later judges deciding similar cases.
- Executive branch—A branch of the U.S. government that has the power to enforce the law. The president of the United States constitutes the executive branch of the government.
- Executive order—An order issued by a member of the executive branch of the government.
- Federal Statute—Written laws, enacted by the U.S. Congress, that regulate foreign and interstate commerce.
- Fourth Amendment—Protects against searches and seizures without probable cause.
- French Civil Code of 1804—One of the models used by countries that adopted civil codes. Also known as the Napoleonic Code.
- German Civil Code of 1896—One of the models for countries used by countries that adopted civil code. Such codes act as the sole source of law in most civil law countries.
- Historical School—School of jurisprudence that believes the law is an aggregate of social traditions and customs that have developed over the centuries.
- IRAC method—A method used to examine a law case. *IRAC* is an acronym that stands for issue, rule, application, and conclusion.
- Judicial branch—A branch of the U.S. government that has the power to interpret and determine the validity of the law. Also known as the courts.
- Judicial decision—A decision about an individual lawsuit issued by federal and state courts.
- Jurisprudence—The philosophy or science of law.


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- Law—That which must be obeyed and followed by citizens, subject to sanctions or legal consequences; a body of rules of action or conduct prescribed by controlling authority and having binding legal force.
- Law and Economics School—School of jurisprudence that believes that promoting market efficiency should be the central goal of legal decision making. Also called Chicago School.
- Law courts—A court that developed and administered a uniform set of laws decreed by the kings and queens after William the Conqueror, legal procedure was emphasized over merits at this time.
- Law Merchant—Rules based on common trade practices and usage that were applied by merchants around England and Europe, in the Middle Ages, to solve commercial disputes. Also known as "law of merchants."
- Legislative branch—A branch of the U.S. government that has the power to enact the law. Also known as the U.S. Congress.
- Merchant Court—The separate set of courts established to administer the "law of merchants."
- Moral theory of law—Theory that proposes that the law should be based on morality and ethics.
- Natural Law School—School of jurisprudence that postulates that the law is based on what is "correct."
- Order—A decision of an administrative agency.
- Ordinance—Laws enacted by local government bodies, such as cities and municipalities, counties, school districts, and water districts.
- Precedent—A rule of law established in a court decision. Lower courts must follow the precedent established by higher courts.
- Romano-Germanic civil law system—Legal system that dates back to 450 BCE when Rome adopted the Twelve Tables, a code of laws applicable to the Romans. Commonly known as civil law.
- Sociological School—School of jurisprudence that asserts that the law is a means of achieving and advancing certain sociological goals.
- Socratic method—A process that consists of a series of questions and answers and a give-and-take inquiry and debate between professors and students.
- *Stare decisis*—Latin for "to stand by the decision." Adherence to precedent.
- State Constitution—Constitutions that establish the legislative, executive, and judicial branches of state government and establish the powers of each branch.
- State Statute—Statute enacted by state legislatures and placed in code books.
- Statute—Written law enacted by the legislative branch of the federal and state governments that establishes certain courses of conduct that covered parties must adhere to.
- Subcommittee—Studies bills sent by the committee. After review, the subcommittee may either let the bill die or report it back to the full committee.
- Treaty—A compact made between two or more nations.
- U.S. Congress—Branch of the government that creates federal law by enacting statutes.
- U.S. House of Representatives—A chamber of the U.S. Congress.
- U.S. Senate—A chamber of the U.S. Congress.


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## Critical Legal Thinking Cases

**1.1 School of Jurisprudential Thought**
Fisher v. University of Texas at Austin
136 S.Ct. 2198, 2016 U.S. Lexis 4059
(Supreme Court of the United States, 2016)

**Case:** UT was admitting students giving weight to race as an admissions factor. A Caucasian student otherwise qualified was denied admission and sued.
**Issue:** Is race-conscious admissions lawful under the Equal Protection Clause at UT?
**Decision:** Race may be a positive factor in favor of admissions but only one factor to help diversify a public university.
**Ethics:** Students will have differing opinions about the issue.

**1.2 Fairness of the Law**
W. C. Ritchie & Co. v. Wayman, Attorney for Cook County, Illinois
91 N.E. 695, 1910 Ill. Lexis 1958
(Supreme Court of Illinois)

**Case:** In 1909, the state legislature of Illinois enacted a statute called the Woman's 10-hour law. The law prohibited women who were employed in factories and other manufacturing facilities from working more than 10 hours per day. The law did not apply to men.
**Issue:** W.C. Ritchie & Co., an employer, brought a lawsuit that challenged the statute as being unconstitutional and in violation of the equal protection clause of the Illinois constitution.
**Decision:** The law was upheld by the Illinois Supreme Court stating that a woman's physical structure and the performance of maternal functions place her at a great disadvantage in the battle of life, while a man can work 10 hours a day without injury to himself.
**Ethics:** Is the statute fair? Would the statute be lawful today?

## Ethics Cases

**1.3 Ethics Case**
Minnesota v. Mille Lacs Band of Chippewa Indians
526 U.S. 172, 119 S.Ct. 1187, 1999 U.S. Lexis 2190
(Supreme Court of the United States)

**Case:** A treaty between the federal government and the Ojibwe Indians in 1837, whereby the Ojibwe sold land located in the Minnesota territory to the United States. The treaty provided, "The privilege of hunting, fishing, and gathering wild rice, upon the lands, the rivers and the lakes included in the territory ceded, is guaranteed to the Indians."
**Issue:** In 1990, the Mille Lacs Band of the Ojibwe tribe sued the state of Minnesota, seeking declaratory judgment that they retained the hunting, fishing, and gathering rights provided in the 1837 treaty and an injunction to prevent Minnesota from interfering with those rights. The state of Minnesota argued that when Minnesota entered the Union in 1858, those rights were extinguished**.**
**Ethics:** Are the hunting, fishing, and gathering rights guaranteed to the Ojibwe in the 1837 treaty still valid and enforceable? Did the state of Minnesota act ethically when it asserted that the Ojibwe's hunting, fishing, and gathering rights no longer were valid?

**1.4 Ethics Case**


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Rostker, Director of Selective Service v. Goldberg
453 U.S. 57, 101 S.Ct. 2646, 1981 U.S. Lexis 126
(Supreme Court of the United States)

**Case:** In 1975, after the war in Vietnam, the U.S. government discontinued draft registration for men in this country. In 1980, after the Soviet Union invaded Afghanistan, President Jimmy Carter asked Congress for funds to reactivate draft registration. President Carter suggested that both men and women be required to register. Congress allocated funds only for the registration of men.
**Issue:** Several men who were subject to draft registration brought a lawsuit that challenged the law as being unconstitutional, in violation of the Equal Protection Clause of the U.S. Constitution.
**Decision:** The U.S. Supreme Court upheld the constitutionality of the draft registration law stating men and women are simply not similarly situated for purposes of a draft or registration for a draft.
**Ethics:** What arguments did the U.S. Supreme Court assert to justify requiring men, but not women, to register for the draft? Is the law, as determined by the U.S. Supreme Court, fair? Do you agree with the dissent?


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# 2 COURTS AND JURISDICTION

*"I was never ruined but twice: once when I lost a lawsuit, and once when I won one."*

Voltaire (1694–1778)

## I. Teacher to Teacher Dialogue

Twenty-first century technological advances have provided our students with all kinds of instant access to information. These devices have provided the students with a variety of preconceptions.

Among these is the average undergraduate's notion of how trials are conducted and the role of attorneys in that process. Invariably these perceptions center on popular television series such as "Law and Order" and "Court TV". This is not all bad. Current media focus on numerous law-related issues has generated a whole new wave of public interest in the workings of our legal system. The downside is that the media has created many myths on the folklore of law and lawyers. In the world of pop culture, no one knows until the end who really did it until a surprise witness shows up to identify the bad guy. In more modern versions, the attorney first has a business relationship with the client and then proceeds to get him or her acquitted. Regardless of the outcome, the process is always full of glamour and intrigue.

The problem is that a trial rarely resembles the goings on found in the entertainment media. Trials are long, tedious, emotionally, and financially draining processes for all parties concerned. In many ways, a trial represents a failure by the parties to reach some sort of satisfactory solution of the issue beforehand. Rarely do the parties actually want to go through a labyrinth of pleadings, motions, and the like, feeling all the while totally dependent on the sometimes questionable competence of their attorneys. Unlike the make-believe world of entertainment, the job of an attorney is to keep his or her client out of court. (This often needs some reinforcement with the student.) The attorney's professional advice should anticipate and resolve potential legal problems before, rather than after, the fact if at all possible.

It is against this backdrop that we should try to present a more realistic picture of how our system works. We can basically start by discussing how few controversies actually get to the trial stage and how even fewer of those are actually reported in the National Reporter System.

Additionally, a fair amount of time should be spent reviewing the growing trend toward alternative dispute resolution (ADR) mechanisms. Personal experience examples might be helpful


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in illustrating the growing trends toward ADR. To complete the cycle, we can then proceed to itemize the key steps used in a court trial in this chapter and in those that follow.

## II. Learning Objectives

2.1 Describe state court systems.
2.2 Describe the federal court system.
2.3 Describe the U.S. Supreme Court and the types of cases it decides.
2.4 Explain the jurisdiction of federal courts and compare it with the jurisdiction of state courts.
2.5 Define *standing to sue*, *jurisdiction*, and *venue*.
2.6 Explain how jurisdiction is applied to digital commerce.

## III. Key Question Checklist

- If the dispute or controversy needs to be resolved in a court of law, which court has jurisdiction?
- Once jurisdiction is established, was the proper sequence of pretrial steps taken?
- Was the trial sequence properly followed?
- After the trial is completed, are any appeals from the decision applicable?

## IV. Text Materials

One of the objectives of this chapter is to familiarize students with the role of the major court systems in the United States:.

(1) The federal court system.
(2) The court systems of the 50 states, Washington DC, and the territories of the United States. Each of these systems has jurisdiction to hear different types of lawsuits.

## *State Court Systems*

### 2.1 Describe state court systems.

**State courts resolve more than 95% of the lawsuits brought in this country. Most include:**

**Limited-Jurisdiction Trial Court** – They are sometimes referred to as **inferior trial courts** and are limited in nature to hear specialized matters, such as traffic courts, juvenile courts, justice-of-the peace courts, probate courts, and family law courts. Another example is small claims courts that hear limited dollar amount (e.g. $5,000, $10,000) civil cases.

**General-Jurisdiction Trial Court** – **They are often referred to as courts of record** because the testimony and evidence brought at trial are recorded and stored for future reference. These courts hear felony cases or civil cases over a certain dollar amount. Some states divide these courts in two: criminal and civil. The decisions in these courts are appealable.


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**Intermediate Appellate Court** – They may be referred to as **appellate courts or courts of appeal** and hear appeals from trial courts, afterreviewing the trial court records to determine whether there have been any errors at trial that would require reversal or modification of the trial court's decision. No evidence or testimony is permitted. The parties submit legal briefs to the appellate court stating the facts that support their positions.

**Highest State Court** – Generally, the highest court in a state is referred to as the **state supreme court**. State supreme courts hear appeals from intermediate state courts and some trial courts, without hearing new evidence. Decisions of the highest court state court are final unless a question of law is involved that is appealable to the U.S. Supreme Court.

**Business Environment**
*Delaware Courts Specialize in Hearing Business Disputes*
Delaware has created a special Chancery Court to decide business litigation, with a reputation for its expertise in handling and deciding corporate matters. Delaware's laws also tend to favor corporate management, so together with the Chancery Court, the state has created an environment that encourages incorporation in that state. More than 50% of the corporations listed on the New York and NASDAQ stock exchanges are incorporated in Delaware. Other states are beginning to follow suit and create their own variation of Delaware's Chancery Court.

## *Federal Court System*

**2.2 Describe the federal court system.**

Pursuant to Article III of the U.S. Constitution:
-There is one Supreme Court, the U.S. Supreme Court.
-It authorizes Congress to establish federal inferior courts.

**Special Federal Courts** – There are six courts of limited jurisdiction: the U.S. tax court, court of federal claims, the Court of International Trade, bankruptcy court, and the court of appeals for the armed services and veteran's claims.

**U.S. District Courts** – These are the federal court system's 94 trial courts of general jurisdiction. The geographic area served by each court is referred to as a **district**.

**U.S. Courts of Appeal** – These are the federal court system's 13 intermediate appellate courts.

**Contemporary Environment**
*Foreign Intelligence Surveillance Court*
Created in 1978, this court handles FBI, NSA, and warrants pertaining to national security issues called FISA warrants to conduct physical searches and electronic surveillance of Americans or foreigners in the U.S. who are deemed a threat to national security. This is a secret court. Its hearing is not open to the public and its decisions are classified.

## *Supreme Court of the United States*

**2.3 Describe the U.S. Supreme Court and the types of cases it decides.**

The Supreme Court is the highest court in the country and is composed of nine justices who are nominated by the President and confirmed by the Senate. The President appoints one as the chief justice who is responsible for the administration of the Court, while the other eight are considered associate justices.


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**There has been debate about the possibility of changing the number of Supreme Court justices. Also, it may be interesting to students to discuss what it takes to change the number of justices and how the number has changed.**

**Contemporary Environment**
*The Process of Choosing a U.S. Supreme Court Justice*
The President appoints Supreme Court justices, with the advice and consent of the Senate (majority vote). If there is a tie vote, the vice president, who presides over the Senate, casts the deciding vote. This allows a form of balance of power between the executive and legislative branches of the government.

**Jurisdiction of the U.S. Supreme Court** – The Supreme Court hears appeals from the federal district courts and from the highest state courts. Legal briefs are filed, oral arguments are made, lower court records are reviewed, but neither new evidence nor testimony is heard. The Supreme Court decision is final.

**Decisions by the U.S. Supreme Court** – Congress has established the rules for the mandatory appellate review by the Supreme Court, which may also elect to hear cases at its discretion. Petitioners file a **petition for certiorari** asking for the Supreme Court to review their case. If the court decides to sit on the matter, it issues a **writ of certiorari**. The court issues only about 100 opinions per year.

> **Unanimous Decision** – All the justices voting and agree as to both the outcome and the reasoning. These decisions become precedent.
>
> **Majority Decision** – Decisions by the Supreme Court are considered majority decisions if a majority of 5, 6, 7, or 8 justices agree on the outcome and reasoning. These decisions become precedent.
>
> **Plurality Decision** – A plurality decision is when the majority of justices agree on the outcome, but not the reasoning. This settles the case. But, the case does not create precedent for later cases.
>
> **Tie Decision** – If all 9 justices are not present which could happen due to illness, conflict of interest, or a justice having not been confirmed to fill a vacancy, there could be a tie decision. In this case, the lower court ruling stands. The case will not serve as precedent in later cases.
>
> **Concurring Opinion** – When a justice agrees with the outcome of the majority, but not the reasoning, they will issue a concurring opinion explaining their stand.
>
> **Dissenting Opinion** – Any justice who does not agree with the decision may state their opinion.

**Contemporary Environment**
"*I'll Take You to the U.S. Supreme Court!"*
This discusses what it takes to win a review by the U.S. Supreme Court. Having a case heard by the Supreme Court is rare. They receive about 10,000 petitions each year. In recent years, the Supreme Court has only accepted about 100 for full review.


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## *Jurisdiction of Federal and State Courts*

**2.4 Explain the jurisdiction of federal courts and compare it with the jurisdiction of state courts.**

**Federal Question** – Federal courts have limited jurisdiction to hear cases involving federal questions arising under the U.S. Constitution, treaties and federal statutes and regulations with no dollar amount limit.

**Diversity of Citizenship** – A case can be brought in federal court even though it involves a nonfederal subject matter question, if there is diversity of citizenship. The federal courts have jurisdiction in cases involving diversity of citizenship. Diversity of citizenship occurs if a lawsuit involves citizens of different states or a citizen of a state and a citizen or subject of a foreign country. The amount in controversy must be over $75,000.

**Jurisdiction of State Courts** – State courts hear cases that the federal courts do not have the jurisdiction to hear.

Federal courts may have concurrent jurisdiction with state courts to hear cases involving diversity of citizenship.

**Full Faith and Credit Clause** – Federal constitutional clause which requires that a judgment from one state court be recognized by every other state.

**Case 2.1 U.S. Supreme Court Case *Full Faith and Credit Clause***
**V.L. v. E.L, 136 S.Ct. 1017 (2016)**
**Supreme Court of the United States**
**Facts:** Two women in a romantic relationship used assisted reproductive technology to have three children together. The couple raised them jointly until they split up.
**Issue:** Who has maternity rights to the children? Does a Georgia court final judgment of adoption make one the legal parent over the other woman as it applies to Alabama?
**Decision:** Full faith clause of the Constitution caused a remand of the case in Alabama for further proceedings.
**Ethics Question:** Students will have differing opinions on this issue.

## *Standing to Sue, Jurisdiction, and Venue*

**2.5 Define *standing to sue*, *jurisdiction*, and *venue*.**

**Standing to Sue** – The plaintiff must have a stake in the outcome of the lawsuit. Similar to in the insurance industry, a person must have insurable interest to take an insurance policy out on another individual.

***In Personam* Jurisdiction** – *In personam* jurisdiction over the person is achieved by the plaintiff filing a lawsuit with a court and by serving a summons on the defendant. If personal service is unavailable, notice of the case by mail or publication in newspapers is allowed.

Defendants disputing the jurisdiction of a court may make a special appearance to argue their case and cannot be served while making this appearance.


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**Service of Process** – The Due Process clauses in the U.S. Constitution prohibit courts from exercising personal jurisdiction over a defendant unless the defendant has proper notice of the court's proceedings.

**Long-Arm Statute** – A court can obtain jurisdiction over persons and businesses located in another state through use of a long-arm statute, provided the defendant has had some minimum contact with the state.

**Critical Legal Thinking**
***International Shoe Company v. State of Washington***
International Shoe's salespeople worked on commission basis selling shoes door-to-door within the state of Washington. They had no office in the state. Washington State determined that they had failed to pay unemployment taxes on International's employees. The state served notice to the organization through one of their Washington sales representatives as well as by mailing the notice to the headquarters in St. Louis. International made a special appearance to argue that it had insufficient contacts within the state to warrant payment of the tax. The unemployment office and appeals board, as well as various courts within the state ruled against International, which appealed to the U.S. Supreme Court. The Supreme Court ruled that International had neither casual nor irregular contacts within the state, and was, therefore, subject to in personam jurisdiction and service upon one of their agents, based on their "minimum contacts" within the state. The Supreme Court clearly stated that the Due Process Clause permits jurisdiction over a defendant in any state in which the defendant has "certain minimum contacts such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice."
**Critical Legal Thinking Questions** – There are firmly established standards developed through case law which allow a court to determine when minimum contact has been made with a state.

**Case 2.2 U.S. Supreme Court Case *Jurisdiction***
**Bristol-Myers Squibb Company v. Superior Court of California**
**137 S.Ct. 1773 (2017)**
**Supreme Court of the United States**

**Facts:** Bristol-Myers Squibb Company (BMS), a large pharmaceutical company, is incorporated in Delaware and headquartered in New York, and it maintains substantial operations in both New York and New Jersey. One of the pharmaceuticals that BMS manufactures and sells is Plavix, a prescription drug that thins the blood and inhibits blood clotting. BMS did not develop Plavix in California, and did not manufacture, label, package, or work on regulatory approval of the product in California. But BMS does sell Plavix in California. A group of plaintiffs—consisting of 86 California residents and 592 nonresidents from 33 other states—filed eight complaints in California court, alleging that Plavix had damaged their health. All the complaints allege claims under California law, including products liability, negligent misrepresentation, and misleading advertising claims.
**Issue:** Does California's exercise of jurisdiction over the nonresident plaintiffs violate the Due Process Clause?
**Decision:** The U.S. Supreme Court held that under the Due Process Clause, California does not have personal jurisdiction to hear the nonresidents' cases against BMS.
**Ethics Questions:** Can California residents sue BMS in California court? Can the nonresidents of California sue BMS elsewhere? Why might the nonresidents have preferred to sue BMS in California instead of their home states?

***In Rem* Jurisdiction** – Courts may have jurisdiction over property found within the state, based on *in rem* (over the thing) jurisdiction.


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***Quasi In Rem* Jurisdiction** – Attachment jurisdiction occurs when a plaintiff who has obtained a judgment attempts to satisfy the judgment by attaching property located in another state.

**Venue** – The court with the jurisdiction that is located closest to where the incident occurred or where the parties live should hear the lawsuit.

Pretrial publicity may prejudice jurors and may lead to a request for a change of venue in order to get a more impartial jury. Forum shopping is the process of looking for a more favorable court without a valid reason, and it is frowned upon by most courts.

**Forum-Selection and Choice-of-Law Clauses** – Because many business agreements are formed between people from different states and different countries, many contracts have clauses that specifically address the state's or country's laws that will be applied in the case of a dispute, in what are known as choice-of-law clauses. Additionally, they will often agree as to which court will have jurisdiction over any dispute in forum-selection clauses.

**Case 2.3 Federal Court Case *Forum-Selection Clause***
**Carter's of New Bedford, Inc. v. Nike, Inc.**
**790 F.3d 289 (2015)**
**United States Court of Appeals for the First Circuit**
**Facts:** Nike attempts to enforce a forum-selection clause against Carter's, a retailer of its shoes in Massachusetts.
**Issue:** Is the forum-selection clause enforceable?
**Decision:** Yes
**Critical Legal Thinking Questions:** Students will have differing ideas on these questions.

## *Jurisdiction in Digital Commerce*

**2.6 Explain how jurisdiction is applied to digital commerce.**

Today, with the advent of the Internet and the ability of persons and businesses to reach millions of people in other states electronically, particularly through websites, modern issues arise as to whether courts have jurisdiction in cyberspace. *Zippo Manufacturing Company v. Zippo Dot Com, Inc.* is an important case that established a test for determining when a court has jurisdiction over the owner or operator of an interactive, semi-interactive, or passive website.

**Information Technology**
***Jurisdiction Over an Internet eBay Seller***
Internet forums like eBay expand the seller's market across the world and sellers know that and avail themselves of the benefits. This opens up personal jurisdiction much more broadly.

**Global Law**
*Judicial System of Japan*
There is very little litigation in Japan when compared to the United States. A primary reason for the difference is cultural because Japan nurtures the attitude that confrontation should be avoided. Other reasons include the high cost that must be borne by plaintiffs who want to file a lawsuit. Even if the plaintiff wins, the damages awarded are low. In the past, a relatively low number of lawyers graduated every year from the few law schools in Japan. But now, due to increasing


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business and personal disputes, the government is building new law schools and plans to double the number of lawyers by the year 2020.

## V. Key Terms and Concepts

- Article III of the U.S. Constitution— It provides that the federal government's judicial power is vested in one "Supreme Court." This court is the U.S. Supreme Court.
- Associate Justices of the U.S. Supreme Court—The eight other justices apart from the Chief Justice of the U.S. Supreme Court.
- Change of Venue—In certain circumstances, when pretrial publicity may prejudice jurors, a change of venue may be requested so that a more impartial jury can be found.
- Chief Justice of the U.S. Supreme Court—Appointed by the President and responsible for administration of the U.S. Supreme Court.
- Choice-of-law clause—A contract provision that designates a certain state's law or country's law that will be applied in any dispute concerning nonperformance of the contract.
- Circuit—The geographical area served by each U.S. court of appeals.
- Concurrent jurisdiction—Jurisdiction shared by two or more courts.
- Concurring opinion—An opinion that can be issued by a justice of the Supreme Court who agrees with the outcome of a case but not the reason proffered by the other justices.
- Delaware Court of Chancery—A special court which decides cases involving corporate governance, fiduciary duties of corporate officers and directors, mergers and acquisitions, and other business issues.
- Dissenting opinion—An opinion which sets forth the reason why a justice of the Supreme Court does not agree with a decision.
- District—The geographical area served by a U.S. district court.
- Diversity of citizenship—A case between (1) citizens of different states and (2) a citizen of a state and a citizen or subject of a foreign country.
- *En banc* review—A review that can be requested by a petitioner in the U.S. court of appeals after a decision is rendered by a three-judge panel.
- Exclusive jurisdiction—Jurisdiction held by only one court.
- Federal question case—A case arising under the U.S. Constitution, treaties, and federal statutes and regulations.
- FISA warrant—A warrant issued by a FISA Court for the government to conduct surveillance against persons who are suspected of being threats to national security.
- Forum-selection clause—Contract provision that designates a certain court to hear any dispute concerning nonperformance of the contract.
- Forum shopping—Looking for a favorable court without a valid reason.
- Full Faith and Credit Clause—A clause of the U.S. Constitution under which a judgment of a court of one state must be given "full faith and credit" by the courts of another state.
- General jurisdiction—The jurisdiction in which a defendant can be sued regardless of where the underlying action prompting the lawsuit occurred.
- General-jurisdiction trial court—A court that hears cases of a general nature that are not within the jurisdiction of limited-jurisdiction trial courts. Testimony and evidence at trial are recorded and stored for future reference.
- Highest state court—The highest court in a state court system; it hears appeals from intermediate appellate state courts and certain trial courts.
- *In personam* jurisdiction—Jurisdiction over the parties to a lawsuit.


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- *In rem* jurisdiction—Jurisdiction to hear a case because of jurisdiction over the property of the lawsuit.
- Intermediate appellate court—An intermediate court that hears appeals from trial courts.
- *International Shoe Company v. State of Washington*—A landmark U.S. Supreme Court case that established the minimum contacts standard.
- Limited-jurisdiction trial court—A court that hears matters of a specialized or limited nature.
- Long-arm statute—A statute that extends a state's jurisdiction to nonresidents who were not served a summons within the state.
- Majority decision—A decision of the U.S. Supreme Court where a majority of the justices agree as to the outcome and reasoning used to decide a case.
- Minimum contact—A nonresident defendant in a civil lawsuit must have had some minimum contact with the state such that the maintenance of that lawsuit in that state does not offend traditional notions of fair play and substantial justice.
- Petition for certiorari—A petition asking the Supreme Court to hear one's case.
- Plurality decision—A decision of the U.S. Supreme Court where a majority of the justices agree as to the outcome of a case but not as to the reasoning for reaching the outcome.
- *Quasi in rem* jurisdiction—Jurisdiction allowed a plaintiff who obtains a judgment in one state to try to collect the judgment by attaching property of the defendant located in another state.
- Rule of four—The votes of four justices are necessary to grant an appeal and schedule an oral argument before the Supreme Court.
- Service of process—A summons is served on the defendant to obtain personal jurisdiction over him or her.
- Small claims court—A court that hears civil cases involving small dollar amounts.
- Special federal courts—Federal courts that hear matters of specialized or limited jurisdiction.
- Standing to sue—The plaintiff must have some stake in the outcome of the lawsuit.
- State courts—A separate court system that is present in each state, Washington, DC and each territory of the United States. It includes limited-jurisdiction trial courts, general-jurisdiction trial courts, intermediate appellate courts, and a supreme court.
- State supreme court—The highest court in a state court system; it hears appeals from intermediate state courts and certain trail courts.
- Supreme Court of the United States— The highest court in the land located in Washington, DC.
- Tie decision—A Supreme court decision where the number of votes cast by the justices leads to a tie and the decision of the lower court is affirmed. It occurs when all nine judges are not present.
- Unanimous decision—A Supreme court decision where all the justices voting agree as to the outcome and reasoning used to decide a case.
- U.S. Bankruptcy Court—Special federal court that hears cases involving federal bankruptcy laws.
- U.S. Courts of Appeals—The federal court system's intermediate appellate court.
- U.S. Court of Appeals for the Armed Forces—Special federal court that exercises appellate jurisdiction over members of the armed services.
- U.S. Court of Appeals for the Federal Circuit—This court has special appellate jurisdiction to review the decisions of the court of federal Claims, the Patent and trademark Office, and the Court of International Trade.


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- U.S. Court of Appeals for Veterans Claims—Special federal court that exercises jurisdiction over decisions of the Department of Veterans Affairs.
- U.S. Court of Federal Claims—Special federal court that hears cases brought against the United States.
- U.S. Court of International Trade—Special federal court that handles cases that involve tariffs and international trade disputes.
- U.S. district courts—The federal court system's trial courts of general jurisdiction.
- U.S. District of Columbia Circuit—The 12th circuit court located in Washington DC.
- U.S. Foreign Intelligence Surveillance (FISA Court)—Located in Washington DC, the court hears requests by federal law enforcement agencies for warrants to conduct physical searches and electronic surveillance of against persons who are deemed to be threats to national security.
- U.S. Foreign Intelligence Surveillance Court of Review (FISCR) —If the FISA court denies a government application for a FISA warrant, the government may appeal the decision to this court.
- U.S. Tax Court—Special federal court that hears cases that involve federal tax laws.
- U.S. territorial courts—Federal trial courts located in Guam, the Northern Mariana islands, and the U.S. Virgin Islands.
- Venue—A concept that requires lawsuits to be heard by the court with jurisdiction that is nearest the location in which the incident occurred or where the parties reside.
- Writ of certiorari—An official notice that the Supreme Court will review one's case.
- *Zippo Manufacturing Company v. Zippo Dot Com, Inc*.—An important case that established a test for determining when a court has jurisdiction over the owner or operator of an interactive, semi-interactive, or passive website.

## Critical Legal Thinking Cases

**2.1 Personal Jurisdiction**
Richtone Design Group, LLC v. Live Art, Inc.
2013 U.S. Dist. Lexis 157781
(United States District Court for the Southern District of New York, 2013)

**Case:** Richtone brought a copyright infringement lawsuit against Live Siri Art and Galliano in U.S. district court in New York, alleging that the defendants were subject to personal jurisdiction in New York based on New York's long-arm statute. The defendants Live Siri Art and Galliano defended, alleging that they were not subject to suit in New York because they were residents of California, that they did not have the requisite minimum contacts with New York to be subject to suit in that state, and that to make them defend the lawsuit in New York violated their due process rights. The defendants made a motion to dismiss the New York lawsuit based on lack of personal jurisdiction
**Issue:** Are the defendants subject to lawsuit in New York?

**2.2 Service of Process**
Facebook, Inc. v. Banana Ads LLC
2013 U.S. Dist. Lexis 65834
(United States District Court for the Northern District of California, 2013)


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**Case:** Facebook, Inc. filed a complaint in the U.S. district court against numerous defendants alleging that the named defendants engaged in trademark infringement, cybersquatting, and false designation of origin. Facebook served the defendants except 14, who Facebook has not been able to serve personally, by mail, or by telephone. Facebook made a motion to the U.S. district court to be permitted to serve these defendants by sending an email notice to the defendants' websites.
**Issue:** May Facebook use alternative service of process by sending email notices to the defendants' websites?

**2.3 Standing to Sue**
Bertram v. Norden, et al.
823 N.E.2d 478, 2004 Ohio App. Lexis 550
(Court of Appeals of Ohio, 2004)

**Case:** Bertram filed a lawsuit against Olson, Harvey, and Norden in a trial court in Ohio, claiming that each of his friends was liable to him for their negligent snowmobile operation. A Michigan statute specifically stated that snowmobilers assumed the risks associated with snowmobiling. Ohio law did not contain an assumption of the risk rule regarding snowmobiling. The three defendants made a motion for summary judgment.
**Issue:** Does Michigan or Ohio law apply to this case?

**2.4 Long-Arm Statute**
Myers v. Casino Queen, Inc.
689 F.3d 904, 2012 U.S. App. Lexis 17543
(United States Court of Appeals for the Eighth Circuit, 2012)

**Case:** Myers sued Casino Queen in a Missouri court, alleging that the casino was negligent in not providing Myers warnings of such illegal activities and protecting him from such activities. Casino Queen, an Illinois corporation, made a motion to have the lawsuit dismissed by the Missouri court, alleging that the Missouri court did not have personal jurisdiction over the Illinois casino. Myers argued that Missouri's long-arm statute gave it personal jurisdiction over Casino Queen.
**Issue:** Does the Missouri court have personal jurisdiction over the Illinois casino based on Missouri's long-arm statute?

**2.5 Standing to Sue**
Phoenix of Broward, Inc. v. McDonald's Corporation
441 F.Supp.2d 1241, 2006 U.S. Dist. Lexis 55112
(United States District Court for the Northern District of Georgia, 2006)

**Case:** The Burger King Corporation, a competitor of McDonald's, owns, operates, and franchises fast-food restaurants. One franchisee is Phoenix of Broward, Inc. (Phoenix), which operates a Burger King restaurant in Fort Lauderdale, Florida. Phoenix brought a class action lawsuit in U.S. District Court on behalf of Burger King franchises against McDonald's, alleging that McDonald's engaged in false advertising in violation of the federal Lanham Act when it advertised that players had an equal chance of winning high-value prizes when in fact they did not because of the Jacobson's criminal conspiracy. Phoenix alleged that it suffered injuries of lost sales because of McDonald's false advertising claims. McDonald's filed a motion to dismiss Phoenix's lawsuit, asserting that Phoenix had no standing to sue.
**Issue:** Did plaintiff Phoenix have standing to sue McDonald's?


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**2.6 U.S. Supreme Court Decision**
Salinas v. Texas
133 S.Ct. 2174, 2012 U.S. Lexis 4697
(Supreme Court of the United States, 2012)

**Case:** At trial, over Salinas's objection, the police witnesses testified that when Salinas was asked whether the shotgun shells found at the scene would match Salinas's shotgun, he grew silent and refused to answer that question. The jury found Salinas guilty, and he received a 20-year sentence. Salinas appealed, alleging that the evidence that he remained silent when asked the question regarding his shotgun and the shells at the scene of crime should not have been admitted at trial. His appeal reached the U.S. Supreme Court.
**Issue:** What kind of decision is this U.S. Supreme Court decision? Does this decision establish precedent?
**Decision:** Three U.S. Supreme Court justices upheld the verdict of guilty, finding that the admission of Salinas's silence when asked about the shotgun shells did not violate his Fifth Amendment privilege not to testify against himself because a defendant normally does not invoke the privilege by remaining silent during a noncustodial interview. Two other justices upheld the verdict of guilty but did so based on another reason, that the Fifth Amendment does not prohibit a prosecutor from commenting on a defendant's silence during a pre-custodial interview. Four justices filed a dissenting opinion, finding that the evidence of the defendant's silence at a pre-custodial interview should not be admitted into evidence.

## Ethics Cases

**2.7 Ethics Case**
Chanel, Inc. v. Banks
2010 U.S. Dist. Lexis 135374
(United States District Court for Maryland, 2010)

**Case:** The goods at issue in this case were sold over the internet to a resident of Maryland. The court had to address the issue of whether Maryland had personal jurisdiction under its long-arm statute over the Florida defendant Banks.
**Issue:** Does the Maryland court have personal jurisdiction over the Florida defendant?
**Decision:**
**Ethics:** Did defendant Banks act ethically in this case?

**2.8 Ethics Case**
Hertz Corporation v. Friend
559 U.S. 77, 130 S.Ct. 1181, 2010 U.S. Lexis 1897
(Supreme Court of the United States, 2010)

**Case:** Friend argued that because Hertz operated more than 270 rental car locations and had more than 2,000 employees in California, it was a citizen of California; thus diversity of citizenship did not apply and the case could not be moved to federal court but should be decided by a California state court.
**Issue:** Is Hertz Corporation a citizen of California and subject to suit in state court?
**Decision:**
**Ethics:** Was it ethical for Hertz to deny citizenship in California when it had such a large presence in California with its 270 rental car locations and more than 2,000 employees there?


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