Business Law 12th edition Cheeseman Solutions Manual

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Chapter 1

Legal Environment, Judicial System, Constitutional Law, and Ethics

Answer to Critical Legal Thinking Case

Flexibility of the Law

Google is not civilly liable to Dawn Bennett for the statements posted by Scott Pierson about Bennett on Google. Section 230(c)(1) of the Communications Decency Act (CDA), a federal statute, specifies that a service provider (such as Google) is not a publisher of information provided by a content provider that is posted by a third-party (such as Scott Pierson). Therefore, Google cannot be held liable for defamatory statements made by Pierson on Google.

Section 230(c)(1) of the Communications Decency Act (CDA) is an example of how the law is flexible enough to adapt to new technology. If Section 230(c)(1) had not been enacted into law, the internet would not have developed as quickly or as extensively as it has. If the providers of internet services were held liable for every defamatory statement posted on their site by third parties, then there would be few if any surviving service providers. *Bennett v. Google, LLC*, 882 F.3d 1163 (United States Court of Appeals for the District of Columbia Circuit, 2018)

Answers to Ethics Cases

1.2 Ethics Case

The U.S. district court found only minimal similarity and weak evidence of association between Charbucks trademarks and Starbucks trademarks. The court held in favor of Wolfe's Borough Coffee, Inc., finding that Starbucks had failed to prove a likelihood of dilution of its "Starbucks" trademarks by Wolfe's Borough's "Charbucks" trademarks. The court permitted Wolfe's Borough to continue using the "Charbucks" name in selling coffee products.

The U.S. court of appeals upheld the decision. The court of appeals stated, "There is no question that 'Starbucks'—an arbitrary mark as applied to coffee—is highly distinctive. The ultimate question is whether the Charbucks marks are likely to cause an association arising from

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their similarity to the Starbucks marks, which impairs the Starbucks marks' tendency to identify the source of Starbucks products in a unique way. Here, minimal similarity strongly suggests a relatively low likelihood of an association diluting Starbuck's marks. We agree with the district court that the distinctiveness, recognition, and exclusive use of the Starbucks marks do not overcome the weak evidence of actual association between the Charbucks and Starbucks marks."

Did Wolfe's Borough act ethically in choosing a name that was similar to Starbucks? Based on how well known the Starbucks brand is worldwide, it seems rather unlikely that Wolfe's Borough came up with the name "Charbucks" without thinking that it was similar to the name Starbucks. It is very likely that Wolfe's Borough choose the Charbuck's name because it sounded like Starbucks. However, as seen, the court found it was not a legal violation to have done so. *Starbucks Corporation v. Wolfe's Borough Coffee, Inc.*, 736 F.3d 198 (United States Court of Appeals for the Second Circuit, 2013)

1.3 Ethics Case

The U.S. court of appeals held that the defendant pet food manufacturers did not engage in false advertising or misleading labeling in violation of Section 43 of the Lanham Act. Instead, the court of appeals found that the defendants' advertising and labeling claims were mere "puffery" that did not violate the law.

The court of appeals stated. "Surely a reasonable consumer could understand the defendants' packaging as indicating the type of animal from which the food was made (e.g., chicken) but not the precise cut used (e.g., chicken breast). Reasonable consumers know that marketing involves some level of exaggeration—what the law calls 'puffery.' Mere puffery is not actionable under the Lanham Act. It is not plausible that reasonable consumers believe most of the (cheap) dog food they encounter in the pet-food aisle is in fact made of the same sumptuous (and more costly) ingredients they find a few aisles over in the people-food sections. The puffery defense is such an obvious impediment to Wysong's success."

Was the defendants' "puffery" advertising ethical? The defendants act of by placing photographs of delectable lamb chops, T-bone steaks, chicken breasts, and other premium cuts of meat on their advertising and packaging of their dog food products does seem quite exaggerated. However, based on the "false" marketing environment consumers face daily, it is likely that they

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have become so jaded that very little advertising, no matter how outlandish, would any longer offend their sensibilities. The court's ruling might require the plaintiff to "join the crowd" and plaster its dog food bags with similar photographs. *Wysong Corporation v. APN, Inc.*, 889 F.3d 267 (United States Court of Appeals for the Sixth Circuit, 2018)

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1 LEGAL HERITAGE AND ETHICS

"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.

As the course begins, 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. A businessperson needs to understand the law to make informed decisions, minimize legal risks, ensure compliance with regulations, protect their business interests, navigate contracts effectively, and avoid potential legal disputes by being aware of relevant laws impacting their industry and operations; essentially, legal knowledge empowers them to run their business ethically and responsibly.

Here are some key reasons why business law knowledge is important:

- **Risk mitigation:**

Understanding legal frameworks helps identify and proactively address potential legal issues, preventing costly lawsuits and penalties.

- **Contractual understanding:**

Knowing the basics of contract law allows for drafting and reviewing contracts that clearly define rights and obligations, protecting against misunderstandings.

- **Compliance with regulations:**

Staying informed about relevant laws in areas like employment, environmental protection, and consumer rights ensures adherence to regulatory standards.

- **Decision-making:**

Legal knowledge enables business leaders to make informed decisions with legal considerations in mind, enhancing strategic planning

- **Protecting intellectual property:**

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Understanding intellectual property law is crucial for safeguarding valuable assets like trademarks, patents, and copyrights

- **Dispute resolution:**

A basic understanding of legal processes can assist in resolving disputes efficiently, potentially through negotiation or mediation

- **Business formation and structure:**

Choosing the appropriate legal structure for a business, like LLC or corporation, requires knowledge of business law

- **Ethical conduct:**

Legal knowledge promotes ethical business practices by providing a clear framework for responsible operations

At this point, it can be helpful to share measurable course goals with your students. Consider what you want them to take away from the course. For example, your goals might include:

- Developing the legal vocabulary necessary to communicate effectively with lawyers and business colleagues about various areas of the law;
- Learning to identify legal issues that may arise in specific business situations;
- Cultivating the judgment required to make informed business decisions that help prevent legal disputes;
- Understanding when to seek legal advice (i.e., recognizing situations that require professional counsel); and
- Building a strong foundation to become a discerning consumer of legal services.

Ready? Let's go!

II. Chapter Objectives

1.1 Define *law*.
1.2 Summarize the schools of judicial thought.
1.3 Describe the sources of law in the United States.
1.4 Define *ethics* and apply it to business
1.5 Explain critical legal thinking and apply it to analyzing cases

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 ethics and how do business ethics and individual ethics relate to each other?
- What is critical thinking and how do we apply it to analyze legal cases?

IV. Text Materials

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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—A body of rules of action or conduct prescribed by a controlling authority, having binding legal consequences. Laws must be obeyed and followed 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.

Schools of Jurisprudential Thought

1.2 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 social justice 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 **Social Justice School**, which maintains that the law should be designed to provide for the fair division of opportunities, resources, and privileges in society.
-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.
-The **Command School**, whose laws are established by the ruling party rather than the society as a whole.

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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.

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.

Sources of Law in the United States

1.3 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.

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.

Legal 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 Constitutions—State Constitutions establish the legislative, executive, and judicial branches of state government and establish the powers of each branch.

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.

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

Precedent—A rule of law established in a court decision. Lower courts must follow the precedent established by higher courts. Based on the common law tradition, past court decisions become precedent for deciding future cases. Lower courts must follow the precedent established by higher courts.

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.

Electronic Technology and Artificial Intelligence—U.S. law has evolved and changed along with norms in society, technology, and the growth and expansion of commerce. This demonstrates the flexibility of the law. 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.

Ethics

1.4 Define *ethics* and apply it to business.

Ethics are principles of conduct that govern an individual or a group. Ethics are moral principles that govern a person's behavior or the conducting of an activity. Basically, ethics are usually considered the ability to distinguish between right and wrong. Some things that are legal are not ethical. Ultimately, business ethics comes down to the ethics of the individual leaders in the business.

Ethics
Facebook Fined $5 Billion for Privacy Violations
The Federal Trade Commission (FTC) charged Facebook with deceptive privacy practices, alleging that the company misled users about their ability to control their personal data. Facebook allowed third-party app developers to access users' private information—even when users had set their accounts to "friends-only." Additionally, Facebook misused users' phone numbers, collected for security purposes, to target them with ads.

The U.S. Department of Justice prosecuted the case, leading to a $5 billion settlement. Under the agreement, Facebook must stop privacy violations, disclose data usage practices, and obtain user

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consent for facial recognition technology. CEO Mark Zuckerberg is personally required to certify compliance quarterly, with false statements carrying potential civil or criminal penalties. The settlement also applies to Facebook-owned affiliates like Instagram and WhatsApp until 2039.

Critical Legal Thinking

1.5 Explain critical legal thinking 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.*

V. Critical Legal Thinking Cases

1.1 Flexibility of the Law
Bennett v. Google, LLC
882 F.3d 1163
(United States Court of Appeals for the District of Columbia Circuit, 2018)

Case: Dawn Bennett, owner of DJ Bennett Holdings, LLC, hired Scott Pierson for search engine optimization (SEO) services. After their business relationship deteriorated, they agreed on a final payment of $20,000, which was paid. Pierson then published a negative blog post about DJ Bennett, alleging non-payment of employees and contractors and unethical business practices.

Bennett requested Google to remove the blog, but Google refused. Bennett then sued Google for damages, arguing that it facilitated the publication of defamatory content. Google defended itself under Section 230(c)(1) of the Communications Decency Act (CDA), which grants internet service providers immunity from liability for third-party content.
Issue: Is Google civilly liable for not removing Pierson's blog, or does Section 230(c)(1) protect it from liability?
Decision: The U.S. Court of Appeals for the D.C. Circuit ruled in favor of Google, affirming that Section 230(c)(1) shields internet platforms from liability for content created and posted by third parties. Google was not responsible for Pierson's defamatory statements.
Critical Legal Thinking Question: Why was Section 230(c)(1) enacted, and what would be the consequences for internet platforms if it had not been enacted?

Ethics Cases

1.2 Ethics Case
Starbucks Corporation v. Wolfe's Borough Coffee, Inc.
736 F.3d 198
(United States Court of Appeals for the Second Circuit, 2013)

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Case: Starbucks, a global coffee company, owns more than 60 trademarks, including the highly recognizable Starbucks brand name. Wolfe's Borough Coffee, Inc. began selling coffee under the names "Mister Charbucks," "Mr. Charbucks," and "Charbucks Blend" through retail stores and online.

Starbucks sued Wolfe's Borough in U.S. district court, claiming that the use of "Charbucks" diluted the Starbucks trademark by creating brand confusion and blurring. Starbucks sought an injunction to stop Wolfe's Borough from using the name.

Issue: Did Wolfe's Borough's use of "Charbucks" dilute Starbucks' trademark under the Federal Trademark Dilution Act?

Decision: The U.S. Court of Appeals for the Second Circuit ruled that Wolfe's Borough did not significantly dilute the Starbucks brand, as "Charbucks" was not similar enough to cause substantial confusion among consumers. Starbucks was not granted the injunction.

Critical Legal Thinking Question: Did Wolfe's Borough act ethically in choosing a name similar to Starbucks, or was it intentionally trying to capitalize on Starbucks' brand recognition?

1.3 Ethics Case

Wysong Corporation v. APN, Inc.
889 F.3d 267
(United States Court of Appeals for the Sixth Circuit, 2018)

Case: Wysong Corporation, a premium pet food manufacturer, sued six competing pet food companies for false advertising and misleading labeling under Section 43 of the Lanham Act.

The competitors used photographs of high-quality meats—such as lamb chops, T-bone steaks, and chicken breasts—on their packaging and advertisements, even though the actual pet food was made from trimmings and scraps left over after premium cuts were removed for human consumption.

The defendant pet food companies argued that their advertising was "puffery"—a legally acceptable form of exaggeration that consumers should recognize as non-literal marketing language.

Issue: Did the defendant pet food companies violate Section 43 of the Lanham Act by engaging in false advertising and misleading labeling?

Decision: The U.S. Court of Appeals for the Sixth Circuit ruled that the advertisements were misleading, stating that puffery does not extend to outright misrepresentation of product quality. The pet food companies were found to have engaged in false advertising.

Critical Legal Thinking Question: Did the pet food companies act ethically in using misleading images to market their products, even if consumers should expect some exaggeration in advertising?

VI. 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 order—A decision of an administrative agency.
- 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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- Chamber—The U.S. Congress is composed of two chambers: the U.S. House of Representatives and the U.S. Senate.
- 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.
- 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.
- Congressional 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.
- Congressional 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.
- Constitution of the United States of America—The supreme law of the United States.
- 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 (president)—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.
- Flexibility of the law—How the law evolves and changes along with the norms of society, advances in technology, and the growth and expansion of commerce.
- Functions of the law—The primary purposes served by the law.
- 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 (courts)—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.
- 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 (Chicago School)—School of jurisprudence that believes that promoting market efficiency should be the central goal of legal decision making. Also called Chicago School.

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- Legislative branch (Congress)—A branch of the U.S. government that has the power to enact the law. Also known as the U.S. Congress.
- 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."
- 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.
- 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.
- Social Justice School—A school of jurisprudence that maintains that the law should be designed to provide for the fair division of opportunities, resources, and privileges in society.
- 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.

VI. Teaching Resources

A. **Oyez.org**—Provides audio and written transcripts of U.S. Supreme Court cases. Great for analyzing case law and stare decisis.
Link: https://www.oyez.org/

B. **U.S. Small Business Administration (SBA) Laws & Regulations**—Helps students understand how laws affect businesses.
Link: https://www.sba.gov/

C. **Library of Congress**—Primary Documents in American Law—Useful for exploring historical legal documents and the Constitution.
Link: https://www.loc.gov/

D. **Harvard Business Review (HBR) Ethics Case Studies**—Contains business ethics dilemmas and case studies to discuss ethical decision-making.
Link: https://hbr.org/topic/subject/business-ethics

VII. Engagement Tips

A. Legal & Ethical Dilemmas Debate

- Divide students into groups to debate real-world legal issues, such as:
    - Should businesses be legally required to act ethically beyond the law?
    - Should AI decision-making be regulated under the same legal principles as human decision-making?

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- Does stare decisis always lead to just outcomes, or should precedent be overturned more often?

B. Role-Playing: Legislators & Legal Philosophers

- Assign students different schools of jurisprudential thought (Natural Law, Sociological, Law & Economics, etc.).
- Have them debate a new legal issue (e.g., AI-driven hiring, climate change laws) from their assigned perspective.

C. Mock Trial or Moot Court on Stare Decisis

- Give students a real Supreme Court case where precedent was challenged.
- Have them argue whether the previous ruling should be upheld or overturned.
- Encourage students to use historical and ethical reasoning in their arguments.

D. "Write Your Own Law" Activity

- Students draft a new law addressing a modern legal or ethical issue (e.g., cybersecurity, corporate responsibility, genetic data privacy).
- They must justify it using legal principles, ethical reasoning, and constitutional considerations.

E. Legal System Comparison Project

- Students research and compare the U.S. legal system with another country's legal system.
- How do different legal traditions (Common Law, Civil Law, Religious Law) shape justice and ethics in different societies?

F. Business Ethics Reflection Journal

- Have students reflect on a personal ethical dilemma and how it would be handled in a legal vs. ethical framework.
- Ask:
  - *Have you ever faced a situation where something was legal but felt unethical?*
  - *How would you handle that situation in a business setting?*

G. IRAC Case Analysis Assignment

- Assign a case study and have students analyze it using the IRAC Method (Issue, Rule, Application, Conclusion).
- Example cases:
  - *W. C. Ritchie & Co. v. Wayman* (gender-based labor laws)
  - *Fisher v. University of Texas* (affirmative action)

H. Ethics Case Study Quiz

- Present students with ethical dilemmas in business and law, and have them:
  - Choose the best legal response
  - Choose the best ethical response
  - Compare how legal vs. ethical decision-making differ

I. "Law in the News" Presentation

- Each student finds a recent legal issue or Supreme Court case and presents:
  - The legal arguments involved
  - The ethical considerations
  - Whether stare decisis should apply

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