Business Law and the Regulation of Business 13th edition Mann Solutions Manual

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Part One:
Introduction to Law and Ethics

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Chapter 1 Introduction to Law
Chapter 2 Business Ethics

ETHICS QUESTIONS RAISED IN THIS PART

1. Are all laws moral? Should all laws be moral? How should morality be determined?
2. Are laws always just?
3. Which is more important, morality or justice?
4. Why is there a difference between the treatment of cases brought under civil law and those brought under criminal law? Should there be a difference?

ACTIVITIES AND RESEARCH PROBLEMS

1. Have students draw a diagram of two overlapping circles, with one circle labeled "Moral" and the other labeled "Legal." The area of overlap would be both moral and legal. Then list several controversial topics of current interest (e.g., abortion, genetic engineering, marijuana smoking, etc.) for students to place within an area of the diagram (or outside the circles if it is neither moral or legal). Can any of these issues be absolutely determined to be moral or immoral?
2. Have any laws in our country's history been repealed on the basis of their immorality? Are there any laws still in existence that should be repealed? Have students discuss their opinions.
3. How does American common law differ from English common law?
4. Have students write a fictitious case involving questionable ethics in a business decision.

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Chapter 1

INTRODUCTION TO LAW

A. Nature of Law
   1. Definition of Law
   2. Functions of Law
   3. Law and Morals
   4. Law and Justice
B. Classification of Law
   1. Substantive and Procedural Law
   2. Public and Private Law
   3. Civil and Criminal Law
C. Sources of Law
   1. Constitutional Law
   2. Judicial Law
      a. Common Law
      b. Equity
      c. Restatements of Law
   3. Legislative Law
      a. Treaties
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   4. Administrative Law
D. Legal Analysis

Cases in This Chapter

Note: This case is provided as a part of the lesson on teaching students how to brief.

Caldwell v. Bechtel, Inc.

Chapter Outcomes

After reading and studying this chapter, the student should be able to:

- Identify and describe the basic functions of law.
- Distinguish between (a) law and justice and (b) law and morals.
- Distinguish between (a) substantive and procedural law, (b) public and private law, and (c) civil and criminal law.
- Identify and describe the sources of law.
- Explain the principle of *stare decisis*.

TEACHING NOTES

Law concerns the relations between and among individuals as those relations affect social and economic order. It affects the rights and duties of every citizen and many non-citizens.

Law is both **prohibitory**, meaning certain acts must not be committed, and **mandatory**, meaning certain acts must be done, sometimes in a set way. Additionally, law is **permissive**: certain acts are allowed, but not required by the law.

A. NATURE OF LAW

The law is a continuously changing process of developing a workable set of rules that balance the individual and group rights of an always-changing society.

Definition of Law

Legal scholars have defined law in various ways, including:

- "predictions of the way that a court will decide specific legal questions"
- "a rule of civil conduct prescribed by the supreme power in a state, commanding what is right, and prohibiting what is wrong"

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*** Chapter Outcome ***

Identify and describe the basic functions of law.

Functions of Law

The functions of law are to maintain stability in the social, political, and economic system through (1) dispute resolution, (2) protection of property, and (3) the preservation of the state while at the same time permitting ordered change.

1. Disputes are inevitable in a complex society and may involve criminal or noncriminal matters. Law provides rules to resolve disputes and avoid personal revenge.
2. Law protects ownership of property and allows for agreements (contracts) to exchange property. (This text deals with many aspects of this including contracts, sales, commercial paper, and business associations.)
3. Law preserves the state. It ensures that changes are result of elections, legislation, and referenda rather than revolution, sedition, and rebellion.

*** Chapter Outcome ***

Distinguish between law and justice. Distinguish between law and morals.

Law and Morals

Though law is affected by morals, law and morality are not the same. Some actions have no moral implications but have legal sanctions, whereas other actions have no legal sanctions but do have moral implications. Some actions have both moral impact and legal sanction.

NOTE: See Figure 1-1: Law and Morals.

Law and Justice

Law and justice are distinct but interrelated concepts.

- Justice may be defined as "the fair, equitable, and impartial treatment of the competing interests and desires of individuals and groups, with due regard for the common good."
- Justice depends on the law, but the law does not guarantee justice, since laws can be unjust. (Think back to "legal" slavery and the "legal" actions of Nazi Germany.)

B. CLASSIFICATION OF LAW

Because the law is vast, it is helpful to organize it into categories such as: (1) substantive and procedural, (2) public and private, and (3) civil and criminal.

Basic to understanding these classifications are the terms right and duty. A **right** is the ability of a person, with the aid of the law, to require another person to perform or to refrain from performing a certain act. A **duty** is the obligation the law imposes upon a person to perform or to refrain from performing a certain act. Duty and right exist together: a person cannot have a right without some other person (or all persons) having the corresponding duty.

NOTE: See textbook Figure 1-2, which outlines the classifications of law.

*** Chapter Outcome ***

Distinguish between (a) substantive and procedural law, (b) public law and private law, and (c) civil law and criminal law.

Substantive and Procedural Law

Substantive law creates, defines, and regulates legal rights and duties. Procedural law sets forth rules for enforcing those rights that are created by the substantive law.

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Public and Private Law

Public law is the branch of substantive law that deals with the government's rights and powers and its relationship to individuals or groups.

Private law is that part of substantive law governing individuals and legal entities (such as corporations) in their relationships with one another.

Civil and Criminal Law

Civil law defines duties and deals with the rights and duties of individuals among themselves. (It is part of private law.)

NOTE: Civil law is not the same as a civil law system, discussed later in this chapter.

Criminal law establishes duties and involves offenses against a whole community. (It is part of public law.)

The purpose of the civil law is to compensate the injured party (plaintiff), while the purpose of criminal law is to punish the wrongdoer. Typically, the civil law awards money for damages or an order for the defendant to behave in a certain way, while criminal law imposes a fine or imprisonment on the guilty party.

*** Chapter Outcomes ***

Identify and describe the sources of law. Explain the principle of *stare decisis*.

C. SOURCES OF LAW

- Federal and state constitutions
- Federal treaties (agreements between or among independent nations)
- Interstate compacts
- Federal and state statutes (laws passed by a legislative body such as the U.S. Congress or the legislature of a state)
- Executive orders (legislation issued by a President or governor)
- Ordinances of local municipal governments
- Rules and regulations of federal and state administrative agencies
- Federal and state court decisions

NOTE: See Figure 1-3, Hierarchy of Law

Constitutional Law

A constitution sets forth the basic principles by which a government is guided, as well as the limitations on governmental authority. The U.S. Constitution is the supreme law of the nation; a state constitution is the highest law within that state. Federal law is supreme in cases of conflict with state law.

Fundamental principles of the U.S. Constitution include: **Separation of Powers** (division of power among branches of government) and **Judicial Review** (power of the Supreme Court to determine constitutionality of all laws).

Judicial Law

Civil Law System – This system, which is less prevalent than common law within the United States, depends on comprehensive legislative enactments (called codes) and an inquisitorial system of determining disputes. In the **inquisitorial system**, the court, rather than the parties, initiates litigation, investigates pertinent facts, and conducts the presentation of evidence.

Common Law — Case decisions establish precedent in our common law system and must also be consulted when researching a legal question. The principle of *stare decisis* requires that inferior courts stay consistent with prior decisions of higher courts on cases with similar facts.

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Equity — A supplementary system of judicial relief separate from the common law, based upon settled rules of fairness, justice and honesty. Remedies include: **specific performance, injunction, reformation, rescission** and **decree.**

In most jurisdictions, a single court administers both common law and equity.

Restatements of Law — This is an orderly re-writing (or re-stating) of the general common law of the United States; it is regarded as the authoritative statement of the common law of the United States. Covers many areas, including torts, contracts, agency, property, and trusts.

Legislative Law

Legislative law consists of statutes passed by legislatures. Statutes may repeal judge-made law as long as the statute is not unconstitutional. Legislatures have the freedom to choose the issues they want to address, and can make or change laws relatively quickly. Courts may only address issues that are presented in actual cases, leading to a more haphazard approach to establishing or revising laws.

The need for uniformity among state statutes led to the codification of large parts of business law. The most successful example of this effort is the Uniform Commercial Code (UCC), prepared under the joint sponsorship and direction of the National Conference of Commissioners on Uniform State Laws and the American Law Institute. The NCCUSL has drafted over 200 uniform laws including the Uniform Partnership Act, the Uniform Limited Partnership Act, and the Uniform Probate Code. The ALI has developed a number of model statutory formulations, including the Model Code of Evidence, the Model Penal Code, and a Model Land Development Code.,. In addition, the American Bar Association has promulgated the Model Business Corporation Act. All fifty states, the District of Columbia, and the Virgin Islands have adopted the UCC. (Louisiana has adopted only part.)

Treaties — Agreements between or among independent nations; if signed by the President and approved by the Senate, it has the legal force of a federal statute.

Executive Orders — The President has power to issue executive orders, which carry the authority of a law.

Administrative Law

The branch of public law that governs the powers and procedures of governmental entities (other than courts and legislatures); often involves public health, safety and welfare. Administrative law is created by administrative agencies in the form of rules, regulations, orders, and decisions to carry out the regulatory powers and duties of those agencies.

D. LEGAL ANALYSIS

Decisions in state trial courts generally are not published but are filed in the office of the clerk of the court. Decisions of state courts of appeals are published in volumes called "reports," numbered consecutively. Some states rely on a commercial reporter and no longer publish official reports. The decisions of courts in the federal system are found in a number of reports.

For instance, *Lefkowitz v. Great Minneapolis Surplus Store, Inc*., 251 Minn. 188, 86 N.W.2d 689 (1957), indicates that the opinion in this case may be found in Volume 251 of the official Minnesota Reports at page 188; and in Volume 86 of the North Western Reporter, Second Series, at page 689; and that the opinion was delivered in 1957.

Normally, the reported opinion in a case includes:

1. the essential facts, the nature of the action, the parties, what happened to bring about the controversy, what happened in the lower court, and what pleadings are material ;
2. the issues of law or fact;
3. the legal principles involved;
4. the application of these principles; and
5. the decision.

When briefing a case, one must determine: (1) the facts of the case, (2) the issue or question involved, (3) the decision of the court, and (4) the reasons for the decision. All cases are decided with these four presuppositions

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in mind: the court must decide the issue before it and may not decide anything other than the issue before it; the court decides this particular case based on general rules; and everything a judge says in an opinion must be interpreted in relation to this particular case.

CASE

Caldwell v. Bechtel, Inc.

UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA 1980

631 F.2d 989

FACTS Caldwell was a laborer who now suffers from silicosis. He claims that he contracted the disease while working in a tunnel under construction as part of the Washington Metropolitan Area Transportation Authority (WMATA). He brought his action for damages against Bechtel, Inc., a consultant engineering firm under contract with WMATA for the project.
ISSUE Did Bechtel breach a duty of due care owed to Caldwell to take reasonable steps to protect him from the foreseeable risk of harm to his health posed by the excessive concentration of silica dust in the subway tunnels?
DECISION In favor of Caldwell. Summary judgment reversed and case remanded to the district court.
REASONS Caldwell has not brought an action for breach of contract as Bechtel seems to believe. Rather, he seeks damages for an alleged breach of the duty of reasonable care. Unlike contractual duties, which are imposed by agreement of the parties to a contract, a duty of due care under tort law is based primarily on social policy. That is, the law imposes upon individuals the expectation that their actions will not cause foreseeable injury to another. These societal expectations comprise the concept of duty—a concept that varies in response to the activity engaged in by the individual. Moreover, the duty is owed to anyone who might foreseeably be injured by the conduct of the actor in question. In contrast, under contract law, a duty is owed only to those parties specified in the contract. Here, by entering into a contract with WMATA, Bechtel placed itself in such a relation toward Caldwell that the law will impose upon it an obligation in tort, and not in contract, to act in such a way that Caldwell would not be injured.

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