Business Law Today Standard Text and Summarized Cases 13th edition Miller Solutions Manual

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Solution and Answer Guide

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Chapter 01: Law and Legal Reasoning

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Critical Thinking Questions in Features

Managerial Strategy—Business Questions

1. "When faced with a clearly erroneous precedent, my rule is simple," writes Supreme Court Justice Clarence Thomas. "We should not follow it." How do these words offer a cautionary tale for managers relying on stare decisis to make business decisions?

   Solution
   Simply put, the doctrine of stare decisis applies in all instances, except when it does not. As noted in the text, a court is able to depart from precedent if it feels that legal, social, or technological changes have rendered the previous decision untenable. In this case, just because the United State Supreme Court believes, at present, that automobile salespeople are exempt from the overtime rules of the FLSA, there is a possibility that the Court could reverse itself in the future. In this context, managers need to be aware that (1) any decision they make based on a court decision is subject to change, and (2) if they believe that a previous business law-related court decision is flawed, they can challenge it in court.

2. Should Roberta consider paying her salespeople overtime even though it is not required by federal law? Why or why not?

   Solution
   Just because Roberta is legally able to avoid paying the salespeople at her new used car dealership overtime, should she? As with so many managerial decisions, the answer to this question involves the tricky determination of costs and benefits. On the one hand, Roberta's costs will be lower if she does not have to pay overtime to the salespeople. On the other hand, the salespeople may be more motivated if they feel they are being properly

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compensated for the extra hours they spend on the lot. The extra motivation will likely lead to additional sales, which very well may offset the overtime costs.

Chapter Review

Practice and Review

Suppose that the California legislature passes a law that severely restricts carbon dioxide emissions of automobiles in that state. A group of automobile manufacturers files a suit against the state of California to prevent enforcement of the law. The automakers claim that a federal law already sets fuel economy standards nationwide and that these standards are essentially the same as carbon dioxide emission standards. According to the automobile manufacturers, it is unfair to allow California to impose more stringent regulations than those set by the federal law. Using the information presented in the chapter, answer the following questions.

1. Who are the parties (the plaintiffs and the defendant) in this lawsuit?

   Solution
   In this situation, the automobile manufacturers are the plaintiffs, and the state of California is the defendant.

2. Are the plaintiffs seeking a legal remedy or an equitable remedy? Why?

   Solution
   The plaintiffs are seeking an injunction, which is an equitable remedy, to prevent the state of California from enforcing its statute restricting carbon dioxide emissions.

3. What is the primary source of the law that is at issue here?

   Solution
   This case involves a law passed by the California legislature and a federal statute, thus the primary source of law is statutory law.

4. Read through the appendix that follows this chapter, and then answer the following question: Where would you look to find the relevant California and federal laws?

   Solution
   Federal statutes are found in the *United States Code,* and California statutes are published in the *California Code*. You would look in both of these sources to find the relevant state and federal statutes.

Practice and Review: Debate This

1. Under the doctrine of stare decisis, courts are obligated to follow the precedents established in their jurisdictions unless there is a compelling reason not to. Should U.S. courts continue to adhere to this common law principle, given that our government now regulates so many areas by statute?

   Solution
   Both England and the U.S. legal systems were constructed on the common law system. The doctrine of *stare decisis* has always been a major part of this system—courts should follow

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precedents when they are clearly established, excepted when compelling reasons dictate otherwise. Even though more common law is being turned into statutory law, the doctrine of *stare decisis* is still valid. After all, statutes often must to be interpreted by courts. What better basis for judges to render their decisions than by basing them on precedents related to the subject at hand?

In contrast, some students may argue that the doctrine of *stare decisis* is passé. There is certainly less common law governing, say, environmental law than there was 100 years ago. Given that federal and state governments increasingly are regulating more aspects of commercial transactions between merchants and consumers, perhaps the courts should simply stick to statutory language when disputes arise.

Issue Spotters

1. The First Amendment to the U.S. Constitution provides protection for the free exercise of religion. A state legislature enacts a law that outlaws all religions that do not derive from the Judeo-Christian tradition. Is this law valid within that state? Why or why not?

   Solution
   No. The U.S. Constitution is the supreme law of the land, and applies to all jurisdictions. A law in violation of the Constitution (in this question, the First Amendment to the Constitution) will be declared unconstitutional.

2. Apex Corporation learns that a federal administrative agency is considering a rule that will have a negative impact on the firm's ability to do business. Does the firm have any opportunity to express its opinion about the pending rule? Explain.

   Solution
   Yes. Administrative rulemaking starts with the publication of a notice of the rulemaking in the Federal Register. Among other details, this notice states where and when the proceedings, such as a public hearing, will be held. Proponents and opponents can offer their comments and concerns regarding the pending rule. After reviewing all the comments from the proceedings, the agency's decision makers consider what was presented and draft the final rule.

Business Scenarios and Case Problems

1. **Binding versus Persuasive Authority.** A county court in Illinois is deciding a case involving an issue that has never been addressed before in that state's courts. The Iowa Supreme Court, however, recently decided a case involving a very similar fact pattern. Is the Illinois court obligated to follow the Iowa Supreme Court's decision on the issue? If the United States Supreme Court had decided a similar case, would that decision be binding on the Illinois court? Explain. (See *The Common Law*.)

   Solution
   A decision of a court is binding on all inferior courts. Because no state's court is inferior to any other state's court, no state's court is obligated to follow the decision of another state's court on an issue. The decision may be persuasive, however, depending on the nature of the case and the particular judge hearing it. A decision of the United States Supreme Court on an issue is binding, like the decision of any higher court, on all inferior courts. The United

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States Supreme Court is the nation's highest court, however, and thus, its decisions are binding on all courts, including state courts.

2. **Sources of Law**. This chapter discussed a number of sources of American law. Which source of law takes priority in the following situations, and why? (See *Sources of American Law*.)
   1. A federal statute conflicts with the U.S. Constitution.

   Solution
   1. The U.S. Constitution—The U.S. Constitution is the supreme law of the land. A law in violation of the Constitution, no matter what its source, will be declared unconstitutional and will not be enforced.

   2. A federal statute conflicts with a state constitutional provision.

   Solution
   2. The federal statute—Under the U.S. Constitution, when there is a conflict between a federal law and a state law, the state law is rendered invalid.

   3. A state statute conflicts with the common law of that state.

   Solution
   3. The state statute—State statutes are enacted by state legislatures. Areas not covered by state statutory law are governed by state case law.

   4. A state constitutional amendment conflicts with the U.S. Constitution.

   Solution
   4. The U.S. Constitution—State constitutions are supreme within their respective borders unless they conflict with the U.S. Constitution, which is the supreme law of the land.

3. **Remedies.** Arthur Rabe is suing Xavier Sanchez for breaching a contract in which Sanchez promised to sell Rabe a Van Gogh painting for $150,000. (See *The Common Law*.)
   1. In this lawsuit, who is the plaintiff, and who is the defendant?

   Solution
   1. In a suit by Arthur Rabe against Xavier Sanchez, Rabe is the plaintiff and Sanchez is the defendant.

   2. If Rabe wants Sanchez to perform the contract as promised, what remedy should Rabe seek?

   Solution
   2. Specific performance is the remedy that includes an order to a party to perform a contract as promised.

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3. Suppose that Rabe wants to cancel the contract because Sanchez fraudulently misrepresented the painting as an original Van Gogh when in fact it is a copy. In this situation, what remedy should Rabe seek?

Solution

3. Rescission is a remedy that includes an order to cancel a contract.

4. Will the remedy Rabe seeks in either situation be a remedy at law or a remedy in equity?

Solution

4. In both cases, these remedies are remedies in equity.

4. **Philosophy of Law.** After World War II ended in 1945, an international tribunal of judges convened at Nuremberg, Germany. The judges convicted several Nazi war criminals of "crimes against humanity." Assuming that the Nazis who were convicted had not disobeyed any law of their country and had merely been following their government's (Hitler's) orders, what law had they violated? Explain. (See *The Common Law.*)

Solution

Crimes against humanity constituted, at the time of the Nuremberg trials, a new international crime, consisting of "murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious ground." In response to the defendants' assertion that they had only been following orders, the Nuremberg judges explained in part that these were familiar crimes within domestic jurisdictions and that thus the accused must have known, when they committed their acts, that they would be considered criminal.

In terms of a philosophy of law, it might be said that these criminals violated "natural law." The oldest and one of the most significant schools of jurisprudence is the natural law school. Those who adhere to the natural law school of thought believe that government and the legal system should reflect universal moral and ethical principles that are inherent in human nature. Because natural law is universal, it takes on a higher order than positive, or conventional, law. The natural law tradition presupposes that the legitimacy of conventional, or positive, law derives from natural law. Whenever it conflicts with natural law, conventional law loses its legitimacy. For example, a precept of natural law may be that murder is wrong, which is a value reflected by specific laws prohibiting murder. If a specific, written law *requires* murder, it conflicts with the natural law precept, in which case individuals should disobey the written law and obey the natural law.

5. **Spotlight on AOL—Common Law.** AOL, LLC, mistakenly made public the personal information of 650,000 of its members. The members filed a suit, alleging violations of California law. AOL asked the court to dismiss the suit on the basis of a "forum-selection" clause in its member agreement that designates Virginia courts as the place where member disputes will be tried. Under a decision of the United States Supreme Court, a forum-selection clause is unenforceable "if enforcement would contravene a strong public policy of the forum in which suit is brought." California has declared in other cases that the AOL clause contravenes a strong public policy. If the court applies the doctrine of *stare decisis*, will

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it dismiss the suit? Explain. [*Doe 1 v. AOL, LLC*, 552 F.3d 1077 (9th Cir. 2009)] (See *The Common Law*.)

Solution
The doctrine of *stare decisis* is the process of deciding cases with reference to former decisions, or precedents. Under this doctrine, judges are obligated to follow the precedents established within their jurisdiction.

In this problem, the enforceability of a forum selection clause is at issue. There are two precedents mentioned in the facts that the court can apply. The United States Supreme Court has held that a forum selection clause is unenforceable "if enforcement would contravene a strong public policy of the forum in which suit is brought." And California has declared in other cases that the AOL clause contravenes a strong public policy. If the court applies the doctrine of *stare decisis*, it will allow the suit to move forward.

In the actual case on which this problem is based, the court determined that the clause is not enforceable under those precedents.

6. **Business Case Problem with Sample Answer— Reading Citations.** Assume that you want to read the entire court opinion in the case of *Friends of Buckingham v. State Air Pollution Control Board*, 947 F.3d 68 (4th Cir. 2020).

Refer to the appendix to this chapter, and then explain specifically where you would find the court's opinion. (See *Finding Case Law*.)
—For a sample answer to Problem 1–6, go to Appendix E.

Solution
The court's opinion in the case *Friends of Buckingham v. State Air Pollution Control Board* can be found in volume 947 of the Federal Reporter, third series, on page 68. The Federal Reporter contains the decisions of all the United States Courts of Appeals, including, as is the case here, the Fourth Circuit Court of Appeals. Also, this case was decided (though not necessarily filed) in 2020.

7. **A Question of Ethics—The Doctrine of Precedent.** Sandra White operated a travel agency. To obtain lower airline fares for her nonmilitary clients, she booked military-rate travel by forwarding fake military identification cards to the airlines. The government charged White with identity theft, which requires the "use" of another's identification. The trial court had two cases that represented precedents.

In the first case, David Miller obtained a loan to buy land by representing that certain investors had approved the loan when, in fact, they had not. Miller's conviction for identity theft was overturned because he had merely said that the investors had done something when they had not. According to the court, this was not the "use" of another's identification.

In the second case, Kathy Medlock, an ambulance service operator, had transported patients for whom there was no medical necessity to do so. To obtain payment, Medlock had forged a physician's signature. The court concluded that this was "use" of another person's identity. [*United States v. White*, 846 F.3d 170 (6th Cir. 2017)] (See *Sources of American Law*.)

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1. Which precedent—the *Miller* case or the *Medlock* case—is similar to White's situation, and why?

Solution

In this problem, White operated a travel agency. To obtain low fares for her clients, she submitted fake military identification cards to the airlines. She was charged with the crime of identity theft, which requires the "use" of another's identification. In a previous case, David Miller, to obtain a loan, represented that certain investors approved of the loan when they did not. Miller's conviction for identity theft was overturned on the ground that he had not "used" the investors' identities—he had only *said* that they had done something when they had not. In a second case, Kathy Medlock, the operator of an ambulance service, obtained payment for transporting patients for whom there was no medical necessity to do so by forging a physician's signature. White's actions most closely resemble Medlock's forgery. White not only told the airlines that her clients were members of the military—she created false identification cards and sent them to the airlines.

In all of these cases, the defendants lied about their actions. Whether or not their conduct fell within the meaning of a word within a statute, or matched the actions of a perpetrator in another case, none of these parties can claim to have acted ethically. Honesty is a part of ethical behavior in any set of circumstances, and none these defendants were truthful about their actions.

In the actual case on which this problem is based, the court concluded that White's actions were most similar to Medlock's. White was convicted of identity theft. On appeal, the U.S. Court of Appeals for the Sixth Circuit affirmed the conviction.

1. In the two cases cited by the court, were there any ethical differences in the actions of the parties? Explain your answer.

Solution

No, in the two cases cited by the *White* court—and in the *White* case—there were no ethical differences in the actions of the parties.

Almost any definition of ethics, and any set of ethical standards, includes honesty as a component. In the *White* case, Sandra White lied to the airlines that her clients were members of the military, and created false identification cards to obtain cheaper fares. In the first case cited by the *White* court, David Miller, to obtain a loan, represented that certain investors approved of the loan when they did not. In the second case cited by the *White* court, Kathy Medlock, the operator of an ambulance service, obtained payment for transporting patients for whom there was no medical necessity to do so by forging a physician's signature.

In all of these cases, the defendants lied. Whether or not their conduct fell within the meaning of a word within a statute, or matched the unlawful actions of each other, none of these parties can claim to have acted ethically. Honesty is a part of ethical behavior in any set of circumstances, and none these defendants were truthful.

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Critical Thinking and Writing Assignments

1. **Business Law Writing.** John's company is involved in a lawsuit with a customer, Beth. John argues that for fifty years higher courts in that state have decided cases involving circumstances similar to his case in a way that indicates he can expect a ruling in his company's favor. Write at least one paragraph discussing whether this is a valid argument. Write another paragraph discussing whether the judge in this case must rule as those other judges did, and why. (See *The Common Law*.)

   Solution
   John's argument is valid. Under the doctrine of *stare decisis*, judges are generally bound to follow the precedents set in their jurisdictions by the judges who have decided similar cases. A judge does not always have to rule as other judges have, however. A judge can depart from precedent. One argument that a party might offer to counter an assertion of precedent is that the times have changed—the social, economic, political, or other circumstances have changed—and thus it is time to change the law.

2. **Time-Limited Group Assignment—Court Opinions.** Go to the section entitled *Reading and Understanding Case Law* in the appendix at the end of this chapter, and read through the subsection entitled "Decisions and Opinions."
   1. One group will explain the difference between a concurring opinion and a majority opinion.

   Solution
   A majority opinion is a written opinion outlining the views of the majority of the judges or justices deciding a particular case. A concurring opinion is a written opinion by a judge or justice who agrees with the conclusion reached by the majority of the court but not necessarily with the legal reasoning that led the conclusion.

   2. Another group will outline the difference between a concurring opinion and a dissenting opinion.

   Solution
   A concurring opinion will voice alternative or additional reasons as to why the conclusion is warranted or clarify certain legal points concerning the issue. A dissenting opinion is a written opinion in which judges or justices who do not agree with the conclusion reached by the majority of the court expound their views on the case.

   The third group will explain why judges and justices write concurring and dissenting opinions, given that these opinions will not affect the outcome of the case at hand, which has already been decided by majority vote.

   Solution
   Obviously, a concurring or dissenting opinion will not affect the case involved—because it has already been decided by majority vote. Nevertheless, such opinions often are used by another court later to support its position on a similar issue.

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Appendix Exhibit

1. For a federal district court to hear a case, the "amount in controversy" must be at least $75,000. Jones paid $5,000 for the motor and $304 in freight charges. What other losses or injuries might Jones claim in order to cross the "amount in controversy" threshold? Explain.

   Solution
   The amount in controversy in a dispute is measured by the value of the object of the litigation. This is not necessarily the amount of money sought or the award obtained through a judgment—it is the value of the consequences that may result from the litigation. It should be considered from the perspective of the plaintiff, with a focus on the economic value of the rights the plaintiff seeks to protect.

   In the *Adelman's* case, Jones could have sought the price of the nonconforming goods, the freight charges, and other costs directly related to the alleged breach of contract—lost profits attributable to the time that the truck was out of operation due to the defective motor, for example.

   In the facts of the actual case, Jones asked for damages for emotional distress, punitive damages, and attorney fees, based on a tort claim. The appellate court was "convinced" that "Jones's alleged monetary damages would result in an amount in controversy of $138,171, well above the $75,000 requirement." And "there is no evidence that Jones's damages claims were made in bad faith," which is clearly an important factor.

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Instructor Manual

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Purpose and Perspective of the Chapter

The purpose of this chapter is for students to learn how business law and the legal environment affect business decisions. The laws may change, but the ability to analyze and evaluate the legal (and ethical) ramifications of situations as they arise is an invaluable and lasting skill. Students will learn how to think about the law and the legal environment and develop critical-thinking and legal reasoning skills.

Cengage Supplements

The following product-level supplements provide additional information that may help you in preparing your course. They are available in the Instructor Resource Center.

- Transition Guide (provides information about what's new from edition to edition)
- Test Bank (contains assessment questions and problems)
- Solution and Answer Guide (offers textbook solutions and feedback)
- PowerPoint (provides text-based lectures and presentations)
- Guide to Teaching Online (provides technological and pedagogical considerations and resources for teaching online)
- MindTap Educator Guide (describes assets in the MindTap platform with a detailed breakdown of activities by chapter with seat time)

Chapter Objectives

The following objectives are addressed in this chapter:

1. Explain how common law and civil law differ.
2. Explain the creation and development of the common law.
3. Explain the creation and development of statutory law.
4. Explain how common law and civil law systems differ.
5. Define *stare decisis*.

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Key Terms

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

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

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

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

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

Allege: to state, recite, assert, or charge.

Binding authority: any source of law that a court *must* follow when deciding a case.

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

Case on point: a previous case involving factual circumstances and issues that are similar to those in the case before the court.

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

Civil law: the branch of law dealing with the definition and enforcement of all private or public rights, as opposed to criminal matters.

Civil law system: a system of law derived from Roman law that is based on codified laws (rather than on case precedents).

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

Concurring opinion: a court opinion by one or more judges or justices who agree with the majority but want to make or emphasize a point that was not made or emphasized in the majority's opinion.

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

Criminal law: the branch of law that defines and punishes wrongful actions committed against the public.

Cyberlaw: an informal term used to refer to all laws governing electronic communications and transactions, particularly those conducted via the Internet.

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Defendant: one against whom a lawsuit is brought (i.e., the accused person) in a criminal proceeding.

Dissenting opinion: a court opinion that presents the views of one or more judges or justices who disagree with the majority's decision.

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

Equitable maxims: general propositions or principles of law that have to do with fairness (equity).

Historical school: a school of legal thought that looks to the past to determine what the principles of contemporary law should be.

International law: law that governs relations among nations.

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

Jurisprudence: the science or philosophy of law.

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

Legal positivism: a school of legal thought centered on the assumption that there is no law higher than the laws created by a national government; laws must be obeyed, even if they are unjust, to prevent anarchy.

Legal realism: a school of legal thought that holds that the law is only one factor to be considered when deciding cases, and that social and economic circumstances should also be taken into account.

Legal reasoning: the process of reasoning by which judges harmonize their opinions with the judicial opinions in previous cases.

Legislative rules: administrative agency rules that carry the same weight as congressionally enacted statutes.

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

Majority opinion: a court opinion that represents the views of the majority (more than half) of the judges or justices deciding the case.

National law: law that pertains to a particular nation (as opposed to international law).

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Natural law: the oldest school of legal thought, based on the belief that the legal system should reflect universal ("higher") moral and ethical principles that are inherent in human nature.

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

***Per curiam* opinion**: a court opinion that does not indicate which judge or justice authored the opinion.

Persuasive authority: any legal authority or source of law that a court may look to for guidance, but need not follow when making its decision.

Plaintiff: one who initiates a lawsuit.

Plurality opinion: a court opinion that is joined by the largest number of the judges or justices hearing the case, but less than half of the total number.

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

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

Procedural law: law that establishes the methods of enforcing the rights established by substantive law.

Remedy: the relief given to an innocent party to enforce a right or compensate for the violation of a right.

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

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

Stare decisis: a common law doctrine under which judges are obligated to follow the precedents established in prior decisions.

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

Substantive law: law that defines, describes, regulates, and creates legal rights and obligations.

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

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What's New in This Chapter

The following elements are improvements in this chapter from the previous edition:

- New chapter-opening scenario on the law and regulations involving a new driverless car being introduced into the U.S. marketplace
- 1 New Numbered Example:
  - on YouTube issues involving privacy, copyright issues with its video postings
- New section on Civil Law and Criminal Law
- New Sample Case in Exhibit 1A-3 from 2020 case
- New Business Law Analysis: *Case Briefing and IRAC Legal Reasoning*

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Chapter Outline

In the outline below, each element includes references (in parentheses) to related content. "PPT Slide #" refers to the slide number in the PowerPoint deck for this chapter (provided in the PowerPoints section of the Instructor Resource Center). Introduce the chapter and review objectives for Chapter 1. (PPT Slide 3).

I.01-1 Business Activities and the Legal Environment (PPT Slide 5-7)

i. **Example 1.1** YouTube

II.01-2 Sources of American Law (PPT Slide 8-13)

a. Constitutional Law

i. Deals with the fundamental principles by which the government exercises its authority.

b. Statutory Law

i. The body of law enacted by legislative bodies.
   1. Local Ordinances
   2. Applicability of Statutes
      a. **Example 1.2** Sanctuary Cities
   3. Uniform Laws
   4. The Uniform Commercial Code (UCC)

c. Administrative Law

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i. Federal Agencies
ii. State and Local Agencies
iii. Agency Creation
iv. Rulemaking
    1. **Example 1.4** The Occupational Safety and Health Act (OHSA)
    2. Legislative Rules
        a. Notice of proposed rulemaking
        b. A comment period
        c. The final rule
    3. Interpretive Rules
        a. **Example 1.5** The Equal Employment Opportunity Commission
v. Enforcement and Investigation
vi. Adjudication

d. Case Law and Common Law Doctrines

e. *Knowledge Checkpoint (1) PPT Slide: 1 minute(s) total (5 minutes with discussion and review of the answer).* *Test students' knowledge of the sources of American law, the types of laws codified by a specific source, and the hierarchy of applicable law.*

III.01-3 The Common Law (PPT Slide 14-17)

a. Early English Courts
i. Common law-body of general rules that applied throughout the entire English realm.

b. Stare Decisis
i. Latin phrase meaning "to stand on decided cases"
    1. Controlling Precedents
        a. Binding authority
    2. *Stare Decisis* and Legal Stability
    3. Departures from Precedent
        a. **Classic Case Example 1.6** Brown v. Board of Education
    4. When There Is No Precedent
        a. Persuasive authority – court may consult for guidance but is not binding on the court
    5. Stare Decisis and Legal Reasoning
        a. Basic Steps in Legal Reasoning
            i. Issue – What are the key facts and issues?
            ii. Rule – What rule of law applies to the case?
            iii. Application – How does the rule of law apply to the particular facts and circumstances of this case?
            iv. Conclusion – What conclusion should be drawn?
        b. There Is No One "Right" Answer

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c. Equitable Remedies and Courts of Equity

(1) **Example 1.7** Elena

ii. Remedies in Equity

(1) Seeks to supply a remedy when no adequate remedy at law is available.

iii. The Merging of Law and Equity

(1) Courts of law and equity have merged, and thus, the distinction between the two courts has largely disappeared.

iv. Equitable Maxims

(1) General propositions or principles of law that have to do with fairness (equity).

b. Schools of Legal Thought

i. The Natural Law School

(1) One of the oldest and most significant schools of jurisprudence, dating back to Greek philosopher Aristotle (384-322 B.C.E.)

ii. Legal Positivism

(1) There can be no higher law than a nation's positive law.

iii. The Historical School

(1) Emphasizes the evolutionary process of law by concentrating on the origin and history of the legal system.

iv. Legal Realism

(1) Law is just one of many institutions in society that is shaped by social forces and needs.

IV. **Classifications of Law** (PPT Slide 18-27)

a. Civil Law and Criminal Law

i. Civil law spells out the rights and duties that exist between persons, and between persons and their governments.

ii. Criminal law has to do with wrongs committed against society for which society demands redress.

b. Common Law and Civil Law Systems

i. Common law system – body of law derives from custom and judicial decisions and depends on the importance of legal precedent.

ii. Civil law system – based on Roman law or "code law" which relies on legal principles enacted into law by a legislature or governing body.

c. National and International Law

i. Varies from country to country because each country's law reflects the interests, customs, activities, and values that are unique to that nation's culture.

d. ***Knowledge Check (2) PPT Slide: 1 minute(s) total (5 minutes with discussion and review of the answer).*** *Test students' knowledge of the different types of legal courts under the*

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American legal system and the types of claim that are heard under administrative, civil, and criminal tribunals.

e. ***Knowledge Check (Video Question) PPT Slide: 5 minutes total (10 minutes with discussion and review of the answer).*** *Test students' knowledge of concepts that originated under the common law with a specific focus on the concept and evolution of the Stare Decisis doctrine.*

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Discussion Questions

You can assign these questions several ways: in a discussion forum in your LMS; as whole-class discussions in person; or as a partner or group activity in class.

1. **Discussion – Sources of American Law** (PPT Slide 8-13). **Duration** 15 Minutes.

    a. **What is jurisprudence?**
        i. Jurisprudence refers to the study of law and the ethical values used in defining what the law should be. **Which of the schools of jurisprudence matches the U.S. system?** None of the approaches mentioned in these sections is an exact model of the American legal system. They represent frameworks that can be used in evaluating the moral and ethical considerations that are an integral part of the law.

    b. **Define and discuss the sources of American law: What is the supreme law of the land?**
        i. The federal constitution. **What are statutes?** Laws enacted by Congress or a state legislative body. **What are ordinances?** Laws enacted by local legislative bodies. **What are administrative rules?** Laws issued by administrative agencies under the authority given to them in statutes.

    c. **What is the Uniform Commercial Code?**
        i. The Uniform Commercial Code (UCC) was created through the joint efforts of the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute. The UCC was first issued in 1952. The UCC facilitates commerce among the states by providing a uniform, yet flexible, set of rules governing commercial transactions (sales of goods, commercial paper, bank deposits and collections, letters of credit, bulk transfers, warehouse receipts, bills of lading, investment securities, and secured transactions). The UCC assures businesspersons, for example, that their contracts, if validly entered into, normally will be enforced. Uniform laws are often adopted in whole or in substantial part by the states. The UCC has been adopted in its entirety by nearly all states (except Louisiana, which has not adopted Article 2).

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2. **Discussion – The Common Law (PPT Slide 14-17). Duration 20 Minutes.**

    a. **What is the common law?**
        i. Students may most usefully understand common law to be case law—that is, the body of law derived from judicial decisions. The body of common law originated in England. The term common law is sometimes used to refer to the entire common law system to distinguish it from the civil law system.

    b. **Under what circumstance might a judge rely on case law to determine the intent and purpose of a statute?**
        i. Case law includes courts' interpretations of statutes, as well as constitutional provisions and administrative rules. Statutes often codify common law rules. For these reasons, a judge might rely on the common law as a guide to the intent and purpose of a statute.

    c. **Discuss the differences between remedies at law and in equity.**
        i. Remedies at law were once limited to payments of money or property (including land) as damages. Remedies in equity were available only when there was no adequate remedy at law. Today, in most states, either or both may be granted in the same action. Remedies in equity are still discretionary, guided by equitable principles and maxims. Remedies at law still include payments of money or property as damages. The major practical difference between actions at law and actions in equity is the right to demand a jury trial in an action at law.

    d. **Identify and describe remedies available in equity.**
        i. Specific performance is available only when a dispute involves a contract. The court may order a party to perform what was promised. An injunction orders a person to do or refrain from doing a particular act. Rescission undoes an agreement, and the parties are returned to the positions they were in before the agreement

3. **Discussion – Classifications of Law (PPT Slide 18-27). Duration 5 Minutes.**

    a. **Discuss the differences within the classification of law as civil law and criminal law.**
        i. Civil law concerns rights and duties of individuals between themselves; criminal law concerns offenses against society as a whole. (Civil law is a term that is also used to refer to a legal system based on a code rather than on case law.)

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Additional Activities and Assignments

1. **MindTap** – Why Do Procedural Laws Matter to Me?
    a. Online auto-graded activities connect the upcoming chapter to an authentic, real-world scenario designed to pick engagement and emphasize relevance. Consists of 1 multiple choice question in each.

2. **MindTap** – Learn It: Theories of Jurisprudence; Creation of the Common Law; Stare Decisis
    a. Online auto-graded activities that review foundational concepts presented in this chapter and assesses students' comprehension of the topics. Consists of 2 multiple choice questions in each.

3. **MindTap** – Check Your Understanding: Laws and Business
    a. Online auto-graded activity that assesses students' foundational knowledge of the concepts presented in this chapter. Consists of 10 multiple choice questions.

4. **MindTap** – Case Problem Analysis: Sources of Law
    a. Online auto-graded activity that first walks students through a fact pattern, and then asks them to answer similar questions with slight variations in the fact pattern. Consists of approximately 5 fill-in-the-blank questions.

5. **MindTap** – Brief Hypotheticals: Law and Legal Reasoning
    a. Online auto-graded activity that presents 5 fact patterns in which students are asked to apply the concepts of the chapter, and to come up with a legal conclusion. Consists of 5 multiple choice questions.

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Additional Resources

Cengage Video Resource

- MindTap Quick Lesson Video:
    - *Stare Decisis*. Duration 2:26 minutes.

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