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

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Solution and Answer Guide

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Chapter 01: Legal and Constitutional Foundations of Business

Table of Contents

Critical Thinking Questions in Features 1
Adapting the Law to the Online Environment 1
Critical Thinking Questions in Cases 2
Case 1.1 2
Case 1.2 3
Case 1.3 3
Chapter Review 4
Practice and Review 4
Practice and Review: Debate This 5
Issue Spotters 5
Business Scenarios and Case Problems 6
Critical Thinking and Writing Assignments 11
Critical Thinking Questions in Appendix Exhibit 1A–3 12
Exhibit 1A–3 12

Critical Thinking Questions in Features

Adapting the Law to the Online Environment

1. One observer has said that the American legal system should evaluate social media companies based on how "they affect us as citizens, not only [on how] they affect us as consumers." What is your opinion of this statement?

Solution

The person who made this statement clearly sees a "citizen" as having different motivations and concerns than a "consumer." Presumably, a citizen is mostly concerned with the good of society as a whole, and therefore would be open to the idea of government regulation that restricted the negative influence of social media, regardless of the First Amendment. A consumer, by contrast, would be primarily concerned with having a marketplace that offers the widest possible varieties of freedom (of choice, of speech, etc.) and would for that reason be opposed to government regulation of social media. There is, however, an argument to be made that the citizens that make up a society benefit when the marketplace of ideas—whether they are subjectively "positive" or "negative"—is allowed to flourish in the absence of government regulation.

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2. Tim Cook, Apple's chief operating officer, has suggested that the United States Congress should pass a law limiting the ability of Apple and other tech countries to keep consumer data private. Why would a business executive make such a request?

Solution
Cook may have wanted to end a controversy that puts Apple squarely at odds with the federal government. After all, large companies such as Apple rely on favorable treatment from the government in regulatory matters, international trade agreements, and many other areas. Also, large corporations such as Apple sometimes gain an advantage over competitors when their industries are regulated. For example, Apple has significant resources with which to lobby Congress for favorable treatment, and it is better positioned to bear the costs of regulation than are other, smaller tech companies. Finally, Apple's position as a champion of consumer privacy would be damaged if it "caved" and changed its stance without being forced to do so by a new federal law.

Critical Thinking Questions in Cases

Case 1.1

1. What "dangerous conditions" might have prompted the city to enact the ordinances at issue in this case? Why?

Solution
As noted in the facts of the case, both ordinances at issue included an extensive rationale for their adoption, stating essentially that a geographically small city has the right to restrict a business from operating within the city when the restriction is for the safety of the city's citizens and visitors.

The appellate court referred to "the dangerous conditions" created by the irresponsible driving behavior of scooter renters, especially at night, amplified by the lack of training, supervision, and oversight practiced by the rental scooter businesses that "existed throughout the entire city" as the basis for the city's regulation. The court paraphrased the expressive clauses in the ordinances more specifically:

- The City is geographically small and crowded and is being besieged by inexperienced scooter drivers seeking amusement and driving in a dangerous manner.
- The City is a tourist destination frequented by tens of thousands, and its streets are congested by scooters that are being driven illegally and in areas where they are not permitted.
- The City's residents and visitors are put in dangerous situations as a result of the improper use of scooters, especially at night.
- City businesses have complained about numerous trespasses on their property by people driving scooters while being disruptive
- City police have been unable to cope with the situation and essential police resources are being drained.
- The City has been unable to control the situation through less restrictive means.

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2. What is the likely economic impact of the ordinances on the businesses in the city? Discuss.

Solution
With the exception of the scooter rental businesses, the effect on the city's economy is likely to be positive in light of the result in the *Classy* case.

The answer to the previous question contains the reasons in support of this outlook. With a ban on motorized scooters, the "small and crowded" city is not likely to be "besieged by inexperienced scooter drivers seeking amusement and driving in a dangerous manner." The streets, filled with "tens of thousands" of tourists will not be "congested by scooters that are being driven illegally and in areas where they are not permitted." Residents and visitors will not be "put in dangerous situations as a result of the improper use of scooters, especially at night." There will be an end to the "numerous trespasses" on business property "by people driving scooters while being disruptive." And "essential police resources" will not be "drained," at least not by irresponsible scooter drivers and riders. All of which bodes well for business.

Case 1.2

1. If this case had involved a small, private retail business that did not advertise nationally, would the result have been the same? Why or why not?

Solution
It is not likely that the result in this case would have been different even if the facts had involved a small, private retail business that did not advertise nationally. The intended impact of the decision in *Heart of Atlanta* was to uphold the constitutionality of the Civil Rights Act of 1964 and the power of Congress to regulate interstate commerce to stop local discriminatory practices. In the Supreme Court's opinion, "The power of Congress to promote interstate commerce also includes the power to regulate the local incidents thereof, including local activities in both the States of origin and destination, which might have a substantial and harmful effect upon that commerce."

Thus, if the case had involved a small, local retail business, the Court would have found participation in interstate commerce based on the use of a phone, or a Facebook page (or other Web presence), or sales to customers who traveled across state lines—or, as in *Wickard v. Filburn*, participation might have been based on any transaction that might otherwise have occurred in interstate commerce.

Case 1.3

1. Whose interests are advanced by the banning of certain types of advertising?

Solution
The government's interests are advanced when certain ads are banned. For example, in the *Bad Frog* case, the court acknowledged, by advising the state to restrict the locations where certain ads could be displayed, that banning of "vulgar and profane" advertising from children's sight arguably advanced the state's interest in protecting children from those ads.

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2. If Bad Frog had sought to use the offensive label to market toys instead of beer, would the court's ruling likely have been the same? Explain your answer.

Solution
Probably not. The reasoning underlying the court's decision in the case was, in part, that "the State's prohibition of the labels . . . does not materially advance its asserted interests in insulating children from vulgarity . . . and is not narrowly tailored to the interest concerning children." The court's reasoning was supported in part by the fact that children cannot buy beer. If the labels advertised toys, however, the court's reasoning might have been different.

Chapter Review

Practice and Review

A state legislature enacted a statute that required any motorcycle operator or passenger on the state's highways to wear a protective helmet. Jim Alderman, a licensed motorcycle operator, sued the state to block enforcement of the law. Alderman asserted that the statute violated the equal protection clause because it placed requirements on motorcyclists that were not imposed on other motorists. Using the information presented in the chapter, answer the following questions.

1. Why does this statute raise equal protection issues instead of substantive due process concerns?

Solution
When a law or action limits the liberty of some persons but not others, it may violate the equal protection clause. Here, because the law applies only to motorcycle operators and passengers, it raises equal protection issues.

2. What are the three levels of scrutiny that the courts use in determining whether a law violates the equal protection clause?

Solution
The three levels of scrutiny that courts apply to determine whether the law or action violates equal protection are (1) strict scrutiny (if fundamental rights are at stake), (2) intermediate scrutiny (in cases involving discrimination based on gender or legitimacy), and (3) the "rational basis" test (in matters of economic or social welfare).

3. Which level of scrutiny or test would apply to this situation? Why?

Solution
The court would likely apply the rational basis test, because the statute regulates a matter of social welfare by requiring helmets. Similar to seat-belt laws and speed limits, a helmet statute involves the state's attempt to protect the welfare of its citizens. Thus, the court would consider it a matter a social welfare and require that it be rationally related to a legitimate government objective.

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4. Under this standard or test, is the helmet statute constitutional? Why or why not?

Solution
The statute is probably constitutional, because requiring helmets is rationally related to a legitimate government objective (public health and safety). Under the rational basis test, courts rarely strike down laws as unconstitutional, and this statute will likely further the legitimate state interest of protecting the welfare of citizens and promoting safety.

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 precedents when they are clearly established, excepted under compelling reasons. Even though more common law is being turned into statutory law, the doctrine of *stare decisis* is still valid. After all, even statutes have 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. South Dakota wants its citizens to conserve energy. To help reduce consumer consumption of electricity, the state passes a law that bans all advertising by power utilities within the state. What argument could the power utilities use as a defense to the enforcement of this state law?

Solution
Even if commercial speech is neither related to illegal activities nor misleading, it may be restricted if a state has a substantial interest that cannot be achieved by less restrictive means. In this situation, however, the interest in energy conservation is substantial, but it could be achieved by less restrictive means. That would be the utilities' defense against the enforcement of this state law.

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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 court, on all inferior courts. The United 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
      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
      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
      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
      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. **Equal Protection.** Abbott Laboratories licensed SmithKline Beecham Corp. to market an Abbott human immunodeficiency virus (HIV) drug in conjunction with one of SmithKline's drugs. Abbott then increased the price of its drug fourfold, forcing SmithKline to increase its prices and thereby driving business to Abbott's own combination drug. SmithKline filed a suit

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in a federal district court against Abbott. During jury selection, Abbott struck the only self-identified gay person among the potential jurors. (The pricing of HIV drugs is of considerable concern in the gay community.) Could the equal protection clause be applied to prohibit discrimination based on sexual orientation in jury selection? Discuss. [*SmithKline Beecham Corp. v. Abbott Laboratories*, 740 F.3d 471 (9th Cir. 2014)] (See *Due Process, Equal Protection, and Privacy*.)

Solution

Yes. The equal protection clause can be applied to prohibit discrimination based on sexual orientation in jury selection. The appropriate level of scrutiny would be intermediate scrutiny. Under the equal protection clause of the Fourteenth Amendment, the government cannot enact a law or take another action that treats similarly situated individuals differently. If it does, a court examines the basis for the distinction. Intermediate scrutiny applies in cases involving discrimination based on gender. Under this test, a distinction must be substantially related to an important government objective.

Gays and lesbians were long excluded from participating in our government and the privileges of citizenship. A juror strike on the basis of sexual orientation tells the individual who has been struck, as well as the trial participants and the general public, that the judicial system still treats gays and lesbians differently. This deprives these individuals of the opportunity to participate in a democratic institution on the basis of a characteristic that has nothing to do with their fitness to serve.

In the actual case on which this problem is based, SmithKline challenged the strike. The judge denied the challenge. On SmithKline's appeal, the U.S. Court of Appeals for the Ninth Circuit held that the equal protection clause prohibits discrimination based on sexual orientation in jury selection and requires that heightened scrutiny be applied to equal protection claims involving sexual orientation. The appellate court remanded the case for a new trial.

4. **Procedural Due Process.** Robert Brown applied for admission to the University of Kansas School of Law. Brown answered "no" to questions on the application asking if he had a criminal history and acknowledged that a false answer constituted "cause for . . . dismissal." In fact, Brown had criminal convictions for domestic battery and driving under the influence. He was accepted for admission to the school. When school officials discovered his history, however, he was notified of their intent to dismiss him and given an opportunity to respond in writing. He demanded a hearing. The officials refused to grant Brown a hearing and then expelled him. Did the school's actions deny Brown due process? Discuss. [*Brown v. University of Kansas*, 599 Fed.Appx. 833 (10th Cir. 2015)] (See *Due Process, Equal Protection, and Privacy*.)

Solution

No. The school's actions did not deny Brown due process. Procedural due process requires that any government decision to take life, liberty, or property must be made fairly. The government must give a person proper notice and an opportunity to be heard. The government must use fair procedures—the person must have at least an opportunity to object to a proposed action before a fair, neutral decision maker.

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In this problem, Robert Brown applied for admission to the University of Kansas School of Law. He answered "no" to the questions on the application about criminal history and acknowledged that a false answer constituted cause for dismissal. He was accepted for admission to the school. But Brown had previous criminal convictions for domestic battery and driving under the influence. When school officials discovered this history, Brown was notified of their intent to dismiss him and given an opportunity to respond in writing. He demanded a hearing. The officials refused, and expelled him. As for due process, Brown knew he could be dismissed for false answers on his application. The school gave Brown notice of its intent to expel him and gave him an opportunity to be heard (in writing). Due process does not require that any specific set of detailed procedures be followed as long as the procedures are fair.

In the actual case on which this problem is based, Brown filed a suit in a federal district court against the school, alleging denial of due process. From a judgment in the school's favor, Brown appealed. The U.S. Court of Appeals for the Tenth Circuit affirmed, concluding that "the procedures afforded to Mr. Brown were fair."

5. **The Commerce Clause.** Regency Transportation, Inc., operates a freight business throughout the eastern United States. Regency maintains its corporate headquarters, four warehouses, and a maintenance facility and terminal location for repairing and storing vehicles in Massachusetts. All of the vehicles in Regency's fleet were bought in other states. Massachusetts imposes a use tax on all taxpayers subject to its jurisdiction, including those that do business in interstate commerce, as Regency does. When Massachusetts imposed the tax on the purchase price of each tractor and trailer in Regency's fleet, the trucking firm challenged the assessment as discriminatory under the commerce clause. What is the chief consideration under the commerce clause when a state law affects interstate commerce? Is Massachusetts's use tax valid? Explain. [*Regency Transportation, Inc. v. Commissioner of Revenue*, 473 Mass. 459, 42 N.E.3d 1133 (2016)] (See *The Constitutional Powers of Government*.)

Solution

Yes. Massachusetts's use tax is valid under the commerce clause. When a state regulation that affects interstate commerce is challenged under the commerce clause, the court weighs the state's interest in regulating the matter against the burden that the regulation places on interstate commerce. Because a court balances the interests involved, it is difficult to predict the outcome in a particular case. State laws that alter conditions of competition to favor in-state interests over out-of-state competitors in a market are considered discriminatory and usually invalidated.

In this problem, Regency Transportation, Inc., operates a freight business throughout the eastern United States. Regency maintains a headquarters, warehouses, and other facilities in Massachusetts. All of the vehicles in Regency's fleet were bought in other states. When Massachusetts imposed a use tax on the purchase price of each tractor and trailer in Regency's fleet, the trucking firm challenged the assessment as discriminatory under the commerce clause. But Massachusetts imposes the tax on all taxpayers subject to its jurisdiction, not only those that, like Regency, do business in interstate commerce. Hence, the tax is not discriminatory. As for the balancing test, Massachusetts presumably imposes the tax based on the benefits derived from a company's using and storing vehicles in the

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state. The burden that the regulation places on interstate commerce seems slight weighed against the state's interest in regulating this matter.

In the actual case on which this case problem is based, Regency sought review of imposition of motor vehicle tax by the Commissioner of Revenue. The Appellate Tax Board affirmed, and Regency filed a petition for direct appellate review. The Supreme Judicial Court of Massachusetts affirmed the decision of the board.

6. **Business Case Problem with Sample Answer— Reading Citations.** Assume that you want to read the entire court opinion in the case of *Worldwide TechServices, LLC v. Commissioner of Revenue*, 479 Mass. 20, 91 N.E.3d 650 (2018). 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 C.

Solution
The court's opinion in this case—*WorldwideTechServices, LLC v. Commissioner of Revenue,* 479 Mass. 20, 91 N.E.3d 650 (2018)—can be found in Volume 479 of the *Massachusetts Reports* on page 20, and in Volume 91 of West's *North Eastern Reporter*, Third Series, on page 650. The Supreme Judicial Court of Massachusetts issued the opinion in 2018.

7. **Freedom of Speech.** Wandering Dago, Inc. (WD), operates a food truck in Albany, New York. WD brands itself and the food it sells with language generally viewed as ethnic slurs. Owners Andrea Loguidice and Brandon Snooks, however, view the branding as giving a "nod to their Italian heritage" and "weakening the derogatory force of the slur." Twice, WD applied to participate as a vendor in a summer lunch program in a stateowned plaza. Both times, the New York State Office of General Services (OGS) denied the application because of WD's branding. WD filed a suit in a federal district court against RoAnn Destito, the commissioner of OGS, contending that the agency had violated WD's right to free speech. What principles apply to the government's regulation of the content of speech? How do those principles apply in WD's case? Explain. [*Wandering Dago, Inc. v. Destito*, 879 F.3d 20 (2d Cir. 2018)] (See *Business and the Bill of Rights*.)

Solution
The First Amendment to the U.S. Constitution protects the freedom of speech. Government regulation of speech is presumed to be unconstitutional. To "pass muster" under the free-speech clause, a law or government action that regulates the content of speech must serve a compelling state interest and must be narrowly tailored to achieve that interest.

In this problem, the government, through OGS, disfavored WD's speech because of its branding. The agency may have labeled the branding offensive because of its perceived effect on the members of a certain ethnic group. The interest that the government sought to serve might have been a mandate of positive expression. But denying the business application of any vendor whose branding might demean or offend could silence dissent in the "marketplace of ideas."

In some contexts, an ethnic slur might be hostile and involve conduct. A regulation of that conduct would arguably serve the interest of preventing immediate harm. For example, the

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government can regulate threats of violence, harassment, and fighting words. But WD's speech did not fall into any of these categories.

WD's use of ethnic slurs reflected its owners' viewpoint about when and how such language should be used. There does not seem to be a sufficiently substantial compelling state interest to justify proscribing this viewpoint. By rejecting WD's application only on the ground of the business's branding, OGS impermissibly discriminated against WD's expression of the owners' viewpoint, and thereby violated the First Amendment.

In the actual case on which this problem is based, the court rejected WD's contention and entered a judgment in the defendants' favor. A state intermediate appellate court reversed, holding, based in part on the points stated above, that OGS violated WD's right to freedom of speech. The appellate court concluded that WD was entitled to an injunction denying WD's future lunch program applications because of the use of ethnic slurs in its branding.

8. **A Question of Ethics—Free Speech.** Michael Mayfield, the president of Mendo Mill and Lumber Co., received a "notice of a legal claim" from Edward Starski. The "claim" alleged that a stack of lumber had fallen on a customer as a result of a Mendo employee's "incompetence." The "notice" presented a settlement offer on the customer's behalf in exchange for a release of liability for Mendo. In a follow-up phone conversation with Mayfield, Starski said that he was an attorney—which, in fact, he was not. Starski was arrested and charged with violating a state criminal statute that prohibited the unauthorized practice of law. *[People v. Starski*, 7 Cal.App.5th 215, 212 Cal.Rptr.3d 622 (1 Dist. Div. 2 2017)] (See *Business and the Bill of Rights.*)

   1. Starski argued that "creating an illusion" that he was an attorney was protected by the First Amendment. Is Starski correct? Explain.

      Solution
      No. The First Amendment guarantees the freedom of speech for individuals against interference by the government. To protect citizens from those who would abuse the right, speech is subject to reasonable restrictions. Speech that violates criminal laws is not constitutionally protected.

      In this problem, Michael Mayfield received a "notice of a legal claim" from Edward Starski. The "claim" alleged that a stack of lumber fell on a customer at Mayfield's company as a result of "incompetence" of one of Mayfield's employees. The "notice" included a settlement offer on the customer's behalf in exchange for a release of liability. In a conversation with Mayfield, Starski stated that he was an attorney—when, in fact, he was not. He was arrested and charged with violating a state statute that prohibited the unlawful practice of law. He argued that "creating an illusion" he was an attorney fell within the protection of the First Amendment. He is wrong. It is within the government's power to restrict speech to frustrate a false claim made to accomplish a fraud. And the interest of the government in regulating the practice of law is part of its interest in protecting the public.

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In the actual case on which this problem is based, the court convicted Starski of the charge. On appeal, a state intermediate appellate court affirmed the conviction. Responding to his free speech defense, the court concluded, that Starski was wrong.

2. Identify, discuss, and resolve the conflict between the right to free speech and the government's regulation of the practice of law.

Solution
The question concerns the extent to which the government can regulate the practice of law without infringing on certain rights. The rights at issue include the right of a person to exercise free speech, and the rights of the public to be protected from misleading or deceptive speech, and to have access to competent legal representation.

In recognition of a person's right to exercise free speech, the government might choose *not* to prohibit the unauthorized practice of law. This would deny the public's right to be protected from misleading or deceptive speech. The government might choose to prohibit the practice of law entirely, but this would deprive the public of legal representation of all kinds in all circumstances. So, the government must strike a balance that protects the public and individual rights.

The government generally prohibits the *unauthorized* practice of law—the practice of law by those who have not met the state's competency standards to be licensed as attorneys. The government also sanctions persons who have not met the standards from misrepresenting their status to practice law.

The government's objective is to ensure that those performing legal services do so competently, without infringing on the rights to free speech, to be protected from misleading or deceptive speech, and to have access to competent legal representation. The regulation protects the public and goes no further than necessary, in recognition of the rights at issue.

Critical Thinking and Writing Assignments

1. **Business Law Writing.** Puerto Rico enacted a law that required specific labels on cement sold in Puerto Rico and imposed fines for any violations of these requirements. The law prohibited the sale or distribution of cement manufactured outside Puerto Rico that does not carry a required label warning and barred that cement from being used in government-financed construction projects. Antilles Cement Corp., a Puerto Rican firm that imports foreign cement, filed a complaint in federal court. Antilles claimed that this law violated the dormant commerce clause. (The dormant commerce clause doctrine applies not only to commerce among the states and U.S. territories, but also to international commerce.) Write three paragraphs discussing whether the Puerto Rican law violates the dormant commerce clause. Explain your reasons why or why not. (See *The Constitutional Powers of Government*.)

Solution
The court ruled that like a state, Puerto Rico generally may not enact policies that discriminate against out-of-state commerce. The law requiring companies that sell cement in Puerto Rico to place certain labels on their products is clearly an attempt to regulate the cement market. The law imposed labeling regulations that affect transactions between the

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citizens of Puerto Rico and private companies. State laws that on their face discriminate against foreign commerce are almost always invalid, and this Puerto Rican law is such a law. The discriminatory labeling requirement placed sellers of cement manufactured outside Puerto Rico at a competitive disadvantage. This law therefore contravenes the dormant commerce clause.

2. **Time-Limited Group Assignment—Court Opinions.** Read through the subsection entitled "Decisions and Opinions" in the appendix following this chapter. (See *Reading and Understanding Case Law*.)

    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. Dissenting opinions are written opinions 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.

    3. 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.

Critical Thinking Questions in Appendix Exhibit 1A–3

Exhibit 1A–3

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.

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It should be considered from the perspective of the plaintiff, with a focus on the economic value of the rights that 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

Miller, Business Law Today – The Essentials: Text & Summarized Cases 13e 2022, 9780357635346; Chapter 1: Legal and Constitutional Foundations of Business

Table of Contents

Purpose and Perspective of the Chapter 2
Cengage Supplements 2
Chapter Objectives 3
Key Terms 3
What's New in This Chapter 6
Chapter Outline 7
Discussion Questions 20
Additional Activities and Assignments 23
Additional Resources 24
Cengage Video Resources 24

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Purpose and Perspective of the Chapter

This introductory chapter examines how business law and the legal environment affect business decisions. For your students to benefit from this course, they must first understand that (1) the law is a set of general rules; (2) that, in applying these general rules, a judge cannot always fit a case to suit a rule, so the judge must fit (or find) a rule to suit the case; (3) that, in fitting (or finding) a rule, a judge must also supply reasons for the decision.

Law consists of enforceable rules governing relationships among individuals and between individuals and their society. The tension in the law between the need for stability and the need for change is one of the concepts introduced in this chapter. How common law courts originated, and the rationale for the doctrine of *stare decisis* are also covered in this chapter. Another major concept in the chapter involves the distinctions among today's sources of law and distinctions in its different classifications on which to hang the mass of principles known as the law.

The latter half of this chapter emphasizes a different perspective from which to view the law, which can be viewed as action taken by the government that must come from authority and this authority cannot be exceeded. Neither Congress nor any state may pass a law in conflict with the Constitution. The Constitution is the supreme law in this country. The Constitution is the source of federal power, and to sustain the legality of a federal law or action, a specific federal power must be found in the Constitution. States have inherent sovereign power—that is, the power to enact legislation that has a reasonable relationship to the welfare of the citizens of that state. The power of the federal government was *delegated* to it by the states, while the power of the states was *retained* by them when the Constitution was ratified.

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)

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Chapter Objectives

The following objectives are addressed in this chapter:

1. Explain the creation and development of the common law and statutory law.
2. Differentiate between procedural and substantive laws.
3. Describe the purpose and application of the Administrative Procedure Act.
4. Compare legal remedies and equitable remedies for breach of contract.
5. Explain the fundamental rights protected by substantive due process.
6. Explain procedural and substantive due process protections under the Constitution.
7. Define *stare decisis*.

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.

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.

Bill of Rights: the first ten amendments to the U.S. Constitution.

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, and constitutional provisions, and governs all areas not covered by statutory or administrative law.

Checks and balances: the system under which the powers of the federal government are divided among three separate branches—the executive, legislative, and judicial branches—each of which exercises a check on the actions of the others.

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.

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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).

Commerce clause: the provision in Article I, Section 8, of the U.S. Constitution that gives Congress the power to regulate interstate commerce.

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

Compelling government interest: a test of constitutionality that requires the government to have convincing reasons for passing any law that restricts fundamental rights (such as free speech), or distinguishes between people based on a suspect trait.

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.

Defendant: one against whom a lawsuit is brought or 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.

Due process clause: the provisions in the Fifth and Fourteenth Amendments that guarantee that no person shall be deprived of life, liberty, or property without due process of law; state constitutions often include similar clauses.

Enabling legislation: the provision in the First Amendment that prohibits the government from establishing any state-sponsored religion or enacting any law that promotes religion or favors one religion over another.

Equal protection clause: the provision in the Fourteenth Amendment that requires state governments to treat similarly situated individuals in a similar manner.

Establishment clause: 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.

Federal form of government: a system of government in which the states form a union and the sovereign power is divided between the central government and the member states.

Free exercise clause: the provision in the First Amendment that prohibits the government from interfering with people's religious practices or forms of worship.

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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.

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

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

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).

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.

Police powers: powers possessed by the states as part of their inherent sovereignty; these powers may be exercised to protect or promote the public order, health, safety, morals, and general welfare.

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

Preemption: a doctrine under which certain federal laws preempt, or take precedence over, conflicting state or local laws.

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.

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Sovereignty: the power of a state to do what is necessary to govern itself; individual state sovereignty is determined by the U.S. Constitution.

***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.

Supremacy clause: the provision in Article VI of the U.S. Constitution that the Constitution, laws, and treaties of the United States are "the supreme Law of the Land."

Symbolic speech: nonverbal expressions of beliefs; symbolic speech, which includes gestures, movements, and articles of clothing, is given substantial protection by the courts.

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

[return to top]

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
- **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*
- **New Ethical Issue**: *Even though corporations can restrict the speech of their employees, should they do so?*
- **New Adapting the Law to the Online Environment**: *Social Media and the Constitution*
- **New Cybersecurity and the Law**: *Should Apple Help Law Enforcement?*
- **1 New Spotlight Numbered Case Example:**
  - on Laws that Restrict the Content of Free Speech based on 1980 case
- **3 New Numbered Examples:**
  - on YouTube issues involving privacy, copyright issues with its video postings
  - on symbolic speech
  - on "Intermediate Scrutiny"
- **4 New Numbered Case Examples**:
  - on the dormant commerce clause based on 2019 case
  - on substantial burden on free exercise rights from 2019 case
  - on threatening speech based on 2018 case
  - on "rational basis" test based on 2019 case
- **New Case**:

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- *Classy Cycles, Inc. v. Panama Beach City* (2019) – The question was whether a pair of municipal ordinances regulating the rental of motorized scooters constituted a reasonable exercise of police powers.

[return to top]

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. 1-1 Sources of American Law (PPT Slides 5-10)

a. Constitutional Law

i. There are numerous sources of American law. A source that establishes the law on a particular issue is called a **primary source of law**. Primary sources include the following:
   1. The U.S. Constitution and state constitutions
   2. Statutory law
   3. Regulations created by administrative agencies
   4. Case law

ii. A **secondary source of law** is a book or article that summarizes and clarifies a primary source of law.
   1. Legal encyclopedias, compilations official comments to statutes, treatises, articles in law reviews published by law schools, and articles in other legal journals are examples of secondary sources of law.

iii. The federal government and the states have written constitutions that set forth the general organization, powers, and limits of their respective governments.
   1. **Constitutional law**, which deals with the fundamental principles by which the government exercises its authority, is the law as expressed in these constitutions.

b. Statutory Law

i. Laws enacted by legislative bodies at any level of government, such as the statutes passed by Congress or by state legislatures, which make up the body of law generally referred to as **statutory law**.

ii. Whenever a particular statute is mentioned in this text, there is a footnote referencing the publication of legal authority showing its **citation** (i.e., a reference to a statute or a court decision).

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1. The appendix at the end of this chapter explains how these citations are utilized to locate statutory law.

2. Statutory law also includes local ordinances. An **ordinance** is a regulation passed by a municipal or county governing unit to deal with matters not covered by federal or state law.

iii. **Applicability of Statutes –** A federal statute, of course, applies to all states. A state statute, in contrast, applies only within the state's borders. State laws thus may vary from state to state.
   1. No federal statute may violate the U.S. Constitution, and no state statute or local ordinance may violate the U.S. Constitution or the relevant state constitution.
      - **Example 1.1**

iv. **Uniform Laws –** During the 1800s, the differences among state laws frequently created difficulties for businesspersons conducting trade and commerce among the states.
   1. To counter these problems, a group of legal scholars and lawyers formed the National Conference of Commissioners on Uniform State Laws in 1892 to draft uniform laws ("model statutes") for the states to consider adopting. The NCCUSL still exists today and continues to issue uniform laws.

v. **The Uniform Commercial Code (UCC) –** One of the most important uniform acts is the Uniform Commercial Code (UCC). The UCC was created through the joint efforts of the NCCUSL and the American Law Institute.
   1. The UCC facilitates commerce among the states by providing a uniform, yet flexible, set of rules governing commercial transactions.
      - Because of its importance in the area of commercial law, the UCC is cited quite frequently throughout the chapter.

c. Administrative Law

i. Another important source of American law is **administrative law**, which consists of the rules, orders, and decisions of administrative agencies.
   1. An **administrative agency** is a federal, state, or local government agency established to perform a specific function.

ii. **Agency Creation –** Because Congress cannot possibly oversee the actual implementation of all the laws it enacts, it delegates such tasks to agencies.
   1. Congress creates an administrative agency by enacting **enabling legislation**, which specifies the name, composition, purpose, and powers of the agency being created.
      - **Example 1.2**

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iii. **Rulemaking** – A major function of an administrative agency is **rulemaking**, which involves formulating new regulations and/or amending old ones.
   1. When Congress enacts an agency's enabling legislation, it confers the power to make legislative rules, or substantive rules, which are legally binding on all businesses.
      - **Example 1.3**

   2. ***Legislative Rules.*** Legislative rulemaking under the APA typically involves the following three steps (referred to as notice-and-comment rulemaking).

   3. ***Interpretive Rules.*** Administrative agencies also issue interpretive rules that are not legally binding but simply indicate how an agency plans to interpret and enforce its statutory authority.
      - **Example 1.4**

iv. **Enforcement and Investigation –** Agencies often enforce their own rules and have both investigatory and prosecutorial powers.
   1. Agencies investigate a wide range of activities, including coal mining, automobile manufacturing, and the industrial discharge of pollutants into the environment.

   2. In an investigation, an agency can request that individuals or organizations hand over specified books, papers, electronic records, or other documents.

v. **Adjudication –** Agency adjudication involves a trial-like hearing before an **administrative law judge (ALJ)**. Hearing procedures vary widely from agency to agency.
   1. After the hearing, the ALJ renders a decision in the case. The ALJ can fine the charged party or prohibit the party from carrying on some specified activity.

d. Case Law and Common Law Doctrines

i. **Case law** is the body of doctrines and principles announced in actual case. Case law governs all areas not covered by statutory or administrative law, and is part of American common law tradition.
   1. The discussion that follows draws upon and considers the origins and characteristics of the common law tradition in some detail.

e. ***Knowledge Check Activity (1) PPT Slide: 1 minute(s) total (5 minutes with discussion and review of answer).*** *Tests students' knowledge on the sources of American law. After answer is provided, review with students: 1) State Legislative Bodies, 2) Administrative Agencies, and 3) The United States Constitution.*

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II. 1-2 The Common Law (PPT Slides 11-12)

a. Early English Courts

i. Much of American law is based on the English legal system, thus, knowledge of this system is crucial to understanding the American legal system today.

1. After the Normans conquered England in 1066, William the Conqueror and his successors began the process of unifying the country under their rule.
   - One of the means they used to do this was the establishment of the king's courts, or *curiae regis*.

2. The king's courts sought to establish a uniform set of rules for the country as a whole.
   - What evolved in these courts was the beginning of the common law—a body of general rules that applied throughout the entire English realm.

3. Judges attempted to be consistent, and based their decisions on the principles suggested by earlier cases.
   - Each interpretation became part of the law on the subject and served as a legal **precedent,** which is a court decision that provides the authority for deciding subsequent cases involving similar legal principles or facts.

b. *Stare Decisis*

i. The practice of deciding new cases with reference to former decisions, or precedents, eventually became a cornerstone of the English and U.S. judicial systems.

1. The practice forms a doctrine called ***stare decisis*** (a Latin phrase meaning "to stand on decided cases").

2. Under the doctrine of *stare decisis*, judges are obligated to follow the precedents established within their jurisdictions. The doctrine of *stare decisis* adheres to the following two principles:
   - A court should not overturn its own precedents unless there is a strong reason to do so; and
   - Decisions made by a higher court are binding on lower courts.

ii. **Controlling Precedents –** Controlling precedents are binding authorities. A **binding authority** is any source of law that a court must follow when deciding a case.

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1. Binding authorities include constitutions, statutes, and regulations that govern the issue being decided, as well as court decisions that are controlling precedents within the jurisdiction.

iii. **Departures from Precedent –** If a court decides that a precedent is incorrect or that technological or social changes have rendered the precedent inapplicable, the court may rule contrary to the precedent.
1. **Classic Case Example 1.5: *Brown v. Board of Education of Topeka***

iv. **When There Is No Precedent –** When deciding *cases of first impression*, courts often look at persuasive authorities. A **persuasive authority** is a legal authority that a court may consult for guidance but that is not binding on the court.
1. A court may consider precedents from other jurisdictions, although those precedents are not binding.

2. A court may also consider legal principles and policies underlying previous court decisions or existing statutes.

c. Equitable Remedies in Courts of Equity

i. A **remedy** is the means given to a party to enforce a right or to compensate for the violation of a right.
1. ***See* Example 1.6**

2. The kinds of remedies available in the early king's courts of England were severely restricted.
- When a person was wronged, the king's courts could award either money or property, including land, as compensation.
- These courts became known as courts of law, and the remedies were called *remedies at law*.

ii. **Remedies in Equity –** *Equity* is a branch of law founded on notions of justice and fair dealing that seeks to provide a remedy when no adequate remedy at law is available.
1. **Plaintiffs** had to specify whether they were bringing an "action at law" or an "action in equity," and choose their courts accordingly.

2. A plaintiff might ask a court of equity to issue a decree for *specific performance*—an order for the **defendant** to perform what was promised.

iii. **The Merging of Law and Equity –** Today, the courts of law and equity have merged, and the distinction between the two courts has largely disappeared.
1. A plaintiff may now request both legal and equitable remedies in the same action, and the trial court judge may grant either form—or both forms—of relief.

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2. ***See* Exhibit 1–1 – Procedural Differences between an Action at Law and an Action in Equity**

III. 1-3 Classifications of Law (PPT Slides 13-14)

a. Civil and Criminal Law

i. The law is broken down according to several classification systems.

1. One classification system divides law into **substantive law** and **procedural law**.
   - ***See* Example 1.7**

2. Other classification systems divide law into federal law and state law, and private law and public law.
   - The term **cyberlaw** refers to the emerging body of law that governs transactions conducted via the Internet, but this area of law is not formally recognized as a classification of law.

ii. **Civil law** spells out the rights and duties that exist between persons and between persons and their governments, as well as the relief available when a person's rights are violated.

1. Note that *civil law* is not the same as a civil law system. A **civil law system** is a legal system based on a written code of laws.

2. In nations with civil law systems, such as France and Mexico, statutes are the primary source of law, and case precedents are not binding on judges and the doctrine of *stare decisis* does not apply.

iii. **Criminal law** has to do with wrongs committed against society for which society demands redress. Criminal acts are proscribed by local, state, or federal government statutes.

b. National and International Law

i. The law of a particular nation, such as Japan or Germany, is **national law**.

1. National law, of course, 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.

ii. **International law** is the body of written and unwritten laws observed by independent nations and governing the acts of individuals as well as governments.

iii. The key difference between national law and international law is that government authorities can enforce national law.

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1. If a nation violates an international law, however, enforcement is up to other countries or international organizations, which may or may not choose to act.

c. ***Knowledge Check Activity (2) PPT Slide: 1 minute(s) total (5 minutes with discussion and review of answer).*** *Tests students' knowledge of the distinction between civil law and criminal law. After answer is provided, review with students the difference between the two.*

IV. 1-4 The Constitutional Powers of the Government (PPT Slides 15-16)

a. A Federal Form of Government

i. The new government created by the Constitution reflected a series of compromises made by the convention delegates on various issues.

1. Some delegates wanted sovereign power to remain with the states, whereas others wanted the national government alone to exercise sovereign power.

2. The end result was a compromise—a **federal form of government** in which the national government and the states share sovereign power.

ii. **Federal Powers – T**he federal government has the implied power to undertake actions necessary to carry out its expressly designated powers. All other powers are "reserved" to the states.

iii. **Regulatory Powers of the States –** As part of their inherent **sovereignty**, state governments have the authority to regulate certain affairs within their borders.

1. State regulatory powers are often referred to as **police powers**. The term encompasses more than just the enforcement of criminal laws.

2. Police powers also give a state government broad rights to regulate private activities to protect or promote the public order, health, safety, morals, and general welfare.

- ***See* Case 1.1: *Classy Cycles, Inc. v. Panama City Beach***

b. The Separation of Powers

i. To prevent the federal government from arbitrarily using its powers, the Constitution divides the federal government's powers among three branches of government.

1. The legislative branch makes the laws, the executive branch enforces the laws, and the judicial branch interprets the laws.

2. Each branch performs a separate function, and no branch may exercise the authority of another branch.

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ii. The U.S. system of **checks and balances** allows each branch to limit the actions of the other two branches, thus preventing any one branch from exercising too much power.

c. The Commerce Clause

i. To prevent states from establishing laws and regulations that would interfere with trade and commerce among the states, the Constitution expressly grants the federal government the power to regulate interstate commerce.

1. Known as the **Commerce Clause**, Article I, Section 8, of the U.S. Constitution expressly permits Congress "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

ii. **The Expansion of Federal Powers under the Commerce Clause –** The power over commerce authorizes the federal government to regulate almost every commercial enterprise in the United States.

1. The breadth of the commerce clause permits the federal government to legislate in areas in which Congress has not explicitly been granted power.
   - ***See* Classic Case 1.2: *Heart of Atlanta Motel v. United States***

iii. **The "Dormant" Commerce Clause –** The United States Supreme Court has interpreted the commerce clause to mean that the federal government has the *exclusive* authority to regulate commerce that substantially affects trade and commerce among the states.

1. This express grant of authority to the federal government implies that the states have no the authority to regulate interstate commerce and is thus referred to as the "dormant" (implied) commerce clause.
   - ***See* Case Example 1.8: *Tennessee Wine and Spirits Retailers Associations v. Thomas***

d. The Supremacy Clause

i. Article VI of the Constitution provides that the Constitution, laws, and treaties of the United States are "the supreme Law of the Land." This article, commonly referred to as the **supremacy clause**, is important in the ordering of state and federal relationships.

ii. **Preemption – Preemption** occurs when Congress chooses to act exclusively in a concurrent area. In this circumstance, a valid federal statute or regulation will take precedence over a conflicting state or local law or regulation on the same general subject.

iii. **Congressional Intent –** Congressional intent to preempt will be found if a federal law regulating an activity is so pervasive, comprehensive, or detailed that the states have little or no room to regulate in that area.

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1. When a federal statute creates an agency to enforce the law [i.e., the U.S. Food and Drug Administration (FDA)], the agency's decisions in matters that come within its jurisdiction will preempt state laws.
    - ***See* Classic Case Example 1.9: *Riegel v. Medtronic, Inc.***

V. 1-5 Business and the Bill of Rights (PPT Slides 17-22)

a. Limits on Federal and State Government Actions

i. The first Congress of the United States enacted twelve amendments to the Constitution and submitted them to the states for approval. The first ten of these amendments, commonly known as the **Bill of Rights**, were adopted in 1791.
    1. The Bill of Rights embodies a series of protections for the individual against various types of conduct by the federal government.
        - Some constitutional protections apply to business entities as well.

ii. Originally the Bill of Rights limited only the powers of the federal government.
    1. Over time, however, the United States Supreme Court "incorporated" most of these rights into the protections against state actions afforded by the Fourteenth Amendment to the Constitution.

iii. **The Fourteenth Amendment –** Starting in 1925, the Supreme Court began to define various rights and liberties guaranteed in the federal Constitution as constituting "due process of law," which was required of state governments under the Fourteenth Amendment.
    1. Today, most of the rights and liberties set forth in the Bill of Rights apply to state governments as well as to the federal government.

iv. **Judicial Interpretation –** The rights secured by the Bill of Rights are not absolute. Many of the rights guaranteed by the first ten amendments are described in very general terms.
    1. For instance, the Second Amendment states that people have a right to keep and bear arms, but it does not explain the extent of this right.

b. The First Amendment – Freedom of Speech

i. A democratic form of government cannot survive unless people can freely voice their political opinions and criticize government actions or policies.
    1. Freedom of speech, particularly political speech, is thus a prized right, and traditionally the courts have protected this right to the fullest extent possible.

    2. *See Adapting the Law to the Online Environment – Social Media and the Constitution*

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ii. **Symbolic speech**—gestures, movements, articles of clothing, and other forms of expressive conduct—is also given substantial protection by the courts.
    1. The burning of the American flag to protest government policies, for instance, is a constitutionally protected form of expression.
        - ***See* Example 1.10**

iii. **Reasonable Restrictions –** Expression—oral, written, or symbolized by conduct—is subject to reasonable restrictions. A balance must be struck between a government's obligation to protect its citizens and those citizens' exercise of their rights. Reasonableness is analyzed on a case-by-case basis.
    1. ***Content-Neutral Laws.*** Laws that regulate the time, manner, and place (but not the content) of speech receive less scrutiny by the courts than do laws that restrict the content of expression.
        - If a restriction imposed by the government is content neutral, then a court may allow it.
        - To be content neutral, the restriction must be aimed at combating some secondary societal problem and not be aimed at suppressing expressive conduct or its message.
            i. ***See* Case Example 1.11: *Commonwealth of Massachusetts v. Ora***

    2. ***Laws That Restrict the Content of Speech.*** If a law regulates the content of the expression, it must serve a compelling state interest and must be narrowly written to achieve that interest.
        - Under the **compelling government interest** test, the government's interest is balanced against the individual's constitutional right to be free of government interference.
        - ***See* Spotlight Case Example 1.12: *Consolidated Edison Co. v. Public Service Commission***

iv. **Corporate Political Speech –** Political speech by corporations also falls within the protection of the First Amendment.
    1. In one case the United States Supreme Court found a Massachusetts statute prohibiting corporations from making political contributions or expenditures to be an unconstitutional violation of the corporation's freedom of speech.
        - ***See* Classic Case Example 1.13: *Citizens United v. Federal Election Commission***

v. **Commercial Speech –** The courts also give substantial protection to *commercial speech*, which consists of communications, primarily advertising and marketing, made by business firms that involve only their commercial interests.
    1. However, the protection given to commercial speech under the First Amendment is not as extensive as that afforded to noncommercial speech.

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2. Generally, a restriction on commercial speech will be considered valid as long as it:
    - Seeks to implement a substantial government interest;
    - Directly advances that interest; and
    - Goes no further than necessary to accomplish its objective. A substantial government interest exists when the government has an important stake in the matter at hand.

3. ***See* Spotlight on Beer Labels: Case 1.3: *Bad Frog Brewery, Inc. v. New York State Liquor Authority***

vi. **Unprotected Speech –** The United States Supreme Court has made it clear that certain types of speech will not be given any protection under the First Amendment.

1. Speech that harms the good reputation of another, or defamatory speech, is not protected.

2. In addition, speech that violates criminal laws (such as threatening or obscene speech) is not constitutionally protected.
    - ***See* Case Example 1.14: *Commonwealth of Pennsylvania v. Knox***

c. The First Amendment – Freedom of Religion

i. The First Amendment states that the government may neither establish any religion nor prohibit the free exercise of religious practices.

1. The first part of this constitutional provision is referred to as the establishment clause, and the second part is known as the free exercise clause.

ii. **The Establishment Clause –** The establishment clause prohibits the government from establishing a state-sponsored religion, as well as from passing laws that promote religion or show a preference for one religion over another.

1. Although the establishment clause involves the separation of church and state, it does not require a complete separation.
    - ***See* Case Example 1.15: *Trunk v. City of San Diego***

2. ***See Business Law Analysis – Determining When Public Religious Displays Violate the Establishment Clause***

iii. **The Free Exercise Clause –** The free exercise clause guarantees that people can hold any religious beliefs they want or can have no religious beliefs.

1. ***Restrictions Must Be Necessary.*** The government must have a compelling state interest for restricting the free exercise of religion, and the restriction must be the only way to further that interest

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2. ***Restrictions Must Not Be a Substantial Burden.*** To comply with the free exercise clause, a government action must not be a substantial burden on religious practices.
    - A burden is substantial if it pressures individuals to modify their behavior and to violate their beliefs.
        i. ***See* Case Example 1.17: *Deotte v. Azar***

3. ***Public Welfare Exception.*** When religious practices work against public policy and the public welfare, the government can act.
    - When public safety is an issue, an individual's religious beliefs often must give way to the government's interests in protecting the public.
        i. ***See* Example 1.18**

VI. 1-6 Due Process, Equal Protection, and Privacy (PPT Slides 23-25)

a. Due Process

i. The **due process clause** of each of these constitutional amendments has two aspects—procedural and substantive. Note that the due process clause applies to "legal persons," such as corporations, as well as to individuals.

ii. **Procedural Due Process –** Procedural due process requires that any government decision to take life, liberty, or property must be made fairly.

1. This means that the government must give a person proper notice and an opportunity to be heard.

2. Fair procedure has been interpreted as requiring that the person have at least an opportunity to object to a proposed action before a fair, neutral decision maker.
    - ***See* Example 1.19**

iii. **Substantive Due Process –** Substantive due process focuses on the content of the legislation rather than the fairness of the procedures.

1. Substantive due process limits what the government may do in its legislative and executive capacities.

2. If a law or other governmental action limits a fundamental right, the courts will hold that it violates substantive due process unless it promotes a compelling state interest.

3. In situations not involving fundamental rights, a law or action does not violate substantive due process if it rationally relates to any legitimate governmental end.

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b. Equal Protection

i. Under the Fourteenth Amendment, a state may not "deny to any person within its jurisdiction the equal protection of the laws."
   1. The United States Supreme Court has used the due process clause of the Fifth Amendment to make the equal protection clause applicable to the federal government as well.

   2. Equal protection means that the government must treat similarly situated individuals in a similar manner.

   3. When a law or action limits the liberty of some persons but not others, it may violate the equal protection clause.
      - ***See* Example 1.20**

   4. In an equal protection inquiry, when a law or action distinguishes between or among individuals, the basis for the distinction—that is, the classification—is examined.

ii. **Strict Scrutiny –** If a law or action prohibits or inhibits some persons from exercising a fundamental right, the law or action will be subject to "strict scrutiny" by the courts.
   1. Under this standard, the classification must be necessary to promote a *compelling government interest*.

iii. **Intermediate Scrutiny –** Another standard, that of "intermediate scrutiny," is applied in cases involving discrimination based on gender or legitimacy.
   1. Laws using these classifications must be substantially related to *important government objectives*.
      - ***See* Example 1.21**

iv. **The "Rational Basis" Test –** In matters of economic and social welfare, a classification will be considered valid if there is any conceivable "rational basis" on which the classification might relate to a *legitimate government interest*.
   1. It is almost impossible for a law or action to fail the rational basis test.
      - ***See* Case Example 1.22: *LMP Services, Inc. v. City of Chicago***

c. Privacy Rights

i. Today, privacy rights receive protection under various federal statutes as well as the U.S. Constitution.
   1. In addition, privacy rights are protected to an extent under tort law, consumer law, and employment law.

   2. ***See Cybersecurity and the Law – Should Apple Help Law Enforcement?***

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ii. **Federal Privacy Legislation –** Congress has enacted a number of statutes that protect the privacy of individuals in various areas of concern.
    1. Most of these statutes deal with personal information collected by governments or private businesses.

    2. The Freedom of Information Act allows individuals to request copies of any information on them contained in federal government files.

    3. The Privacy Act also gives persons the right to access such information.
        - ***See* Exhibit 1–2 – Federal Legislation Relating to Privacy**

iii. **The USA Patriot Act –** The USA Patriot Act was passed by Congress after the terrorist attacks of September 11, 2001, and has been reauthorized twice.
    1. The Patriot Act permits government officials increased authority to monitor Internet activities and gain access to personal financial information and student information.

    2. To gain access to these communications, the government must certify that the information likely to be obtained is relevant to an ongoing criminal investigation.

d. ***Knowledge Check Activity (2) PPT Slide: 3 minutes total including video (7 minutes with discussion and review of answer).*** *Tests students' knowledge of* stare decisis. *After answer is provided, review with students: 1)* stare decisis, *and 2) the role of legal precedents.*

[return to top]

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 – Constitutional Law, Common Law, and Statutory Laws ([1-1 Sources of American Law], PPT Slides 5-10). Duration 20 minutes.**

    a. **If justice is defined as the fair, impartial consideration of opposing interests, are law and justice the same thing?**
        i. No. There can be law without justice—as happened in Nazi-occupied Europe, for example. There cannot be justice without law.

    b. **What is the supreme law of the land?** The federal constitution. **What are statutes?** Laws enacted by Congress (or a state legislative body). **What are ordinances?** Laws enacted by

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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.

ii. 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).

iii. 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).

d. 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.

2. Discussion – Equitable Remedies ([1-2 The Common Law], PPT Slides 11-12). Duration 5 minutes.

a. 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 – Federal Form of Government, the Commerce Clause, and the Supremacy Clause ([1-4 The Constitutional Powers of the Government], PPT Slides 15-16). Duration 5 minutes.

a. What is the national government's relation to the states?

i. The relationship between the national and state governments is a partnership. Neither is superior to the other except as the Constitution provides.

ii. When conflicts arise as to which government should be exercising power in a particular area, the United States Supreme Court decides which governmental system is empowered to act under the Constitution.

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b. What is the conflict between the states' police power and the commerce clause?

i. The term police power refers to the inherent right of the states to regulate private activities within their own borders to protect or promote the public order, health, safety, morals, and general welfare.

ii. When state regulation encroaches on interstate commerce—which Congress regulates under the commerce clause—the state's interest in the merits and purposes of the regulation must be balanced against the burden placed on interstate commerce.

4. Discussion – Free Speech and the Degrees of Regulation Over Commercial and Non-Commercial Speech ([1-5 Business and the Bill of Rights], PPT Slides 17-22). Duration 20 minutes.

a. What is the distinction between the degrees of regulation that may be imposed on commercial and noncommercial speech?

i. Commercial speech is not as protected as noncommercial speech. Even if commercial speech concerns a lawful activity and is not misleading, a restriction on it will generally be considered valid as long as the restriction:

1. Seeks to implement a substantial government interest;

2. Directly advances that interest; and

3. Goes no further than necessary to accomplish its objective. As for noncommercial speech, the government cannot choose what are and what are not proper subjects.

5. Discussion – Government Action, Fundamental Rights, and Levels of Scrutiny ([1-6 Due Process, Equal Protection, and Privacy], PPT Slides 23-25). Duration 15 minutes.

a. Would a state law imposing a fifteen-year term of imprisonment without allowing a trial on all businesspersons who appear in their own television commercials be a violation of substantive due process? Would it violate procedural due process?

i. Yes, the law would violate both types of due process. The law would be unconstitutional on substantive due process grounds, because it abridges freedom of speech.

ii. The law would be unconstitutional on procedural due process grounds, because it imposes a penalty without giving an accused a chance to defend his or her actions.

b. Question? What are the tests used to determine whether a law comports with the equal protection clause?

i. Equal protection means that the government must treat similarly situated individuals in a similar manner. Equal protection requires review of the substance of a law or other government action instead of the procedures used.

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ii. If the law distinguishes between or among individuals, the basis for the distinction is examined. If the law inhibits some persons' exercise of a fundamental right or if the classification is based on race, national origin, or citizenship status, the classification must be necessary to promote a compelling interest.

iii. In matters of economic or social welfare, a classification will be upheld if there is any rational basis on which it might relate to any legitimate government interest.

iv. Laws using classifications that discriminate on the basis of gender or legitimacy must be substantially related to important government objectives.

v. When a law or action limits the liberty of all persons, it may violate substantive due process; when a law or action limits the liberty of some persons, it may violate the equal protection clause.

[return to top]

Additional Activities and Assignments

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

2. **Mind Tap** – Learn It: Creation of the Common Law; *Stare Decisis*; Impact of the Federal Supremacy Clause on State Actions; Regulation under the Commerce Clause; Freedom of Speech Rights Available to Businesses
    a. Get familiar with one of the key concepts from the chapter.

3. **MindTap** – Check Your Understanding: Legal and Constitutional Foundations of 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: Business and the Bill of Rights
    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: Legal and Constitutional Foundations of Business
    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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[return to top]

Additional Resources

Cengage Video Resources

- MindTap Quick Lesson Videos:
    - *Stare Decisis*. Duration 2:27 minutes.

[return to top]

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