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Correct answers located at the end of the chapter.

TRUE/FALSE - Write 'T' if the statement is true and 'F' if the statement is false.

1) Uniform acts are model statutes drafted by private bodies of lawyers and scholars, and they do not become law until a legislature enacts them.
   - ◎ true
   - ◎ false

2) Common law exists only at the state level and only state courts can apply it.
   - ◎ true
   - ◎ false

3) The same behavior will sometimes violate both civil law and criminal law, and in such a case, a person may be held both civilly and criminally liable for the same act.
   - ◎ true
   - ◎ false

4) As compared with positivist judges, judges influenced by natural law ideas may be more likely to read constitutional provisions broadly to strike down positive laws they regard as unjust.
   - ◎ true
   - ◎ false

5) The critical legal studies movement regards law as inevitably the product of political calculation and longstanding class biases on the part of lawmakers, including judges.
   - ◎ true
   - ◎ false

6) State and federal declaratory judgment statutes prohibit parties from determining their rights and duties if their controversy has not yet advanced to the point where harm has actually occurred.
   - ◎ true
   - ◎ false

7) The plain meaning rule calls for the court to apply the statute according to the usual meaning of its words, without concerning itself with anything else.
   - ◎ true
   - ◎ false

8) A rescission occurs when the court rewrites the parties' contract terms to reflect the parties' real intentions.
   - ◎ true
   - ◎ false

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9) Section 230 of the Communications Decency Act holds the provider of an interactive computer service liable for defamation when a user of the service creates and posts false, reputation-harming statements about someone else.
   - ◎ true
   - ◎ false

10) Standing to sue generally requires the plaintiff to have, at a minimum, some indirect, articulable, and measurable stake in the outcome of the litigation.
   - ◎ true
   - ◎ false

MULTIPLE CHOICE - Choose the one alternative that best completes the statement or answers the question.

11) The U.S. Constitution respects the principle of _____ by recognizing the states' power to make law in certain areas.
   - A) privileges and immunities
   - B) federalism
   - C) federal supremacy
   - D) res ipsa loquitur

12) The Restatements are rules covering various areas of law written by the _____.
   - A) Society for American Laws
   - B) Uniform Commerce Commission
   - C) American Law Institute
   - D) Legal Institute of Jurisprudence

13) According to the U.S. Constitution, treaties made by the president with foreign governments and approved by _____ of the U.S. Senate invalidate inconsistent state (and sometimes federal) laws.
   - A) two-thirds
   - B) three-quarters
   - C) a majority
   - D) a minority

14) A state statute making murder a crime is an example of which of the following?
   - A) Strict liability, criminal law, and equity .
   - B) Equity, private law, and criminal law .
   - C) Strict liability, criminal law, and public law.
   - D) Criminal law, substantive law, and public law.

15) American legal _____ regards the law in the books as less important than the law in action and defines law as the behavior of public officials (mainly judges) as they deal with matters before the legal system.
   - A) utilitarianism
   - B) positivism
   - C) realism
   - D) naturalism

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16) The doctrine of _____ states that like cases should be decided alike.
A) *res ipsa loquitor*
B) *post hoc ergo propter hoc*
C) *quantum meruit*
D) *stare decisis*

17) In cases governed by _____, courts find the appropriate legal rules in prior cases called _____.
A) equity; benchmarks
B) the common law; precedents
C) equity; precedents
D) the common law; benchmarks

18) The doctrine of _____ normally requires that the plaintiff must have some direct, tangible, and substantial stake in the outcome of the litigation.
A) mootness
B) ripeness
C) standing to sue
D) feigned controversies

19) Courts often employ which of the following if a statute's words have a clear, common, accepted meaning?
A) The statute's legislative history
B) The plain meaning rule
C) Prior cases interpreting the statute
D) The statute's legislative purpose

20) Which of the following states that when general words follow words of a specific, limited meaning, the general language should be limited to things of the same class as those specifically stated?
A) The *quantum meruit remedy*
B) The *res ipsa loquitor doctrine*
C) The *ejusdem generis rule*
D) The substantial performance doctrine

21) What is a statute?
A) A law made by the judiciary
B) A law made by the U.S. Congress or a state legislature
C) A law written by an administrative agency
D) A law written by the U.S. president or a state governor

22) Which of the following are model statutes drafted by private bodies of lawyers and scholars?
A) The common law
B) Uniform acts
C) Executive orders
D) Equitable remedies

23) Common law is also known as _____.
A) judge-made law
B) statutory law
C) constitutional law
D) equity

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24) Which of the following is true regarding the Restatements?
A) They are written by the courts.
B) They can be adopted as common law by state courts.
C) They include only statutory laws.
D) They are binding on the courts.

25) A(n) _____ is a cancellation of a contract and a return of the parties to their precontractual position.
A) injunction
B) specific performance
C) rescission
D) reformation

26) Which of the following is the most important type of equitable remedy provided by the courts?
A) Injunction
B) Specific performance
C) Reformation
D) Rescission

27) Which of the following is true regarding the historical origins of equity?
A) Common law rules were too flexible to produce fair results.
B) The remedies available in common law courts were too few.
C) Equitable remedies were rigid rules of law and produced fair results.
D) Common law rules were less technical and rigid.

28) Which of the following is a characteristic of administrative agencies?
A) They derive their power from the U.S. Supreme Court.
B) They issue laws called executive orders.
C) They are normally created by statute.
D) They are elected bodies.

29) Ordinances are created by which of the following?
A) The U.S. Congress
B) The U.S. Supreme Court
C) Counties and municipalities
D) State courts

30) The U.S. president or a state's governor has the power to issue which of the following?
A) Statutes
B) Executive orders
C) Administrative regulations
D) The common law

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31) Through its _____, the U.S. Constitution establishes the Congress and gives it power to make law in certain areas, provides for a chief executive (the president) whose function is to execute or enforce the laws, and helps create a federal judiciary to interpret the laws.
A) privileges and immunities
B) separation of powers
C) federal immunity
D) equitable powers

32) Which of the following is false regarding constitutions?
A) They exist at both the federal and state levels.
B) They establish the structure of government for the political unit they control.
C) They prevent the government from passing certain laws.
D) They have been eliminated at the state level due to federal supremacy.

33) Which of the following mainly concerns obligations that private parties owe to each other?
A) Criminal law
B) Civil law
C) Procedural law
D) Public law

34) Which of the following controls the behavior of government bodies as they establish and enforce rules of substantive law?
A) Procedural law
B) Public law
C) Private law
D) Equity

35) Jamal is angry because Henri is now dating Jamal's former girlfriend. One day, as Jamal was driving his car, he saw Henri walking by the side of the road. Jamal deliberately swerved and struck Henri with the car. Jamal may be successfully sued under which of the following classifications of law?
A) Criminal law and equity
B) Civil law and equity
C) Public law and private law
D) Criminal law and civil law

36) Which of the following covers the rules of contract, property, and agency?
A) Procedural law
B) Private law
C) Criminal law
D) Equity

37) Legal positivists see legal validity and moral validity as _____.
A) irreconcilable
B) entirely separate questions
C) the same question
D) irrelevant

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38) Why does sociological jurisprudence appear to resemble natural law?
A) It advocates the separation of law and morality.
B) It stresses the superiority of lawmakers.
C) It calls for a separation of the judiciary and the legislature.
D) Its definition of law includes social values.

39) The law and economics movement has influenced judicial opinions in what area of law?
A) Antitrust law
B) Federal monetary policy
C) Federal fiscal policy
D) Equity

40) Which of the following characterizes natural law?
A) It accepts the enforceability of both just and unjust laws.
B) It interprets constitutional law narrowly.
C) It rejects the separation of law and morality.
D) It opposes the view that universal rules bind all human beings in all times and places.

41) Which of the following is a characteristic of legal realists?
A) They define law as that which is codified in the books.
B) They sometimes favor discretionary standards.
C) They believe that the rules in the books really affect people's lives.
D) They believe that "law is law, just or not."

42) Which of the following is true regarding statutes and statutory interpretation?
A) Statutes are easier to interpret than case law.
B) Courts begin their interpretation of statues with legislative history.
C) There is often deliberate ambiguity in the language of statutes.
D) Courts rarely engage in statutory interpretation.

43) Regarding the functions of law, which of the following is a strength of the instrumentalist attitude?
A) It is willing to adapt the law to further the social good.
B) It separates legal validity and moral validity.
C) It results in legal stability and certainty.
D) It views the law as an unchanging rule that deserves obedience.

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44) Which of the following states that a present case should be decided in the same way as past cases presenting the same facts and the same legal issues?
A) The parol evidence rule
B) The doctrine of *stare decisis*
C) The doctrine of *res ipsa loquitur*
D) Equity

45) When a court identifies a meaningful difference between a present and past case, it _____ the earlier decision.
A) remands
B) acknowledges
C) rescinds
D) distinguishes

46) Which of the following is true regarding judicial precedents?
A) They are inappropriate legal rules courts predict will be established in future cases.
B) They are appropriate legal rules courts find in prior cases.
C) They are inappropriate legal rules courts locate in contemporaneous, undecided cases.
D) They are appropriate legal rules courts recognize only in prior federal cases, or in cases decided in another state court system.

47) Which of the following is/are required for a plaintiff to demonstrate standing to sue?
A) In a majority of jurisdictions, proof beyond a reasonable doubt that the defendant has violated the reasonable person standard of care.
B) The jurisdiction's recognition of strict liability theory.
C) In all jurisdictions proof by the greater weight of the evidence that the plaintiff was not contributorily negligent.
D) A direct, tangible, and substantial stake in the outcome of the litigation.

48) In some instances, legislators may deliberately use ambiguous language when they are unwilling or unable to deal specifically with each situation a statute was enacted to regulate. When this happens, what does the legislature expect courts and/or administrative agencies to do?
A) Nullify the statute
B) Fill in the details on a case-to-case basis
C) Consult with the executive branch of government
D) Enact a new statute to replace the existing one

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49) Courts begin their interpretation of a statute with which of the following?
A) The statute's actual language
B) The statute's legislative history
C) Records of legislative debates regarding the statute
D) The first draft of the statute in legislative committee

50) According to the U.S. Constitution, the president has the power to do which of the following?
A) Make the laws
B) Enforce the laws
C) Interpret the laws
D) Whatever the president wishes, at the president's discretion

51) The U.S. Supreme Court once denied tax-exempt status to a private university that discriminated based on race. Which of the following influenced or guided the interpretation of the statute relevant to this case?
A) Feigned controversies
B) Advisory opinions
C) General public purpose
D) Standing to sue

52) Which of the following is false regarding the power of courts?
A) Courts are not absolutely bound to favor one technique of statutory interpretation over another.
B) Courts can distinguish prior decisions in common law cases.
C) State supreme courts can overrule their own prior decisions.
D) A court can make or interpret law regardless of whether litigants have presented it with a case to decide.

53) In the *O'Connor v. Oakhurst Dairy* case referenced in the text, the court used several maxims to interpret a Maine overtime law exemption. The court referred to the maxims as "_____ " of statutory _____ .
A) cannons; nullification
B) canons; interpretation
C) canons; rescission
D) cannons; oversight

54) Which of the following are general rules of thumb employed in statutory interpretations?
A) Idioms
B) Phrases
C) Quotations
D) Maxims

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55) Cases are said to be _____ when there is no longer a real dispute between the parties.
A) ripe
B) moot
C) advisory opinions
D) feigned controversies

56) The doctrine of standing to sue implies that _____.
A) the lawsuit must benefit the public at large
B) the plaintiff has a substantial stake in the litigation
C) a case before a court must involve a genuine controversy
D) a court cannot issue an advisory opinion

57) Which of the following enables parties to determine their legal position without taking action that could expose them to liability?
A) The doctrine of privity of contract
B) *Ejusdem generis*
C) A declaratory judgment statute
D) Public law

58) Which of the following allows parties to determine their rights and duties even though their controversy has not advanced to the point where harm has occurred?
A) *Ejusdem generis*
B) Standing to sue
C) A declaratory judgment
D) Judicial precedent

59) Ursula plans to open a company named "Maryland" and use an “M” trademark; Ursula’s trademark in no way resembles the famous McDonald's trademark. Ursula fears, however, that McDonald’s might think otherwise and sue her for an intellectual property violation. Ursula is risk-aversive, and she accordingly would like to seek a court's judgment on the issue. Does Ursula have a legal way to seek such judicial input?
A) Yes. Ursula can invoke equity to petition the court.
B) Yes. Ursula can petition the court for a declaratory judgment.
C) No. Ursula cannot petition the court since the case is not yet ripe.
D) No. Ursula cannot petition the court since the case is moot.

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60) Which method of statutory interpretation was emphasized and used in the *James v. City of Costa Mesa* case referenced in the text?
   A) The plain meaning rule
   B) General public purpose
   C) Legislative history
   D) Maxims of statutory interpretation

61) The Bill of Rights to the U.S. Constitution is an example of _____.
   A) prohibiting government action that restricts certain individual rights.
   B) separation of powers
   C) the critical legal studies movement
   D) federalism.

62) What is the goal of a uniform act?
   A) To demonstrate a logical approach to the reconciliation of conflicting laws
   B) To provide a reasoned argument regarding why a particular law should be nullified
   C) To provide reference materials to aid decision makers
   D) To produce state-by-state uniformity regarding its subject

63) Which of the following does not mainly consist of common law?
   A) Contract laws
   B) Equity
   C) Tort laws
   D) Agency law

64) Which of the following was the court's ruling in the *Price v. High Pointe Oil Company, Incorporated* case referenced in the text?
   A) The court upheld a longstanding common-law rule.
   B) The court upheld the unambiguous language of a state statute.
   C) The court declined to assume the role of the legislature.
   D) The court, *sua sponte*, created a new procedural rule.

65) Which of the following is not an equitable remedy?
   A) Monetary damages
   B) An injunction
   C) Specific performance
   D) Reformation

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66) Which of the following equitable remedies is a court order for a party to perform according to the terms of the parties' contract?
A) Injunction
B) Specific performance
C) Reformation
D) Rescission

67) Administrative agencies obtain the ability to make law through a(n) _____ of power from the _____ .
A) assignment; executive
B) delegation; legislature
C) divestment; executive
D) attenuation; judiciary

68) Which of the following types of law do administrative agencies create?
A) Statutes
B) Uniform acts
C) Common law
D) Agency decisions

69) According to the U.S. Constitution, treaties made by the _____ with foreign governments and approved by _____ of the U.S. Senate become "the supreme Law of the Land."
A) president; a simple majority
B) Congress; a simple majority
C) president; two-thirds
D) Congress; two-thirds

70) Although the president or a state's governor does not have typical law-making powers, these officials have limited power to issue laws called _____.
A) uniform acts
B) advisory opinions
C) statutes
D) executive orders

71) When a treaty conflicts with a federal statute over a purely domestic matter, which prevails?
A) The measure that is later in time
B) The measure that is first in time
C) The federal statute
D) The treaty

72) When a common law rule conflicts with an administrative regulation, which prevails?
A) The measure that is later in time
B) The measure that is first in time
C) The conflicting common law rule
D) The administrative regulation

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73) Which of the following was the issue the court considered in the *Advance Dental Care, Incorporated v. SunTrust Bank* case referenced in the text?
A) Whether Advance Dental Care, Incorporated's common-law negligence claim had been displaced by the statutory UCC conversion claim
B) Whether Advance Dental Care, Incorporated's common-law strict liability claim had been displaced by the statutory UCC ratification claim
C) Whether Advance Dental Care, Incorporated's common-law ratification claim had been displaced by the statutory rescission claim.
D) Whether Advance Dental Care, Incorporated had standing to sue SunTrust Bank

74) Which of the following classifications of law does not describe contract law?
A) Civil law
B) Procedural law
C) Substantive law
D) Private law

75) Which of the following is an example of public law?
A) Contract law
B) Property law
C) Agency law
D) Administrative law

76) To define law properly, it is helpful to have a general description that captures its essence. The field known as _____ seeks to provide such a description.
A) philosophy
B) jurisprudence
C) equity
D) deontology

77) Regarding judicial manipulation of existing legal rules to achieve desired results, which of the following is a recognized weakness of the instrumentalist attitude?
A) Its legal instability and uncertainty
B) Its unwillingness to adapt the law to further social good
C) Its inherent conflict with the fundamental principles of ethics
D) Its constant evolution

78) Which of the following is not a general social function of the law referenced in the text?
A) Peacekeeping
B) Protecting the environment
C) Checking government power and promoting personal freedom
D) Ensuring equitable outcomes in the litigation process

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79) Regarding the issue of case law reasoning, a distinction between a present case and a previous case is considered valid if it involves which of the following?
   A) A widely accepted ethical or policy reason
   B) The reinstatement of legislative history
   C) *Stare decisis*
   D) Equitable distribution

80) Which of the following was the court's holding in the *Coomer v. Kansas City Royals Baseball Corporation* case referenced in the text?
   A) The risk of injury from the hotdog toss was not one of the risks inherent in watching the baseball game, and the defendants owed the plaintiff a duty to use reasonable care.
   B) The risk of injury was reasonably foreseeable; therefore, the defendants were not liable.
   C) The risks of injury are numerous and inherent in attending a baseball game; therefore, the defendants were not liable.
   D) The plaintiff was contributorily negligence, which serves as a complete bar to recovery in the state of Missouri; therefore, the defendants were not liable.

81) If no applicable precedent exists, a court _____.
   A) must dismiss the case with prejudice
   B) must dismiss the case without prejudice
   C) is free to develop a new statutory rule to govern the case
   D) is free to develop a new common law rule to govern the case

82) In the *O'Connor v. Oakhurst Dairy* case referenced in the text, what was the largest deciding factor in determining whether the defendant might be liable for millions of dollars in unpaid overtime wages?
   A) Unambiguous language
   B) Legislative history
   C) The use of the word "and"
   D) A "missing" comma

83) Which of the following is not an example of legislative history?
   A) Reports of investigative committees
   B) Transcripts or summaries of hearings of legislative committees
   C) A common law case that interpreted a previous version of the subject statute
   D) Records of legislative debates

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84) A case is said to be _____ when it has matured into a genuine controversy.
A) moot
B) ripe
C) advisory
D) feigned

85) Which of the following was not a consideration when the U.S. Supreme Court decided in the *Olympic Airways v. Husain* case referenced in the text?
A) The definition of "accident" in the Court's earlier precedent
B) The language of the Warsaw Convention
C) Public policy
D) Legislative history

ESSAY. Write your answer in the space provided or on a separate sheet of paper.

86) What do statutes and administrative regulations have in common? How do they differ?

87) Explain the position legal positivists take regarding the law.

88) How does sociological jurisprudence define law? What are the implications of this school of jurisprudence?

89) Why might legislators deliberately use ambiguous language in a statute?

90) Explain the two ways courts use legislative history.

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Answer Key

Test name: Chapter 01

1) TRUE
2) FALSE
3) TRUE
4) TRUE
5) TRUE
6) FALSE
7) TRUE
8) FALSE
9) FALSE
10) FALSE
11) B
12) C
13) A
14) D
15) C
16) D
17) B
18) C
19) B
20) C
21) B
22) B
23) A
24) B
25) C
26) A
27) B
28) C
29) C
30) B
31) B
32) D
33) B
34) A
35) D
36) B
37) B
38) D
39) A
40) C
41) B
42) C
43) A
44) B
45) D
46) B
47) D
48) B
49) A
50) B
51) C
52) D
53) B
54) D
55) B
56) B
57) C
58) C
59) B
60) A
61) A
62) D
63) B
64) A
65) A
66) B
67) B
68) D
69) C
70) D
71) A
72) D
73) A
74) B
75) D
76) B
77) A

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78) D
79) A
80) A
81) D
82) D
83) C
84) B
85) D
86) Essay
87) Essay
88) Essay
89) Essay
90) Essay

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CHAPTER 01
THE NATURE OF LAW

I. OBJECTIVES:

As its title suggests, this chapter seeks to acquaint students with the general nature of law. The chapter does this by: (1) describing the different types of law; (2) examining legal philosophy or jurisprudence; (3) sketching some of law's functions; and (4) discussing legal reasoning. The chapter's content maximizes instructor discretion by keeping these four subjects as distinct from each other as possible. As a result, you may feel you do not need to teach or assign certain parts of the chapter. The material on the types of law, however, is basic material that any instructor probably would want to present or assign.

II. ANSWERS TO INTRODUCTORY PROBLEM:

A. See the major types of law discussed in Chapter 1 (especially constitutions, statutes, common law, administrative regulations and decisions, and treaties).
B. See the schools of jurisprudence discussed in Chapter 1.
C. See the "Legal Reasoning" section of Chapter 1 for discussion of the role courts play in making and interpreting law. That section also discusses two important methods of legal reasoning: case law reasoning and statutory interpretation.
D. The question about the relationship between legal standards of behavior and notions of ethical conduct is largely rhetorical at this point. It will be explored more fully at later points.

III. SUGGESTIONS FOR LECTURE PREPARATION:

A. Types of Law
   1. The material in this section can be viewed as one response to the question: "What is law?" The section answers this question by listing and describing the kinds of rules that commonly are regarded as law in the United States. What unites most of them is their issuance by a legitimate political authority. Remind students that he first question in the chapter's opening vignette concerns types of law.
   2. We do not use the term "sources of law" to identify this material because in ordinary language the things described *are* law rather than sources of law. A statute, for instance, is colloquially referred to as a law, and the legislature is ordinarily regarded as its source.
   3. Provide students an overview (including examples) of each of the types of law outlined in the text. Keep in mind the following:
      a. The text's description of the functions served by constitutions and of separation of powers and federalism is traditional and somewhat limited. You might want to add that, as Chapter 3 suggests, the political and legal reality often differs from the accepted homilies in these areas.

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b. Note the role played by courts—most notably the Supreme Court—in interpreting the U.S. Constitution. Comment on Presidents' attempts to shape the judiciary through appointments (subject to Senate confirmation) to the federal district courts, courts of appeal, and the Supreme Court. Mention confirmation fights that have occurred through the years (e.g., regarding Bork and Thomas; perhaps Alito, Sotomayor, and Kagan in more recent years, though the fights in those instances were less intense). More recent examples here include the Republican-controlled Senate's refusal to consider President Obama's nomination of Merrick Garland in 2016 and the resort to the so-called "nuclear option" to stymie any attempt to filibuster President Trump's nomination of Neil Gorsuch in 2017. And, of course, the confirmation processes were fraught for both Brent Kavanaugh and Amy Coney Barrett, though for quite different reasons. Finally, the most recent confirmation process for Justice Jackson broke along party lines but was not marked by significant controversy beyond that. Provide examples of Supreme Court justices who proved to be consistent with the probable expectations of the Presidents who appointed them and of justices who most likely were disappointments to the appointing President. Burger, Rehnquist, Scalia, Thomas, Ginsburg, Alito, Sotomayor, Gorsuch would be examples of the former. Warren, Brennan, Blackmun, Stevens, and Souter would be examples of the latter.
c. The material on uniform acts is included here because students will so often encounter uniform acts throughout the text. Of course, you should emphasize that uniform acts are not law until enacted in whole or in part by a legislature, and that state-by-state variations from the original text are common.
d. Emphasize that common law applies only when there is no other applicable type of law and that statutes have a controlling effect with regard to the common law. Therefore, Congress or a state legislature may enact a statute that abolishes or modifies a common law rule. *Advance Dental Care, Inc. v. SunTrust Bank*, which appears somewhat later in the chapter, illustrates this point. (See the later discussion of this case.) A portion of the Cyberlaw in Action box does as well. In addition, see Problem #1. Note, also, that a legislature may choose to enact a statute that codifies what formerly was only a common law rule.
e. *Price v. High Pointe Oil Company, Inc.*: High Pointe Oil Company erroneously filled Beckie Price's basement with 400 gallons of oil, which destroyed her house and all of her personal belongings. The oil came in through an "oil fill pipe" that used to lead to an oil furnace in Price's basement. A year prior, however, Price had replaced the oil furnace with a propane model and had cancelled her contract with High Pointe to keep oil in the furnace. High Pointe somehow included her address on a "keep full" list, leading to the contamination. Although Price's land was remediated, her house rebuilt, and her belongings cleaned or replaced, she sued High Pointe for negligence seeking noneconomic damages. After a jury awarded her $100,000 and the appellate court affirmed, the Michigan Supreme Court had to decide whether to adopt a new common law rule to allow the recovery of noneconomic damages for the negligent destruction of real property. It declined to do so.

   Points for Discussion: Have a student summarize the basic facts and the procedural history of the case. Because this is the first excerpted judicial opinion in the text, it is also worthwhile to talk about why it is important to read the cases in the text, how they help us understand and illustrate the legal rules discussed in the text better. Point them to the Appendix at the end of the chapter for guidance on how to read and brief a case. Moreover, as any case would, this case involves legal terms and concepts with which students will likely be unfamiliar (e.g., plaintiff and defendant, personal and real property, motions, tort and negligence). This can provide

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instructors the opportunity to encourage students to make liberal use of a legal dictionary, either a hard copy or one of the several online law dictionaries, when reading the text and case excerpts. Yet, the authors chose *Price v. High Pointe* as the first case to present in the text in part because the likely unfamiliar concepts in it are relatively simple to explain within the factual and legal context of the case and because they are ones that students will see repeatedly throughout the text and, presumably, in your course. We recommend that you take some time, therefore, in discussing this case to help students build some confidence and familiarity with reading, briefing, and understanding the cases in the text. It may also be worthwhile to reassure them that they might not always fully understand the cases, which is why you will discuss them in class and why they should ask questions. The more carefully they read the cases, the better they will follow class discussion and the more pointed and helpful questions they can ask.

Ask the students why the court begins its discussion with the following statement: "[a]bsent any relevant statute, the answer to that question [whether noneconomic damages are recoverable for the negligent destruction of real property] is a matter of common law." (This may be a good way to highlight the doctrine in point d. above.) Ask the students to describe the longstanding common law rule at issue. (Negligent destruction of property is remedied by awarding damages equal to the fair market value of destroyed property or the repair cost of damaged property.) Note that simply because the law has been static and consistent for a long time does not mean that it cannot be altered. Thus, the Michigan Supreme Court must determine whether it would be appropriate to modify the common law rule. Ask the students to summarize the arguments for why the Court refused to do so in this case. (The policy arguments upon which the court relies are summarized in the sample case brief at the end of the chapter.)

It might also be worth noting here what is sometimes thought of (and sometimes critiqued) as a fundamental conservatism in the law, not in the political sense but in the sense that favors tradition, settled expectations, and incrementalism over revolution. Instructors who wish to delve into the short jurisprudence discussion in this chapter might explore what reason each of the various schools of jurisprudence might give for that fundamental conservatism.

For instructors who cover the common law and case law reasoning in the same session, be sure to note that the first half of the *Price* case is a prototypical example of case law reasoning. The approach of the *Price* court to that process can be compared and contrasted to the approach of the *Coomer* court later in the chapter.

f. The text's statement that, as a general mater, common law exists only at the state level implicitly recognizes the Supreme Court's decision in *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938), which supposedly eliminated the "federal common law" that the federal courts had previously used in some diversity cases. *Erie's* progeny--and the related question whether there still is a federal common law despite *Erie*--are well beyond the scope of this text.

g. Some discussion of the *Restatements* is included in Chapter 1 for the same reason that the chapter discusses uniform acts. References to the *Restatements* appear frequently in the torts, contracts, and agency chapters of this text. Emphasize that *Restatement* rules are not law unless adopted by a court as a rule of decision. Also, you might want to add that the *Restatements* have been subjected to conflicting criticisms. Sometimes, they are criticized for "leading" the courts in the fashion suggested in the text. And sometimes they are criticized as misguided attempts to rigidly state rules that are always changing with circumstances.

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h. Note that *equity* isn't really a separate body of law any longer but that equitable remedies (injunctions, etc.) remain very important instruments that courts frequently employ.
i. In the text, the term *delegation* is used to refer only to transfers of power made by a legislature. Under this usage, for example, a constitution's grant of power to a legislature is not an example of delegation.
j. In discussing administrative regulations and decisions, note the political debates that often arise regarding whether we have too much, too little, or about the right amount of, regulation of business by administrative agencies. Mention that the level of regulatory activity on the part of agencies tends to vary with the prevailing political winds.
k. Note the priority rules that apply only when the different types of law conflict. Further note, as illustrated by the following *Advance Dental Care* case, that courts will avoid interpreting the law to create such conflicts when possible. Problem # 2 at the end of the chapter provides an additional opportunity for students to test their application of the priority rules.
l. *Advance Dental Care, Inc. v. SunTrust Bank*: The Federal District Court for the District of Maryland determined that the Maryland U.C.C. section 3-420, which defines and provides a remedy for conversion, displaces the Maryland common-law negligence claim when a payee sues a bank for negligently accepting unauthorized and fraudulently endorsed checks. Michelle Rampersad had deposited in her personal account at SunTrust Bank more than $400,000 worth of insurance reimbursement checks that she had fraudulently endorsed to herself instead of intended payee, Advance Dental Care. Advance Dental Care sued SunTrust under the U.C.C. and for common law negligence. One U.C.C. claim was dismissed, but the court had to decide whether the remaining claim, dealing with conversion, displaced the common law claim.

   Points for Discussion: Students may need a bit of coaching on the language in this case, including who is the payee (Advance Dental) and drawer (the insurance company), as well as what it means to endorse a check (i.e., to sign over the right to receive payment to someone else). There's no need to get deeply into the law of negotiable instruments for the purposes of this case, but the text elaborates on that topic in Chapter 31.

   Note for students that a primary concern is whether displacement of the common law remedy would leave a plaintiff with an adequate statutory remedy. It would in this case, as opposed to cases where the drawer of the check is harmed when a bank negligently honors a fraudulently endorsed check.

   Ask students what is the relevance of U.C.C. section 1-103(b)'s "particular provisions" language. (Because the U.C.C. does not expressly displace the common law in total, the court must look to whether the particular conversion provision displaces the particular negligence claim. Sometimes statutes expressly indicate the legislature's intention to displace certain common law rules.) Ask students to indicate what it is about the conversion provision that causes the court to find that it displaces the common-law negligence claim. (Significant overlap between the two claims makes them largely duplicative and inconsistent defenses under each. So the common law claim adds nothing in terms of what conduct is regulated, but the two claims would result in differing standards for excusing the defendant of its liability based on the plaintiff's own negligence.) Explain that typically the courts would let a somewhat related claim under common law sit alongside a statutory claim that does not expressly displace it, so long as they are distinct and not contradictory. But, here,

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the claims were not distinct and were contradictory. In that case, the priority rules require that the statute displace the common law.

m. Briefly discuss the classifications of law identified in the text and give examples.

B. Jurisprudence

1. We use the term "positive law" here, because it often is useful in distinguishing between the various abstract jurisprudential definitions of law and the law that is actually in force.
2. The materials in the jurisprudence section can be regarded as another set of answers to this question: "What is law?" You might introduce the subject by pointing out that defining law by providing a list of things that get called "law" isn't satisfactory to everyone, and that some people want a more general definition. Over time, you can continue, the various attempted general definitions of law have been grouped into "schools" of jurisprudence. Stress that with the possible exception of sociological jurisprudence, each school has its own distinctive definition of law. Also, stress that in some cases practical consequences flow from a school's definition.
3. Regarding legal positivism:
   a. Emphasize the basic idea that positivists regard law as the command of a political authority. In addition to the text's definition from Hobbes's *Leviathan*, Austin's *Jurisprudence* defines law as "a rule laid down for the guidance of an intelligent being by an intelligent being having power over him."
   b. Some positivists adopt a more general definition of law, defining it as the command of society's ultimate political authority, or sovereign. On this view, the different kinds of positive law are valid because the sovereign has delegated some of its ultimate lawmaking power to various subordinate bodies (e.g., courts). Locating the sovereign has been a problem for positivists, however. Doing so may be easy in an absolute monarchy or dictatorship. In systems of divided power such as the U.S. political system, however, the task is more difficult.
   c. Note how either positivist definition of law dovetails with the general positivist position that law and morality are separate and distinct things. A command as such need not have any moral dimension. Typically, it does not say, "Obey because it's right," but instead says, "Obey or else." Perhaps the point can be amplified by telling students to look at the law as Holmes's "bad man" would--not caring whether the sovereign's commands are right or wrong, but merely wanting to know what they are and what the consequences of disobeying them will be.
   d. Emphasize the positivist tendency to say that validly enacted positive laws should be enforced and obeyed, just or not. This is only a tendency, for many positivists say that the competing claims of law and morality must somehow be weighed against each other.
4. Regarding natural law:
   a. Emphasize the basic idea underlying almost every system of natural law: that there is some set of moral standards that is universally binding. These standards, of course, are a criterion for evaluating positive law.
   b. Cicero's statement in the text is by no means the only natural law definition of law. The text attempts down-to-earth definition: those commands of a recognized political authority that do not offend the higher law. An alternative formulation is to say that to be law, a positive law must actually be good. Some positive laws (e.g., whether to drive on the right or left side of the road) seem morally neutral, however, and some involve difficult moral tradeoffs. The first formulation therefore seems preferable.
   c. To many natural law thinkers, a positive law that gets too far out of line with the

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natural law simply is not law. The practical payoff of this position is that there supposedly is no duty to obey such positive laws. In reality, however, as the *Lynch* case (see Problem #3) demonstrates, no natural law "defense" is recognized in court. Even so, there is no question that judges' notions of morality may sometimes influence their application of the law.

d. Stress the ways in which natural law and legal positivism differ. The two key differences concern: (1) the relation between law and morality; and (2) the duty to obey unjust positive laws.

e. Briefly note an obvious problem with natural law: moral diversity. This fact of life can lead to skeptical attacks on the whole notion of natural law. It also can indirectly support the positivist position on the duty to obey law. What would life be like if in a morally diverse society everyone believes that one need not obey unjust laws? Of course, natural law thinkers can counterattack by saying that the positivist position requires us to obey *any* validly enacted positive law, no matter how unjust.

f. Note that a natural law defense is not allowed in court. Example: Problem #3.

5. Regarding American Legal Realism:

a. The most important thing to emphasize is the characteristic legal realist distinction between the "law in the books" and the "law in action." Ask the class to supply examples of situations in which the actual behavior of law-enforcers differs from what the positive "law in the books" says (e.g., the "in the books" speed limit on a two-lane, non-interstate highway may be 55 mph in a given state, but the "in action" speed limit is probably somewhere between 60 and 65 mph). Also, see Problem #4.

b. Unlike natural law and legal positivism, legal realism has relatively little to say about the duty to obey positive law. Instead, we have the characteristic legal realist program for the judiciary described in the text. To link the legal realists' law in the books vs. law in action distinction and their agenda for the judiciary, emphasize that one obstacle to the judicial activism desired by the realists is the widespread belief that this violates the rule of law. But if this belief can be undermined by denigrating the importance of "book law" and by showing that decisions ostensibly so based actually reflect the whims of the judge, the door is opened for a more activist judicial posture. Then, the realists can say: "If (as is inevitable) judges decide on the basis of their personal preferences, at least they ought to do so intelligently."

c. Can a legal realist judge really decide cases without values of some kind? From what source are these to be derived? Does legal realism itself provide moral criteria? To the author of this chapter, the answers to these questions are "No," "Unclear," and "No," respectively. Occasionally, it seems that the realists naively see moral questions as having obvious answers and as being easily resolved.

d. You might note that legal realism is no longer an organized movement, but that its influence lingers.

6. Regarding sociological jurisprudence:

a. Stress that "sociological jurisprudence" is an umbrella term uniting a wide range of approaches to the study of law and society, and that the definition offered in the text is only suggestive. The specific examples of Pound, Savigny, and Ehrlich in the text help flesh out this suggestive definition.

b. Note how sociological jurisprudence puts the positivist conception of law in a new light. Rather than seeing law as simply the will of a political authority, we now have to look behind that will to identify the social forces influencing it. In Ehrlich's view,

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moreover, positive law is not so special. It is only one element within a spectrum of formal and informal social controls.

c. Stress how sociological jurisprudence differs from natural law. Sociological jurisprudence's treatment of values generally takes this form: "Society X emphasizes values A, B, and C; and these influence X's legal system in certain ways. But I'm not saying whether this is wrong or right."

d. There is a common judicial tendency that might be termed “sociological”: following dominant social interests and values. This is the apparent point of the Holmes quotation in the text. Arguably, the Supreme Court has taken this approach at various points in its history--during the 1970s, for example, in the abortion, teenage contraception, and capital punishment contexts. This approach sounds nice, but the problems it presents might be dramatized by asking the following question: "What do you do when society is going to the dogs?" If the quotation in the text is any guide, Holmes might have said: "Follow the dominant social tendency anyway."

7. Problem #4 might be used as a general review of the four schools. The Ethics and Compliance in Action box related to jurisprudence is designed to allow instructors who are so inclined to explore areas of common ground between certain ones of the schools of jurisprudence (most notably natural law and sociological jurisprudence) and the ethical theories to be explored in Chapter 4.

8. Briefly note the other schools of jurisprudence--or ways of viewing law--described at the end of the chapter’s section on jurisprudence. All of these have received considerable attention in the academic literature in recent years, but the law and economics movement has had the most tangible effect on the development of the law.

C. The Functions of Law: Material of this kind has long appeared in this text in one form or another. The text's list of law's functions is not meant to be complete and is only illustrative. One function that should arguably be included because of its prominence but is not included solely for purposes of brevity is the “establishing the right to exclude others.” All of the various types of property law—personal, real, intellectual—might be understood as advancing this particular purpose.

Try to get the class to think of concrete instances in which these various functions collide with one another and tradeoffs seemingly must be made.

D. Legal Reasoning

1. In emphasizing the importance of legal reasoning, you might stress that: (a) the subject gives some insight into how judges and lawyers think; (b) it helps dispel the notion that the law is a fixed body of predictable black-letter rules; and (c) it gives some idea of the mechanisms by which the law responds to social change. Note that the types of legal reasoning discussed in the chapter are what the last question in the chapter’s opening vignette contemplates.

2. With regard to case law reasoning:

a. Discuss the doctrine of *stare decisis* and what it means to distinguish a prior case. Elaborate on the elusive difference between a good and a bad distinction. The text’s brief discussion of employment-at-will-rule and the public policy exception thereto should be helpful in that regard. Emphasize that even though it may seem rigid at first glance, *stare decisis* actually is sufficiently flexible to permit much change in the common law.

b. *Coomer v. Kansas City Royals Baseball Corp.*: The Missouri Supreme Court in this case determines that the so-called “baseball rule,” which protects baseball teams from

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negligence claims if a spectator at a game is hurt in the normal course of the game (by, for instance, a foul ball or a broken bat), does not apply when a spectator is injured by a hot dog tossed by the baseball team's mascot between innings. In so holding, the court engages in an analysis of the origin, policies underpinning, and subsequent expansion of the baseball rule, in a classic example of case law reasoning. Ultimately, the court determines that the injury the plaintiff suffered was not an inherent risk of watching a live baseball game but was rather a distinct risk created by the mascot and not related to the baseball game itself.

Points for Discussion: A particularly illuminating exercise here would be to walk through the case asking students to make the counterargument to the court's conclusions regarding whether the prior cases are instructive or distinguishable. Then students can determine whether the court is moving the policy underlying the original baseball rule in the proper direction. Query the students whether the modern game of baseball still needs the protections from liability that the original baseball rule supplied and whether protection from liability is equally appropriate for recreational and professional baseball teams. For an excellent discussion of the history of the baseball rule and its potential ill-fitting nature for the pace at which the modern professional game proceeds, see Nathaniel Grow & Zachary Flagel, *The Faulty Law and Economics of the Baseball Rule*, 60 WILLIAM & MARY LAW REVIEW 59 (2018).

c. Problem #5 asks students to practice case law reasoning by determining whether the baseball rule should apply to a different set of facts.

d. For a classic illustration of case law reasoning, instructors might discuss with students the case of *MacPherson v. Buick Motor Co.*, 111 N.E. 1050 (N.Y. Ct. App. 1916).

3. With regard to statutory interpretation:

   a. You might begin by suggesting why, at first glance, statutory interpretation seems to present fewer problems than case law reasoning: one starts with a fixed, authoritative statement of the rule. Then launch into why things aren't so simple. Note the reasons why statutes are often ambiguous or difficult to apply.

   b. *O'Connor v. Oakhurst Dairy*: This case is included to illustrate how high the stakes can be raised by ambiguity in statutory language, even simple differences in conventional uses of punctuation. The Federal Court of Appeals for the First Circuit holds that delivery drivers for Oakhurst Dairy in Maine are entitled to millions of dollars in unpaid overtime wages under the Maine wage and hour law, interpreting an exemption to overtime eligibility narrowly not to apply to the drivers. The ambiguity in the case arises because of a "missing" Oxford comma. The court works through plain meaning, legislative purpose, and legislative history approaches to interpreting the statute, finding none of them definitive. Ultimately, it relies on a maxim of interpretation (a "rule of construction" in Maine) that wage and hour laws should be interpreted to maximize their remedial effect. Thus, in the face of ambiguous drafting, the workers' rights to overtime pay take precedence.

   Points for Discussion: Ask the students whether they agree with the court that the three major tools of statutory interpretation really are non-decisive. Choose students to present the strongest arguments for both sides of each approach. After discussing the case in full, inform the students that the case was formally settled by the parties in early 2018 for $5 million after more than four years of litigation. Do the students think that is an appropriate resolution of the dispute? Instructors might use this fact to foreshadow discussions of alternative dispute resolution that will arise in connection with Chapter 2.

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c. Students may ask which technique takes priority when the various canons of statutory interpretation actually or seemingly conflict. Emphasize that no single technique takes priority, that courts are free to pick and choose from among the interpretation techniques, and that courts are sometimes result-oriented when they decide on the appropriate technique(s) to use. Sometimes they combine techniques, as illustrated by some of the text cases discussed later herein. The text uses a "toolbox" metaphor to illustrate how judges tend to use the various techniques for various purposes, for both pragmatic and policy-driven reasons.

d. For examples of uses of the plain meaning technique, see Problems #1, #8, and #9. See also *James v. City of Costa Mesa*, a text case discussed below.

e. Go through the various legislative history sources. Note that courts use them both when the statute is ambiguous and, increasingly, when the language is plain. Also, note the two ways in which courts use legislative history, which really are different inquiries. The distinction, roughly speaking, is between what the legislature thought particular words meant and the overall ends it sought to advance (i.e., the legislative purpose). Interpreting statutory language in light of the legislative purpose may sometimes lead to a result different from the result that would have been spawned by rigid adherence to the actual words used in the statute. See, for instance, the *General Dynamics* case (formerly a text case but now Problem #7).

f. Note the *general public purpose* technique is not used as often as the other techniques (at least not by itself).

g. Discuss prior interpretations and the factors that help determine their authoritativeness. There is another argument for following prior interpretations besides the stability-oriented argument discussed in the text. This is the idea that, by not acting to overturn a prior interpretation, the legislature impliedly approved it. Here, you might elaborate by distinguishing situations in which the legislature reconsidered and overhauled the whole act and did not amend the provision in question, from situations in which the legislature simply did nothing. In the first case there is some reason to think the legislature might have known about the prior interpretation, so the rationale for following it is arguably stronger there. Even in the latter situation, however, there may still be a reasonably strong argument that the prior interpretation should be followed. This is known as "statutory *stare decisis*," and its most famous application is in the professional baseball antitrust exemption cases. See, for example, *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922); *Toolson v. New York Yankees, Inc.*, 346 U.S. 356 (1953); *Flood v. Kuhn*, 407 U.S. 258 (1972).

h. Maxims may raise for students the most concern that statutory interpretation is a wholly instrumental process. You may want to discuss that famed legal scholar Karl N. Llewellyn offered this sort of critique of the canons of construction in his classic 1950 article "Remarks on the Theory of Appellate Decision and the Rules or Canons of About How Statutes are to be Construed." While the nuances of his argument are well beyond the scope of a business law or legal environment course, students might connect with his notion that there are dueling canons of construction. For almost every canon, one exists that counsels nearly the opposite interpretive approach. Still, it is worth noting to students that the most famous canons are known to those who draft legislation, and they surely guide the way statutes are written.

i. Also note the *ejusdem generis* maxim, which courts sometimes employ, and provide further examples of its operation. Instructors also might want to mention and illustrate other maxims not discussed in the text, including *expressio unius est*

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exclusio alterius (the expression of one thing is the exclusion of another). *Trentadue v. Gorton*, a former text case, but now included as Problem #1, provides an opportunity to explore it. Moreover, though the court does not explicitly name it as such, the majority and dissenting opinions in *James v. City of Costa Mesa* (discussed below) spar over the application of the so-called "rule against surplusage" maxim, in which courts are counseled, when confronting a reading of a statute that would make one or more parts of the statute redundant and another reading would avoid the redundancy, that the latter reading is preferred. This is raised in the court's discussion of whether the word "other" is redundant under James's proposed reading of the statute.

j. *Jones v. City of Costa Mesa*: The U.S. Court of Appeals for the Ninth Circuit holds that plaintiffs who are users of medicinal marijuana, under the supervision of physicians, are not "qualified individual[s] with a disability" as defined in the Americans with Disabilities Act (ADA), because they are engaged in the "illegal use of drugs" as also defined in the ADA. The case comes down to an interpretation of the ADA's definition of "illegal use of drugs." The cities of Costa Mesa and Lake Forest, California, were attempting to close existing and prohibit new marijuana-dispensing facilities within their boundaries. The plaintiffs—a class of individuals suffering from serious medical conditions, of which Marla James was the lead and named plaintiff—were engaging in the use of marijuana for medicinal purposes, which is lawful under California state law. Nonetheless, marijuana is a controlled substance under the federal Controlled Substances Act (CSA), and thus, its possession and distribution is a federal crime. The plaintiffs sued to prohibit the cities from interfering with the dispensaries, arguing that the cities' efforts violated Title II of the ADA, which prohibits discrimination on the basis of disability in the provision of public services. The trial court never decided whether the cities' actions otherwise violated the ADA, because it found that the ADA did not apply to the plaintiffs, who were excluded from protection of the statute because they were engaging in the illegal use of drugs and the cities acted on that basis. The appeal in the excerpt in the text addresses that definitional question. The definition of "illegal use of drugs" references the CSA, but excepts from the definition "the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the [CSA] or other provisions of Federal law." The case is provided, in part, to illustrate how the majority opinion and the dissenting opinion each use the same techniques of statutory interpretation and yet arrive at opposite conclusions.

Points for discussion: It may be helpful for instructors to begin by parsing the different statutes that are relevant to this case (the ADA and the CSA) and pinpointing the language that is at issue (the ADA's exception to "illegal use of drugs" for what is otherwise an agreed use of a substance that is unlawful under the CSA). Depending on class size and dynamics, instructors could split the class into two groups to reconstruct the arguments of the majority and the dissent. Ask the students to identify each of the techniques of statutory interpretation that the majority opinion applies to find that the plaintiffs are not within the exception to the illegal use of drugs. (Plain meaning and legislative history; also arguably general public purpose in the sense that the court argues that Congress would only depart from the clear "war on drugs" policy clearly and expressly, which the exception does not do.) The majority opinion admits that plain meaning and legislative history are open to debate. Ask the students to discuss, then, why the majority and dissent come to different conclusions based on those "indeterminate" indications of the meaning of the statutory language. Guide them in a debate over the "better" interpretation.

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Also note the earlier indication that the opinions consider without explicitly referencing the "rule against surplusage" maxim when discussing whether the word "other" in the exception is made redundant by the cities' preferred interpretation.

k. Cyberlaw in Action box: Note the content and apparent purposes of § 230 of the Communications Decency Act. Note its application to defamation cases. Then focus on the *Craigslist* decision, in which the Seventh Circuit holds that a "natural reading" of § 230 protects Craigslist against Fair Housing Act liability for unlawful statements posted by users of the Craigslist forum. Ask students about the public policy questions that the case suggests. Then turn to a discussion of the *Fair Housing Council* case (Problem #10; see below). Ask the students whether *Craigslist* and *Fair Housing Council* are inconsistent decisions, or whether they can be harmonized.

l. The *Olympic Airways* case discussed in the Global Business Environment box reveals that the same techniques used to interpret statutes may be used in the interpretation of treaties.

4. Remind students of the limits on courts, as stated near the end of the chapter.

5. Note the Appendix that deals with reading and briefing cases. A sample brief of *Price v. High Pointe Oil Company, Inc.* appears there.

IV. RECOMMENDED (CLASSIC) REFERENCES:

A. B. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS (1921).

B. J. FRANK, LAW AND THE MODERN MIND (1930) (perhaps the best-known legal realist tract).

C. W. FRIEDMANN, LEGAL THEORY (5th ed. 1967) (a general treatise on jurisprudence).

D. W. FRIEDMANN, LAW IN A CHANGING SOCIETY (2d ed. Penguin 1972) (an examination of the interaction between law and social change which focuses on a variety of topical problem areas).

E. L. FULLER, THE LAW IN QUEST OF ITSELF (1940) (a critique of legal positivism and related jurisprudential views).

F. E. LEVI, AN INTRODUCTION TO LEGAL REASONING (1949).

G. D. LLOYD, THE IDEA OF LAW (Penguin 1970) (a general discussion of jurisprudence from what seems to be a positivist viewpoint).

H. Fuller, *The Case of the Speluncean Explorers*, 62 HARV. L. REV. 616 (1949) (a classic hypothetical case that provides an excellent vehicle for discussing statutory interpretation and schools of jurisprudence).

I. P. SUBER, THE CASE OF THE SPELUNCEAN EXPLORERS: NINE NEW OPINIONS (Routledge 1998) (an outstanding work that builds upon Fuller's classic case by adding new hypothetical judicial opinions that illustrate other schools of legal thought and modern jurisprudential themes).

J. B. WEINREB, NATURAL LAW AND JUSTICE (1987).

K. K. LLEWELLYN, THE BRAMBLE BUSH (1930 edition and later editions) (Karl Llewellyn's classic work dealing with many legal reasoning issues).

V. ANSWERS TO PROBLEMS AND PROBLEM CASES:

1. The court should determine whether the common-law "discovery rule" for tolling of the statute of limitations applies when the relevant statute of limitations does not appear to allow room for the discovery rule to apply, except in statutorily specified situations not applicable to the case at hand. The Supreme Court of Michigan held that it does not. Instead it applied the rule that when

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an applicable statute and a common law rule conflict, the statute controls. *Trentadue v. Gorton*, 738 N.W.2d 664 (Mich. 2007).

2. Students should apply the priority rules as follows:
   - The federal administrative regulation (due to federal supremacy)
   - The U.S. Constitution
   - The federal statute
   - The treaty (due to federal supremacy)
3. No. In upholding the district court's issuance of an injunction against Lynch and Moscinski, the U.S Court of Appeals for the Second Circuit ruled that natural law did not constitute a valid defense. *United States v. Lynch*, 1996 U.S. App. LEXIS 32729 (2d Cir. 1996).
4. An extreme legal positivist would say that the laws are valid positive law and they should be enforced and obeyed. Natural law thinkers, on the other hand, would generally say that unjust laws are not law and should not be enforced and obeyed. Because Sunday closing laws restrict economic freedom, a natural law person of strong laissez-faire views would regard them as unjust, and would say that they should not be enforced and obeyed. A natural law thinker who is a Christian traditionalist would probably take the opposite view, because these laws respect the Sabbath.

   As usual, legal realists would be quick to note how the non-enforcement of these laws vindicates their distinction between the law in action and the law in the books. Adherents to sociological jurisprudence could identify the social factors that originally led to the enactment of Sunday closing laws--e.g., religious sentiment and the political power of religious groups. They could also note that the current failure to enforce Sunday closing laws reflects the growing secularization of American life, the prevalence of society's consumer orientation, and the political influence of business. They could further suggest that a balancing of interests between these forces and remaining religious influences explains why Sunday closing laws have not been repealed outright. Finally, some sociological thinkers might argue that the law should follow the times, and that, because Americans evidently want to be able to shop on Sunday, Sunday closing laws should not be enforced or obeyed, or should be repealed.
5. This problem asks students to engage in the process of case law reasoning, determining whether the prior "baseball rule" cases should control or are distinguishable from the facts of the Rawlins' case. Students might argue that Rawlins was hit by a foul ball, which is at the heart of the risks the baseball rule expects spectators will accept. Certainly, students should distinguish Rawlins's being hit by a foul ball during the course of the baseball game from Coomer's being hit by a hotdog thrown by a mascot. However, because the Indians interfered with Rawlins's ability to watch the game and take action to avoid the foul ball, through the command to vacate their seats enforced by the ushers, students might distinguish Rawlins's injury from the typical baseball rule case. This problem is a simplified version of the facts from *Rawlins v. Cleveland Indians Baseball Company, Inc.*, 48 N.E.3d 136 (Ct. App. Ohio 2015), in which the court refused to grant summary judgment for the Indians on the basis of the baseball rule, writing:

   > Our finding that there is a genuine issue of material fact is based on the circumstance of this case. Spectators at sporting events routinely leave their seats — to go to the restroom or purchase concessions, for example — and are still subject to the doctrine of primary assumption of the risk. But a different circumstance may be created when spectators are forced to leave their seats for a non-emergency or unjustified reason. We find that on the record in this case, a genuine issue of material fact exists and the trial court, therefore, erred in granting summary judgment in favor of the Cleveland Indians.
6. Using case law reasoning. The Florida Supreme Court held that when a person's ingestion of a

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contaminated beverage produces emotional distress, damages for that distress are recoverable in a negligence action even if there was no physical injury-producing "impact." In so holding, the court declined to abolish the physical injury/impact rule generally applicable in Florida to negligent infliction of emotional distress cases, but distinguished this case from precedents setting forth that rule by noting the special circumstances presented by beverage-ingestion cases. Those special circumstances called for an exception to at least the physical injury portion of the impact requirement. In addition, the court relied on precedents that created other exceptions to the physical injury/impact rule. *Hagan v. Coca-Cola Bottling Co.*, 804 So. 2d 1234 (Fla. 2001).

7. No. Relying on the legislative purpose and legislative history techniques of statutory interpretation, the Supreme Court focused on what the ADEA was designed to do (deal with the problem of employers favoring younger workers over older workers) and how we know that (legislative studies, legislative hearings, introductory provisions of ADEA, and society's focus on "youth culture"). The Court was disinclined to apply the ADEA language in mechanical fashion, because doing so would contravene what the Court regarded as a clear statutory focus on addressing the problem of discrimination against older employees in favor of younger employees. *General Dynamics Land Systems, Inc. v. Cline*, 540 U.S. 581 (U.S. Sup. Ct. 2004).
8. The court should apply the techniques of statutory interpretation to determine the meaning of "personal privacy." In this particular case, the U.S. Supreme Court held that the "personal privacy" exception in the Freedom of Information Act (FOIA) does not furnish corporations protection against disclosure of requested documents in government files based on the plain meaning of the language, looking at it in context. The Court noted, "[w]hen it comes to the word "personal," there is little support for the notion that it denotes corporations, even in the legal context." Moreover, the Court referenced the maxim that "when interpreting a statute we construe language in light of the terms surrounding it." Referencing the combination of the words "personal" and "privacy" can mean something than their individual meanings put together (as with the term "golden boy" meaning something other than a boy who is gold colored), the Court explained that "personal privacy" "suggests a type of privacy evocative of human concerns." *Federal Communications Commission v. AT&T, Inc.*, 131 S. Ct. 1177 (2011).
9. No. On appeal, the Supreme Court of Minnesota held that the state's dog bite statute applies to municipal owners of dogs. In deciding that the word "owner" in the dog bite statute could apply to municipal owners of dogs and not merely to private owners, the court applied the plain meaning technique. The statute defined "owner" as "any person harboring or keeping a dog." Given how the word "person" is often interpreted in the law (so as to include not only human beings but also corporations and governmental entities) the definition would naturally and logically include municipal owners as well as private owners. If the legislature had meant for the statute to apply only to private owners and not to governmental owners, it would have been easy for the legislature to have said so. Having concluded that the dog bite statute applies to municipal owners of dogs, the court went on to hold that a separate statute authorizing the use of reasonable force by police officers may sometimes apply so as to protect the municipality against liability that would otherwise arise out of certain dog bite incidents. *Hyatt v. Anoka Police Dept.*, 691 N.W.2d 824 (Minn. Sup. Ct. 2005).
10. The U.S. Court of Appeals for the Ninth Circuit held that § 230 of the Communications Decency Act protected Roommate against Fair Housing Act liability for certain content posted on its website by users thereof, but, importantly, did not immunize Roommate against Fair Housing Act liability regarding statements as to which Roommate was an information content provider (as opposed to merely a provider of an interactive computer service). The court stressed the distinction between an interactive computer services (ICS) provider and an ICS provider that also serves as an information content provider. The distinction was important, the court observed, because § 230 protects ICS providers against liability for statements posted by another information content provider but not against liability for the ICS provider's own statements as an

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information content provider. The specific directions Roommate provided users regarding information they needed to submit effectively made Roommate a co-maker of many of the statements posted by the users. It may be useful to ask students a slightly reformulated version of the question posed in the Cyberlaw in Action box earlier in the chapter: whether *Craigslist* (a decision discussed in the Cyberlaw box) and *Fair Housing Council* are inconsistent decisions, or whether they can be harmonized. (They can be harmonized when one fully takes into account the language of § 230. *Craigslist* is a case in which the ICS provider (Craigslist) was only that. It therefore could not be held liable for the information content posted by someone else. In *Fair Housing Council*, the ICS provider (Roommate) likewise could not be held liable for the information content posted by someone else. However, Roommate also provided its own information content, and thus could be held liable for its own statements that arguably violated the Fair Housing Act.) *Fair Housing Council of San Fernando Valley v. Roommate.com, LLC*, 521 F.3d 1157 (9th Cir. 2008).

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