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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) Much of the origins of the law dealt with issues related to property ownership.
   - ◎ true
   - ◎ false

2) The law today is crucial to business by creating some degree of reliability to be used in business planning and commercial transactions and promoting good faith dealing among merchants.
   - ◎ true
   - ◎ false

3) It is more common for States to amend their constitutions than it is for Congress to amend the U.S. Constitution.
   - ◎ true
   - ◎ false

4) A presidential veto can be overridden by a two-thirds majority vote of the Senate.
   - ◎ true
   - ◎ false

5) All states have combined courts of law and equity.
   - ◎ true
   - ◎ false

6) A statute of limitations determines the minimum and maximum amounts of monetary relief that may be granted in different types of civil lawsuits.
   - ◎ true
   - ◎ false

7) A single wrongful act may violate both civil law and criminal law.
   - ◎ true
   - ◎ false

8) Freedom of speech, as defined in the Constitution, is an example of substantive law.
   - ◎ true
   - ◎ false

9) Civil law allows one party to be compensated for money lost due to another party's unlawful conduct.
   - ◎ true
   - ◎ false

10) When an Illinois appellate court makes a decision, stare decisis requires that Delaware trial courts follow the case precedent when a case with a similar fact situation arises.
   - ◎ true
   - ◎ false

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11) Attorneys representing a business are only permitted to consult current laws in order to determine the best course of action or strategy.
- ◎ true
- ◎ false

12) The United States Constitution is consistently amended to reflect the current societal needs.
- ◎ true
- ◎ false

13) According to the doctrine of specific performance cases with similar facts and issues should have the same outcome.
- ◎ true
- ◎ false

14) Employing stare decisis and precedent allows a business to predict how the court will treat their situation and plan strategically.
- ◎ true
- ◎ false

15) The courts always apply the doctrine of stare decisis.
- ◎ true
- ◎ false

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

16) Black's Law Dictionary, as cited in the textbook, defines "law" as including each of the following except
- A) A body of rules
- B) Conduct prescribed by a controlling authority
- C) Having the power to bind persons
- D) A tool for regulating personal ethics.

17) If a state passes a new law banning horseracing within the state, the law would be defined as:
- A) An ordinance
- B) A regulation
- C) A statute
- D) A common law

18) The City of New York has passed a law banning cigarette and cigar smoking in public bars and restaurants. The law would be defined as
- A) An ordinance
- B) A regulation
- C) A statue
- D) A common law

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19) Erin witnessed a motor vehicle accident but did not stop because she did not want to get involved. Had she stopped, she could have saved the life of Joseph, who was thrown from the car. When Joseph's widow hears that Erin could have easily saved Joseph's life but chose to ignore the situation, she sues Erin. The state has no "Good Samaritan" laws or duty-to-assist laws, but such cases have been brought in the past. Which of the following will the court apply when making a decision in this case?

A) Statutory law
B) Administrative law
C) Common law
D) Equity law

20) Which of the following outcomes would not be available in a court of equity?

A) An order for the payment of money damages for a breach of contract
B) An order prohibiting the building of a 16-foot fence in a residential neighborhood
C) An order requiring teachers to stop picketing in a particular area
D) An order requiring a party to turn over goods after being found guilty of breach of contract

21) A state's appellate court has made a decision in a particular case. That decision becomes case precedent in all cases except the cases heard in

A) The state's supreme or highest court
B) The state's special courts, such as family or probate
C) The state's general trial court
D) The state's inferior or small-claims court

22) Regulations created and enforced by federal regulatory agencies are examples of

A) Administrative laws
B) Antitrust laws
C) Labor laws
D) Securities laws

23) Secondary sources of law

A) Are used as precedent when there is no primary source of law that applies to the facts of a case.
B) Are considered a legally binding and valid independent authority.
C) Apply to both federal and state legal issues.
D) Are generally advisory in nature.

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24) Once stare decisis and case precedent are established
    A) It may be disregarded and overturned by a court if it deems such action appropriate
    B) It may not be disregarded by a court but may be overturned by state statute
    C) It may not be disregarded by a court or be overturned by state statute but may only be changed by amendment to the state's constitution
    D) It may not be disregarded or overturned once established and must be followed without exception

25) The authoritative source for legal terms is
    A) The U.S. Constitution
    B) The Uniform Model Law
    C) Black's Law Dictionary
    D) Google Scholar

26) A state statute mandates that the statute of limitations of a negligence lawsuit is two years and the plaintiff is barred from filing the suit if he or she files after that time. This statute is an example of a
    A) Private law
    B) Procedural law
    C) Criminal law
    D) Substantive law

27) The U.S. system of common law
    A) Is derived from the French common law
    B) Is derived from the British common law
    C) Was established primarily by the U.S. Constitution
    D) Is a secondary sources of law established in various Restatements of the Law

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28) In Flagiello V. Pennsylvania Hospital the court determined that
   A) The charitable immunity doctrine was specifically and clearly written; therefore, the court was bound to follow the clear intent of the statutory scheme and find for the hospital
   B) The charitable immunity doctrine had been litigated in the past and stare decisis required that the court adhere to established case precedent and find for the hospital
   C) Current societal norms rendered the current doctrine inapplicable to the case and fundamental fairness allowed the court to deviate from established case precedent and find in favor of Flagiello
   D) The charitable immunity doctrine can be repealed or overturned only by the state's legislature, and stare decisis required that case precedent be followed; however, due to the severity of Flagiello's injuries, the charitable immunity doctrine allowed for certain exceptions, permitting Flagiello to recover in the case

29) Irina promised to mow Axel's lawn. In return, Axel paid her $500.00. When Irina arrived, she became mad at Axel and only mowed one strip of grass and then mowed over his foot and through his prized flower garden and then left. Which statement below is correct?
   A) Axel can only sue Irina for one category of law, such as breach of contract because laws are mutually exclusive
   B) Technically Irina did mow part of Axel's lawn and partial completion of a contract bars bringing a lawsuit
   C) Axel could sue for multiple causes of actions because one act of transaction may be classified in more than one legal category
   D) Axel would be barred from recovery because he invited Irina to his house

30) _____ provide(s) mechanisms for resolving disputes from duties and rights and allows parties to enforce them in a court of law.
   A) Ethics
   B) Societal norms
   C) Laws
   D) The will of the majority

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31) George, the supervisor at Shylo Company, punches an employee, Fred, when he finds him asleep next to his workstation. Fred sustains a broken jaw. Which statement is true?
    A) George could not be sued as he was an agent of his employer, Shylo Company
    B) George could be both prosecuted criminally and held civilly wrong to compensate Fred for the damages he sustained from being hit
    C) Fred would have to choose whether to pursue this cause of action either in the criminal system or civil system
    D) Fred would need to base any lawsuits brought on a violation of an ordinance

32) Sherry attends a training session at her job as a contract administrator. The presenter continually refers to the legal term "force majeur" that is unclear to Sherry. What is the term “force majeur” an example of?
    A) Legalese or jargon
    B) Primary authority
    C) Secondary authority
    D) Ethical constructs

33) The wording used in United States law is a combination of
    A) Spanish, Latin and Portuguese
    B) Russian, Swedish and French
    C) German, English and French
    D) Latin, English and French

34) The trend is to make legal documents and language:
    A) More accessible to the average person
    B) Remain unchanged
    C) Add additional layers of legalise to add credibility to the law profession
    D) Modify all legal documentation for the purpose of making is less accessible to the average person

35) Today, many antidiscrimination statutes have been passed, especially in education and employment. The goals of these statutes are
    A) To establish basic standards of employment qualifications and educational standards
    B) To promote the most cost-effective systems
    C) To ensure that every person is treated the same
    D) To ensure consistency and fairness

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36) In commerce today, the intent of laws include all of the following except
   A) To promote good faith
   B) To promote maximum profits
   C) To encourage fair dealing
   D) To create reliability

37) Bekah owns Sweet Creations, a bakery which is famous for making the most delicious organic baked goods. Bekah learns that a bill, being publicly debated in Congress, is likely to become law, which will require any bakeries stating that their products are organic to purchase all of baked goods through one central supplier to ensure accuracy and quality of baked goods deemed organic. Finding out this information, Bekah contacts the central supplier to enter into a long term contract for the lowest possible price of the supplies as she predicts the prices will soar once the general public learns of this new law. Bekah
   A) Is engaged in unethical insider trading as she is using her knowledge to her own advantage
   B) Is morally required to ensure that others in her industry know of this bill so that they too can make similar contracts
   C) Is legally aware, which allows her to be proactive in business planning
   D) Will not be able to enforce the terms of the contract due to a change in circumstances

38) Connor is an aerospace engineer and project manager for Space Corporation. His team is actively researching, developing and building a satellite to be launched in soon. Connor learns that a new statute is passed that requires all satellites must be built using American made supplies. He immediately orders his team to scrap the current satellite and start building a new satellite in compliance with the new statute. However, what he did not know is that a provision of the new law states that this applies only to new projects started six months from today. To assist with this type of decision, Connor should have
   A) Consulted an attorney who is skilled in this area of law and worked cooperatively for better strategic planning.
   B) Made no changes in his actions as his decisions were reasonable.
   C) Done a cost-benefit analysis to determine if it was worth paying an attorney to advise about the law.
   D) Sought the approval of all the employees of Space Corporation to determine the will of the company.

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39) The European Union fining Amazon $887 million related to its advertising policies illustrates a trend in the law that
   A) Globalization of commerce is inherently more expensive.
   B) Sovereignty of United States business is being challenged worldwide.
   C) Penalties are becoming stiffer for non-compliance of laws.
   D) Big business is unethical.

40) Recent data breaches of some major corporations have increased
   A) The need for legal advice in technology issues.
   B) The exposure of officers and director liabilities.
   C) The need for businesses to keep sensitive information only in hard copy form rather than electronically stored.
   D) The liability of shareholder for the action or inaction of the corporation.

41) An attorney working within a business context is called a(an)
   A) Barrister
   B) Esquire
   C) Counsel
   D) Jurisdoctor

42) Sunshine Recording Artists, a major business in the music industry, routinely seeks to copyright the songs of each artist they sign. Rockin' Robert, a new artist with amazing musical talent has just signed with them and he has already created 40 amazing songs in the first week alone and he is not expected to slow down. What advice would you give Sunshine Recording Artists about their legal needs due to their extraordinary increase in intellectual property rights due to Rockin' Robert?
   A) They must hire a litigator who possesses strong trial skills in the courtroom.
   B) They must get a computer program where they can file their own copyright paperwork since it is coming in such large quantities.
   C) They should terminate their contract with Rockin' Robert because the cost of the legal representation could outweigh the benefits.
   D) They should employ in-house counsel because of the extraordinary regulatory burdens.

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43) The state of New Jersey enacts a statute that states no private citizen may own a gun. This statute will
    A) Be declared unconstitutional because a state law cannot violate the Second Amendment of the U.S. Constitution.
    B) Be held constitutional as long as the state of Virginia has a substantial governmental interest.
    C) Be limited in jurisdiction and apply only in the state of Virginia.
    D) Be declared unconstitutional only if it violates the constitution of Virginia.

44) In 2008, the state of North Carolina created a law that made it illegal for a registered sex offender to access social media websites that also allow minors to access the same social media. The law demonstrates:
    A) Secondary authority
    B) Ordinance
    C) Primary authority
    D) Common law

45) Packingham, a registered sex offender in North Carolina, was convicted of a felony for violating a North Carolina law which made it a felony for a registered sex offender to access social media sites that allowed minor children to access the same social media. Packingham appealed his conviction to the U.S. Supreme Court which overturned his conviction stating that the law was unconstitutional because it impermissibly restricted lawful speech and violated the First Amendment. The opinion of the U.S. Supreme Court is
    A) Secondary Authority
    B) Civil law
    C) Precedent
    D) Regulations

46) Assume that the North Carolina Supreme Court upholds a ban that registered sex offenders cannot access social media sites that minors may also access. If this was declared unconstitutional by the U.S. Supreme Court, because it impermissibly limits lawful speech, the precedent that will be applied to future cases is known as the doctrine of:
    A) Due process
    B) Equity
    C) Res Ipsa Loquitor
    D) Stare decisis

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47) Rhonda recently earned her driver's license. She learned all the rules of the road within her state, Indiana, and aced her Indiana driver's test. While traveling through Missouri, she follows all of the traffic rules that she learned in Illinois. If a Missouri traffic rule conflicts with an Indiana law, which one would apply to an Indiana licensed driver who is driving in Missouri?

A) Indiana laws will apply since Rhonda is licensed and domiciled in Indiana.
B) Missouri laws will apply to Rhonda when she is driving in Missouri.
C) The state which has the strictest laws will apply no matter in which state Rhonda drives.
D) Since Rhonda is an Indiana resident and crossed state lines into Missouri, federal law will apply.

48) The U.S. Constitution created three branches in the federal government. Those three branches executive, legislative, and

A) Administrative
B) State
C) Judicial
D) Criminal

49) _____ has the power to regulate interstate commerce.

A) The U.S. Supreme Court
B) Congress
C) The President
D) The Department of Justice

50) Statutory law is

A) Created by the legislative branch and approved by the executive branch.
B) Created by the legislative branch and affirmed by the judicial branch.
C) Created by the executive branch and affirmed by the legislative branch.
D) Created by administrative agencies and affirmed by the legislative branch.

51) Congress can override a presidential veto by:

A) A majority vote
B) Unanimous vote
C) 3/4 majority vote
D) 2/3 majority vote

52) _____ is derived from the courts.

A) Civil law
B) Criminal law
C) Equity law
D) Statutory law

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53) Common law is used by the United States, United Kingdom, Canada and
A) Australia
B) Japan
C) Spain
D) Brazil

54) Erica's Seashells Company realizes that it is losing money daily and must file bankruptcy. Which level of government's law would apply?
A) State
B) Federal
C) Village
D) International

55) Alexander entered into a contract with Eowynn to purchase a vintage 1962 Shelby Cobra for $5000.00. After both parties agreed to the price Eowynn learned that the actual market value of the car is around $760,000.00. She therefore decides to back out of the deal and offers to give Alexander his money back. Alexander does not want the money, he wants the car. For what remedy might Alexander sue Eowynn?
A) Criminal punishment
B) The equitable remedy of specific performance
C) The equitable remedy of an injunction
D) The monetary damages caused by the breach of contract.

56) Each day that Lin goes to work she parks on the street in front of an expired meter. She is fully aware that she will get a $2.00 parking ticket each time that she does this. The closest parking lot charges $100.00 a month to park there. Lin decides that it is cheaper to disregard the law, since the benefit outweighs the cost in that it is cheaper for her to pay the daily parking ticket than the monthly rate for the parking lot. This type of strategy is called:
A) Non-compliance
B) Avoidance
C) Prevention
D) Value creation

57) Marty Company, located in Illinois, learns that the State of Illinois will be increasing taxes on all businesses. Before the tax goes into effect, Marty Company relocates to Missouri where the taxes are far lower on businesses. This type of business strategy is called:
A) Non-compliance
B) Avoidance
C) Prevention
D) Value creation

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58) Elliott is in-house counsel for a major corporation. The chief executive officer, Daryll, wants to create a policy whereby if an employee is pregnant, they will only work a maximum of 20 hours a week to ensure that a pregnant employee is not overworked. Daryll asks Elliott to research the law to determine if there would be any potential legal risks with the course of action. This type of business strategy is called

A) Non-compliance
B) Avoidance
C) Prevention
D) Value creation

59) A business securing patents for all of their creations and inventions is an example of what type of business strategy?

A) Non-compliance
B) Avoidance
C) Prevention
D) Value Creation

60) Andre, Michael and Reed go on a hunting trip to Texas, leaving their good buddy Evan behind to run the business they own together as partners. In a fit of jealousy and rage, Evan burns the business to the ground. Which statement below is correct?

A) Since Evan's actions were criminal, he could be held criminally liable and since his actions caused monetary damages to the business, he could also be held civilly liable to his partners for the damages.
B) Since Evan's actions were criminal, he can only be held criminally responsible and the other partners will have pay for the repair to the business
C) Evan will only be held civilly liable since no person was injured and it was only monetary damages.
D) Evan will not be liable criminally or civilly unless he violated a statute.

61) Business corporation law is an example of what type of law?

A) Procedural law
B) Private law
C) Public law
D) Civil law

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62) Congress is drafting a federal statute to increase the speed limit on the interstate to 100 miles per hour. However, it has not been passed or been approved by the President. It is called a(n)
   A) Bill
   B) Ordinance
   C) Secondary authority
   D) Precedent

63) Cathy and Tomeika are looking to build a small building where they can run their trendy clothing boutique shop as a business. When they find the perfect spot, they are told that cannot put a business there, since it is zoned residential. The zoning limit is an example of
   A) Common law
   B) An ordinance
   C) Unethical conduct
   D) Unconstitutional conduct

64) Secondary sources of law
   A) Are binding in all 50 states
   B) Ensure that the law is clear to all that read it
   C) Requires that the executive branch approves it
   D) Have no independent authority or legally binding effect

65) Jamal enters into a contract with Lonnie to provide tutoring in Biology one day a week for a year. After the second session, Lonnie decides to stop tutoring Jamal due to their conflicting schedules. Jamal sues Lonnie for breach of contract. This is an example of:
   A) Private laws
   B) Public laws
   C) Procedural laws
   D) Equitable laws

66) Another term for in-house counsel is:
   A) of counsel
   B) pro bono counsel
   C) outside counsel
   D) general counsel

67) The "general counsel," may also
   A) Supervise the Board of Directors in a large corporation
   B) Supervise one or more attorneys, usually called "associate counsel"
   C) Supervise and approve or disapprove all managerial decisions
   D) Supervise the actions of the shareholders

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68) Which statement below is correct as it relates to business strategy?
A) Since legal fees and representation costs have sky-rocketed, large businesses should focus on hiring one attorney to address all their legal needs.
B) Those in managerial roles should learn more about the law so as to decrease their need for legal representation.
C) Since the law has become increasingly complex and specialized, and businesses routinely face many different legal issues, it is not unusual for a business to need to seek advice from more than one attorney.
D) All business decisions should be run by an attorney before the business moves forward with any plans.

69) The governmental body charged with enforcing and carrying out the laws promulgated by Congress is:
A) Administrative agencies
B) The judicial branch
C) Local townships
D) the American Law Institute

70) Japan does not rely extensively on precedent, but rather adheres to a strict interpretation of a legislatively established code or regulation. What type of system of law is that called?
A) Common law system
B) Civil law system
C) Statutory law system
D) Administrative law system

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

71) A case of first impression comes before the state court in Kentucky. While the issue has not been heard in Kentucky courts, appellate courts in the states of Wisconsin, Iowa and Indiana have ruled on the issue, providing slightly different outcomes from one another. Further, the case heard by the Indiana court was ruled upon by the U.S. Supreme Court. Explain whether the court in Kentucky is bound by the decision of any of the other courts and why.

72) Name the three essential functions of the U.S. Constitution.

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73) Describe the similarities and differences among statutes, ordinances and regulations.

74) Tom attacked Kathy in the parking lot of a bar. He knocked her to the ground and stole her purse, breaking her arm in the process. Kathy works as a data input specialist at a bank and missed eight weeks of work due to her injury. Discuss how her case could be handled under both the criminal and civil law systems, including possible remedies available under each system.

75) Lisa owns a wedding planning business. Her signature wedding services are in demand all over the country and keep her very busy. She seeks legal advice from counsel when necessary. A new federal statute becomes effective in six months that allows a wedding planner to protect their signature wedding techniques as a trade secret and also creates penalties if a wedding planner infringes upon the protected trade secrets of another wedding planner. Chris, her trusted counsel, offers four strategies to plan for the new statute. First, Chris says the penalties are rather small compared to the profit she makes each time she plans a wedding. Therefore, she can just ignore the new law and all the hassle that comes with it. A second option Chris offers is that should could change her business classification from a wedding planner to an event planner because this new law only applies to wedding planners and not event planners. He believes this is a legal loophole. The third option Chris offers is to register some of her most popular services as trade secrets and create a brochure where she lists the types of signature wedding plans she has registered and not deviate from that list of offered services. This will ensure that she does not risk infringing upon a trade secret another wedding planner has protected. Finally, the fourth option Chris offers is that since the law is relatively new and virtually unknown to anyone in her industry, they should register for every possible type of wedding technique that she has ever used or can think to

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possibly use in the future. This will limit the options of all the other wedding planners and will therefore make her the wedding planner with the most services to offer. For each of the four options Chris offered, identify and briefly explain the type of business strategy employed.

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Answer Key

Test name: Chapter 01

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

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Chapter 1
Legal Foundations and Thinking Strategically

CHAPTER OVERVIEW

This chapter discusses important touchstones for understanding the legal process and identifying legal issues that arise in the business environment.

KEY LEARNING OUTCOMES

Outcome	Accreditation Categories
Articulate a working definition of law and explain its origins.	Knowledge
Categorize various laws and articulate the functions of law and legal systems.	Application
Explain the importance and benefits of legal awareness for business owners and managers in creating strategy and adding value to a company, and the role of counsel in decision making.	Application
Differentiate between and provide examples of primary and secondary sources of American law.	Analytical Thinking
Apply the legal doctrine of stare decisis in a business context.	Application

Teaching Tip: Manageable Material

Students are often overwhelmed with their first introduction to law. It is important to cover the material in manageable amounts and use lots of examples, both real and hypothetical.

I. INTRODUCTION TO LAW

Points to emphasize:

- **Law** is a body of rules of action or conduct prescribed by a controlling authority and having legal binding force. (*Black's Law Dictionary*)
- The rule of law means that we submit to being governed not by strength, power, party, name, or wealth, but by a fair and transparent body of law that applies equally to every member of society.
- Law may be set down in written code as prescribed by an elected legislative body or take the form of judicial decisions and actions of government agencies.
- The common characteristic of state law is that it creates duties, obligations, and rights that reflect accepted views of a given society.
- Important to business, the law provides a mechanism to resolve disputes arising from duties and rights and allows parties to enforce promises in a court of law.
- Law is often classified by subject matter, so that one refers to certain rules regarding agreements as contract law or certain laws that regulate the rights of employees as employment law.

II. CATEGORIES OF LAW

Points to emphasize:

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- It is helpful to break down law into broad categories based on classifications of a particular function or a right afforded by law.
- Laws are established by governments and courts to maintain order and protect rights, and ethics is a broader set of societal standards that dictate what is right/wrong based on values, beliefs, and norms. Laws and ethics often overlap, but they often do not perfectly align.
- Table 1.1 sets out the various categories of law and provides examples.

TABLE 1.1 Categories of Law

Category of Law	Purpose	Examples
Criminal	Protect society; the violation of criminal laws results in penalties to the violator such as fines or imprisonment.	Homicide, robbery, theft
Civil	Compensate parties (including businesses) for losses as a result of another's conduct.	Negligence that causes a personal injury
Substantive	Provide individuals with rights and create certain duties. This is the definitional *what* of the law.	A state law that permits a business or individual to recover losses in a shipping contract
Procedural	Set a structure and rules for pursuing substantive rights. This is the definitional *how* of the law.	A state law that sets out a time period during which an injured party must file a lawsuit to recover losses
Public	Governs and regulates the relationship between individuals or entities and the federal, state, and local government.	Federal statutes (Patent Act) or state statutes (business corporation law)
Private	Governs and regulates a legal relationship between or two or more parties absent a specific public law.	Contract for services between a vendor and a business

- These categories are *not* mutually exclusive. For example, a person who punches another person in the face has committed both a criminal act (the crime of assault and battery) and a civil wrong (the tort of assault and battery).

A. Language of the Law

Points to emphasize:

- It is vital that business students have a basic understanding of legal terminology that might be used in a business context in their future careers.
- ***Black's Law Dictionary*** is the authoritative source for legal terms.

B. Functions of Law

Points to emphasize:

- Law provides for a system of order that defines rules of conduct and levies punishment for violation of those rules.
- One purpose of law is to ensure consistency and fairness and to promote equality and justice in society.

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- The law also sets out a system for resolving disputes by providing a basis for deciding the legal interest and rights of the parties.
- In business, law serves as an important catalyst for commerce by promoting *good faith dealing* among merchants and consumers and giving some degree of *reliability* for business planning and commercial transactions.

III. LAW IN CONTEXT: BUSINESS AND STRATEGY

Points to emphasize:

- The first step to learning how legal decisions should be made in a business context is to develop legal insight by understanding the fundamentals of legal theory and how they may impact business.
- The second step is learning to apply legal theories in practice and recognizing that having legal awareness may present opportunities for proactive business planning. This awareness may empower business owners and managers to limit liability, gain a competitive edge, and add value to the business.
- Managers who work cooperatively with attorneys make better business decisions.

A. Business Swimming in a Sea of Law: Defining Strategy

Points to emphasize:

According to Professor Constance Bagley, "business is swimming is a sea of law." Consider the following current regulatory trends:

- *Navigating increased U.S. and foreign regulation* (e.g., federal regulation of financial markets, European Union (EU) regulation of antitrust and consumer privacy).
- *Varying international regimes in trade and intellectual property* (e.g., World Intellectual Property Organization versus developing nations).
- *Stiffer penalties for noncompliance* (e.g., Amazon was recently fined US$887 million by an EU privacy regulator for violations related to its advertising policies).
- *Increased officer and director liability* (e.g., liability for data breaches and ransomware attacks).
- *Substantial increase in attorney-directors* (e.g., attorney representation on U.S.-based corporate boards nearly doubled from 2000 (23 percent) to 2009 (48 percent). The increase is even more dramatic when focusing on commercial banks only. Where the numbers jump from just less than 40 percent to nearly 75 percent between 1999 and 2014—an 86 percent increase).
- *Changing legal landscape* (e.g., uncertainty surrounding use of Covid-19-related waivers and workplace rules).

B. Using Strategy in Legal Decisions

Points to emphasize:

- Focus on the big picture, on the strategic nature of these complex and multifaceted interactions.

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- A strategy refers to a set of guideposts created to achieve an overall objective.
- The legal environment is full of uncertainty regarding the level of compliance and the level of enforcement, especially in areas of real-world factors—such as limited resources, opportunistic behavior, and asymmetrical information.
- Business leaders often pursue legal strategies such as (1) noncompliance, (2) avoidance, (3) prevention, and (4) value creation or legal competitive advantage.
- Business owners and executives deploy tactics to achieve the objectives as part of the strategy.

C. Role of Counsel

Points to emphasize:

- Business owners and managers should work with counsel to increase business opportunities, reduce costs, and limit risk and liability.
- *In-house counsel* refers to counsel that is part of the executive or midlevel management team in a business.
- General counsel, who are in-house counsel, may also serve as a *secretary* (corporate officer) who is responsible for record keeping and complying with notice and voting requirements of the board of directors.
- *Business lawyers or corporate lawyers* devote their time to advising businesses on issues such as formation, governance, labor and employment laws, regulatory agency compliance, legal transactions, intellectual property, and other legal issues important to business operations.

IV. PRIMARY SOURCES AND LEVELS OF AMERICAN LAW

Points to emphasize:

- Much of American law is derived from English legal doctrines.
- Modern law is generally a combination of constitutional law, statutory law, common law, and administrative law at the federal, state, and local levels. These sources of law are known as *primary sources* of law.
- Managers who work cooperatively with attorneys make better business decisions.

A. Constitutional Law

Points to emphasize:

- Constitutional law is the foundation for all other law in the U.S. and is the supreme law of the land.
- It functions with other sources of law to (1) establish a structure for the federal and state governments and set rules for amending the constitution; (2) grant specific powers for the different branches of government; and (3) provide procedural protections for U.S. citizens from wrongful government actions.
- Constitutional law includes permanence (basic principles of society and rarely amended) and preemption (constitutional law is supreme over other sources of law).

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Case 1.1 Kelo et al. v. City of New London, Connecticut, et al.

Facts: New London had experienced decades of economic decline. State and local officials targeted New London for economic revitalization. The New London Development Corporation (NLDC), a private nonprofit entity, was established to assist the city with economic development. The NLDC's development plan aimed to leverage Pfizer's relocation to New London and create new hotels, restaurants, and shopping. The city council authorized NLDC to acquire property by exercising eminent domain in the city's name. Kelo and a few other holdouts refused to negotiate with NLDC and brought action in the New London Superior Court, claiming the taking of their property would violate the Fifth Amendment of the U.S. Constitution, which states: "[N]or shall private property be taken for public use, without just compensation." The case ultimately made it to the U.S. Supreme Court.

Opinion: The U.S. Supreme Court allowed the NLDC to take Kelo's property in exchange for just compensation. The Court stated that public use encompasses public purposes to accommodate changing social needs such as economic revitalization.

Case Questions

1. Is it ethical to place a city redevelopment project on hold by behaving strategically as a real estate holdout? Note that Kelp's house was initially appraised at $78,000, and after five years of litigation, the city paid her $442,000 as just compensation for taking her property.
    - Support for Kelo's position was strong. Does this imply that NLDC's economic revitalization plan is not what the majority of society wanted? If so, doesn't current public opinion determine what is ethical or not ethical?

2. What competing interests is the Court trying to balance in this case? Did the Court strike the right balance? Explain.
    - The Supreme Court was trying to balance the property rights of the individuals with the city's right to combat the spread of economic blight. Some argue that the Court did strike the right balance by allowing the city to use eminent domain to stop the spread of the blight while giving just compensation to the individual. However, this view is not universally shared. As a response to this case, over 30 states passed or considered passing legislation to offer further protection of an individual's property rights.

3. *Focus on Critical Thinking:* Could an alternative solution have been reached in this case?
    - The Court could have ruled in favor of the individuals instead of the city. If the Court held that the plan to revitalize the city was not clear. This outcome would allow public condemnation of property if there was a clear plan on how to use the land. Also, the Court could have ruled that the "public use" argument in this case was just a pretext. The "use" really benefits Pfizer and not the public.

B. Statutory Law

Points to emphasize:

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- Statutory law is created by a legislative body and approved or disapproved by the executive branch of government; the U.S. Congress is the exclusive legislative body for the passage of federal law.
- A *bill* is a draft or a proposed federal statute that Congress has not yet passed or the executive has not yet approved.
- At the federal level, the president may sign a bill into law or veto it. Congress can override the veto with a two-thirds majority vote.
- At the state level, the governor has the authority to sign a state bill into law.
- Statutes at local levels are called *ordinances* and generally regulate issues such as zoning or impose health and safety regulations.

Case 1.2 United States v. Ulbricht, 31 F. Supp. 3d 540 (S.D.N.Y. 2014)

Facts: A grand jury indicted Robert Ulbricht (Ulbricht) for conspiracy to launder money obtained from illegal activities. Prosecutors alleged, among other things, that Ulbricht was engaged in money laundering conspiracies by designing, launching, and administering a website called Silk Road as an online marketplace for illicit goods and services. It operated much like eBay. Ulbricht would receive a portion of the seller's revenue as commission. He allowed payment only via Bitcoin, an anonymous and untraceable form of digital currency.

Ulbricht filed a motion to dismiss, arguing partly that he could not be guilty of money laundering because the use of bitcoins did not fit into the statute's requirement that money laundered be a result of a "financial transaction." Because the IRS treats bitcoins as property, transactions involving bitcoins cannot form the basis for a money laundering conspiracy.

Opinion: The U.S. District Court ruled against Ulbricht. The court noted that bitcoins carry value and act as a medium of exchange; thus, they fall into the meaning of financial transaction in the money laundering statute.

Case Questions

1. Why did Ulbricht point out that the IRS treats bitcoins as property?
   - Ulbricht was trying to argue that bitcoins are property and not currency. As such, he argued that he could not be guilty of money laundering if he did not use currency in his transactions.

2. Does the fact that Ulbricht created Silk Road have any bearing on the court's decision?
   - Yes, the money laundering was conducted through Silk Road, and Ulbricht was getting commission from the transactions on Silk Road. Ownership and control can be used to connect Ulbricht to the money laundering scheme.

3. *Focus on Critical Thinking:* Is the court interpreting the statute or filling in a gap that exists in a statute? If Congress had wanted to include digital currency in its definition of financial

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transactions, why didn't it do so by naming it specifically in the statute or in an amendment to the law? Did the court overreach in this case by trying to decipher the intent of Congress?

- The court interpreted the intent of Congress in passing the statute. Bitcoin was not around when the statute was passed, and Congress has not yet passed a bill to clarify this issue. Given that Congress has not responded, the court did not overreach in this case. Congress may feel there is no need to clarify, given the courts' correct interpretation of the intent of the statute.

C. Administrative Law

Points to emphasize:

- Administrative law is the source of law that authorizes the exercise of authority by the *executive branch* agencies and *independent* government agencies.
- Federal administrative law is largely authorized by statutes and the Constitution, and rules for applying the law are articulated and carried out by *administrative agencies.*
- Administrative agencies are empowered to administer the details of federal statutes and have broad powers to impose regulations, make policy, and enforce the law in their designated area of jurisdiction.

D. Common Law

Points to emphasize:

- Common law is essentially law made by the courts. It is composed of principles of law based on a just resolution of disputes between parties, which also sets a specific standard for other courts to follow when the same dispute arises again.
- *Precedent* is when courts apply the law of a previous case to current cases with similar facts.

TABLE 1.2 Laws That Impact Business

Type of Law	Source(s)	Level(s)
Negligence (tort)	Statutory and common law	Primarily state
Employment discrimination	Primarily statutory and administrative	Primarily state and federal, some local
Patent and Copyright	Statutory and administrative	Federal
Contracts for sale of goods	Statutory	State
Contracts for services	Primarily common law	State
Bankruptcy	Statutory and administrative	Federal
Securities law (selling company stock to the public)	Statutory and administrative	Federal and state
Zoning ordinances	Statutory	Local
Taxes	Statutory and administrative	Federal, state, and local

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E. Law versus Equity

Points to emphasize:

- The terms *law* and *equity* are used to describe the appropriate measure of judicial action intended to compensate an injured party in a civil lawsuit; these measures are known as remedies.
- Remedies at law generally take the form of money damages.
- Equitable relief is in a form other than money, such as an injunction and specific performance.
- Case 1.3 addresses whether an equitable remedy is appropriate in a breach of contract case.

Case 1.3 Wilcox Investment, L.P. v. Brad Wooley Auctioneers, Inc., et al., 454 S.W.3d 792 (Ark. Ct. App. 2015)

Facts: Wilcox Investment Limited Partnership (Wilcox) entered into a contract with Brad Wooley Auctioneers, Inc. (Auctioneers) to market and sell by auction 333 acres of real property owned by Wilcox in Arkansas. Shollmier was declared the highest bidder with a bid of $235,000. Wilcox refused to complete the sale because the property was appraised in excess of $950,000. Shollmier sued for specific performance.

Opinion: The Court of Appeals of Arkansas affirmed the jury's verdict in favor of Shollmier. The court held that there was no evidence of collusion between Shollmier and Auctioneers and rejected Wilcox's argument that the auction contract was void. Specific performance was awarded to Shollmier.

Case Questions

1. Why wasn't money an adequate remedy in this case?
   - Property is considered unique. Money is not an adequate remedy because it cannot be used to buy an exact piece of property. It will not make the injured party whole. Further, Shollmier had not actually paid any money yet.

2. What does Wilcox mean when he alleges that Shollmier engaged in collusion?
   - Wilcox alleges that Shollmier engaged in collusion with the auctioneers to get the property at a discounted rate. The jury found no evidence of collusion.

3. *Focus on Critical Thinking:* How would Wilcox have prevented the property from being sold below the appraised price at auction?
   - Wilcox should have required the auction to have a reserve price; in other words, the sale would not be completed if the bid was below a given amount.

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A. Secondary Sources of Law

Point to emphasize:

- Secondary sources of law have no independent authority or legally binding effect but are used frequently to assist courts when interpreting statutory or applying judicially created law.
- In the business context, the most important secondary sources of law are (1) Restatements of Law, a collection of uniform legal principles focused on a particular area of state law and (2) various sets of model state statutes.
- The purpose of law is to increase the level of uniformity and fairness across courts in all 50 states.
- State legislatures and courts are free to adopt all, adopt part of, or reject secondary sources of law.

V. STARE DECISIS AND PRECEDENT

Points to emphasize:

- The ***doctrine of stare decisis*** is the principle that similar cases with similar facts and issues should have the same judicial outcome. It requires all lower courts to follow the case precedent.
- Once an appellate court has decided a particular case, the decision becomes a case precedent.
- On a case-by-case basis, courts may depart from precedent on the basis that technological or societal changes render a particular precedent unworkable.

Teaching Tip: Stare Decisis

Explain to students the pros and cons of stare decisis. It allows individuals and businesses to have some degree of confidence in how a court will rule if a case has similar facts, but it does not allow for evolving societal standards of behavior or expectations.

A. Stare Decisis and Business

Point to emphasize:

- Understanding the legal impact of a certain course of action can create opportunities for business planning.

B. Departing from Precedent

Points to emphasize:

- Strict adherence to precedent and the doctrine of stare decisis has a significant drawback, as it doesn't allow for evolving societal standards of behavior or expectations.

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Case 1.4 South Dakota v. Wayfair, Inc., 138 S. Ct. 2080 (2018)

Facts: South Dakota taxes the retail sales of goods and services in the state, and sellers are required to collect and remit the tax to the state; if they do not, then in-state consumers are responsible for paying. Wayfair and other top online retailers with no employees in South Dakota did not collect the state's sales tax. South Dakota sought a declaration that the South Dakota law was valid and applicable to Wayfair, and Wayfair sought summary judgment, arguing that the law was unconstitutional.

Opinion: The South Dakota trial court granted Wayfair's motion based on controlling precedent. The state supreme court affirmed. South Dakota appealed to the U.S. Supreme Court. The U.S. Supreme Court reversed and ruled in favor of South Dakota because the "physical presence" rule created in the Quill precedent case was not out of date due to advances in the cyberspace marketplace.

Case Questions

1. What is the "physical presence" test?
    - Taxation of retail sales of goods and services for those businesses with a physical presence in a particular state

2. Why did the Court overrule *Quill* and *National Bellas Hess?*
    - The Court held that the physical presence rule was no longer workable due to the advances in the cyberspace marketplace. Out-of-state sellers had an advantage over in-state sellers in the *Quill* case.
3. *Focus on Critical Thinking:* What other areas of the law might be affected by technology in the future?
    - This question is intended to spur discussion on areas of law such as intellectual property, jurisdiction of courts over disputes, and health law.

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TABLE 1.3 Summarizes the Major Legal Strategies and Execution Methods Used by Businesses, with Examples of Each.

Legal Strategy	Execution Methods	Examples in Business
Compliance	Full compliance, or. . .	A company going public files the required risk disclosure statements to investors.
Non-Compliance	Strategic non-compliance: paying the legal penalty.	A large technology company violates a small company's patent and pays a court-ordered royalty.
Avoidance	Legal evasion, for example, lying to regulators or destroying documents	The Madoff Ponzi scheme
	Exploiting legal loopholes	Creating offshore tax havens.
Prevention	Minimize or eliminate future business risks	A buyer of a business uses a non-compete clause in the sales contract with the former owner to prevent the former owner from competing with the buyer.
	Minimize or eliminate future legal liability	An amusement park operator requires visitors to sign waivers in case of physical injury
Value Creation	Transactional	A university licenses its trademarks to generate royalties from merchandise sales
	Source of long-term competitive advantage	A company like Tesla changes state laws to allow direct-to-consumer sales of its vehicles

VI. END OF CHAPTER PROBLEMS, QUESTIONS, AND CASES

Key Terms

Chapter Review Questions [Note: Answers and explanations are provided at the very end of the chapter.]

Thinking Strategically: Questions and Answers

1. In your view, is the noncompliance strategy always unethical?

   - It is important to understand that strategy is a broad-based concept that identifies actions taken by companies to advance their interest. It is equally important to identify strategies that are not ethical and/or legal. It also provides a springboard for a discussion on the social contract—do corporations have an obligation to abide by certain norms and rules? (covered in detail in Chapter 2).

2. From an ethical perspective, what do you think of Pfizer's tax inversion strategy?

   - This question allows instructors to begin a discussion on two important questions: Are actions that are legal also ethical? Are all actions that are ethical also legal? This includes how and when civil disobedience can be justified. This may also be a springboard for the notion of corporate social responsibility (covered in detail in Chapter 2).

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3. Do you use Facebook, Twitter, Instagram, or some other social networking site? Look up the "terms of use" of one of the websites and try to find at least one disclaimer or other limitation of liability clause.

- This is an opportunity to introduce the concept of disclaimers and warranties. Here is the relevant paragraph from Twitter's Terms of Use:

4. *Disclaimers and Limitations of Liability*

The Services are Available "AS-IS"

Your access to and use of the Services or any Content are at your own risk. You understand and agree that the Services are provided to you on an "AS IS" and "AS AVAILABLE" basis. The "Twitter Entities" refers to Twitter, its parents, affiliates, related companies, officers, directors, employees, agents, representatives, partners, and licensors. Without limiting the foregoing, to the maximum extent permitted under applicable law, THE TWITTER ENTITIES DISCLAIM ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. The Twitter Entities make no warranty or representation and disclaim all responsibility and liability for (i) the completeness, accuracy, availability, timeliness, security, or reliability of the Services or any Content; (ii) any harm to your computer system, loss of data, or other harm that results from your access to or use of the Services or any Content; (iii) the deletion of, or the failure to store or to transmit, any Content and other communications maintained by the Services; and (iv) whether the Services will meet your requirements or be available on an uninterrupted, secure, or error-free basis. No advice or information, whether oral or written, obtained from the Twitter Entities or through the Services, will create any warranty or representation not expressly made herein.

5. Have you ever created any form of intellectual property? What was it? Did you create it on your own, or is there a possibility that someone else has rights to it as well?

- Students sometimes have good answers to this based on experience in an internship or summer job (work for hire). It is important to realize the difference between creating IP for someone else and owning it yourself. They can also be made to realize that even their notes for this course are a form of intellectual property (copyright).

Case Summary Questions and Answers [pp. 20–21]

CASE SUMMARY 1.1 U.S. v. Alvarez, 567 U.S. 709 (2012)

1. In what ways does this case illustrate the concepts of constitutional permanence and preemption?

- Permanence: The First Amendment is a basic reflection of American principles of freedom of speech and a restriction of the government's attempts to regulate political

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speech. Preemption: The Constitution is the supreme law of the land, and federal statutes that conflict with the First Amendment are void.

2. Is the link between the statute and the government's interest enough to satisfy any constitutional scrutiny? Why or why not?

- The Court held that the statute (criminalizing a false statement about the Medal of Honor) and the government's interest (protecting the integrity of the Medal of Honor) were sufficient, but the First Amendment prohibited any restriction by the government of political speech.

3. Could Congress have crafted a different law that would have survived a constitutional challenge? How?

- This question helps students focus on other powers that Congress may have, which might achieve the same end. It would be difficult to pass a similar law because the restriction on political speech by the government was the fundamental problem with the Stolen Valor Act.

CASE SUMMARY 1.2 Sokoloff v. Harriman Estate Development Corp., 754 N.E. 2d 184 (N.Y. 2001)

1. Can Harriman withhold the plans from Sokolff?

- The court concluded that there was no contractual provision that would allow Harriman to withhold the plans from Sokoloff.

2. What legal theories or maxims would a court consider in deciding this case?

- The court considered specific performance as a potential remedy (Sokoloff's request for an equitable remedy was based on specific performance of turning the architectural plans over to Sokoloff). Sokoloff claimed that money damages would be inadequate and that he was entitled to an equitable remedy.

3. How should the court rule, and why?

- The court rejected Harriman's assertion that specific performance is an inappropriate remedy because the architectural plans are not unique, and a dollar value can be placed on the purchase of replacement plans. The court ruled that specific performance is a proper remedy, however, where the subject matter of the particular contract is unique and has no established market value.

CASE SUMMARY 1.3 Jones v. R. R. Donnelley & Sons Col., 541 U.S. 369 (2004)

1. Which statute of limitations governs, and why?

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- The federal statute of limitations applies. In a case where federal law conflicts with state law, a plaintiff may choose the most favorable statute of limitations.

2. Will Jones be able to sue Donnelley?

- Yes. The Court ruled that the four-year statute of limitations for suits brought under acts of Congress passed after 1990 applies to amendments of previously existing laws.

CASE SUMMARY 1.4 Kauffman-Harmon v. Kauffman, 36 P.3d 408 (Sup. Ct. Mont. 2001)

1. Should the court apply the clean hands doctrine here? Why or why not?

- The court did apply the clean-hands doctrine because this was a case in equity (Kauffman wanted the stock transferred back to his name) and determined that the transfer was an attempt to evade a judgment. Thus, Kauffman is not entitled to equitable relief.

2. Do the children have clean hands? Didn't they accept the stock to help their father perpetrate fraud?

- It may be true that the children do not have clean hands, but it is irrelevant. Kauffman is the one coming to court and asking for equitable relief. This relief is not available for those without clean hands.

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