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Solution and Answer Guide

Miller, Business Law Today - Comprehensive Edition: Text & Cases 14e, 9798214045665; Chapter 01: Law and Legal Reasoning

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Critical Thinking Questions in Features

Ethical Issue—Value Judgment

1. Should an administrative authority have the power to make decisions involving hundreds of billions of taxpayer dollars—such as canceling student loans—without input from Congress? Why or why not?

   Solution: When the secretary of education decided to establish a student loan forgiveness program that would have cancelled about $430 million in student debt for as many as 430 million American debtors, several states sued to prevent this unilateral policy resolution from moving forward. The case eventually made it to the United States Supreme Court, where the administration of President Joseph Biden insisted that Congress had given it this power in the HEROES Act, which allows the secretary of education to respond to a national emergency by waiving or modifying any "statutory or regulatory" provision governing student-loan programs.

   The Supreme Court rejected this reasoning. In his opinion, Supreme Court Chief Justice John R. Roberts, Jr., used the language of the HEROES Act to interpret congressional intent. Congress's use of the word "modify" meant that a government agency could make "modest adjustments and additions to existing provisions," Roberts

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wrote. "Not transform them." He went on to suggest that the debt-forgiveness program "modified" student loan laws in the same way that the "French Revolution 'modified' the status of the French nobility—it has abolished them and supplanted them with a new regime entirely."

Here, the Court asserted that an administrative body had not modified an existing Congressional plan. Rather, the Biden administration had used its authority to enact a major new law that Congress had not chosen to enact itself. Even given the leeway that administrative agencies have within the separation of powers, the executive branch had gone too far in this case.

Other members of the Court, disagreeing with the majority opinion, stated that the financial burden being suffered by millions of student loan debtors was a sufficient "emergency" to justify the loan forgiveness program, no matter its cost. To this, Chief Justice Roberts responded, "The question here is not whether something should be done; it is who has the authority to do it." Thus, when determining the ethical components of a government decision with regard to business law, one must not only consider the inherent rightness or wrongness of the decision. One must also consider the consequences of giving the government agency or individual the power to make the decision.

Managerial Strategy—Business Questions

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

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

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

   Solution: Just because Roberta is legally able to avoid paying the salespeople at her new used car dealership overtime, should she? As with so many managerial decisions, the answer to this question involves the tricky determination of costs and benefits. On the one hand, Roberta's costs will be lower if she does not have to pay overtime to the salespeople. On the other hand, the salespeople may be more motivated if they feel they are being properly compensated for the extra hours they spend on the lot. The extra motivation will likely lead to additional sales, which very well may offset the overtime costs.

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Landmark in the Law—Application to Today's World

1. The equitable maxims listed here underlie many of the legal rules and principles that are commonly applied by the courts today—and that you will read about in this book.

   For instance, in the contracts materials, you will read about the doctrine of promissory estoppel. Under this doctrine, a person who has reasonably and substantially relied on the promise of another may be able to obtain some measure of recovery, even though no enforceable contract exists. The court will estop (bar) the one making the promise from asserting the lack of a valid contract as a defense. The rationale underlying the doctrine of promissory estoppel is similar to that expressed in which of the maxims just listed?

   Solution: The rationale underlying the doctrine of promissory estoppel is similar to that expressed in the fourth and fifth equitable maxims listed in the feature. The fourth maxim supports the notion that the law should not be applied unfairly just because the law does not provide a solution to a particular problem. The fifth maxim holds that those administering the law should not get bogged down in technicalities when doing so leads to unfairness or injustice. In a perfect legal world, then, a lack of a valid contract should not punish a party who has justice and fairness on their side.

Chapter Review

Practice and Review

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

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

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

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

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

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

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

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

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

Practice and Review: Debate This

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

   Solution: Both England and the U.S. legal systems were constructed on the common law system. The doctrine of *stare decisis* has always been a major part of this system—courts should follow precedents when they are clearly established, except when compelling reasons dictate otherwise. Even though more common law is being turned into statutory law, the doctrine of *stare decisis* is still valid. After all, statutes often must be interpreted by courts. What better basis for judges to render their decisions than by basing them on precedents related to the subject at hand?

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

Issue Spotters

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

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

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

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

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Business Scenarios and Case Problems

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

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

1–2. Sources of Law. This chapter discussed a number of sources of American law. Which source of law takes priority in the following situations, and why? (See *Sources of American Law*.)

1. A federal statute conflicts with the U.S. Constitution.

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

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

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

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

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

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

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

1–3. Remedies. Arthur Rabe is suing Xavier Sanchez for breaching a contract in which Sanchez promised to sell Rabe a Van Gogh painting for $150,000. (See *The Common Law*.)

1. In this lawsuit, who is the plaintiff, and who is the defendant?

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

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

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

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

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

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

   Solution: In both cases, these remedies are remedies in equity.

1–4. Philosophy of Law. After World War II ended in 1945, an international tribunal of judges convened at Nuremberg, Germany. The judges convicted several Nazi war criminals of "crimes against humanity." Assuming that the Nazis who were convicted had not disobeyed any law of their country and had merely been following their government's (Hitler's) orders, what law had they violated? Explain. (See *The Common Law*.)

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

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

1–5. Business Case Problem with Sample Answer—Reading Citations. Assume that you want to read the entire court opinion in the case of *Friends of Buckingham v. State Air Pollution Control Board*, 947 F.3d 68 (4th Cir. 2020).

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Refer to the appendix to this chapter, and then explain specifically where you would find the court's opinion. (See *Finding Case Law*.)

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

1–6. Spotlight on Gateway Hotels—*Stare Decisis*. Orlando Garcia filed a lawsuit against Gateway Hotels, contending that, in violation of the Americans with Disabilities Act (ADA), the company's website failed to indicate whether any of its rooms would accommodate his disability. After a court ruled that Gateway's website did comply with the ADA, the company sought an award of attorney's fees, as allowed by federal law. Garcia countered that his case was not "frivolous" and therefore he should not be forced to cover the hotel chain's legal costs. Gateway pointed out that, according to a previous United States Supreme Court ruling, attorney's fees could be awarded in such cases even if the original lawsuit was not frivolous. Applying the doctrine of *stare decisis*, will the court side with Gateway? Explain. [*Garcia v. Gateway Hotel*, *LP*, 82 F.4th 750 (9th Cir. 2023] (See *The Common Law*.)

> **Solution:** In *Brown v. Lucky Stores* (2001), the U.S. Court of Appeals for the Ninth Circuit (the authority deciding this case) ruled that ADA defendants could not recoup the legal costs of a failed discrimination lawsuit unless the action was "frivolous, unreasonable, or groundless." Twelve years later, with its *Marx v. General Revenue Corp*. decision, the United States Supreme Court held that a district court has the discretion to award legal fees to a defendant regardless of whether the plaintiff's legal action was in bad faith.
>
> Applying the doctrine of *stare decisis*, the U.S. Court of Appeals for the Ninth Circuit concluded that "our decision in *Brown* cannot be reconciled with the Court's decision in *Marx*, and therefore it has been effectively overruled." Therefore, in this case, at the district court's discretion, Garcia could be found liable for those costs that Gateway incurred in defending itself against Garcia's failed ADA lawsuit.

1–7. A Question of Ethics—The Doctrine of Precedent. Sandra White operated a travel agency. To obtain lower airline fares for her nonmilitary clients, she booked military-rate travel by forwarding fake military identification cards to the airlines. The government charged White with identity theft, which requires the "use" of another's identification. The trial court had two cases that represented precedents.

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

In the second case, Kathy Medlock, an ambulance service operator, had transported patients for whom ambulance transport was not medically necessary. To obtain payment, Medlock had forged a physician's signature. The court concluded that this was "use" of another person's identity. [*United States v. White*, 846 F.3d 170 (6th Cir. 2017)] (See *Sources of American Law*.)

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

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

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

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

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

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

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

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

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Critical Thinking and Writing Assignments

1–8. Business Law Writing. John's company is involved in a lawsuit with a customer, Beth. John argues that for fifty years higher courts in that state have decided cases involving circumstances similar to his case in a way that indicates he can expect a ruling in his company's favor. Write at least one paragraph discussing whether this is a valid argument. Write another paragraph discussing whether the judge in this case must rule as those other judges did and why. (See *The Common Law*.)

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

1–9. Time-Limited Group Assignment—Court Opinions. Go to the section entitled *Reading and Understanding Case Law* in the appendix at the end of this chapter, and read the subsection entitled "Decisions and Opinions."

1. One group will explain the difference between a concurring opinion and a majority opinion.

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

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

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

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

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

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Critical Thinking Question in Exhibit 1A-3

A Sample Court Case—Critical Thinking

1. **What If the Facts Were Different?** Suppose the evidence showed that, during the five-year period in question, Kirkland's employees felt free to leave the store without being stopped by their managers and routinely did so. Would the appeals court have come to the same conclusion? Explain.

   Solution: Most likely, under this different scenario, the appeals court would not have come to the same conclusion. In its *Kirkland's Stores, Inc.* opinion, the court specifically stated that Kirkland's Stores' break policy, by itself, was not enough to support a class action lawsuit by Miles and her coworkers. The plaintiffs also had to prove that Kirkland's "consistently implemented and enforced the policy." If the evidence showed that—despite a policy indicating otherwise—Kirkland's employees felt free to leave the store during breaks, then such proof would not be available. Despite the lower court's erroneous reliance on employees who did not work at Kirkland's during the five-year period in question, the appeals court would very probably have ruled in the chain's favor.

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Instructor Manual

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Purpose and Perspective of the Chapter

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

Learning Objectives

The following objectives are addressed in this chapter:

1. Identify the four primary sources of law in the United States.
2. Define precedent and identify situations when a court might depart from precedent.
3. Explain the difference between remedies at law and remedies in equity.
4. Describe the important differences between civil law and criminal law.

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What's New in This Chapter

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

- **New chapter opening quote** from U.S. Supreme Court Associate Justice Sonia Sotomayor.
- **New introductory example** in the opening section.
- **New case problem 1-6** on *stare decisis* **[*Garcia v. Gateway Hotel, LP* (2023)].** Should Gateway Hotels be awarded attorney's fees after successfully defending itself against a nonfrivolous lawsuit claiming that its website did not comply with the ADA?
- **New Sample Court Case, *Miles v. Kirkland's Stores Inc.*,** decided in 2024.
- **New Building Analytical Skills feature introducing the IRAC** method of legal reasoning, using ***Miles v. Kirkland's Stores Inc.*** as the example.
- **New briefed** version of the **new sample court case** in **Appendix to Chapter 1.**

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CHAPTER OUTLINE

I. **1-1 Business Activities and the Legal Environment** (PPT Slides 5-6)

   i. **Example 1.1** YouTube

II. **1-2 Sources of American Law** (PPT Slides 7-12)

   a. **Constitutional Law**

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

      ii. ***Knowledge Check (1) PPT Slide 8:*** *Test students' knowledge of the sources of American law.*

   b. **Statutory Law**

      i. The body of law enacted by legislative bodies.

         1. Local Ordinances

         2. Applicability of Statutes

            a) **Example 1.2** Sanctuary Cities

         3. Uniform Laws

         4. The Uniform Commercial Code (UCC)

   c. **Administrative Law**

      i. Federal Agencies

      ii. State and Local Agencies

      iii. Agency Creation

         1. **Example 1.3** Federal Trade Commission (FTC)

      iv. Rulemaking

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2. **Example 1.4** The Occupational Safety and Health Act (OSHA)

3. Legislative Rules

    a) Notice of the proposed rulemaking

    b) A comment period

    c) The final rule

4. Interpretive Rules

    a) **Example 1.5** The Equal Employment Opportunity Commission

v. Enforcement and Investigation

vi. Adjudication

d. Case Law and Common Law Doctrines

III. 1-3 The Common Law (PPT Slides 13-17)

a. Early English Courts

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

b. *Stare Decisis*

i. Latin phrase meaning “to stand on decided cases”

1. Controlling Precedents

    a) Binding authority

2. *Stare Decisis* and Legal Stability

3. Departures from Precedent

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a) **Classic Case Example 1.6** *Brown v. Board of Education of Topeka*

4. When There Is No Precedent

a) Persuasive authority – court may consult for guidance but is not binding on the court

5. Stare Decisis and Legal Reasoning

a) Basic Steps in Legal Reasoning

(i) Issue – What are the key facts and issues?

(ii) Rule – What rule of law applies to the case?

(iii) Application – How does the rule of law apply to the particular facts and circumstances of this case?

(iv) Conclusion – What conclusion should be drawn?

b) There Is No One "Right" Answer

c. Equitable Remedies and Courts of Equity

i. **Example 1.7** Jawei

ii. Remedies in Equity

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

iii. The Merging of Law and Equity

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

iv. Equitable Maxims

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

b. Schools of Legal Thought

i. The Natural Law School

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

ii. Legal Positivism

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

iii. The Historical School

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

iv. Legal Realism

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

IV. 1-4 Classifications of Law (PPT Slides 18-19)

i. **Example 1.8** Workers' compensation

a. Civil Law and Criminal Law

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

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

b. Common Law and Civil Law Systems

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

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

c. National and International Law

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

d. ***Knowledge Check (2) PPT Slide 19.*** *Test students' knowledge of the of the civil law cases and what they involve.*

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Discussion Questions

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

1. **Discussion — Business Activities and the Legal Environment** (PPT Slides 5-6)

   a. Why do businesspersons need to understand laws and regulations?

   i. Laws and regulations govern almost all aspects of business, including managing the workforce, designing and manufacturing products, and financing business entities. Businesspersons need to understand laws and regulations so they can apply this knowledge to decision making. Legal reasoning skills allow them to anticipate how the law will apply to a specific situation and determine the best course of action.

2. **Discussion – Sources of American Law** (PPT Slides 7-12)

   a. Define and discuss the sources of American law: What is the supreme law of the land?

   i. The federal constitution. **What are statutes?** Laws enacted by Congress or a state legislative body. **What are ordinances?** Laws enacted by local legislative bodies. **What are administrative rules?** Laws issued by administrative agencies under the authority given to them in statutes.

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b. What is the Uniform Commercial Code?

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

c. Why are administrative agencies important?

i. Federal, state, and local administrative agencies create and amend the rules that govern nearly all aspects of business. Each agency is created by the legislature to oversee a specific area, such as the development of pharmaceutical drugs or the protection of the natural environment. Additionally, some agencies have the power to enforce their rules and adjudicate, or resolve, disputes.

3. Discussion – The Common Law (PPT Slides 13-17)

a. What is the common law?

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

b. Under what circumstance might a judge rely on case law to determine the intent and purpose of a statute? How does this relate to *stare decisis*?

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

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

c. Discuss the differences between remedies at law and in equity.

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

d. Explain the four steps in legal reasoning.

i. The first step in legal reasoning is to become familiar with the facts and issues of the case, including the identities of the plaintiff (the person initiating the suit) and the defendant (the person being sued). The second step is to determine what rule of law applies to the case, which may include previous court decisions, statutes, and regulations. The third step is to apply the rule of law to the specific facts and circumstances of the case. Finally, the fourth step is to arrive at a conclusion. However, there isn't always one perfect or correct conclusion.

e. Identify and describe remedies available in equity.

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

f. What is jurisprudence?

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

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g. Briefly explain the four schools of legal thought presented in the text.

i. **Natural law:** Followers of this school believe there is a higher, or universal, law that applies to all human beings. Each written law should reflect the principles inherent in natural law.
ii. **Legal positivism:** Positive law, or national law, is the written law of a given society at a particular point in time. In contrast to natural law, it applies only to the citizens of that nation or society.
iii. **Historical school:** The historical school of legal thought emphasizes the evolutionary process of law by concentrating on the origin and history of the legal system. This school looks to the past to discover what the principles of contemporary law should be.
iv. **Legal realism:** Legal realism is based on the idea that law is just one of many institutions in society and that it is shaped by social forces and needs. This school reasons that because the law is a human enterprise, judges should look beyond the law and take social and economic realities into account when deciding cases.

4. Discussion – Classifications of Law (PPT Slides 18-19)

a. Discuss the differences within the classification of law as civil law and criminal law.

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

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