

22ND EDITION



ANDERSON'S

BUSINESS LAW

And the Legal Environment *Comprehensive Volume*



TWOMEY & JENNINGS

Comprehensive Volume

ANDERSON'S BUSINESS LAW

And The Legal Environment

22e

DAVID P. TWOMEY

Professor of Law
Carroll School of Management
Boston College
Member of the Massachusetts and Florida Bars

MARIANNE MOODY JENNINGS

Professor Emeritus of Legal and Ethical Studies
W.P. Carey School of Business
Arizona State University
Member of the Arizona Bar



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and The Legal Environment, 22e**
David P. Twomey, Marianne Moody
Jennings

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CONNECT *for* SUCCESS

For today's – and tomorrow's – business leaders, a solid understanding of the legal environment of business is crucial. Students must be equipped with the knowledge of basic legal concepts and the skills to apply these concepts to real-world examples in order to succeed in business.

Anderson's Business Law and the Legal Environment,

a time-tested market leading textbook, continues the tradition of providing crystal clear explanations of the law, student-friendly examples, and vivid illustrations. Perhaps the most exciting innovation to the new edition is not *what* students learn but *how* they learn – the cutting-edge 22nd edition continues with its proven features and approaches for teaching and learning that are integrated into every facet of the text and package.

CONNECT *for* LEARNING SUCCESS

The learning system introduced in the 21st Edition of *Anderson's Business Law and the Legal Environment*, proved to be an effective tool for students to make the connection to what they are reading, what they are doing in class, and—ultimately—what they will do in the real world as business managers and leaders. This new tool is continued and refined for the 22nd edition.

Chapters open with a self-guided outline—helping students focus on key concepts. Chapter content continues to provide just the right amount of detail, presented in terminology students can grasp and relate to. As a learning and study tool, key examples are highlighted in green throughout each chapter—spotlighting the connection between chapter concepts and real-world experiences for students.

The self-guided outlines help students focus on the key concepts presented in the chapter.

CHAPTER 3
Business Ethics, Social Forces, and the Law

learning outcomes
After studying this chapter, you should be able to:

- LO1** Define business ethics.
- LO2** Discuss why ethics are important to business.
- LO3** Describe how to recognize and resolve ethical dilemmas.

A. What is Business Ethics?

1. THE LAW AS THE STANDARD FOR BUSINESS ETHICS
2. THE NATURE OF UNIVERSAL STANDARDS FOR BUSINESS ETHICS
3. ETHICAL THEORIES AND STANDARDS
4. THE BUSINESS ENVIRONMENT'S INFLUENCE ON BUSINESS ETHICS
5. WHY IS BUSINESS ETHICS "IMPORTANT?"
6. ETHICALLY RESPONSIBLE DECISION-MAKING

B. BUSINESS ETHICS AND FINANCIAL PERFORMANCE

7. THE IMPORTANCE OF A GOOD REPUTATION
8. BUSINESS ETHICS AND BUSINESS REGULATION: PUBLIC POLICY, LAW, AND ETHICS

C. How to Recognize and Resolve Ethical Dilemmas

9. CATEGORIES OF ETHICAL DECISIONS
10. RESOLVING ETHICAL DILEMMAS

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2. The Notion of Universal Standards for Business Ethics

Another view of ethics holds that standards exist universally and cannot be changed or modified by law. In many cases, universal standards stem from religious beliefs. In some countries today, the standards for business are still determined by religious tenets. **Natural law** imposes higher standards of behavior than those required by positive law and they must be followed even if those higher standards run contrary to codified law. **For Example**, in the early nineteenth century when slavery was legally permissible in the United States, a positive law standard supported slavery. However, slavery violates the natural law principle of individual freedom and would be unethical. **Civil disobedience** is the remedy natural law proponents use to change positive law.

natural law—a system of principles to guide human conduct independent of, and sometimes contrary to, enacted law and discovered by man's rational intelligence.

civil disobedience—the term used when natural law proponents violate positive law.

Former Supreme Court Justice Sandra Day O'Connor, who was second in her class at Stanford Law School (the late Chief Justice William Rehnquist was first), was offered a job as a receptionist for a law firm while her male classmates were hired as attorneys. At that time, no law prohibited discrimination against women, so law

Examples are emphasized in every paragraph with green highlights – spotlighting the connection between legal concepts and real-world experiences for students.

Maximizing student success, the **Make the Connection** section found at the end of each chapter begins with a revised and more thorough chapter summary recapping key chapter topics. Action-oriented **Learning Outcomes** direct students to utilize the existing text pedagogy by serving as a direct reference point for selected *For Example* callouts, case summaries, and feature boxes. A list of **Key Terms** gives students further opportunity to check their understanding of commonly-used business law terminology. The **Questions and Case Problems** offer students additional opportunities for students to connect legal concepts to real-world issues. And the **CPA Questions** provide excellent review for the CPA Exam.



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LawFlix
Continued
The Family Man (2000) (PG-13)

Niclas Capp plays a Wall Street billionaire who is suddenly given a suburban life in New Jersey with all of its family life and financial constraints. He is forced to examine who he really is and what is important.

MAKE THE CONNECTION

SUMMARY

Business ethics is the application of values and standards to business conduct and decisions. These values originate in various sources from positive (codified) law to natural law to ethical theories and standards and on to stakeholder values. Business ethics is important because trust is a critical component of good business relationships and free enterprise. A business with values will enjoy the additional competitive advantage of a good reputation and, over the long term, better earnings. When businesses make decisions that violate basic ethical standards, they set into motion social forces and cause the area of abuse to be regulated, resulting in additional costs and restrictions for business. Voluntary value choices by businesses position them for a competitive advantage. The categories of ethical values in business are truthfulness and integrity, promise keeping, loyalty and avoiding conflicts of interest, fairness, doing no harm, and maintaining confidentiality. Resolution of ethical dilemmas is possible through the use of various models that require a businessperson to examine the impact of a decision before it is made. These models include stakeholder analysis, the Blanchard and Peale test, the front-page-of-the-newspaper test, and the Laura Nash model.

LEARNING OUTCOMES

After studying this chapter, you should be able to clearly explain:

<p>A. What Is Business Ethics?</p> <ul style="list-style-type: none"> 1. Define business ethics 2. See the discussion of the definition, balancing the goal of profits with the values of individuals and society, on p. 41–42. 	<p>B. Why Is Business Ethics Important?</p> <ul style="list-style-type: none"> 1. Discuss why ethics are important in business 2. See "The Importance of Trust" on p. 42. 3. See "Business Ethics and Financial Performance" on p. 43. 4. See "The Importance of a Good Reputation" on p. 44.
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End-of-chapter material has been thoroughly revised and expanded! The cases, new "Thinking Things Through" examples, new ethics examples, and new "Sports and Entertainment Law" sections offer students up-to-date examples that help them understand the chapter concepts and laws covered.

Make the Connection helps students understand and retain legal concepts by explaining them in the context of real-world examples. The result: Students are better prepared to have success in class—and in their careers as business leaders.



CONNECT *for* TEACHING SUCCESS

Instructor resources also integrate the text's **Make the Connection** learning system. The **Instructor's Manual** includes a thorough explanation of the system as well as tips for implementation. Expanded **PowerPoint®** presentations incorporate **Learning Outcomes** into every chapter, enabling instructors to talk through examples step by step in class. In addition, the **Test Bank** includes questions from the Learning Outcomes sections.

Instructor's Manual:

This manual provides instructor insights, chapter outlines, and teaching strategies for each chapter. Chapter overviews and transparency integration notes ease lecture preparation. Discussion points are provided for the textbook's "Thinking Things Through" and "Ethics & the Law" vignettes. Also included are answers to CPA questions.

The Nature and Sources of Law

1

Chapter 1

THE NATURE AND SOURCES OF LAW

RESTATEMENT

This chapter provides the students with a look at the nature, origin and importance of individual rights and how those rights are protected by laws and judicial process. The chapter provides a historical look at the evolution of rights of individuals and how technology requires that laws be revised to provide protection for those rights.

Students are introduced to the various sources of law and their interrelationships. Constitutional law, statutory law, administrative regulation, and case law (along with the principle of stare decisis and concept of precedent) are explained along with the role and historical significance of common law. The nature and role of the uniform state laws are explained along with a discussion of the distinction between substantive law and procedural law. The distinctions between legal and equitable remedies are also explained.

STUDENT LEARNING OUTCOMES

- LO.1: Discuss the nature of law and legal rights.
- LO.2: List the sources of law.
- LO.3: Explain uniform state laws.
- LO.4: Describe the classifications of law.

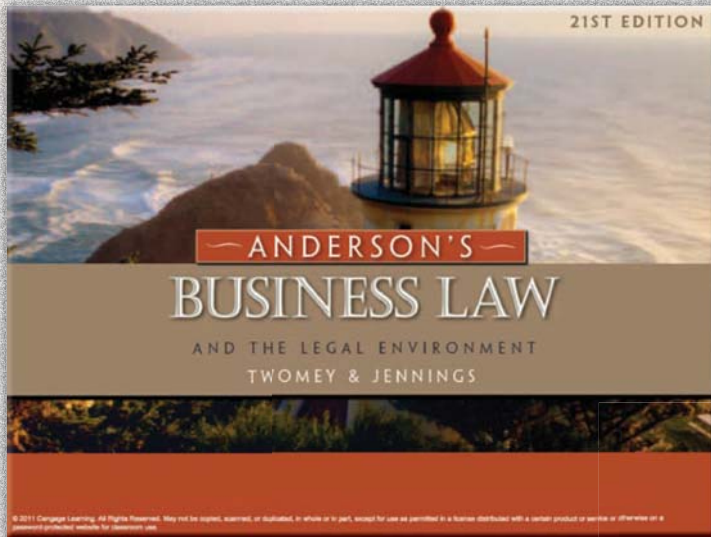
INSTRUCTOR'S INSIGHTS

Break the chapter down into four components – related Learning Outcomes are indicated in ().

1. What is the nature of law and legal rights?
 - Discuss the nature and origin of rights: legal rights; individual rights; right of privacy (LO.1)
 - Present the evolution of the protection of rights (LO.1)
2. What are the sources of law? (LO.2)
3. What are the roles of uniform laws? (LO.3)
4. What are the classifications of law?
 - Discuss the types of laws: substantive and procedural (LO.4)
 - Cover the origins and current status of equitable relief (LO.4)

CHAPTER OUTLINE

- I. What is the Nature of Law and Legal Rights?
 - A. Legal rights are part of the law – principles that govern conduct and can be enforced in courts or by administrative agencies
 - B. Individual rights



Power Point:

PowerPoint® slides are available to help instructors enhance their lectures.

D. Classifications of Law

Definitions (LO 4):

- **Substantive law** creates, defines and regulates rights and liabilities.
- **Procedural law** specifies how rights and liabilities are enforced.
- **Civil law** is of Roman origin; **common law** is of English origin.

Chapter 1—THE NATURE AND SOURCES OF LAW

TRUE/FALSE

- The pattern of rules that society uses to control the conduct of individuals in their relationships is called law.
ANS: T MSC: AACSB Analytic
- The law works to cause our society to operate in an inefficient manner.
ANS: F MSC: AACSB Analytic
- Law is often defined as the body of principles that courts will enforce.
ANS: T MSC: AACSB Analytic
- Jane asserts she has a legal right. Jane is really saying she has an obligation to perform or refrain from performing an act.
ANS: F MSC: AACSB Analytic
- Rights always stand alone, without any duties.
ANS: F MSC: AACSB Analytic
- Rights guaranteed in the United States Constitution are not accompanied by duties.
ANS: F MSC: AACSB Analytic
- Court decisions and statutes can take away rights created by the United States Constitution.
ANS: F MSC: AACSB Analytic
- One of our most important rights is the right of privacy.
ANS: T MSC: AACSB Analytic
- The right to be secure against unreasonable searches and seizures conducted by the police is guaranteed by state statute.
ANS: F MSC: AACSB Analytic
- The United States Constitution provides that we have a right to be free from intrusions by others.
ANS: T MSC: AACSB Analytic
- The private life of a nonpublic citizen is subject to public scrutiny.
ANS: F MSC: AACSB Analytic

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Test Bank:

Thousands of true/false, multiple-choice, and case questions are available.



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Regardless of the day of the week, newspapers and magazines constantly carry stories about law and business together. Raj Rajaratnam of the now-defunct Galleon Hedge Fund was convicted of insider trading even as his former employees entered guilty pleas and a Goldman Sachs director was convicted of passing inside information along to Raj. The U.S. Supreme Court issued a landmark constitutional decision when it held that the Commerce Clause did not permit Congress to require citizens to purchase health insurance, but yet upheld the law that imposed that requirement. Mortgage foreclosures hit record levels as questions about who owned the promissory notes arose as courts tried to determine who could actually start the foreclosure proceedings. MF Global collapsed into bankruptcy because employees violated one of Wall Street's critical regulations that prohibits the use of client funds for hedging. The problem of cyberbullying resulted in cases, new laws, and company policies on employee use of social media. Those who did business with Bernie Madoff, and their auditors, faced questions regarding their liability to those who lost money in the failed Madoff firm.

Here in the United States and around the world fascinating legal questions arose and all of those questions affected businesses. What damages is Qantas airlines entitled to when it must ground its entire Airbus 380 fleet because the manufacturer has found a defect that affects safety? Did Goldman Sachs intentionally misrepresent the risk on mortgage-based obligations? If so, are they criminally liable? And who is responsible for crimes committed by companies? As major corporations have continued to experience significant criminal, legal, and ethical difficulties since the last edition in 2009, we can see how important it is for business managers to understand the law and the foundations of ethics. When a manager has a void in knowledge on law and ethics, running a company can be tricky business. Employers are learning the complexities of access to employee e-mails and text messages, and lenders are learning the importance of complete and accurate paperwork when they create a mortgage.

When an entrepreneur is struggling with the decision of whether to incorporate or create an LLC, or the shareholders of Disney are grappling with issues about their rights when their CEO makes a bad decision, the law is there. No business or manager can hope to succeed without an understanding of the laws and legal environment of business. Students in business must be prepared with both knowledge of the law and the skill of applying it in the business setting. We learn principles and application through interaction with examples and by working our way through dilemmas, issues, and problems. This 22nd edition of *Anderson's Business Law and the Legal Environment* continues its emphasis on the student's learning process while still providing a detailed and rigorous case approach.

FEATURES OF THE TEXT

The features of this text make the business and law connection easily understood and offer students clarity for grasping the often challenging complexities of law. The features are summarized in the following sections, which offer an overview of this edition.

Learning Outcomes

Students will better see and understand the relationship between legal concepts and their application in real-life situations by using the new chapter Learning Outcomes. These are also featured at the end of each chapter – along with the Summary and new Key Terms list – in the all-encompassing “Make the Connection” section. The Learning Outcomes also encourage students to utilize the existing text pedagogy by serving as a direct reference point for selected *For Example* call-outs, case summaries, and feature boxes.

Sports and Entertainment Law

Using pop culture, this feature teaches students about law and ethics in a way that is sure to engage them. How does a court handle the fact that Leona Helmsley left a large portion of her estate to her dog? The bankruptcies of celebrities and sports figures provide some insight into what poor money management can do to substantial assets. And what about football fans’ rights to transfer their season tickets to others? Can the team prohibit the transfer of those tickets as a license restriction? What are their rights? What are the rights of the teams and stadium owners? Students have the chance to explore the law through these examples of sports figures’ and entertainers’ brushes with the law.

Clarity

The writing style has been evolving and, once again, we have changed those passages that fell victim to the passive voice. The writing is clear and lively. The examples are student-friendly, and the discussions of law are grounded in the book’s strong connection to business. The principles of law are taught in the language and examples of business. Students can relate to the examples, which provide memorable illustrations of complex but critical legal concepts. Several chapters, including the chapter that covers antitrust, have been substantially reorganized and rewritten.

CPA Helps

As always, the text provides coverage for all the legal topics covered on the CPA exam. Several topics have been eliminated from the content for the CPA exam as of October 2009. However, the exam lags behind the content change, so the eliminated topics may continue to appear on the exam for six to 18 months. Below is the new business law/regulatory content for the CPA exam. The topics of property, bailments, insurance, and estates will be eliminated going forward with more emphasis on federal regulation, including in the areas of antitrust and employment law.

Business Law (17%–21%)

- A. Agency
 - 1. Formation and termination
 - 2. Authority of agents and principals
 - 3. Duties and liabilities of agents and principals
- B. Contracts
 - 1. Formation
 - 2. Performance
 - 3. Third-party assignments
 - 4. Discharge, breach, and remedies
- C. Uniform Commercial Code
 - 1. Sales contracts
 - 2. Negotiable instruments
 - 3. Secured transactions
 - 4. Documents of title and title transfer
- D. Debtor-Creditor Relationships
 - 1. Rights, duties, and liabilities of debtors, creditors, and guarantors
 - 2. Bankruptcy and insolvency
- E. Government Regulation of Business
 - 1. Federal securities regulation
 - 2. Other federal laws and regulations (antitrust, copyright, patents, money laundering, labor, employment, and ERISA)
- F. Business Structure (Selection of a Business Entity)
 - 1. Advantages, disadvantages, implications, and constraints
 - 2. Formation, operation, and termination
 - 3. Financial structure, capitalization, profit and loss allocation, and distributions
 - 4. Rights, duties, legal obligations, and authority of owners and management

Business organizations, now a substantial portion of the exam, remain a focus of eight chapters with up-to-date coverage of Sarbanes-Oxley and Dodd-Frank and their impact on business forms and disclosures. This edition continues to feature sample CPA exam questions at the end of those chapters that include legal areas covered on the exam. Answers for the odd-numbered CPA exam questions in each of the appropriate chapters are given in the Instructor's Manual along with explanations for the answers. This edition of the book also continues to use a CPA highlight icon to alert students to those areas that are particularly critical in preparing for the law portion of the CPA exam.

Innovative Chapters

Restructured and updated for this edition, the Cyberlaw chapter (chapter 11) provides students with a look at how the Internet and new technology have resulted in new interpretations of existing laws as well as new laws that govern the unique commerce issues involving these tools. Bloggers and Tweeters beware, for the law has caught up with you. The chapter provides a nice introductory tool for instructors who want to show how much the law affects this new generation of Internet-savvy students.

Case Summaries

Specially selected case summaries appear in abundance and are still at the core of this text. Most chapters include three to five case summaries, many of them with 2012 decision dates. Landmark decisions also appear. To highlight the charm and induce the student's recall of the principles of the cases, a one-line title appears above each case. These can be a humorous introduction, a play on words, or a simple memorable description of the parties or facts of the case. The one-line introduction is intriguing for students and makes the strong cases even more memorable.

e-Commerce and Cyberlaw

This feature covers e-mail privacy, Internet taxes, identity theft, contract formation on the Internet, e-commerce employment rules, electronic signatures, and more. Chapter 26 includes a new cyberlaw feature on returns and revocation of acceptance for online sellers and buyers.

Chapter 8, the criminal law chapter, includes great detail on the new and evolving computer crimes. Chapter 34 covers fraudulent title issues on Craigslist and the rights of the parties.

Thinking Things Through

This feature is designed to help students apply the law they have learned from the chapter and cases to a hypothetical or another case that varies slightly from the examples in the reading. With these problems built into this feature the reading, students have the chance to really think through what they have just read and studied with regard to the law presented in that chapter. This feature can be used to promote classroom discussion or as an assignment for analysis. For example, in Chapter 25, students can walk through an example on a customer biting into an undeveloped peanut in a Goo Goo candy bar and whether there is liability on the part of the manufacturer. Do people expect to bite into undeveloped peanuts in a candy bar? What is the test for product liability when a natural item in food results in harm?

Major Regulatory Reforms: Dodd-Frank, the Consumer Financial Protection Bureau

Businesses continue to be dramatically affected not only by laws at the federal level, but also by complex and intricate new federal regulatory schemes. Dodd-Frank affects everything from corporate governance to consumer rights in financing. This

dramatic piece of legislation and the new Consumer Financial Protection Bureau with its expansive authority, enjoy coverage throughout this edition.

Ethical Focus

In addition to Chapter 3, which is devoted exclusively to the current issues in business ethics, each chapter continues to provide students with an ethical dilemma related to that particular area of law. The Ethics & the Law feature presents problems in each area of law. Students will be able to analyze ethical issues and problems that are very real and very challenging for anyone in business—for example, the issues involved in the state of Ohio’s release of Joe the Plumber’s divorce and child custody records after he asked then-presidential candidate Barack Obama a question about his views, Claremont-McKenna’s inflation of SAT scores to ensure its outstanding ranking among the best colleges, and Wi-Fi Piggybacking.

Critical Thinking

The American Assembly of Collegiate Schools of Business (AACSB) mandate on critical thinking is addressed by this text. The Thinking Things Through feature asks students to analyze a problem that requires application of the law and examination of slight changes in factual patterns from examples in the text and the cases. For example, in the negotiable instruments chapters, students can look at a sample instrument in one problem and apply the requirements for negotiability to determine whether the instrument is indeed negotiable. In the Ethics & the Law feature, students must connect ethical thought with law and public policy and walk through the logic of application and results. End-of-chapter problems are, for the most part, real cases that summarize fact patterns and ask the students to find the applicable laws in the chapter and determine applicability and results. The fact patterns in the chapter problems are detailed and realistic and offer students the chance to test their mastery of the chapter concepts.

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*Saint Leo University and American
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Bevill State Community College

Derek Mosley
Meridian Community College

Michael Murphy
Langston University – Tulsa

Jeffrey D. Penley, JD
Catawba Valley Community College

Simone I. Rosenberg
*Valencia Community College – East
Campus*

Joseph A. Spadaro
Naugatuck Valley Community College

Darrell H. Thompson
Mountain View College

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Iowa Western Community College

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Bevill State Community College

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<i>University of Tennessee</i> | Ronald Picker
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Lester Smith
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about the authors

Professor David Twomey has been a member of the Business Law Department in the Carroll School of Management at Boston College since 1968. As department chair for over a decade, and four-term chairman of the school's Education Policy Committee, he served as a spokesperson for a strong legal and ethical component in both the undergraduate and graduate curriculum. The author of some 34 editions of textbooks on labor, employment, and business law topics, the 15th edition of his *Labor & Employment Law* book was published in 2012. His articles have appeared in journals such as *Best's Review*, *The American Business Law Journal*, *The Labor Law Journal*, *The Massachusetts Law Quarterly*, *The Florida Bar Journal*, and *The Business Law Review*.

He has served as arbitrator in over two thousand labor-management disputes throughout the country. His service includes appointments by Presidents Ronald Reagan, George H. W. Bush, William J. Clinton, and George W. Bush to eight Presidential Emergency Boards, whose recommendations served as a basis for the resolution of major disputes in the rail and airline industries.

After service in the U.S. Marine Corps, he graduated from Boston College, earned his M.B.A. at the University of Massachusetts, Amherst, and a J.D. degree at Boston College Law School. He is a member of the Massachusetts and Florida Bars and a member of the National Academy of Arbitrators.

Professor Marianne M. Jennings, Emeritus Professor of Legal and Ethical Studies, taught at the W. P. Carey School of Business, Arizona State University, from 1977 through 2011. She has six textbooks and four monographs in circulation with the 7th edition of her business ethics case book published in January 2011 and the 22nd and 7th editions of two other textbooks to be published in 2013. She was director of the Lincoln Center for Applied Ethics from 1995 to 1999. She has worked with government agencies, professional organizations, colleges and universities, and Fortune 500 companies on ethics training and culture. She is a contributing editor of *Corporate Finance Review* and *Real Estate Law Journal*. Two of her books have been named *Library Journal's* book of the year and her books have been translated into three languages. Her book, *The Seven Signs of Ethical Collapse*, was published by St. Martin's Press and has been used as a primer by numerous organizations for creating and sustaining an ethical culture. In 2011, she was named one of the Top 100 Thought Leaders by Trust Across America and in 2012, she was named one of the 100 most influential people in business ethics by *Ethisphere* magazine.

PART 1

The Legal and Social Environment of Business



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- 1 The Nature and Sources of Law
- 2 The Court System and Dispute Resolution
- 3 Business Ethics, Social Forces, and the Law
- 4 The Constitution as the Foundation of the Legal Environment
- 5 Government Regulation of Competition and Prices
- 6 Administrative Agencies
- 7 The Legal Environment of International Trade
- 8 Crimes
- 9 Torts
- 10 Intellectual Property Rights and the Internet
- 11 Cyberlaw



CHAPTER

1

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The Nature and Sources of Law

A. Nature of Law and Legal Rights

1. LEGAL RIGHTS
2. INDIVIDUAL RIGHTS
3. THE RIGHT OF PRIVACY
4. PRIVACY AND TECHNOLOGY

B. Sources of Law

5. CONSTITUTIONAL LAW
6. STATUTORY LAW
7. ADMINISTRATIVE LAW
8. PRIVATE LAW

9. CASE LAW, STATUTORY INTERPRETATION, AND PRECEDENT

10. OTHER FORMS OF LAW: TREATIES AND EXECUTIVE ORDERS

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C. Classifications of Law

12. SUBSTANTIVE LAW VS. PROCEDURAL LAW

13. CRIMINAL LAW VS. CIVIL LAW

14. LAW VS. EQUITY

learning outcomes

After studying this chapter, you should be able to

LO.1 Discuss the nature of law

LO.2 List the sources of law

LO.3 Describe the classifications of law

Why have law? If you have ever been stuck in a traffic jam or jostled in a crowd leaving a stadium, you have observed the need for order to keep those involved moving in an efficient and safe manner. The issues with bloggers' use of others' materials and continuing downloading of music and films without compensation to copyright holders illustrate the need for rules and order in this era of new technology. When our interactions are not orderly, whether at our concerts or through our e-mail, all of us and our rights are affected. The order or pattern of rules that society uses to govern the conduct of individuals and their relationships is called **law**. Law keeps society running smoothly and efficiently.

law—the order or pattern of rules that society establishes to govern the conduct of individuals and the relationships among them.

A. NATURE OF LAW AND LEGAL RIGHTS

Law consists of the body of principles that govern conduct and that can be enforced in courts or by administrative agencies. The law could also be described as a collection or bundle of rights.

1. Legal Rights

right—legal capacity to require another person to perform or refrain from an action.

A **right** is a legal capacity to require another person to perform or refrain from performing an act. Our rights flow from the U.S. Constitution, state constitutions, federal and state statutes, and ordinances at the local levels, including cities, counties, and boroughs. Within these sources of rights are also duties. A **duty** is an obligation of law imposed on a person to perform or refrain from performing a certain act.

duty—an obligation of law imposed on a person to perform or refrain from performing a certain act.

Duties and rights coexist. No right exists in one person without a corresponding duty resting on some other person or persons. For example, if the terms of a lease provide that the premises will remain in a condition of good repair so that the tenant can live there comfortably, the landlord has a corresponding duty to provide a dwelling that has hot and cold running water.

2. Individual Rights

The U.S. Constitution gives individuals certain rights. Those rights include the right to freedom of speech, the right to due process or the right to have a hearing before any freedom is taken away, and the right to vote. There are also duties that accompany individual rights, such as the duty to speak in a way that does not cause harm to others. For example, individuals are free to express their opinions about the government or its officials, but they would not be permitted to yell "Fire!" in a crowded theater and cause unnecessary harm to others. The rights given in the U.S. Constitution are rights that cannot be taken away or violated by any statutes, ordinances, or court decisions. These rights provide a framework for the structure of government and other laws.

3. The Right of Privacy

One very important individual legal right is the right of privacy, which has two components. The first is the right to be secure against unreasonable searches and seizures by the government. The Fourth Amendment of the U.S. Constitution

right of privacy—the right to be free from unreasonable intrusion by others.

guarantees this portion of the **right of privacy**.¹ A police officer, for example, may not search your home unless the officer has a reasonable suspicion (which is generally established through a warrant) that your home contains evidence of a crime, such as illegal drugs. If your home or business is searched unlawfully, any items obtained during that unlawful search could be excluded as evidence in a criminal trial because of the Fourth Amendment's exclusionary rule. **For Example**, in the murder trial of O.J. Simpson, Judge Lance Ito excluded some of the evidence the police had obtained from inside Mr. Simpson's Ford Bronco, which was parked on the street outside his home. Judge Ito ruled that the officers should have first obtained a warrant for the locked vehicle, which was not going to be taken anywhere because Mr. Simpson was out of town at that time.

CASE SUMMARY



Searches of Cars When Drivers Are Cuffed

FACTS: Rodney Gant was arrested for driving with a suspended license and handcuffed in the back seat of the squad car of the arresting officers. After handcuffing Mr. Gant, the arresting officers searched his car and found cocaine in the pocket of a jacket lying on the back seat of Gant's vehicle. Mr. Gant was charged with possession of cocaine (as well as driving with a suspended license).

Mr. Gant's lawyer challenged the search of his client's vehicle on the grounds that there were not exigent circumstances. That is, locked in and handcuffed as he was, there was no emergency or reason to believe that Mr. Gant would spring into action and hide, destroy, or swallow the cocaine. As a result, his lawyer argued that the officers needed a warrant. Without the warrant, his lawyer argued, the cocaine could not be used as evidence in the case.

The cocaine evidence was admitted and Mr. Gant was convicted and appealed. The Court of Appeals of Arizona reversed. The United States Supreme Court granted Arizona's petition for *certiorari*, and subsequently vacated and remanded. The Court of Appeals of Arizona remanded for evidentiary hearing on the legality of the warrantless search. On remand, the trial court found no violation. Defendant appealed again. The Court of Appeals of Arizona reversed the decision and the Supreme Court of Arizona affirmed that reversal. Arizona appealed.

DECISION: The court held that the officers needed to impound the vehicle and obtain a warrant in order to search it. Police may search the passenger compartment of a vehicle after such an arrest only if it is reasonable to believe that the person arrested might somehow access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest, which, in this case, was a suspended license. Without a warrant to search the vehicle while its owner was handcuffed, the cocaine that was found was not admissible for purposes of prosecuting Mr. Gant on the cocaine charges. Without the cocaine evidence, unless Mr. Gant confesses, that charge had to be dropped. Searches require warrants or a valid exception to the privacy provided under the Fourth Amendment. Affirmed. [*Arizona v. Gant*, 556 U.S. 332 (2009)]

¹ Police officers who record the arrest of a DUI suspect have not violated the suspect's privacy. *State v. Morris*, 214 P.3d 883 (Ut. App. 2009)

A second aspect of the right of privacy protects individuals against intrusions by others. Your private life is not subject to public scrutiny when you are a private citizen. This right is provided in many state constitutions and exists through interpretation at the federal level through the landmark case of *Roe v. Wade*,² in which the U.S. Supreme Court established a right of privacy that gives women the right to choose whether to have an abortion.

These two components of the right to privacy have many interpretations. These interpretations are often found in statutes that afford privacy rights with respect to certain types of conduct. **For Example**, a federal statute provides a right of privacy to bank customers that prevents their banks from giving out information about their accounts except to law enforcement agencies conducting investigations. Some laws protect the rights of students. **For Example**, the Family Educational Rights and Privacy Act of 1974 (FERPA, also known as the *Buckley Amendment*) prevents colleges and universities from disclosing students' grades to third parties without the students' permission. From your credit information to your Social Security number, you have great privacy protections.

4. Privacy and Technology

Technology creates new situations that may require the application of new rules of law. Technology has changed the way we interact with each other, and new rules of law have developed to protect our rights. Today, business is conducted by computers, wire transfers of funds, e-mail, electronic data interchange (EDI) order

Ethics & the Law



Twitter, Facebook, Google, and Your Job Application

A study by the social monitoring service, Repler, found the following about employers:

91 percent of the employers polled use social networking sites (Twitter, Facebook, and LinkedIn) to screen prospective employees. Some employers even ask for applicants' passwords as a condition of employment.

69 percent say they have rejected a job applicant because of something they saw on one of these social platforms.

47 percent of employers do their checks of these social networking sites immediately after receiving their job applications.

76 percent of employers check Facebook.

53 percent check Twitter.

48 percent check LinkedIn.

68 percent of employers say that they have hired someone because they liked what they saw on these social networking sites.

One employer commented that these searches are so simple that it would be irresponsible to not do them. Experts tell college students to remember that what may seem to be fun can later come back to haunt you when you begin your professional career. Their advice is to watch what you post and what you write. Discuss privacy rights and whether there is any legal issue when information is posted voluntarily on the Internet. Is there an ethical issue with these types of searches?

Source: Shea Bennett, "91% of Employers Use Twitter, Facebook, and LinkedIn to Screen Job Applicants," www.alltwitter.com, October 24, 2011.

² 410 U.S. 113 (1973).

placements, and the Internet. We still expect that our communication is private. However, technology also affords others the ability to eavesdrop on conversations and intercept electronic messages. The law has stepped in to reestablish that the right of privacy still exists even in these technologically nonprivate circumstances. Some laws now make it a crime and a breach of privacy to engage in such interceptions of communications.³ (See Chapter 11)

E-Commerce & Cyberlaw



A University's Access to Your Computer

Scott Kennedy, a computer system administrator for Qualcomm Corporation in San Diego, California, discovered that somebody had obtained unauthorized access (or “hacked into,” in popular parlance) the company’s computer network. Kennedy contacted the Federal Bureau of Investigation (FBI). Working together, Kennedy and the FBI were able to trace the intrusion to a computer on the University of Wisconsin at Madison network. They contacted Jeffrey Savoy, the University of Wisconsin computer network investigator, who found evidence that someone using a computer on the university network was in fact hacking into the Qualcomm system and that the user had gained unauthorized access to the university’s system as well. Savoy traced the source of intrusion to a computer located in university housing, the room of Jerome Heckenkamp, a computer science graduate student at the university. Savoy knew that Heckenkamp had been terminated from his job at the university computer help desk two years earlier for similar unauthorized activity.

While Heckenkamp was online and logged into the university’s system, Savoy, along with detectives, went to Heckenkamp’s room. The door was ajar, and nobody was in the room. Savoy entered the room and disconnected the network cord that attached the computer to the network. In order to be sure that the computer he had disconnected from the network was the computer that had gained unauthorized access to the university server, Savoy wanted to run some commands on the computer. Detectives located Heckenkamp, explained the situation, and asked for Heckenkamp’s password, which Heckenkamp voluntarily provided. Savoy then ran tests on the computer and copied the hard drive without a warrant. When Heckenkamp was charged with several federal computer crimes, he challenged the university’s access to his account and Savoy’s steps that night, including the copy of the hard drive, as a breach of his privacy. Was Heckenkamp correct? Was his privacy breached?

[*U.S. v. Heckenkamp*, 482 F.3d 1142 (9th Cir. 2007)]

B. SOURCES OF LAW

Several layers of law are enacted at different levels of government to provide the framework for business and personal rights and duties. At the base of this framework of laws is constitutional law.

5. Constitutional Law

Constitutional law is the branch of law that is based on the constitution for a particular level of government. A **constitution** is a body of principles that establishes the structure of a government and the relationship of that government to the people who are governed. A constitution is generally a combination of the written document and the practices and customs that develop with the passage of time and the

constitution—a body of principles that establishes the structure of a government and the relationship of the government to the people who are governed.

³ *Luangkhot v. State*, 722 S.E.2d 193 (Ga. App. 2012).

emergence of new problems. In each state, two constitutions are in force: the state constitution and the federal Constitution.

6. Statutory Law

statutory law—legislative acts declaring, commanding, or prohibiting something.

Statutory law includes legislative acts. Both Congress and the state legislatures enact statutory law. Examples of congressional legislative enactments include the Securities Act of 1933 (Chapter 46), the Sherman Antitrust Act (Chapter 5), the bankruptcy laws (Chapter 35), and consumer credit protection provisions (Chapter 33). At the state level, statutes govern the creation of corporations, probate of wills, and the transfer of title to property. In addition to the state legislatures and the U.S. Congress, all cities, counties, and other governmental subdivisions have some power to adopt ordinances within their sphere of operation. Examples of the types of laws found at this level of government include traffic laws, zoning laws, and pet and bicycle licensing laws.

7. Administrative Law

administrative regulations—rules made by state and federal administrative agencies.

Administrative regulations are rules promulgated by state and federal administrative agencies, such as the Securities and Exchange Commission and the National Labor Relations Board. For example, most of your rights related to your wages, hours worked, and overtime pay have been promulgated by the Department of Labor. These regulations generally have the force of statutes.

8. Private Law

private law—the rules and regulations parties agree to as part of their contractual relationships.

Even individuals and businesses create their own laws, or **private law**. Private law consists of the rules and regulations parties agree to as part of their contractual relationships. **For Example**, landlords develop rules for tenants on everything from parking to laundry room use. Employers develop rules for employees on everything from proper computer use to posting pictures and information on bulletin boards located within the company walls. Homeowner associations have rules on everything from your landscaping to the color of your house paint.

9. Case Law, Statutory Interpretation, and Precedent

case law—law that includes principles that are expressed for the first time in court decisions.

Law also includes principles that are expressed for the first time in court decisions. This form of law is called **case law**. Case law plays three very important roles. The first is one of clarifying the meaning of statutes, or providing statutory interpretation. **For Example**, a man who was sentenced to house arrest left his house but still wanted to count the time as part of his sentence.⁴ A court decision held that you must actually be in the house to have the time count. The second role that courts play is in creating precedent. When a court decides a new question or problem, its decision becomes a **precedent**, which stands as the law in future cases that involve that particular problem.

precedent—a decision of a court that stands as the law for a particular problem in the future.

⁴ *Com. v. Stafford*, 29 A.3d 800 (Pa. Super. 2011).

stare decisis – “let the decision stand”; the principle that the decision of a court should serve as a guide or precedent and control the decision of a similar case in the future.

common law – the body of unwritten principles originally based upon the usages and customs of the community that were recognized and enforced by the courts.

Using precedent and following decisions is also known as the doctrine of **stare decisis**. However, the rule of *stare decisis* is not cast in stone. Judges have some flexibility. When a court finds an earlier decision to be incorrect, it overrules that decision. **For Example**, in 1954, the U.S. Supreme Court departed from the general rule of *stare decisis* in *Brown v. Board of Education*.⁵ In that case, the Court decided that its 1896 decision *Plessy v. Ferguson*,⁶ that held separate facilities for blacks were equal to facilities for whites, was incorrect.

The third role courts play is in developing a body of law that is not statutory but addresses long standing issues. Court decisions do not always deal with new problems or make new rules. In many cases, courts apply rules as they have been for many years, even centuries. These time-honored rules of the community are called the **common law**. **For Example**, most of law that we still follow today in determining real property rights developed in England, beginning in 1066. Statutes sometimes repeal or redeclare the common law rules. Many statutes depend on the common law for definitions of the terms in the statutes.

10. Other Forms of Law: Treaties and Executive Orders

Law also includes treaties made by the United States and proclamations and executive orders of the president of the United States or of other public officials.

11. Uniform State Laws

To facilitate the national nature of business and transactions, the National Conference of Commissioners on Uniform State Laws (NCCUSL), composed of representatives from every state, has drafted statutes on various subjects for adoption by the states. The best example of such laws is the Uniform Commercial Code (UCC).⁷ (See Chapters 23–31, Chapter 34.) The UCC regulates the sale and lease of goods; commercial paper, such as checks; fund transfers; secured transactions in personal property; banking; and letters of credit. Having the same principles of law on contracts for the sale of goods and other commercial transactions in most of the 50 states makes doing business easier and less expensive. Other examples of uniform laws across the states include the Model Business Corporations Act (Chapter 44), the Uniform Partnership Act (Chapter 42), and the Uniform Residential Landlord Tenant Act (Chapter 51). The Uniform Computer Information Transactions Act (UCITA) as well as the Uniform Electronic Transactions Act (UETA) are two uniform laws that have taken contract law from the traditional paper era to the paperless computer age.

⁵ 349 U.S. 294 (1954).

⁶ 163 U.S. 537 (1895).

⁷ The UCC has been adopted in every state, except that Louisiana has not adopted Article 2, Sales. Guam, the Virgin Islands, and the District of Columbia have also adopted the UCC. The NCCUSL has adopted amendments to Article 8, Investment Securities (1977 and 1994), and Article 9, Secured Transactions (1999, and as amended 2001). There have been new articles of the UCC: Article 2A, Leases, and Article 4A, Funds Transfers. The United Nations Convention on Contracts for the International Sale of Goods (CISG) has been adopted as the means for achieving uniformity in sale-of-goods contracts on an international level. Provisions of CISG were strongly influenced by Article 2 of the UCC.