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6<sup>th</sup> EDITION

INTRODUCTION TO  
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# INTRODUCTION TO BUSINESS LAW

6<sup>th</sup> EDITION

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**Introduction to Business Law, 6th Edition**  
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Library of Congress Control Number: 2017948394

Student Edition:

ISBN: 978-1-337-40434-1

Loose-leaf Edition:

ISBN: 978-1-337-40443-3

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## NOTE FROM THE AUTHORS

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### Enhanced Digital Content—*MindTap*<sup>™</sup>

Our goal—and yours—is for the students to learn the material. With that singular goal in mind, Cengage has created an extremely useful tool for both instructors and students. *MindTap*<sup>™</sup> is a fully online, highly personalized learning experience combining readings, multimedia, activities, and assessments into a singular Learning Path. It integrates seamlessly with Learning Management Systems. *MindTap* guides students through their course with ease and engagement. Instructors can personalize the Learning Path by customizing Cengage resources and adding their own content via apps that integrate with *MindTap*.

**Our students who use *MindTap* are better prepared for, and earn better grades on, our exams.** We recognize that the online experience is as important to the students—and you—as the book itself. Thus, unlike other texts, we (the authors) have reviewed every question in the *MindTap* product to ensure that it meets the high standards of our book.

We have heard that business law instructors want to help students **Prepare** for class, **Engage** with the course concepts to reinforce learning, **Apply** these concepts in real-world scenarios, use legal reasoning and critical thinking to **Analyze** business law content, and **Evaluate** real business scenarios and their legal implications.

Accordingly, our *MindTap* product provides a five-step Learning Path designed to meet these critical needs while also allowing instructors to measure skills and outcomes with ease.

- **Prepare**—Interactive worksheets are designed to prepare students for classroom discussion by ensuring that they have read and understood the reading.
- **Engage**—Real-world videos with related questions help engage students by displaying the relevance of business law in everyday life.
- **Apply**—Brief hypothetical case scenarios help students practice spotting issues and applying the law in the context of short factual scenarios.
- **Analyze**—Case-problem analysis promotes deeper critical thinking and legal reasoning by building on acquired knowledge. These exercises guide students step by step through a case problem and then add in a critical thinking section based on “What If the Facts Were Different?” In a **new third section**, a writing component requires students to demonstrate their ability to forecast the legal implications of real-world business scenarios.
- **Evaluate**—New **business case** activities develop students’ *skills* to apply critical thinking and legal reasoning through relevant real-world business scenarios. These exercises give students the opportunity to advocate, evaluate, and make a decision through a variety of flexible assessment options including Discussion Questions, Multiple-Choice Questions, Short-Answer Essays, Group Work, and Ethical Dilemmas. Whether you have a large class, small class, teach online or in a traditional classroom setting, promote group work, or individual assignments, the *MindTap* Business Cases offer a variety of activity types to complement and enhance how YOU teach.

Each and every item in the Learning Path is assignable and gradable. Thus instructors have up-to-the-minute information on the class' general understanding of concepts as well as data on the performance of each individual student. Students also know where they stand—both individually and compared to the highest performers in the class. Thus, both faculty and students are less likely to face unpleasant surprises on exams.

*MindTap* also includes:

- **Case Collection** where instructors can find over 1,600 additional cases that were included in several previous editions of all of the Cengage Business Law or Legal Environment texts. These cases are searchable by name, year, state, and subject matter.
- **Adaptive Test Prep** for students, where they can generate their own practice quizzes with questions similar to those found on most exams.

To view a demo video and learn more about *MindTap*, please visit [www.cengage.com/mindtap](http://www.cengage.com/mindtap).

## The Beatty/Samuelson/Abril Difference

Our goal in writing this book was to capture the passion and excitement, the sheer enjoyment, of the law. Business law is notoriously complex, and, as authors, we are obsessed with accuracy. Yet this intriguing subject also abounds with human conflict and hard-earned wisdom, forces that we wanted to use to make this book sparkle. Look, for example, at Chapter 21 on corporations. A robust discussion of the nitty gritty of corporate governance is enlivened by court cases featuring intense personal conflict.

Once we have the students' attention, our goal is to provide the information they will need as business people and as informed citizens. Of course, we present the *theory* of how laws work, but we also explain when *reality* is different. To take some examples, traditionally business law textbooks have simply taught students that shareholders elect the directors of public companies. Even Executive MBA students rarely understand the reality of corporate elections. But our book explains the complexity of corporate power. The practical contracts chapter focuses not on the theory of contract law but on the real-life issues involved in making an agreement: Do I need a lawyer? Should the contract be in writing? What happens if the contract has an unclear provision or an important typo? What does all that boilerplate mean anyway?

Nobel Laureate Paul Samuelson famously said, "Let those who will write the nation's laws, if I can write its textbooks." As authors, we never forget the privilege—and responsibility—of educating a generation of business law students. Our goal is to write a business law text like no other—a book that is authoritative, realistic, and yet a pleasure to read.

**Strong Narrative.** The law is full of great stories, and we use them. It is easier to teach students when they come to class curious and excited. Every chapter begins with a story that is based in fact, to illustrate important issues. We also include stories in the body of the chapters. Look at Chapter 5 on dispute resolution. No tedious list of next steps in litigation, this chapter teaches the subject by tracking a double-indemnity lawsuit. An executive is dead. Did he drown accidentally, obligating the insurance company to pay? Or did the businessman commit suicide, voiding the policy? Students follow the action from the discovery of the body, through each step of the lawsuit, to the final appeal.

**Student Reaction.** Students have responded enthusiastically to our approach. One professor asked a student to compare our book with the one that the class was then using. This was the student's reaction: "I really enjoy reading the [Beatty] textbook, and I have decided that I will give you this memo ASAP, but I am keeping the book until Wednesday so that I may continue reading. Thanks! :-)"

This text has been used in courses for undergraduates, MBAs, and Executive MBAs, with students ranging in age from 18 to 65. This book works, as some unsolicited comments indicate:

**From verified purchasers on Amazon:**

- “If you have this textbook for your business law class, then you are in luck! This is one of the best and most helpful textbooks that I have ever had the pleasure of using. (I mostly just use my textbooks as a pillow.) I actually did enjoy reading this and learning the material. The author breaks down the concepts so they are easy to understand. Even if you hate law, if you put forth the effort to learn this, you should have no trouble at all learning and understanding the concepts.”
- “I enjoyed this book so much that I will not be selling it back to the bookstore (or anyone) because I know that I will use the book for years.”

**From undergraduates:**

- “This is the best textbook I have had in college, on any subject.”
- “The textbook is awesome. A lot of the time I read more than what is assigned—I just don’t want to stop.”
- “I had no idea business law could be so interesting.”

**From MBA students:**

- “Actually enjoyed reading the text book, which is a rarity for me.”
- “The law textbook was excellent through and through.”

**From a Fortune 500 vice president, enrolled in an Executive MBA program:**

- “I really liked the chapters. They were crisp, organized, and current. The information was easy to understand and enjoyable.”

**From business law professors:**

- “The clarity of presentation is superlative. I have never seen the complexity of contract law made this readable.”
- “Until I read your book I never really understood UCC 2-207.”
- “With your book, we have great class discussions.”

**From a state supreme court justice:**

- “This book is a valuable blend of rich scholarship and easy readability. Students and professors should rejoice with this publication.”

**Current.** This 6th edition contains more than 25 new cases. Most were reported within the last two or three years, and many within the last 12 months. The law evolves continually, and our willingness to toss out old cases and add important new ones ensures that this book—and its readers—remain on the frontier of legal developments.

**Authoritative.** We insist, as you do, on a law book that is indisputably accurate. To highlight the most important rules, we use bold print, and then follow with vivid examples written in clear, forceful English. We cheerfully venture into contentious areas, relying on very recent decisions. Can a Delaware court order the sale of a successful business? Is discrimination based on sexual orientation legal? Is the list of names in a LinkedIn group a trade secret? What are the limits to free speech on social media? Where there is doubt about the current (or future) status of a doctrine, we say so. In areas of particularly heated debate, we footnote our work. We want you to have absolute trust in this book.



**Humor.** Throughout the text we use humor—judiciously—to lighten and enlighten. We revere the law for its ancient traditions, its dazzling intricacy, and its relentless, though imperfect, attempt to give order and decency to our world. But because we are confident of our respect for the law, we are not afraid to employ some levity, for the simple reason that humor helps retention. Research shows that the funnier or more original the example, the longer students will remember it. They are more likely to recall an intellectual property rule involving the copyrightability of yoga than a plain-vanilla example about a common widget.

## Features

Each feature in this book is designed to meet an essential pedagogical goal. Here are some of those goals and the matching feature.

### Exam Strategy

**GOAL: To help students learn more effectively and to prepare for exams.** In developing this feature, we asked ourselves: *What do students want?* The short answer is—a good grade in the course. How many times a semester does a student ask you, “What can I do to study for the exam?” We are happy to help them study and earn a good grade because that means that they will also be learning.

About four times per chapter, we stop the action and give students a two-minute quiz. In the body of the text, again in the end-of-chapter review, and also in the Instructor’s Manual, we present a typical exam question. Here lies the innovation: We guide the student in analyzing the issue. We teach the reader—over and over—how to approach a question: to start with the overarching principle, examine the fine point raised in the question, apply the analysis that courts use, and deduce the right answer. This skill is second nature to lawyers and teachers, but not to students. Without practice, too many students panic, jumping at a convenient answer, and leaving aside the tools they have spent the course acquiring. Let’s change that. Students love the Exam Strategy feature.

### You Be the Judge Cases

**GOAL: Get them thinking independently.** When reading case opinions, students tend to accept the court’s “answer.” But we strive to challenge them beyond that. We want students to think through problems and reach their own answers guided by sound logic and legal knowledge. The You Be the Judge features are cases that provide the facts of the case and conflicting appellate arguments. But the court’s decision appears only in the Instructor’s Manual. Because students do not know the result, class discussions are more complex and lively.

### Ethics

**GOAL: Make ethics real.** We include the latest research on ethical decision-making, such as ethics traps (why people make decisions they know to be wrong).

### End-of-Chapter Exam Review and Questions

**GOAL: Encourage students to practice!** At the end of the chapters, we provide a list of review points and several additional Exam Strategy exercises. We also challenge the students with 20 or more problems—Matching, True or False, Multiple-Choice Questions, Case Questions, and Discussion Questions. The questions include the following:

- *You Be the Judge Writing Problem.* Students are given appellate arguments on both sides of the question and then must prepare a written opinion.
- *Ethics.* This question highlights the ethics issues of a dispute and calls upon the student to formulate a specific, reasoned response.

- *CPA Questions.* For topics covered by the CPA exam, administered by the American Institute of Certified Public Accountants, the Exam Review includes questions from previous CPA exams.

Answers to the odd-numbered Matching, True or False, Multiple-Choice, and Case Questions are available in Appendix C of the book.

## Cases

**GOAL: Bring case law alive.** Each case begins with a summary of the facts and a statement of the issue. Next comes a summary of the court's opinion. We have written this summary ourselves to make the judges' reasoning accessible to all readers while retaining the court's focus and the decision's impact. In the principal cases in each chapter, we provide the state or federal citation, unless it is not available, in which case we use the LEXIS and Westlaw citations.

# TEACHING MATERIALS

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For more information about any of these ancillaries, contact your Cengage Consultant, or visit the Beatty Samuelson Abril Business Law website at [www.cengagebrain.com](http://www.cengagebrain.com).

**MindTap.** *MindTap* is a fully online, highly personalized learning experience combining readings, multimedia, activities, and assessments into a singular Learning Path. Instructors can personalize the Learning Path by customizing Cengage resources and adding their own content via apps that integrate into the *MindTap* framework seamlessly with Learning Management Systems. To view a demo video and learn more about *MindTap*, please visit [www.cengage.com/mindtap](http://www.cengage.com/mindtap).

**Instructor's Manual.** The Instructor's Manual, available on the Instructor's Support Site at [www.cengagebrain.com](http://www.cengagebrain.com), includes special features to enhance class discussion and student progress:

- Answers to the You Be the Judge cases from the main part of the chapter and to the Exam Review questions found at the end of each chapter.
- Current Focus. This feature offers updates of text material.
- Additional cases and examples.
- Exam Strategy Problems. If your students would like more of these problems, there is an additional section of Exam Strategy problems in the Instructor's Manual.
- Dialogues. These are a series of questions-and-answers on pivotal cases and topics. The questions provide enough material to teach a full session. In a pinch, you could walk into class with nothing but the manual and use the Dialogues to conduct an effective class.
- Action learning ideas. Interviews, quick research projects, drafting exercises, classroom activities, and other suggested assignments get students out of their chairs and into the diverse settings of business law.

**Cengage Testing Powered by Cognero.** Cognero is a flexible online system that allows you to author, edit, and manage test bank content from multiple Cengage solutions; create multiple test versions in an instant; and deliver tests from your LMS, your classroom, or wherever you want.

**PowerPoint Lecture Review Slides.** PowerPoint slides are available for use by instructors for enhancing their lectures and to aid students in note taking. Download these slides at [www.cengagebrain.com](http://www.cengagebrain.com).

**Interaction with the Authors.** This is our standard: Every professor who adopts this book must have a superior experience. We are available to help in any way we can. Adopters of this text often call or email us to ask questions, offer suggestions, share pedagogical concerns, or inquire about ancillaries. One of the pleasures of writing this book has been this link to so many colleagues around the country. We value those connections, are eager to respond, and would be happy to hear from you.

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## ACKNOWLEDGMENTS

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The list of people who have contributed helpful comments and suggestions for this book is long. We are grateful to all of the reviewers and instructors from around the country who have helped us refine this book through all of its editions.

## ABOUT THE AUTHORS

---

Jeffrey F. Beatty (1948–2009) was an Associate Professor of Business Law at the Boston University Questrom School of Business. After receiving his B.A. from Sarah Lawrence and his J.D. from Boston University, he practiced with the Greater Boston Legal Services representing indigent clients. At Boston University, he won the Metcalf Cup and Prize, the university's highest teaching award. Professor Beatty also wrote plays and television scripts that were performed in Boston, London, and Amsterdam.

Susan S. Samuelson is a Professor of Business Law at the Boston University Questrom School of Business. After earning her A.B. at Harvard University and her J.D. at Harvard Law School, Professor Samuelson practiced with the firm of Choate, Hall and Stewart. She has written many articles on legal issues for scholarly and popular journals, including the *American Business Law Journal*, *Ohio State Law Journal*, *Boston University Law Review*, *Harvard Journal on Legislation*, *National Law Journal*, *Sloan Management Review*, *Inc. Magazine*, and *Boston Magazine*. At Boston University she won the Broderick Prize for excellence in teaching.

Patricia Sánchez Abril is a Professor of Business Law and Vice Dean for Graduate Business Programs and Executive Education at the University of Miami School of Business Administration. Professor Abril's research has appeared in the *American Business Law Journal*, *Harvard Journal of Law & Technology*, *Florida Law Review*, *Houston Law Review*, *Wake Forest Law Review*, and *Columbia Business Law Journal*, among other journals. In 2011, the American Business Law Journal honored her with its Distinguished Junior Faculty Award, in recognition of exceptional early career achievement. Her research has won the Outstanding Proceedings competition at the annual conference of the Academy of Legal Studies in Business and has twice earned the Hoerber Memorial Award for Excellence in Research. Professor Abril has won awards for her teaching in both the undergraduate and graduate programs at the University of Miami.

To w.f.s., “*the fountain from the  
which my current runs*”

S.S.S.

To a.f.a., *with gratitude and love*

p.s.a.



# The Legal Environment

UNIT

**1**

# INTRODUCTION TO LAW

The Pagans were a motorcycle gang with a reputation for violence. Two of its rougher members, Rhino and Backdraft, entered a tavern called the Pub Zone, shoving their way past the bouncer. The pair wore gang insignia, in violation of the bar's rules. For a while, all was quiet, as the two sipped drinks at the bar. Then they followed an innocent patron toward the men's room, and things happened fast.

"Wait a moment," you may be thinking, "are we reading a chapter on business law or one about biker crimes in a roadside tavern?" Both.

Law is powerful, essential, and fascinating. We hope this book will persuade you of all three ideas. Law can also be surprising. Later in the chapter, we will return to the Pub Zone (with armed guards) and follow Rhino and Backdraft to the back of the pub. Yes, the pair

engaged in street crime, which is hardly a focus of this text. However, their criminal acts will enable us to explore one of the law's basic principles, negligence. Should a pub owner pay money damages to the victim of gang violence? The owner herself did nothing aggressive. Should she have prevented the harm? Does her failure to stop the assault make her liable?

We place great demands on our courts, asking them to make our large, complex, and sometimes violent society into a safer, fairer, more orderly place. The *Pub Zone* case is a good example of how judges reason their way through the convoluted issues involved. What began as a gang incident ends up as a matter of commercial liability. We will traipse after Rhino and Backdraft because they have a lesson to teach anyone who enters the world of business.

Should a pub owner  
pay money damages to the  
victim of gang violence?

## 1-1 EXPLORING THE LAW

---

A driver is seriously injured in an automobile accident, and the jury concludes that the car had a design defect. The jurors award her \$29 million. A senior vice president congratulates himself on a cagey stock purchase but is horrified to receive, not profits, but a prison sentence. A homeless person, ordered by local police to stop panhandling, ambles into court and walks out with an order permitting him to beg on the city's streets. The strong hand of the law touches us all. To understand something that powerful is itself power.

Suppose, some years after graduation, you are a mid-level manager at Sublime Corp., which manufactures and distributes video games. You are delighted with this important position in an excellent company—and especially glad that you bring legal knowledge to the job. Sarah, an expert at computer-generated imagery, complains that Rob, her boss, is constantly touching her and making lewd comments. That is sexual harassment, and your knowledge of *employment law* helps you respond promptly and carefully.

You have dinner with Jake, who has his own software company. Jake wants to manufacture an exciting new video game in cooperation with Sublime, but you are careful not to create a binding deal (*contract law*). Jake mentions that a similar game is already on the market. Do you have the right to market one like it? That answer you already know (*intellectual property law*).

LuYu, your personnel manager, reports that a silicon chip worker often seems drowsy; she suspects drug use. Does she have the right to test him (*constitutional law* and *employment law*)? On the other hand, if she fails to test him, could Sublime Corp. be liable for any harm the worker does (*tort law* and *agency law*)?

In a mere week, you might use your legal knowledge a dozen times, helping Sublime to steer clear of countless dangers. During the coming year, you encounter many other legal issues, and you and your corporation benefit from your skills.

It is not only as a corporate manager that you will confront the law. As a voter, investor, juror, entrepreneur, and community member, you will influence and be affected by the law. Whenever you take a stance about a legal issue, whether in the corporate office, the voting booth, or as part of local community groups, you help to create the social fabric of our nation. Your views are vital. This book will offer you knowledge and ideas from which to form and continually reassess your legal opinions and values.

**Law is also essential.** *Every* society of which we have any historical record has had some system of laws. Societies depend upon laws for safe communities, functioning economies, and personal liberties. An easy way to gauge the importance of law is to glance through any newspaper and read about nations that lack a strong system of justice. Notice that these countries cannot ensure physical safety and personal liberties. They also fail to offer economic opportunity for most citizens. We may not always like the way our legal system works, but we depend on it to keep our society functioning.

**Law is intriguing.** When the jury awarded \$29 million against an auto manufacturer for a defective car design, it certainly demonstrated the law's power. But was the jury's decision right? Should a company have to pay that much for one car accident? Maybe the jury was reacting emotionally. Or perhaps the anger caused by terrible trauma *should* be part of a court case. These are not abstract speculations for philosophers. Verdicts such as this may cause each of us to pay more for our next automobile. Then again, we may be driving safer cars.

### 1-1a Sources of Contemporary Law

It would be nice if we could look up “the law” in one book, memorize it, and then apply it. But the law is not that simple. Principles and rules of law come from many different sources. Why is this so?

### Federalism

A double-layered system of government, with the national and state governments each exercising important but limited powers

### United States Constitution

The supreme law of the United States

We inherited a complex structure of laws from England. Additionally, ours is a nation born in revolution and created, in large part, to protect the rights of its people from the government. Our country's Founders created a national government but insisted that the individual states maintain control in many areas. As a result, each state has its own government with exclusive power over many important areas of our lives. What the Founders created was **federalism**: a double-layered system of government, with the national government and state governments each exercising important but limited powers. To top it off, the Founders guaranteed many rights to the people alone, ordering national and state governments to keep clear. They achieved all of this in one remarkable document: the United States Constitution.

## United States Constitution

America's greatest legal achievement was the writing of the **United States Constitution** in 1787. It is the supreme law of the land, and any law that conflicts with it is void. This federal Constitution does three basic things. First, it establishes the national government of the United States, with its three branches. Second, it creates a system of checks and balances among the branches. And, third, the Constitution guarantees many basic rights to the American people.

**Branches of Government.** The Founders sought a division of government power. They did not want all power centralized in a monarch or anyone else. And so the Constitution divides legal authority into three pieces: legislative, executive, and judicial power.

*Legislative power* gives the ability to create new laws. In Article I, the Constitution gives this power to the Congress, which is comprised of two chambers—a Senate and a House of Representatives.

The House of Representatives has 435 voting members. A state's voting power is based on its population. States with large populations (Texas, California, Florida) send dozens of representatives to the House, while sparsely populated states (Wyoming, North Dakota, Delaware) send only one. The Senate has 100 voting members—two from each state.

*Executive power* is the authority to enforce laws. Article II of the Constitution establishes the president as commander-in-chief of the armed forces and the head of the executive branch of the federal government.

*Judicial power* gives the right to interpret laws and determine their validity. Article III places the Supreme Court at the head of the judicial branch of the federal government. Interpretive power is often underrated, but it is often as important as the ability to create laws in the first place. For instance, the Supreme Court ruled that privacy provisions of the Constitution protect a woman's right to abortion, although neither the word "privacy" nor "abortion" appears in the text of the Constitution.<sup>1</sup> And at times, courts void laws altogether. For example, in 2016, the Supreme Court struck down a Texas law regulating abortion clinics and the doctors who worked in them. The Court found that those rules created an undue burden for Texas women by causing many clinics to close and making abortions unreasonably difficult to obtain.<sup>2</sup>

**Checks and Balances.** The authors of the Constitution were not content to divide government power three ways. They also wanted to give each part of the government the power over the other two branches. Many people complain about "gridlock" in Washington, but the government is sluggish by design. The Founders wanted to create a system that, without broad agreement, would tend towards inaction. The president can veto congressional legislation. Congress can impeach the president. The Supreme Court can void laws passed by Congress. The president appoints judges to the federal courts, but these nominees do not serve unless approved by the Senate.

Many of these checks and balances will be examined in more detail later in the text.

<sup>1</sup>Roe v. Wade, 410 U.S. 113 (1973).

<sup>2</sup>Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292 (2016).

**Fundamental Rights.** The Constitution also grants many of our most basic liberties. For the most part, those liberties are found in the amendments to the Constitution. The First Amendment guarantees the rights of free speech, free press, and the free exercise of religion. The Fourth, Fifth, and Sixth Amendments protect the rights of any person accused of a crime. Other amendments ensure that the government treats all people equally and that it pays for any property it takes from a citizen.

By creating a limited government of three branches and guaranteeing basic liberties to all citizens, the Constitution has become one of the most important documents ever written.

## Statutes

The second important source of law is statutory law. The Constitution gave to the U.S. Congress the power to pass laws on various subjects. These laws are called **statutes**, and they can cover absolutely any topic at all, so long as they do not violate the Constitution.

Almost all statutes are created by the same method. An idea for a new law—on taxes, health care, texting while driving, or anything else—is first proposed in the Congress. This idea is called a *bill*. The House and Senate then independently vote on the bill. To pass Congress, the bill must get approval from a simple majority of each of these chambers.

If Congress passes a bill, it goes to the White House. If the president signs it, a new statute is created. It is no longer a mere idea; it is the law of the land. If a president *veto*es a bill, it does not become a statute unless Congress overrides the veto. To do that, both the House and the Senate must approve the bill by a two-thirds majority. At this point, it becomes a statute without the president's signature.

## Common Law

Binding legal ideas often come from the courts. Judges generally follow *precedent*. When courts decide a case, they tend to apply the same legal rules that other courts have used in similar cases. **The principle that precedent is binding on later cases is *stare decisis*, which means “let the decision stand.”** *Stare decisis* makes the law predictable, and this in turn enables businesses and private citizens to plan intelligently.

It is important to note that precedent is only binding on *lower* courts. If the Supreme Court, for example, decided a case in one way in 1965, it is under no obligation to follow precedent if the same issue arises in 2020.

Sometimes, this is quite beneficial. In 1896, the Supreme Court decided (unbelievably) that segregation—separating people by race in schools, hotels, public transportation, and so on—was legal. In 1954, on the exact same issue, the Court changed its mind.

In other circumstances, it is more difficult to see the value in breaking with an established rule.

## Court Orders

Judges have the authority to issue court orders that place binding obligations on specific people or companies. A court can both compel a party to and prohibit it from doing something. An injunction is an example of court order. Injunctions can require people to do things, like perform on a contract or remove a nuisance. A judge might also issue an injunction to stop a salesperson from using his former company's client list or prevent a counterfeiter from selling fake goods. Courts have the authority to imprison or fine those who violate their orders.

## Administrative Law

In a society as large and complex as ours, the executive and legislative branches of government cannot oversee all aspects of commerce. Congress passes statutes about air safety, but U.S. senators do not stand around air traffic towers, serving coffee to keep everyone awake. The executive branch establishes rules concerning how foreign

### Statute

A law passed by Congress or by a state legislature

### Stare decisis

The principle that precedent is binding on later cases



Senators do not stand around air traffic towers, serving coffee to keep everyone awake.

nationals enter the United States, but presidents are reluctant to sit on the dock of the bay, watching the ships come in. Administrative agencies do this day-to-day work.

Most government agencies are created by Congress. Familiar examples include the Environmental Protection Agency (EPA), the Securities and Exchange Commission (SEC), and the Internal Revenue Service (IRS), whose feelings are hurt if it does not hear from you every April 15. Agencies have the power to create laws called *regulations*.

## 1-1b Classifications of Law

We have seen where laws come from. Now we need to classify them. First, we will distinguish between criminal and civil law. Then we will take a look at the intersection between law and morality.

### Criminal and Civil Law

#### Criminal law

Concerns behavior so threatening that society prohibits it

It is a crime to embezzle money from an employer, to steal a car, and to sell cocaine. **Criminal law concerns behavior so threatening that society outlaws it altogether.** Most criminal laws are statutes, passed by Congress or a state legislature. The government itself prosecutes the wrongdoer, regardless of what the bank president or car owner wants. A district attorney, paid by the government, brings the case to court. The injured party, for example the owner of the stolen car, is not in charge of the case, although she may appear as a witness. The government will seek to punish the defendant with a prison sentence, a fine, or both. If there is a fine, the money goes to the state, not to the injured party.

#### Civil law

Regulates the rights and duties between parties

Civil law is different, and most of this book is about civil law. **Civil law regulates the rights and duties between parties.** Tracy agrees in writing to lease you a 30,000-square-foot store in her shopping mall. She now has a legal duty to make the space available. But then another tenant offers her more money, and she refuses to let you move in. Tracy has violated her duty, but she has not committed a crime. The government will not prosecute the case. It is up to you to file a civil lawsuit. Your case will be based on the common law of contracts. You will also seek equitable relief—namely, an injunction ordering Tracy not to lease to anyone else. You should win the suit, and you will get your injunction and some money damages. But Tracy will not go to jail.

Some conduct involves both civil and criminal law. Suppose Tracy is so upset over losing the court case that she becomes drunk and causes a serious car accident. She has committed the crime of driving while intoxicated, and the state will prosecute. Tracy may be fined or imprisoned. She has also committed negligence, and the injured party will file a lawsuit against her, seeking money.

### Law and Morality

Law is different from morality, yet the two are obviously linked. There are many instances when the law duplicates what all of us would regard as a moral position. It is negligence to text while driving, and few would dispute the moral value of that law. And similarly with contract law: If the owner of land agrees in writing to sell property to a buyer at a stated price, the seller must go through with the deal, and the legal outcome matches our moral expectations.

On the other hand, we have had laws that we now clearly regard as immoral. Seventy-five years ago, a factory owner could legally fire a worker for any reason at all—including, for example, her religion. It is immoral to fire a worker because she is Jewish—and today, the law prohibits it. Finally, there are legal issues where the morality is not so clear. Suppose you serve alcohol to a guest who becomes intoxicated and then causes an automobile accident, seriously injuring a pedestrian. Should you, the social host, be liable? This is an issue of tort liability, which we examine in Chapter 9. As with many topics in this book, the problem has no easy answer. As you learn the law, you will have an opportunity to re-examine your own moral beliefs.

One of the goals of Chapter 2, on ethics, is to offer you new tools for that task. But our ethics discussion does not end there. Throughout the text, you will find ethics questions and features, like the one that follows, which ask you to grapple with the moral dimensions of legal questions.

## Ethics

The Colombian flower industry supplies 75 percent of all cut flowers sold in the United States between Valentine's Day and Mother's Day.

Leo owns a flower company near Bogotá, Colombia. He pays his workers less than \$1 per hour, a rate consistent with Colombian minimum wage laws. Colombian law does not allow employees to work more than 56 hours per week, with various daily breaks. Employers must give minimum wage employees one rest day per week or face penalties.

Leo's employees anxiously await the busy season because it means overtime pay, which is 25 percent over the base rate. Many count on this extra money for survival. Iris is one of Leo's most loyal and efficient employees. This year, Iris has a serious problem: Her daughter needs a complicated surgery that will cost more than \$300, which is more than Iris's monthly salary. If she does not pay for the surgery in advance, the girl will likely die. To raise this large amount of money, Iris asks that Leo allow her to work 140 hours a week during high season—that is, 20-hour days, 7 days a week. She is willing to work through her breaks and give up her rest day, working through her exhaustion.

What are Leo's legal and moral obligations? What would you do?

## 1-2 WORKING WITH THE BOOK'S FEATURES

In this section, we introduce a few of the book's features and discuss how you can use them effectively. We will start with cases.

### 1-2a Analyzing a Case

A law case is the decision a court has made in a civil lawsuit or criminal prosecution. Cases are the heart of the law and an important part of this book. Reading them effectively takes practice. This chapter's opening scenario is fictional, but the following real case involves a similar situation. Who can be held liable for the assault? Let's see.

## Kuehn v. Pub Zone

364 N.J. Super. 301  
Superior Court of New Jersey, 2003

### CASE SUMMARY

**Facts:** Maria Kerkoulas owned the Pub Zone bar. She knew that several motorcycle gangs frequented the tavern. From her own experience tending bar and conversations with city police, she knew that some of the gangs, including the Pagans, were dangerous and prone to attack customers for no reason. Kerkoulas posted a sign prohibiting

any motorcycle gangs from entering the bar while wearing "colors"; that is, insignia of their gangs. She believed that gangs without their colors were less prone to violence, and experience proved her right.

Rhino, Backdraft, and several other Pagans, all wearing colors, pushed their way past the tavern's bouncer and

approached the bar. Although Kerkoulas saw their colors, she allowed them to stay for one drink. They later moved towards the back of the pub, and Kerkoulas believed they were departing. In fact, they followed a customer named Karl Kuehn to the men's room, where, without any provocation, they savagely beat him. Kuehn was knocked unconscious and suffered brain hemorrhaging, disc herniation, and numerous fractures of facial bones. He was forced to undergo various surgeries, including eye reconstruction.

Although the government prosecuted Rhino and Backdraft for their vicious assault, our case does not concern that prosecution. Kuehn sued the Pub Zone, and that is the case we will read. The jury awarded him \$300,000 in damages. However, the trial court judge overruled the jury's verdict. He granted a judgment for the Pub Zone, meaning that the tavern owed nothing. The judge ruled that the pub's owner could not have foreseen the attack on Kuehn and had no duty to protect him from an outlaw motorcycle gang. Kuehn appealed, and the appeals court's decision follows.

**Issue:** *Did the Pub Zone have a duty to protect Kuehn from the Pagans' attack?*

**Decision:** Yes, the Pub Zone had a duty to protect Kuehn. The decision is reversed, and the jury's verdict is reinstated.

**Reasoning:** Whether a duty exists depends on the foreseeability of the harm, its potential severity, and the defendant's ability to prevent the injury. A court should also evaluate society's interest in the dispute.

A business owner generally has no duty to protect a customer from acts of a third party unless experience suggests that there is danger. However, if the owner could, in fact, foresee injury, she is obligated to take reasonable safety precautions.

Kerkoulas knew that the Pagans engaged in random violence. She realized that when gang members entered the pub, they endangered her customers. That is why she prohibited bikers from wearing their colors—a reasonable rule. Regrettably, the pub failed to enforce the rule. Pagans were allowed to enter wearing their colors, and the pub did not call the police. The pub's behavior was unreasonable, and it is liable to Kuehn.

## 1-2b Analysis

### Plaintiff

The person who is suing

### Defendant

The person being sued

Let's take it from the top. The case is called *Kuehn v. Pub Zone*. Karl Kuehn is the **plaintiff**, the person who is suing. The Pub Zone is being sued and is called the **defendant**. In this example, the plaintiff's name happens to appear first, but that is not always true. When a defendant loses a trial and files an appeal, *some* courts reverse the names of the parties for the appeal case.

The next lines give the legal citation, which indicates where to find the case in a law library or online.

The *Facts* section provides a background to the lawsuit, written by the authors of this text. The court's own explanation of the facts is often many pages long and may involve complex matters irrelevant to the subject covered in this book, so we relate only what is necessary. This section will usually include some mention of what happened at the trial court. Lawsuits always begin in a trial court. The losing party often appeals to a court of appeals, and it is usually an appeals court decision that we are reading. The trial judge ruled in favor of Pub Zone, but in the appellate decision we are reading, Kuehn won.

The *Issue* section is very important. It tells you what the court had to decide—and why you are reading the case.

The *Decision* section describes the court's answer to the issue posed. A court's decision is often referred to as its **holding**. The court rules that the Pub Zone did have a duty to Kuehn. The court **reverses** the trial court's decision, meaning it declares the lower court's ruling wrong and void. The judges reinstate the jury's verdict. In other cases, an appellate court may **remand** the case; that is, send it back down to the lower court for a new trial or some other action. If this court had agreed with the trial court's decision, the judges would have **affirmed** the lower court's ruling, meaning to uphold it.

The *Reasoning* section explains why the court reached its decision. The actual written decision may be 3 paragraphs or 75 pages. Some judges offer us lucid prose, while others seem intent on torturing the reader. Judges frequently digress and often discuss matters that are irrelevant to the issue on which this text is focusing. For those reasons, we have taken the court's explanation and cast it in our own words. If you are curious about the full opinion, you can always look it up using the legal citation.

### Holding

A court's decision

### Reverse

To declare the lower court's ruling wrong and void

### Remand

To send a case back down to a lower court

### Affirm

To uphold a lower court's ruling

Let us examine the reasoning. The court points out that a defendant is liable only if he has a duty to the plaintiff. Whether there is such a duty depends on the foreseeability of the injury and other factors. The judges are emphasizing that courts do not reach decisions arbitrarily. They attempt to make thoughtful choices, consistent with earlier rulings, which make good sense for the general public.

The court also points out what it is *not* deciding. The court is *not* declaring that all businesses must guarantee the safety of their patrons against acts by third parties. If an owner had no reason to foresee injury from a third party, the owner is probably not liable for such harm. However, if experience indicated that the third party presented serious danger, the owner was obligated to act reasonably. The judges note that Kerkoulas knew the Pagans could be violent and had taken reasonable precautions by prohibiting gang colors. However, the pub failed to enforce its sensible rule and failed even to telephone the police. By the very standard the pub had created, its conduct was unreasonable. The court therefore concludes that the Pub Zone was liable for the Pagans' injury to Kuehn, and the judges reinstate the jury's verdict for the injured man.

## 1-2c Exam Strategy

This feature gives you practice analyzing cases the way lawyers do—and the way *you* must on tests. Law exams are different from most others because you must determine the issue from the facts provided. Too frequently, students faced with a law exam forget that the questions relate to the issues in the text and those discussed in class. Understandably, students new to law may focus on the wrong information in the problem or rely on material learned elsewhere. The Exam Strategy feature teaches you to figure out exactly what issue is at stake, and then analyze it in a logical, consistent manner. Here is an example relating to the element of “duty,” which the court discussed in the *Pub Zone* case.

### EXAMStrategy

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**Question:** The Big Red Traveling (BRT) Carnival is in town. Tony arrives at 8:00 p.m., parks in the lot, and is robbed at gunpoint by a man who beats him and escapes with his money. There are several police officers on the carnival grounds, but no officer is in the parking lot at the time of the robbery. Tony sues, claiming that brighter lighting and more police in the lot would have prevented the robbery. There has never before been any violent crime—robbery, beating, or other incident—at any BRT Carnival. BRT claims it had no duty to protect Tony from this harm. Who is likely to win?

**Strategy:** Begin by isolating the legal issue. What are the parties disputing? They are debating whether BRT had a duty to protect Tony from an armed robbery committed by a stranger. Now ask yourself: How do courts decide whether a business has a duty to prevent this kind of harm? The *Pub Zone* case provides our answer. A business owner is not an insurer of the visitor's safety. The owner generally has no duty to protect a customer from the criminal act of a third party unless the owner could foresee it is about to happen. (In the *Pub Zone* case, the business owner *knew* of the gang's violent history and could have foreseen the assault.) Now apply that rule to the facts of this case.

**Result:** There has never been a violent attack of any kind at a BRT Carnival. BRT cannot foresee this robbery, and has no duty to protect against it. The carnival wins.

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## 1-2d You Be the Judge

Many cases involve difficult decisions for juries and judges. Often both parties have legitimate, opposing arguments. Most chapters in this book will have a feature called “You Be the Judge,” in which we present the facts of a case but not the court's holding.

We offer you two opposing arguments based on the kinds of claims the lawyers made in court. We leave it up to you to debate and decide which position is stronger or to add your own arguments to those given.