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Essentials of BUSINESS LAW

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FIFTH EDITION

ESSENTIALS *of* BUSINESS LAW

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Boston University

Susan S. Samuelson
Boston University

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Essentials of Business Law, Fifth Edition
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CONTENTS: OVERVIEW

Looking for more examples for class? Do you want the latest developments? Visit our blog at bizlawupdate.com or our Facebook page at Beatty Business Law. To be notified when we post updates, follow us on Twitter @bizlawupdate.

Note from the Authors

New to This Edition

A New Chapter: Practical Contracts

In this textbook, as well as other business law texts, contracts chapters focus on the *theory* of contract law. And that theory is important. But our students tell us that theory, by itself, is not enough. They need to know how these abstract rules operate in *practice*. They want to understand the structure and content of a standard agreement. They have questions such as:

- Do I need a written agreement?
- What do these legal terms *really* mean?
- Are any important provisions missing?
- What happens if a term is unclear?
- Do I need to hire a lawyer? How can I use a lawyer most effectively?

We answer all these questions in Chapter 18, "Practical Contracts," which is new to this edition. As an illustration throughout the chapter, we use a real-life contract between a movie studio and an actor.

A New Chapter: Employment Discrimination

We have heard from faculty and students alike that employment law plays an increasingly important role in the life of a businessperson. At the same time, fewer and fewer workers belong to labor unions. Therefore, we have rewritten the labor law and employment law chapters from the previous edition. Instead of one chapter on labor law and one on employment law, we now have a new Chapter 26, "Employment and Labor Law," which covers both common law employment issues and labor law. In addition, Chapter 27, "Employment Discrimination," focuses solely on employment discrimination and includes, among other things, an expanded discussion of disparate impact cases, which have become increasingly common and important.

New Material: Ethics Chapter

The Ethics chapter has been completely revised and is full of up-to-date examples, all either from the news or true stories provided by executives. The section on the Theories of Ethics has been enhanced and now includes, among others, John Rawls' theory of justice. This chapter also includes a discussion of the latest research on the ethics traps that prevent us from doing what we know to be right. Students are asked to develop their own list of Life

Principles that they can use to make ethical decisions and avoid ethics traps. The chapter also discusses the options that employees face when confronted with unethical behavior in the workplace. And, finally, the chapter concludes with a discussion of Corporate Social Responsibility—should companies practice it and, if so, how should they evaluate success?

Landmark Cases

As a general rule, we want our cases to be as current as possible, reporting on the world as it is now. However, sometimes students can benefit from reading vintage cases that are still good law and provide a deep understanding of how and why the law has developed as it has. Thus, for example, we have added a discussion about the famous Supreme Court case *Miranda v. Arizona*. Reading this case provides students with a much better understanding of why the Supreme Court created Miranda rights, and this context helps students follow the recent Supreme Court rulings on *Miranda*. Other landmark cases include *Hawkins v. McGee* (the case of the hairy hand), and *Griggs v. Duke Power Co.*

Reorganized and Revised Material

In response to requests from faculty, product liability is now covered in Chapter 6, "Torts and Product Liability." It seems that most people like to teach these two subjects together. The discussion of warranties is now found in the chapter on ownership and risk.

The new CPA exam no longer includes questions about banks and their customers, and much of that material (such as how long it takes checks to clear) is not very relevant to our students. Therefore we have deleted the chapter on Banks and Their Customers, and combined the remaining material on Negotiable Instruments into one chapter, which now covers how to create a negotiable instrument and liability.

The chapter on Securities Regulation has been expanded to include coverage of antitrust law, under the title, "Government Regulation." As the Justice Department increases its oversight of mergers and with price-fixing violations increasingly common, it is more important than ever for students to understand the basics of antitrust law.

In response to faculty requests, we have added a chapter on Consumer Protection. This material is critical for all of us—everyone from the experienced executive to the young adult with increasing financial responsibilities.

End of Chapter Material

To facilitate class discussion and student learning, we have overhauled the study questions at the end of the chapters. They are now divided into three parts:

1. **Multiple-choice questions.** Because many instructors use this format in their tests, it seemed appropriate to provide practice questions. The answers to these multiple-choice questions are available to students online at **www.cengagebrain.com**.
2. **Essay questions.** Students can use these as study questions, and professors can also assign them as written homework problems.
3. **Discussion questions.** Instructors can use these questions to enhance class discussion. If assigned in advance, students will have a chance to think about the answers before class. This approach is similar to business cases, which often provide discussion questions in advance.

Other New Material

We have, of course, added substantial new material, with a particular focus on the Internet and social media. Chapter 26, "Employment and Labor Law," includes a section on social media. Chapter 29, "Corporations," uses Facebook as an example of how to organize a corporation. There are also new cases involving eBay and craigslist. In addition,

Chapter 28, "Starting a Business: LLCs and Other Options," includes a new section about socially conscious organizations.

Staying Current: Our Blog, Facebook, and Twitter

To find out about new developments in business law, visit our blog at Bizlawupdate.com or our Facebook page at Beatty Business Law. If you follow us on Twitter @bizlawupdate, you will receive a notification automatically whenever we post to the blog.

The Beatty/Samuelson Difference

When we began work on the first edition of this textbook, our publisher warned us that our undertaking was risky because there were already so many law texts. Despite these warnings, we were convinced that there was a market for an Essentials book that was different from all the others. Our goal 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 can make a law book sparkle.

Now, as this fifth edition goes to press, we look back over the intervening years and are touched by the many unsolicited comments from students, such as these posted on Amazon:

- "Glad I purchased this. It really helps put the law into perspective and allows me as a leader to make intelligent decisions. Thanks."

- "I enjoyed learning business law and was happy my college wanted this book. THUMBS UP!"

We think of the students who have emailed us to say, "In terms of clarity, comprehensiveness, and vividness of style, I think it's probably the best textbook I've ever used in any subject," and "I had no idea business law could be so interesting." Or the professor who said, "With your book, we have great class discussions." Comments such as these never cease to thrill us and to make us grateful that we persisted in writing an Essentials text like no other—a book that is precise and authoritative, yet a pleasure to read.

Comprehensive Staying comprehensive means staying current. This fifth edition contains over 25 new cases. Almost all were reported within the last two or three years. We never include a new court opinion merely because it is recent, but 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.

Look, for example, at the important field of corporate governance. All texts cover par value, and so do we. Yet a future executive is far likelier to face conflicts over Sarbanes-Oxley (SOX), executive compensation, and shareholder proposals. We present a clear path through this thicket of new issues. In Chapter 29, for example, read the section about the election and removal of directors. Typically, students (even those who are high-level executives) have a basic misconception about the process of removing a director from office. They think that it is easy. Once they understand the complexity of this process, their whole view of corporate governance—and compensation—changes. We want tomorrow's business leaders to anticipate the challenges that await them and then use their knowledge to avert problems.

Strong Narrative The law is full of great stories, and we use them. Your students and ours should come to class excited. Look at Chapter 3, "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? The student follows the action from the discovery of the body, through each step of the lawsuit, to the final appeal.

Students read stories and remember them. Strong narratives provide a rich context for the remarkable quantity of legal material presented. When students care about the material they are reading, they persevere. We have been delighted to find that they also arrive in class eager to question, discuss, and learn more about issues.

Precise The great joy of using English accurately is the power it gives us to attack and dissect difficult issues, rendering them comprehensible to any lay reader. This text takes on the most complex legal topics of the day, yet it is appropriate for *all college and graduate-level students*. Accessible prose goes hand in hand with legal precision. We take great pride in walking our readers through the most serpentine mazes this tough subject can offer.

As we explore this extraordinary discipline, we lure readers along with quirky anecdotes and colorful diagrams. (Notice that the chart on page 713 clarifies the complex rules of the duty of care in the business judgment rule.) However, before the trip is over, we insist that students:

- Gauge policy and political considerations,
- Grapple with legal and social history,
- Spot the nexus between disparate doctrines, and
- Confront tough moral choices.

Authoritative We insist, as you do, on a law book that is indisputably accurate. A professor must teach with assurance, confident that every paragraph is the result of exhaustive research and meticulous presentation. Dozens of tough-minded people spent thousands of hours reviewing this book, and we are delighted with the stamp of approval we have received from trial and appellate judges, working attorneys, scholars, and teachers.

We reject the cloudy definitions and fuzzy explanations that can invade judicial opinions and legal scholarship. To highlight the most important rules, we use bold print, and then follow with vivacious examples written in clear, forceful English. (See, for example, the discussion of factual cause on page 149.) We cheerfully venture into contentious areas, relying on very recent appellate decisions. Can a creditor pierce the veil of an LLC? What are the rights of an LLC member in the absence of an operating agreement? (See pages 679–684.) 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.

A Book for Students We have written this book as if we were speaking directly to our students. We provide black letter law, but we also explain concepts in terms that hook students. Over the years, we have learned how much more successfully we can teach when our students are intrigued. No matter what kind of a show we put on in class, *they are only learning when they want to learn*.

Every chapter begins with a story, either fictional or real, to illustrate the issues in the chapter and provide context. Chapter 32, "Cyberlaw," begins with the true story of a college student who discovers nude pictures of himself online. These photos had been taken in the locker room without his knowledge. What privacy rights do any of us have? Does the Internet jeopardize them? Students want to know—right away.

Many of our students were not yet born when Bill Clinton was elected president. They come to college with varying levels of preparation; many now arrive from other countries. We have found that to teach business law most effectively, we must provide its context. Chapter 26, on employment law, provides the historical setting for the employment-at-will doctrine. Chapter 33, on intellectual property, explains the difference between intellectual and other types of property.

At the same time, we enjoy offering "nuts-and-bolts" information that grabs students. For example, in Chapter 31, "Consumer Protection," we offer advice about how students can obtain a free credit report (page 768).

Students respond enthusiastically to this 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 & Samuelson] 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! :-)."

Along with other professors, we have used this text in courses for undergraduates, MBAs, and Executive MBAs, with the students ranging in age from 18 to 55. The book works, as some unsolicited comments indicate:

- An undergraduate wrote, "This is the best textbook I have had in college, on any subject."
- A business law professor stated that the "clarity of presentation is superlative. I have never seen the complexity of contract law made this readable."
- An MBA student commented, "I think the textbook is great. The book is relevant, easy to understand, and interesting."
- A state supreme court justice wrote that the book is "a valuable blend of rich scholarship and easy readability. Students and professors should rejoice with this publication."
- A Fortune 500 vice president, enrolled in an Executive MBA program, commented, "I really liked the chapters. They were crisp, organized and current. The information was easy to understand and enjoyable."
- An undergraduate wrote, "The textbook is awesome. A lot of the time I read more than what is assigned—I just don't want to stop."

Humor Throughout the text, we use humor—judiciously—to lighten and enlighten. Not surprisingly, students have applauded—but is it appropriate? How dare we employ levity in this venerable discipline? We offer humor because we take the law seriously. We revere the law for its ancient traditions; its dazzling intricacy; its relentless, though imperfect, attempt to give order and decency to our world. Because we are confident of our respect for the law, we are not afraid to employ some levity. Leaden prose masquerading as legal scholarship does no honor to the field.

Humor also helps retention. Research shows that the funnier or more bizarre the example, the longer students will remember it. Students are more likely to remember a contract problem described in a fanciful setting, and from that setting recall the underlying principle. By contrast, one widget is hard to distinguish from another.

Features

We chose the features for our book with great care. Each one supports 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 preparing this fifth edition, 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 they are learning.

About six 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, but not to students. Without practice, too many students panic, jumping at a convenient answer and leaving aside the tools that they have spent the course acquiring. Let's change that. Students tell us that they love the Exam Strategy feature.

You Be the Judge

GOAL: Get students to think independently. When reading case opinions, students tend to accept the court's "answer." Judges, of course, try to reach decisions that appear indisputable, when in reality they may be controversial—or wrong. From time to time we want students to think through the problem and reach their own answer. Almost every chapter contains a You Be the Judge feature, providing the facts of the case and conflicting appellate arguments. The court's decision, however, 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 ask ethical questions about cases, legal issues, and commercial practices. Is it fair for one party to void a contract by arguing, months after the fact, that there was no consideration? What is a manager's ethical obligation when asked to provide a reference for a former employee? What is wrong with bribery? We believe that asking the questions and encouraging discussion reminds students that ethics is an essential element of justice and of a satisfying life.

Cases

GOAL: Bring Case Law Alive. Each case begins with a summary of the facts followed by a statement of both the issue and the decision. 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. We cite cases using a modified bluebook form. In the principal cases in each chapter, we provide the state or federal citation, the regional citation, and the LEXIS or Westlaw citation. We also give students a brief description of the court. Because many of our cases are so recent, some will have only a regional reporter and a LEXIS or Westlaw citation.

Exam Review

GOAL: Help students to remember and practice! At the end of every chapter, we provide a list of review points and several additional Exam Strategy exercises in a Question/Strategy/Result format. We also challenge the students with 15 or more problems—Multiple-Choice, Essay Questions, and Discussion Questions. The questions include the following:

- *You Be the Judge Writing Problem.* The students are given appellate arguments on both sides of the question and must prepare a written opinion.
- *Ethics.* This question highlights the ethical issues of a dispute and calls upon the student to formulate a specific, reasoned response.
- *CPA Questions.* Where relevant, practice tests include questions from previous CPA exams administered by the American Institute of Certified Public Accountants.

Answers to all the Multiple-Choice questions are available to students online through **www.cengagebrain.com**.

Teaching Materials

For more information about any of these ancillaries, contact your Cengage Learning/ SouthWestern Legal Studies Sales Representative for more details, or visit the Beatty & Samuelson *Essentials*, fifth edition web page, accessed through **www.cengagebrain.com.**

Instructor's Manual Available through cengagebrain.com, this manual includes answers to the You Be the Judge cases and also to the questions at the end of each chapter. In addition, the Instructors' Manual provides additional cases to use as the basis of class discussion as well as other pedagogical features.

PowerPoint Lecture Review Slides PowerPoint slides are available for instructors to use with their lectures, and can be accessed through cengagebrain.com.

Test Bank The test bank offers hundreds of essay, short-answer, and multiple-choice problems. Editable files of the test bank are available at cengagebrain.com, and the test bank is also available through the Cognero Testing Software.

Cognero Testing Software—Computerized Testing Software This online testing system contains all of the questions in the test bank. Instructors can add or edit questions, instructions, and answers; and select questions by previewing them on the screen, selecting them randomly, or selecting them by number. Instructors can also create and administer quizzes online.

CengageNOW This robust, online course management system gives you more control in less time and delivers better student outcomes—NOW. CengageNOW for *Essentials* 5e includes six homework types that align with the six levels of Bloom's taxonomy: Knowledge: Chapter Review; Comprehension: Business Law Scenarios; Application: Legal Reasoning; Analysis: IRAC; Synthesis: Exam Strategy; and Evaluation: Business Wisdom. With all these elements used together, CengageNOW will ensure that students develop the higher-level thinking skills they need to reach an advanced understanding of the material.

Business Law CourseMate Cengage Learning's Business Law CourseMate brings course concepts to life with interactive learning, study, and exam preparation tools—including an e-book—that supports the printed textbook. Designed to address a variety of learning styles, students will have access to flashcards, Learning Objectives, and the Key Terms for quick reviews. A set of auto-gradable, interactive quizzes will allow students to instantly gauge their comprehension of the material. For instructors, all quiz scores and student activity are mapped within Engagement Tracker, a set of intuitive student performance analytical tools that help identify at-risk students. An interactive blog helps connect book concepts to real-world situations happening now.

Business Law Digital Video Library This dynamic online video library features over 90 video clips that spark class discussion and clarify core legal principles. The library is organized into six series:

- ***Legal Conflicts in Business*** includes specific modern business and e-commerce scenarios.
- ***Ask the Instructor*** contains straightforward explanations of concepts for student review.
- ***Drama of the Law*** features classic business scenarios that spark classroom participation.

- ***Real World Legal*** takes students out of the classroom and into real-life situations, encouraging them to consider the legal aspects of decision making in the business world.
- ***Business Ethics in Action*** challenges students to examine ethical dilemmas in the world of business.

Access to the Business Law Digital Video Library is available as an optional package with each new student text at no additional charge. Students with used books can purchase access to the video clips online. For more information about the Business Law Digital Video Library, visit **www.cengagebrain.com.**

A Handbook of Basic Law Terms, Blacks Law Dictionary Series This paperback dictionary, prepared by the editor of the popular Black's Law Dictionary, can be packaged for a small additional cost with any new South-Western Legal Studies in Business text.

Student Guide to the SOX This brief overview for business students explains SOX, what is required of whom, and how it might affect students in their business lives. Available as an optional package with the text.

Interaction with the Author This is my standard: Every professor who adopts this book must have a superior experience. I am available to help in any way I can. Adopters of this text often call me or email me to ask questions, obtain a syllabus, offer suggestions, share pedagogical concerns, or inquire about ancillaries. One of the pleasures of working on this project has been this link to so many colleagues around the country. I value those connections, am eager to respond, and would be happy to hear from you.

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Susan S. Samuelson is a professor of business law at Boston University's School of Management. After earning her undergraduate and law degrees at Harvard University, 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*, *Better Homes and Gardens*, and *Boston Magazine*. At Boston University, she won the Broderick Prize for excellence in teaching. For 12 years, Professor Samuelson was the faculty director of the Boston University Executive MBA program.

UNIT 1

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The Legal Environment

CHAPTER 1

Introduction to Law

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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?

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…

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.

1-1 The Role of Law in Society

1-1a Power

The strong reach of the law touches nearly everything we do, especially at work. Consider a mid-level manager at Sublime Corp., which manufactures and distributes video games.

During the course of a day's work, she might negotiate a deal with a game developer (contract law). Before signing any deals, she might research whether similar games already exist, which might diminish her ability to market the proposed new game (intellectual property law). One of her subordinates might complain about being harassed by a coworker (employment law). Another worker may complain about being required to work long hours (administrative law). And she may consider investing her own money in her company's stock, but she may wonder whether she will get into trouble if she invests based on inside information (securities law).

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, in the voting booth, or as part of local community groups, you help to create the 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.

1-1b Importance

Law is also essential. *Every* society of which we have any historical record has had some system of laws. For example, consider the Visigoths, a nomadic European people who overran much of present-day France and Spain during the fifth and sixth centuries C.E. Their code admirably required judges to be "quick of perception, clear in judgment, and lenient in the infliction of penalties." It detailed dozens of crimes.

Our legal system is largely based upon the English model, but many societies contributed ideas. The Iroquois Native Americans, for example, played a role in the creation of our own government. Five major nations made up the Iroquois group: the Mohawk, Cayuga, Oneida, Onondaga, and Seneca. Each nation governed its own domestic issues. But each nation also elected "sachems" to a League of the Iroquois. The league had authority over any matters that were common to all, such as relations with outsiders. Thus, by the fifteenth century, the Iroquois had solved the problem of *federalism:* how to have two levels of government, each with specified powers. Their system impressed Benjamin Franklin and others and influenced the drafting of our Constitution, with its powers divided between state and federal governments.[1]

1-1c Fascination

In 1835, the young French aristocrat Alexis de Tocqueville traveled through the United States, observing the newly democratic people and the qualities that made them unique. One of the things that struck de Tocqueville most forcefully was the American tendency to file suit: "Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question."[2] De Tocqueville got it right: For better or worse, we do expect courts to solve many problems.

Not only do Americans litigate—they watch each other do it. Every television season offers at least one new courtroom drama to a national audience breathless for more cross-examination. Almost all of the states permit live television coverage of real trials. One of the most heavily viewed events in the history of courtroom television was the 1995

[1]Jack Weatherford, *Indian Givers* (New York: Fawcett Columbine, 1988), pp. 133–150.
[2]Alexis de Tocqueville, *Democracy in America* (1835), Vol. 1, Ch. 16.

murder trial of former football star O.J. Simpson: 150 million viewers tuned in. In most nations, coverage of judicial proceedings is not allowed.[3]

The law is a big part of our lives, and it is wise to know something about it. Within a few weeks, you will probably find yourself following legal events in the news with keener interest and deeper understanding. In this chapter, we develop the background for our study. We look at where law comes from: its history and its present-day institutions. In the section on jurisprudence, we examine different theories about what "law" really means. And finally we see how courts—and students—analyze a case.

1-2 Origins of Our 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, and *cannot* be that simple, because it reflects the complexity of contemporary life. In truth, there is no such thing as "the law." Principles and rules of law actually come from *many different* sources. Why is this so? In part because 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. The Founding Fathers 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. To top it off, the Founders guaranteed many rights to the people alone, ordering national *and* state governments to keep clear. This has worked, but it has caused a multilayered system, with 50 state governments and one federal government all creating and enforcing law.

1-2a English Roots

England in the tenth century was a rustic agricultural community with a tiny population and very little law or order. Vikings invaded repeatedly, terrorizing the Anglo-Saxon peoples. Criminals were hard to catch in the heavily forested, sparsely settled nation. The king used a primitive legal system to maintain a tenuous control over his people.

England was divided into shires, and daily administration was carried out by a "shire reeve," later called a sheriff. The shire reeve collected taxes and did what he could to keep peace, apprehending criminals and acting as mediator between feuding families. Two or three times a year, a shire court met; lower courts met more frequently. Today, this method of resolving disputes lives on as mediation, which we will discuss in Chapter 3.

Because there were so few officers to keep the peace, Anglo-Saxon society created an interesting method of ensuring public order. Every freeman belonged to a group of 10 freemen known as a "tithing," headed by a "tithingman." If anyone injured a person outside his tithing or interfered with the king's property, all 10 men of the tithing could be forced to pay. Today, we still use this idea of collective responsibility in business partnerships. All partners are personally responsible for the debts of the partnership. They could potentially lose their homes and all assets because of the irresponsible conduct of one partner. That liability has helped create new forms of business organization, including limited liability companies.

When cases did come before an Anglo-Saxon court, the parties would often be represented by a clergyman, by a nobleman, or by themselves. There were few professional lawyers. Each party produced "oath helpers," usually 12, who would swear that one version of events was correct. The Anglo-Saxon oath helpers were forerunners of our modern jury of 12 persons.

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[3]Regardless of whether we allow cameras, it is an undeniable benefit of the electronic age that we can obtain information quickly. From time to time, we will mention websites of interest. Some of these are for nonprofit groups, while others are commercial sites. We do not endorse or advocate on behalf of any group or company; we simply wish to alert you to what is available.

In 1066, the Normans conquered England. William the Conqueror made a claim never before made in England: that he owned all of the land. The king then granted sections of his lands to his favorite noblemen, as his tenants in chief, creating the system of feudalism. These tenants in chief then granted parts of their land to *tenants in demesne*, who actually occupied a particular estate. Each tenant in demesne owed fidelity to his lord (hence, "landlord"). So what? Just this: land became the most valuable commodity in all of England, and our law still reflects that. One thousand years later, American law still regards land as special. The Statute of Frauds, which we study in the section on contracts, demands that contracts for the sale or lease of property be in writing. And landlord-tenant law, vital to students and many others, still reflects its ancient roots. Some of a landlord's rights are based on the 1,000-year-old tradition that land is uniquely valuable.

In 1250, Henry de Bracton (d. 1268) wrote a legal treatise that still influences us. *De Legibus et Consuetudinibus Angliae (On the Laws and Customs of England)*, written in Latin, summarized many of the legal rulings in cases since the Norman Conquest. De Bracton was teaching judges to rule based on previous cases. He was helping to establish the idea of **precedent**. The doctrine of precedent, which developed gradually over centuries, requires that judges decide current cases based on previous rulings. This vital principle is the heart of American common law. Precedent ensures predictability. Suppose a 17-year-old student promises to lease an apartment from a landlord, but then changes her mind. The landlord sues to enforce the lease. The student claims that she cannot be held to the agreement because she is a minor. The judge will look for precedent, that is, older cases dealing with the same issue, and he will find many holding that a contract generally may not be enforced against a minor. That precedent is binding on this case, and the student wins. The accumulation of precedent, based on case after case, makes up the **common law**.

Precedent
The tendency to decide current cases based on previous rulings.

Common law
Judge-made law.

In the end, today's society is dramatically different from that of medieval English society. But interestingly, legal disputes from hundreds of years ago are often quite recognizable today. Some things have changed but others never do.

Here is an actual case from more than six centuries ago, in the court's own language. The plaintiff claims that he asked the defendant to heal his eye with "herbs and other medicines." He says the defendant did it so badly that he blinded the plaintiff in that eye.

The Oculist's Case (1329)

LI MS. Hale 137 (1), fo. 150, Nottingham[4]

Case Summary

Attorney Launde [for defendant]: Sir, you plainly see how [the plaintiff claims] that he had submitted himself to [the defendant's] medicines and his care; and after that he can assign no trespass in his person, inasmuch as he submitted himself to his care: but this action, if he has any, sounds naturally in breach of covenant. We demand [that the case be dismissed].

Excerpts from Judge Denum's Decision: I saw a Newcastle man arraigned before my fellow justice and me for the death of a man. I asked the reason for the indictment, and it was said that he had slain a man under his care, who died within four days afterwards. And because I saw that he was a [doctor] and that he had not done the thing feloniously but [accidentally] I ordered him to be discharged. And suppose a blacksmith, who is a man of skill, injures your horse with a nail, whereby you lose your horse: you shall never have recovery against him. No more shall you here.

Afterwards the plaintiff did not wish to pursue his case any more.

[4]J. Baker and S. Milsom, *Sources of English Legal History* (London: Butterworth & Co., 1986).

This case from 1329 is an ancient medical malpractice action. Attorney Launde does not deny that his client blinded the plaintiff. He claims that the plaintiff has brought the wrong kind of lawsuit. Launde argues that the plaintiff should have brought a case of "covenant"; that is, a lawsuit about a contract.

Judge Denum decides the case on a different principle. He gives judgment to the defendant because the plaintiff voluntarily sought medical care. He implies that the defendant would lose only if he had attacked the plaintiff. As we will see when we study negligence law, this case might have a different outcome today. Note also the informality of the judge's ruling. He rather casually mentions that he came across a related case once before and that he would stand by that outcome. The idea of precedent is just beginning to take hold.

1-2b Law in the United States

The colonists brought with them a basic knowledge of English law, some of which they were content to adopt as their own. Other parts, such as religious restrictions, were abhorrent to them. Many settlers had made the dangerous trip to America precisely to escape persecution, and they were not interested in recreating their difficulties in a new land. Finally, some laws were simply irrelevant or unworkable in a world that was socially and geographically so different. American law ever since has been a blend of the ancient principles of English common law and a zeal and determination for change.

During the nineteenth century, the United States changed from a weak, rural nation into one of vast size and potential power. Cities grew, factories appeared, and sweeping movements of social migration changed the population. Changing conditions raised new legal questions. Did workers have a right to form industrial unions? To what extent should a manufacturer be liable if its product injured someone? Could a state government invalidate an employment contract that required 16-hour workdays? Should one company be permitted to dominate an entire industry?

In the twentieth century, the rate of social and technological change increased, creating new legal puzzles. Were some products, such as automobiles, so inherently dangerous that the seller should be responsible for injuries even if no mistakes were made in manufacturing? Who should clean up toxic waste if the company that had caused the pollution no longer existed? If a consumer signed a contract with a billion-dollar corporation, should the agreement be enforced even if the consumer never understood it? New and startling questions arise with great regularity. Before we can begin to examine the answers, we need to understand the sources of contemporary law.

1-3 Sources of Contemporary Law

Throughout the text, we will examine countless legal ideas. But binding rules come from many different places. This section describes the significant *categories* of laws in the United States.

1-3a 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.[5] 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 Founding Fathers sought a division of government power. They did not want all power centralized in a king or in 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. Voters in all 50 states elect representatives who go to Washington, D.C., to serve in the Congress and debate new legal ideas.

The House of Representatives has 435 voting members. A state's voting power is based on its population. Large states (Texas, California, and Florida) send dozens of representatives to the House. Some small states (Wyoming, North Dakota, and 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 every bit 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.[6]

At times, courts void laws altogether. For example, in 1995, the Supreme Court ruled that the Gun-Free School Zones Act of 1990 was unconstitutional because Congress did not have the authority to pass such a law.[7]

Checks and Balances

Sidney Crosby might score 300 goals per season if checking were not allowed in the National Hockey League. But because opponents are allowed to hit Crosby and the rest of his teammates on the Penguins, he is held to a much more reasonable 50 goals per year.

Political checks work in much the same way. They allow one branch of the government to trip up another.

The authors of the Constitution were not content merely to divide government power three ways. They also wanted to give each part of the government some power over the other two branches. Many people complain about "gridlock" in Washington, but the government is slow and sluggish by design. The Founding Fathers 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

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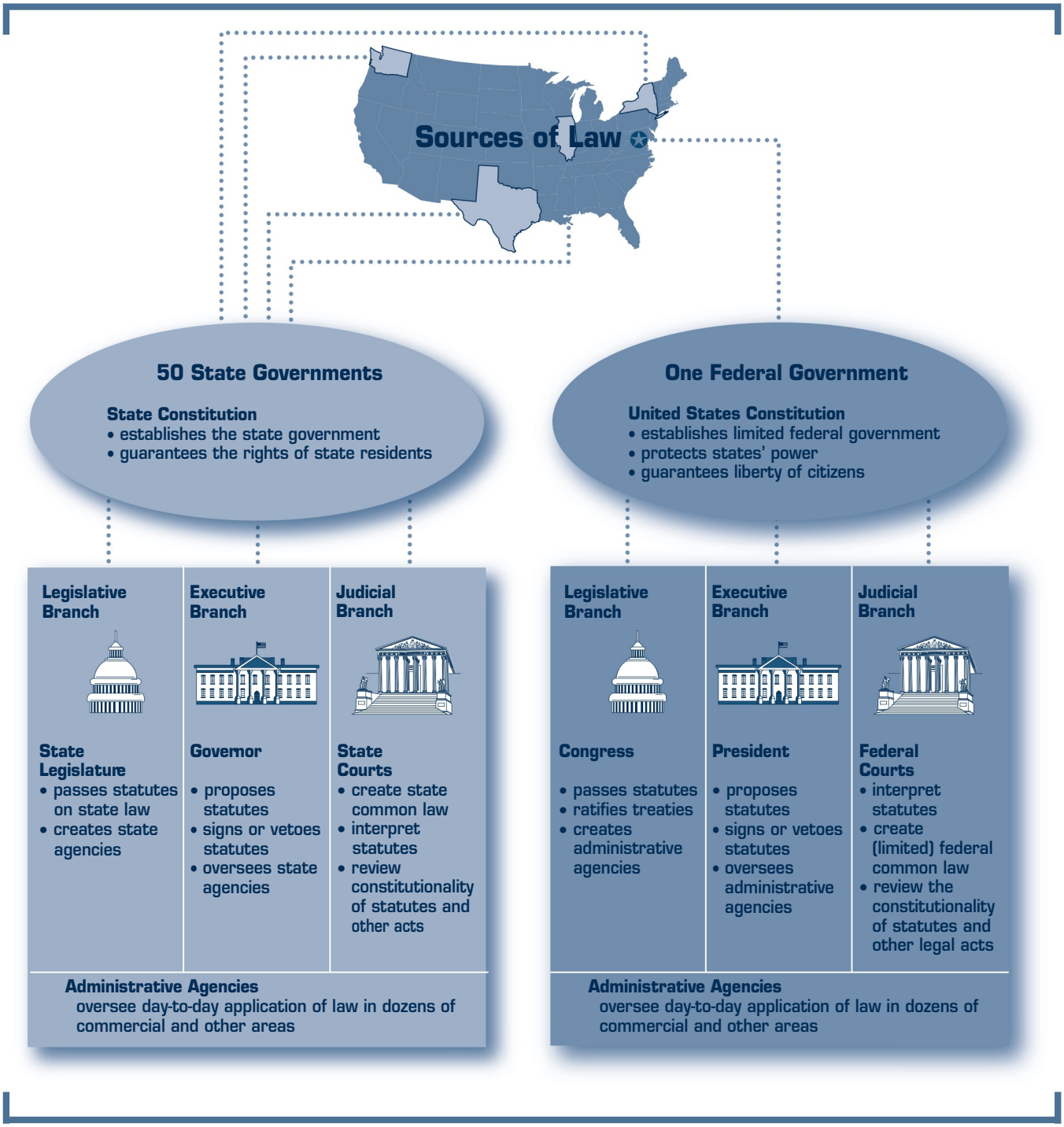
[5]The Constitution took effect in 1788, when 9 of 13 colonies ratified it. Two more colonies ratified it that year, and the last of the 13 did so in 1789, after the government was already in operation. The complete text of the Constitution appears in Appendix A.

[6]*Roe v. Wade*, 410 U.S. 113 (1973).

[7]*United States v. Alfonso Lopez, Jr.*, 514 U.S. 549 (1995).



Federal Form of Government. Principles and rules of law come from many sources. The government in Washington creates and enforces law throughout the nation. But 50 state governments exercise great power in local affairs. And citizens enjoy constitutional protection from both state and federal government. The Founding Fathers wanted this balance of power and rights, but the overlapping authority creates legal complexity.

the federal courts, including the Supreme Court, but these nominees do not serve unless approved by the Senate. Congress (with help from the 50 states) can override the Supreme Court by amending the Constitution. The President and the Congress influence the Supreme Court by controlling who is placed on the court in the first place.

Many of these checks and balances will be examined in more detail later in this book, starting in Chapter 4.

Fundamental Rights

The Constitution also grants many of our most basic liberties. For the most part, they 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 became one of the most important documents ever written.

1-3b Statutes

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

Statute
A law created by a legislative body.

Almost all statutes are created by the same method. An idea for a new law—on taxes, health care, texting while driving, or any other topic, big or small—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 win a simple majority vote in each of these chambers.

If Congress passes a bill, it goes to the White House for the President's approval. 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 the President refuses to approve, or *vetoes* 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. If this happens, it becomes a statute without the President's signature.

1-3c Common Law

Binding legal ideas often come from the courts. Judges generally follow *precedent*. When courts decide a case, they tend to apply the legal rules that other courts have used in similar cases.

The principle that precedent is binding on later cases is called *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 binding only on *lower* courts. For example, if the Supreme Court decided a case in one way in 1965, it is under no obligation to follow precedent if the same issue arises in 2015.

Sometimes, this ability to change is quite beneficial. In 1896, the Supreme Court decided (unbelievably) that segregation—separating people by race in schools, hotels, public transportation, and other public services—was legal under certain conditions.[8] In 1954, on the exact same issue, the court changed its mind.[9]

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

[8] *Plessy v. Ferguson*, 163 U.S. 537 (1896).
[9] *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).