

2 3 R D E D I T I O N



ANDERSON'S
BUSINESS LAW
and the Legal Environment
Comprehensive Volume

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23rd Edition

ANDERSON'S

BUSINESS LAW

and The Legal Environment

Comprehensive Volume

DAVID P. TWOMEY

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

MARIANNE MOODY JENNINGS

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

STEPHANIE M. GREENE

Chair, Business Law Department
Professor of Business Law
Carroll School of Management
Boston College
Member of the Massachusetts Bar



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David P. Twomey, Marianne Moody Jennings, and Stephanie M. Greene

VP for Social Science and Qualitative Business: Erin Joyner

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Preface

Regardless of the day of the week, newspapers and magazines will have stories about law and business together. The dentists in North Carolina lost a challenge by the teeth whitening industry to the profession's rules prohibiting whitening except by licensed dentists. In 2015, BP, the international energy company, paid \$18 billion to settle all the state and federal claims related to the explosion of its Deepwater Horizon off-shore oil rig. The problems with mortgages and foreclosures have resulted in a new federal agency and significant revisions to the requirements for the formation of credit contracts. Securities laws have changed because buying shares over the Internet, so-called crowdfunding, has become an entrepreneurial trend.

There were more insider trading convictions in the past three years than in any other era of financial growth. And now those convictions are being challenged because the definition of what is inside information requires clarification.

SAC Capital was one of the companies that had a large number of former and current employees convicted or enter guilty pleas to insider trading, but yet SAC's CEO was not charged and the company paid civil fines related to the activities of its brokers, analysts, and advisers.

Who is responsible for crimes committed by companies? If a mining company CEO closely tracks production, can he be held criminally liable when the problems at the mine result in an explosion and deaths of the miners? As major corporations have continued to experience major criminal, legal, and ethical difficulties, we can see how important it is for business managers to understand the law and the foundations of ethics. When a manager has a void in knowledge on law and ethics, running a company can be tricky business. Budweiser and Corona learned the intricacies of antitrust law as they worked out the details of their proposed merger.

When an entrepreneur is struggling with the decision of whether to incorporate or create an LLC, or the shareholders of Disney are grappling with issues about their rights when their CEO makes a bad decision, the law is there. No business or manager can hope to succeed without an understanding of the laws and legal environment of business. Students in business must be prepared with both knowledge of the law and the skill of applying it in the business setting. We learn principles and application through interaction with examples and by working our way through dilemmas, issues, and problems. This 23rd edition of *Anderson's Business Law and the Legal Environment* enhances the learning process while still providing a detailed and rigorous case approach.

New to This Edition

Enhanced Digital Content—*MindTap*[™]

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

We understand 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, and use legal reasoning and critical thinking to **Analyze** business law content.

Each and every item in the Learning Path is assignable and gradable. This gives instructors the knowledge of class standings and concepts that may be difficult. Additionally, students gain knowledge about where they stand—both individually and compared to the highest performers in class.

Instructors may view a demo video and learn more about *MindTap*, at www.cengage.com/mindtap.

Features of the Text

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

Learning Outcomes

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

Sports and Entertainment Law

Using pop culture, this feature teaches students about law and ethics in a way that is sure to engage them. What happens to the contract fees that Lance Armstrong earned from the U.S. Postal Service for its sponsorship of his races? What happens when sports figures have personal problems and the companies and products they endorse want to end that relationship? Can contracts be terminated because of public behavior? Was Heath Ledger’s will, one that was drawn up and executed before he had a child, still valid? What happens to the personal property that actor Robin Williams failed to specify a distribution for? Who gets his *Mork & Mindy* suspenders? The New Orleans Saints and their bounty compensation program present an interesting series of ethical questions in a feature in Chapter 3. Students have the chance to explore the law through these examples of sports figures’ and entertainers’ brushes with the law.

Clarity

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

CPA Helps

As always, the text provides coverage for all the legal topics covered on the CPA exam. Several topics have been eliminated from the content for the CPA exam as of June 2015.

However, the exam lags behind the content change, so the eliminated topics may continue to appear on the exam for 6 to 18 months. Below is the new business law/regulatory content for the CPA exam. The topics of property, bailments, insurance, and estates will be eliminated going forward with more emphasis on federal regulation, including in the areas of antitrust and employment law.

Business Law (17%–21%)

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

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

Case Summaries

Specially selected case summaries appear in abundance and are still at the core of this text. Most chapters include three to five case summaries, and they have been updated to feature the most current and newsworthy topics. Landmark decisions also appear, including several from the 2014–2015 U.S. Supreme Court term.

e-Commerce and Cyberlaw

This feature covers e-mail privacy, Internet taxes, identity theft, contract formation on the Internet, e-commerce employment rules, electronic signatures, and more. Chapter 8, the criminal law chapter, includes greater detail on the new and evolving computer crimes. Chapter 9, the intellectual property chapter, features a section on Protection of Computer Software and Mask Works, covering copyright and patent protection of computer programs, restrictive licensing, semiconductor chip protection, and more. There are features in chapters throughout the book, such as an example in Chapter 2 about how social media is having an impact on jury selection because of the information lawyers can gather about potential jurors from these sources. The Edward Snowden issues are covered as both a cyber law and an ethical issue in Chapter 3. In Chapter 6, there is a discussion of net neutrality. Chapter 29 has a feature covering electronic presentment of instruments.

Thinking Things Through

This feature is designed to help students apply the law they have learned from the chapter and cases to a hypothetical scenario or another case that varies slightly from the examples in the reading. With these problems built into the reading, students have the chance to really think through what they have just read and studied with regard to the law presented in that chapter. This feature can be used to promote classroom discussion or as an assignment for analysis. For example, in Chapter 29, students get to walk through a liability question when there are forgeries on a check to determine who ultimately bears the loss on a fraudulent check. In Chapter 4, students can think about whether flashing your headlights to warn oncoming drivers of a speed trap is legal. Is this a form of protected speech? Is it against the law to warn other drivers?

Major Regulatory Reforms: USA Patriot Act, Dodd-Frank, and the JOBS Act

Businesses continue to be dramatically affected not only by laws at the federal level, but also by complex and intricate new federal regulatory schemes. Dodd-Frank has changed many things in many areas of the law from the behavior of analysts to the protection of consumers in mortgage and credit transactions. The provisions of the Affordable Health Care Act have twice been litigated to the level of the U.S. Supreme Court—cases that cover fundamental questions about our Constitution as well as the balance of state and federal power. The JOBS Act has made it easier for smaller companies to raise money by easing securities regulation requirements.

Ethical Focus

In addition to Chapter 3, which is devoted exclusively to the current issues in business ethics, each chapter continues to provide students with an ethical dilemma related to that particular area of law. The Ethics & the Law feature presents problems in each area of law. Students will be able to analyze ethical issues and problems that are very real and

very challenging for anyone in business—for example, the issues involved in check cashing companies that take checks for a fee knowing that there are probably issues with those checks and then seek holder-in-due-course protection.

Critical Thinking

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

For Additional Help in Teaching and Learning

For more detailed information about any of the following ancillaries, contact your local Cengage Learning Consultant or visit the *Anderson's Business Law and the Legal Environment* Web site.

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 Learning 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.

Instructor's Manual

The Instructor's Manual is prepared by Marianne Jennings, one of the textbook authors. It provides instructor insights, chapter outlines, and teaching strategies for each chapter. Discussion points are provided for Thinking Things Through, Ethics & the Law vignettes, and for each case referenced in the new Learning Outcomes. Also included are answers to CPA questions. Download the Instructor's Manual at the instructor's companion site online.

Cengage Learning Testing Powered by Cognero

Cognero is a flexible online system that allows instructors to author, edit, and manage test bank content from multiple Cengage Learning solutions; create multiple test versions in an instant; and deliver tests from the instructor's LMS, classroom, or wherever the instructor desires. The test bank includes thousands of true/false, multiple choice, and case questions.

Microsoft[®] PowerPoint[®] Lecture Review Slides

PowerPoint slides are available for use by instructors for enhancing their lectures. Download these slides at the instructor's companion site online.

Business Law Digital Video Library

This dynamic online video library features more than 90 video clips that spark class discussion and clarify core legal principles. The library, recently updated with new videos, is organized into five series including classic business and modern business and e-commerce scenarios, straightforward lecture-style explanations of concepts for student review, and clips from many popular films. Access for students is free when bundled with a new textbook or can be purchased for an additional charge. For more information about the Digital Video Library, visit: www.cengage.com/blaw/dvl.

Cengage Learning Custom Solutions

Whether you need print, digital, or hybrid course materials, Cengage Learning Custom Solutions can help you create your perfect learning solution. Draw from Cengage Learning's extensive library of texts and collections, add or create your own original work, and create customized media and technology to match your learning and course objectives. Our editorial team will work with you through each step, allowing you to concentrate on the most important thing—your students. Learn more about all our services at www.cengage.com/custom.

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Dean Alexander
Miami-Dade Community College

Robert A. Arnold
Thomas More College

John T. Ballantine
University of Colorado

Todd Barnet
Pace University

Marie F. Benjamin
Valencia Community College

Kenneth V. Bevan
Valencia Community College

Weldon M. Blake, JD
Bethune-Cookman University

Bob Blinderman
WTAMU and Amarillo College

Robert Boeke
Delta College

Billy Carson
Itawamba Community College

Norman Bradshaw
Alvin Community College

Thomas L. Brooks, Jr.
Purdue University

Myra Bruegger
Southeastern Community College

Barry Bunn
Valencia Community College

Jarrold Y. Burch, JD
*Saint Leo University and American
Intercontinental University*

Deborah Carter
Coahoma Community College

Greg Cermigiano
Widener University

David A. Clough
*Naugatuck Valley Community
College*

Anne Cohen
University of Massachusetts

Thomas S. Collins
Loras College

Jason Cooley
Copiah Lincoln Community College

Lawrence J. Danks
Camden County College

Shoshana Dennis
San Diego City College

Darrell Dies
Illinois State University

De Vee E. Dykstra
University of South Dakota

Adam Epstein
University of Tennessee

Phillip Evans
Kutztown University of Pennsylvania

Deborah Lynn Bundy Ferry
Marquette University

Darrel Ford
University of Central Oklahoma

Andrea Foster
John Tyler Community College

Leslie L. Francis
CUNY-York College

Edward J. Gac
University of Colorado

Teresa R. Gillespie
Northwest University

Kimberly Goudy
Central Ohio Technical College

Patrick J. Griffin, CPA, LL.M., JD
Lewis University

David Grigg
Pfeiffer University

Ronald Groeber
Ball State University

Francis A. Hatstat, MBA, JD
Bellevue College

Heidi Helgren
Delta College

Florence Elliot Howard
Stephen F. Austin University

Richard Hurley
Francis Marion University

Lawrence A. Joel
Bergen Community College

David Lewis Jordan
Emmanuel College

Michael A. Katz
Delaware State University

Thomas E. Knothe
Viterbo University

Ruth Kraft
Audrey Cohen College

Claire La Roche
Longwood College

Virginia Edgerton Law, JD
Saint Leo University

Paolo Longo, Jr.
Valencia Community College

Susan D. Looney
Mohave Community College

Linda McCarley
Bevill State Community College

Roy J. Millender, Jr.
Westmont College

Derek Mosley
Meridian Community College

Michael Murphy
Langston University – Tulsa

Steven Murray
Community College of Rhode Island

Ann Olazábal
University of Miami

Neal Orkin
Drexel University

Jeffrey D. Penley, JD
Catawba Valley Community College

Ronald Picker
St. Mary's of the Woods College

Francis Polk
Ocean County College

Robert Prentice
University of Texas at Austin

Linda Reppert
Marymount University

Richard J. Riley
Samford University

Simone I. Rosenberg
Valencia Community College – East Campus

Gary Sambol
Rutgers University School of Business

Samuel L. Schragger
University of Connecticut

Kathy Scott
Western Piedmont Community College

Janet Seggern
Lehigh Carbon Community College

Lester Smith
Eastern New Mexico University

Joseph A. Spadaro
Naugatuck Valley Community College

Michael Sugameli
Oakland University

Cathy L. Taylor
Park University and Webster University

Mike Teel
Samford University

Darrell H. Thompson
Mountain View College

Cathy Trecek
Iowa Western Community College

Bob Vicars
Bluefield State University

Thomas K. Ware
Johnson State College

James Welch
Kentucky Wesleyan College

Lisa Wilhite
Bevill State Community College

We extend our thanks to our families for their support and patience as we work our long hours to ensure that each edition is better than the last.

About the Authors

Professor David Twomey has been a member of the Business Law Department in the Carroll School of Management at Boston College since 1968. As department chair for over a decade, and four-term chair of the school's Education Policy Committee, Professor Twomey served as a spokesperson for a strong legal and ethical component in both the undergraduate and graduate curriculum. He is the author of some 35 editions of textbooks on labor, employment, and business law topics. His articles have appeared in journals such as *Best's Review*, *The American Business Law Journal*, *The Labor Law Journal*, *The Massachusetts Law Quarterly*, *The Florida Bar Journal*, and *The Business Law Review*. He has served as arbitrator in over two thousand labor-management disputes throughout the country. His service includes appointments by Presidents Ronald Reagan, George H. W. Bush, William J. Clinton, George W. Bush, and Barack Obama to nine Presidential Emergency Boards, whose recommendations served as the basis for the resolution of major disputes in the rail and airline industries. After service in the U.S. Marine Corps, he graduated from Boston College, earned his MBA at the University of Massachusetts, Amherst, and a JD degree at Boston College Law School. He is a member of the Massachusetts and Florida Bars and a member of the National Academy of Arbitrators.

Professor Marianne M. Jennings, Emeritus Professor of Legal and Ethical Studies, has taught at the WP Carey School of Business, Arizona State University, from 1977 through the present. She has six textbooks and four monographs in circulation in the areas of business ethics, ethical culture, and legal environment. She was director of the Lincoln Center for Applied Ethics from 1995 to 1999. She has worked with government agencies, professional organizations, colleges and universities, and Fortune 100 companies on ethics training and culture. She is a contributing editor of *Corporate Finance Review* and *Real Estate Law Journal*. Two of her books have been named *Library Journal's* book of the year. Her books have been translated into three languages. Her book, *The Seven Signs of Ethical Collapse*, was published by St Martin's Press and has been used as both an audit tool and a primer by numerous organizations for creating and sustaining an ethical culture.

In 2011, she was named one of the Top 100 Thought Leaders by Trust Across America, and in 2012, she was named one of the 100 most influential people in business ethics by *Ethisphere* magazine.

She served on the board of directors for Arizona Public Service (now Pinnacle West), the owner of the Palo Verde Nuclear Station, from 1987 through 2000. She has served on INPO's advisory council since 2005. In 2015, she was named an affiliated scholar with the Center for the Study of Economic Liberty at Arizona State University. She conducts ethics training and ethical culture assessments for businesses, including Fortune 100 companies, government agencies, professional associations, and nonprofit organizations.

Professor Stephanie M. Greene has been a member of the faculty at the Boston College Carroll School of Management since 1995, where she currently serves as professor and chair of the Business Law Department. She served as editor-in-chief of the *American Business Law Journal* and is currently the senior articles editor for the *Journal of Legal Studies Education*. She has published numerous articles on intellectual property law, pharmaceutical regulation, and employment law with publications appearing in the *American Business Law Journal*, the *Northwestern Journal of International Law & Business*, and the *Columbia Business Law Review*. A member of the Massachusetts Bar, Professor Greene earned her undergraduate degree from Princeton University and her JD from Boston College Law School. She is a member of the Massachusetts Bar.



The Legal and Social Environment of Business

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

The Nature and Sources of Law

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- 1-2c Administrative Law
- 1-2d Private Law

- 1-2e Case Law, Statutory Interpretation, and Precedent

- 1-2f Other Forms of Law: Treaties and Executive Orders

- 1-2g Uniform State Laws

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- 1-3a Substantive Law vs. Procedural Law

- 1-3b Criminal Law vs. Civil Law

- 1-3c Law vs. Equity

Learning Outcomes <<<

After studying this chapter, you should be able to

LO.1 Discuss the nature of law and legal rights

LO.2 List the sources of law

LO.3 Describe the classifications of law

1-1 Nature of Law and Legal Rights

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

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

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

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

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

1-1a Legal Rights

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

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

1-1b Individual Rights

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

1-1c The Right of Privacy

One very important individual legal right is the right of privacy, which has two components. The first is the right to be secure against unreasonable searches and seizures by the government. The Fourth Amendment of the U.S. Constitution guarantees this portion of the **right of privacy**. A police officer, for example, may not search your home unless the officer has a reasonable suspicion (which is generally established through a warrant) that your home contains evidence of a crime, such as illegal drugs. If your home or business is searched unlawfully, any items obtained during that unlawful search could be excluded as evidence in a criminal trial because of the Fourth Amendment's exclusionary rule. **For Example**, in *Riley v. California*, 134 S. Ct. 2473 (2014), David Riley was stopped by a police officer for driving with expired registration tags. The officer discovered that Mr. Riley's license had been suspended, so his car was impounded and searched. Officers

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

also found Mr. Riley's smart phone and, in going through the phone, found pictures and information related to a gang shooting, and Mr. Riley was then charged with that earlier shooting. However, the court held that evidence from the smart phone could not be used at trial because there was no warrant and Mr. Riley had a right of privacy in the data on that phone.¹

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

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



1-1d Privacy and Technology

Technology creates new situations that may require the application of new rules of law. Technology has changed the way we interact with each other, and new rules of law have developed to protect our rights. Today, business is conducted by computers, wire transfers of funds, e-mail, electronic data interchange (EDI) order placements, and the Internet. We still expect that our communication is private. However, technology also affords others the ability to eavesdrop on conversations and intercept electronic messages. The law has stepped in to reestablish that the right of privacy still exists even in these technologically nonprivate circumstances. Some laws now make it a crime and a breach of privacy to engage in such interceptions of communications.³

CASE SUMMARY

If You Shout It Out the Window or on Facebook, Is It Private?

FACTS: Gina L. Fawcett (plaintiff) and her then-minor son, John, sued Sea High School and the parents of Nicholas Altieri (defendants) to recover damages for John's eye injury that he sustained in an altercation with Nicholas during a tennis match with St. Joseph High School. The defendants made a discovery request for access to John's social media accounts, including Facebook, MySpace, Friendster, Flickr,

and others. Ms. Fawcett moved for a protective order to prevent discovery of the information on these sites because John's sites were not publicly available.

DECISION: The court held that a variety of factors must be considered before granting broad access to social media accounts, including privacy settings by the holder of the

¹ Police officers do not need a warrant in order to use the content of an incoming text message on a suspect's phone that is received while they are questioning the suspect because the sender does not have a right of privacy in the suspect's smart phone's content. *State v. Varle*, 337 P.3d 904 (Or. App. 2014).

² 410 U.S. 113 (1973).

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

If You Shout It Out the Window or on Facebook, Is It Private? continued

account, relevancy of the information to the litigation, and protections afforded by the various social media sites. The court's decision provides the guidelines for determining whether the litigants in cases will be able to have discovery access to each other's social media sites. The parties will

have to do depositions and then renew the request once more factual information is available for the analysis of the request for access. [*Fawcett v. Altieri*, 960 N.Y.S.2d 592 (2013)]



ETHICS & THE LAW

Maybe a Little Too "LinkedIn"

LinkedIn, the popular professional connection service, has a tool called "Reference Search." A premium service, employers and recruiters are using the tool to cull their connections to see who knows job applicants in order to get background on them. Employers are checking with references that the applicants did not list, references that may not have all good things to say about them. The service provides employers with the list of LinkedIn contacts that they have who worked at the same companies as the applicants and at the same time.*

Applicants are worried that employers are basing employment decisions on the information that they receive, information that may not be true or verified or verifiable. The applicants do not always know that the employer is checking with other sources or which ones and do not have the opportunity to respond to negative information.

Discuss the ethical issues in the use of this LinkedIn service by employers.

*Natasha Singer, "Funny, They Don't Look Like My References," *New York Times Magazine*, November 10, 2014, p. BU4.



E-COMMERCE & CYBERLAW

A University's Access to Your Computer

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

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

Was Heckenkamp correct? Was his privacy breached?

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

1-2 Sources of Law

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

1-2a Constitutional Law

Constitutional law is the branch of law that is based on the constitution for a particular level of government. A **constitution** is a body of principles that establishes the structure of a government and the relationship of that government to the people who are governed. A constitution is generally a combination of the written document and the practices and customs that develop with the passage of time and the emergence of new problems. In each state, two constitutions are in force: the state constitution and the federal Constitution.

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

1-2b Statutory Law

Statutory law includes legislative acts. Both Congress and the state legislatures enact statutory law. Examples of congressional legislative enactments include the Securities Act of 1933 (Chapter 45), the Sherman Antitrust Act (Chapter 5), the bankruptcy laws (Chapter 34), and consumer credit protection provisions (Chapter 32). At the state level, statutes govern the creation of corporations, probate of wills, and the transfer of title to property. In addition to the state legislatures and the U.S. Congress, all cities, counties, and other governmental subdivisions have some power to adopt ordinances within their sphere of operation. Examples of the types of laws found at this level of government include traffic laws, zoning laws, and pet and bicycle licensing laws.

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

1-2c Administrative Law

Administrative regulations are rules promulgated by state and federal administrative agencies, such as the Securities and Exchange Commission (SEC) and the Environmental Protection Agency (EPA). For example, the restrictions on carbon emissions by businesses have all been promulgated by the EPA. These regulations generally have the force of statutes.

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

1-2d Private Law

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

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

1-2e Case Law, Statutory Interpretation, and Precedent

Law also includes principles that are expressed for the first time in court decisions. This form of law is called **case law**. Case law plays three very important roles. The first is one of clarifying the meaning of statutes, or providing statutory interpretation. **For Example**, in *King v. Burwell*, the U.S. Supreme Court interpreted the phrase, “an Exchange

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

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

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

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

established by the State” in the Affordable Care Act to determine whether tax credits were available to insurance exchanges operated by the federal government and not the states. The court held that “State,” meant either the federal government or any of the states so that all exchanges qualified for the tax credits.⁴ The second role that courts play is in creating precedent. When a court decides a new question or problem, its decision becomes a **precedent**, which stands as the law in future cases that involve that particular problem.

Using precedent and following decisions is also known as the doctrine of **stare decisis**. However, the rule of *stare decisis* is not cast in stone. Judges have some flexibility. When a court finds an earlier decision to be incorrect, it overrules that decision. For example, in *National Federation of Independent Business v. Sebelius*, 132 S.Ct. 2566 (2012) the U.S. Supreme Court held that the Affordable Care Act (Obama Care) was constitutional. However, in 2014, the Court held, based on new issues raised, that a portion of the act violated the First Amendment because it mandated health care coverage of certain types of birth controls that were in violation of the religious beliefs of the owners of a corporation. *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014).

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

1-2f Other Forms of Law: Treaties and Executive Orders

Law also includes treaties made by the United States and proclamations and executive orders of the president of the United States or of other public officials. President Obama’s executive order altering immigration policy is the subject of a constitutional challenge to the scope of executive orders.

1-2g Uniform State Laws

To facilitate the national nature of business and transactions, the National Conference of Commissioners on Uniform State Laws (NCCUSL), composed of representatives from every state, has drafted statutes on various subjects for adoption by the states. The best example of such laws is the Uniform Commercial Code (UCC).⁵ (See Chapters 22–30, Chapter 33.) The UCC regulates the sale and lease of goods; commercial paper, such as checks; fund transfers; secured transactions in personal property; banking; and letters of credit. Having the same principles of law on contracts for the sale of goods and other commercial transactions in most of the 50 states makes doing business easier and less expensive. Other examples of uniform laws across the states include the Model Business Corporation Act (Chapter 43), the Uniform Partnership Act (Chapter 41), and the Uniform Residential Landlord Tenant Act (Chapter 50). The Uniform Computer Information Transactions Act (UCITA) as well as the Uniform Electronic Transactions Act

⁴ *King v. Burwell*, 135 S.Ct. 2480 (2015).

⁵ The UCC has been adopted in every state, except that Louisiana has not adopted Article 2, Sales. Guam, the Virgin Islands, and the District of Columbia have also adopted the UCC. The United Nations Convention on Contracts for the International Sale of Goods (CISG) has been adopted as the means for achieving uniformity in sale-of-goods contracts on an international level. Provisions of CISG were strongly influenced by Article 2 of the UCC.

(UETA) are two uniform laws that have taken contract law from the traditional paper era to the paperless computer age.

1-3 Classifications of Law

1-3a Substantive Law vs. Procedural Law

substantive law—the law that defines rights and liabilities.

procedural law—the law that must be followed in enforcing rights and liabilities.

Substantive law creates, defines, and regulates rights and liabilities. The law that determines when a contract is formed is substantive law. **Procedural law** specifies the steps that must be followed in enforcing those rights and liabilities. For example, once that contract is formed, you have rights to enforce that contract, and the steps you take through the court system to recover your damages for a breach of contract are procedural laws. The laws that prohibit computer theft are substantive laws. The prosecution of someone for computer theft follows procedural law.

1-3b Criminal Law vs. Civil Law

criminal laws—the laws that define wrongs against society.

civil laws—the laws that define the rights of one person against another.

Criminal laws define wrongs against society. **Civil laws** define the rights of one person against another. Criminal law violations carry fines and imprisonment as penalties. Civil laws carry damage remedies for the wronged individual.

For Example, if you run a red light, you have committed a crime and you will be punished with a fine and points on your license. If you run a red light and strike a pedestrian, you will also have committed a civil wrong of injury to another through your



SPORTS & ENTERTAINMENT LAW

When Players Break the Law and Owners Are Offensive

During 2014, professional sports had three events that resulted in a public engaged in the business decisions of the teams and their leagues. Baltimore Ravens player Ray Rice was accused of striking his fiancé (who would shortly become his wife) in an elevator. Local authorities declined to prosecute because his wife refused to cooperate with the investigation or the prosecution. Nonetheless, Roger Goodell, the NFL commissioner, suspended Mr. Rice from play indefinitely. Public opinion swung both ways, and Mr. Rice eventually won his appeal on the suspension and was reinstated. However, he lost his endorsement contracts with various companies, including Nike.

In the NBA, Donald Sterling was forced by the league to sell the LA Clippers franchise after an audio tape emerged of him making racist comments to his girlfriend. Steve Ballmer, the former CEO of Microsoft, bought the team for \$2 billion. The team owners in the NBA made the decision by a vote to require Sterling to sell the team, a provision permitted under the bylaws of the corporation.

Back in the NFL, Adrian Peterson of the Minnesota Vikings was arrested for child abuse. Mr. Peterson entered a

no-contest plea to the charges, which were based on his using a branch to hit his four-year-old son. The court's determination of guilt was postponed for two years as Mr. Peterson serves 80 hours of community service and pays a \$4,000 fine. Under its bylaws, the NFL imposed a temporary suspension, and Mr. Peterson and the NFL are locked in a court and arbitration dispute over the suspension.

The three cases have these topics in common:

- Private conduct affected business ownership and employment.

- There were private bylaws involved that permitted league action against team owners and players.

- There were also civil and criminal laws involved that required prosecution in two of the cases.

The law at various levels, including the authority of the leagues to do what they did, was at the center of these very public controversies.