Sixteenth Edition

BUSINESS LAW

The Ethical, Global, and E-Commerce Environment

Jane Mallor
Jamie Darin Prenkert
A. James Barnes
Martin A. McCrory
Arlen W. Langvardt

Mc Graw Hill Education

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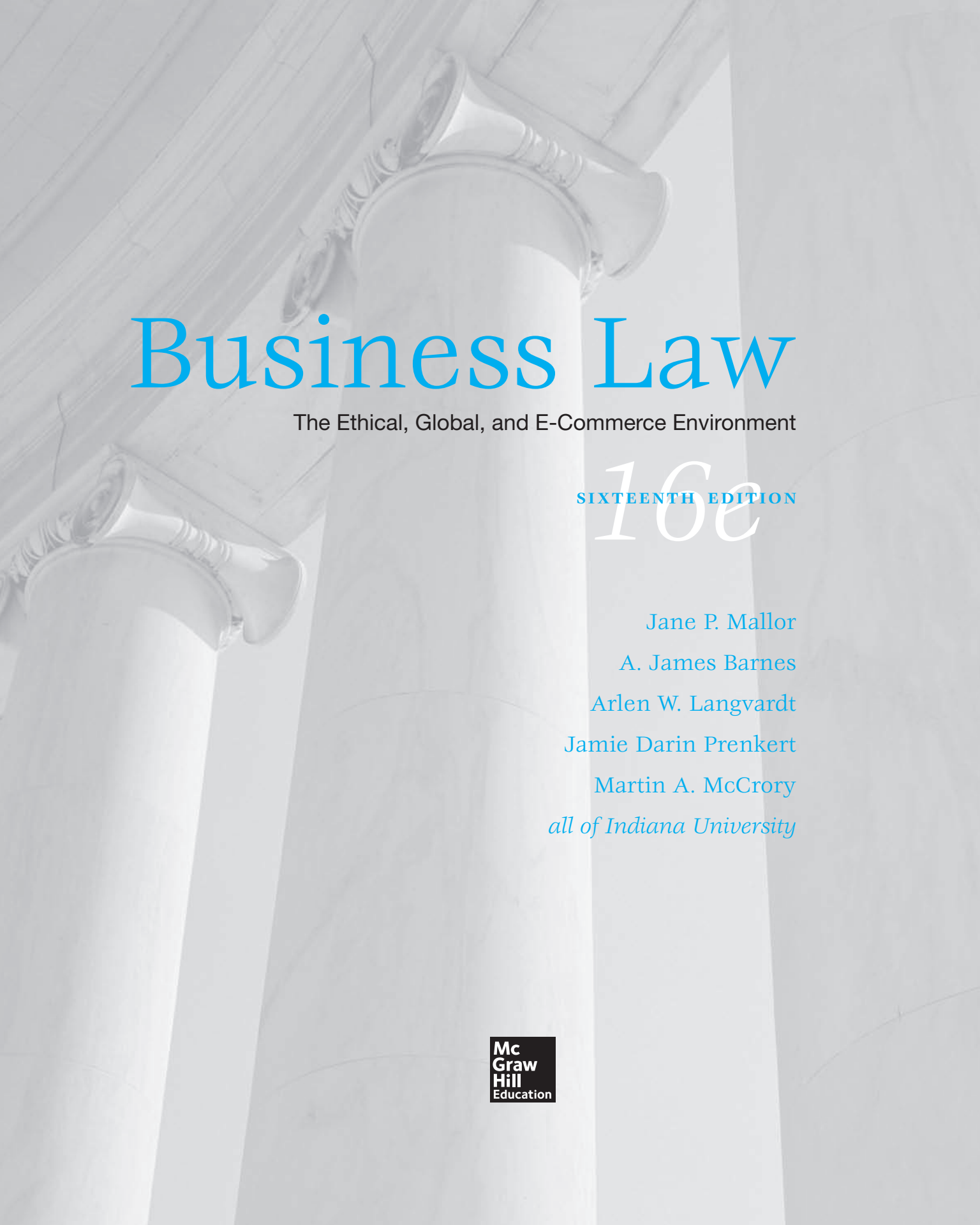

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Jane P. Mallor is Professor Emerita of Business Law at the Kelley School of Business, Indiana University (IU). She joined the Kelley School faculty in 1976 and served two stints as chair of its Department of Business Law & Ethics, most recently from 2009 to 2014. Professor Mallor received a B.A. from IU and a J.D. from IU's Maurer School of Law. She has been admitted to the Indiana Bar, the Bar of the Southern District of Indiana, and the Bar of the U.S. Supreme Court. She is a member of the Academy of Legal Studies in Business.

Professor Mallor has taught a range of courses, including an introductory legal environment course and real estate law at the undergraduate level and graduate-level legal concepts and cyberlaw courses. She has also taught an online law and ethics graduate course and university pedagogy courses for business doctoral students. Professor Mallor is a member of IU's Faculty Colloquium for Excellence in Teaching and was a Lilly Postdoctoral Teaching Fellow. She has won a number of teaching awards, including the Amoco Foundation Award for Distinguished Teaching, the Dow Technology Teaching Award, and the Innovative Teaching Award. Her research has focused primarily on punitive damages, product liability, and employment rights. Her work has been published in law reviews such as the *American Business Law Journal*, the *Hastings Law Journal*, the *North Carolina Law Review*, and the *Notre Dame Lawyer*.

A. James Barnes is Professor of Public and Environmental Affairs and Professor of Law at Indiana University, Bloomington (IU). He previously served as Dean of IU's School of Public and Environmental Affairs, and has taught business law at Indiana University and Georgetown University. His teaching interests include commercial law, environmental law, alternative dispute resolution, law and public policy, and ethics and the public official. He is the co-author of several leading books on business law. From 1985 to 1988, Professor Barnes served as the deputy administrator of the U.S. Environmental Protection Agency (EPA).

From 1983 to 1985 he was the EPA general counsel and in the early 1970s served as chief of staff to the first administrator of EPA. Professor Barnes also served as a trial attorney in the U.S. Department of Justice and as general counsel of the U.S. Department of Agriculture. From 1975 to 1981, he had a commercial and environmental law practice with the firm of Beveridge and Diamond in Washington, D.C.

Professor Barnes is a Fellow of the National Academy of Public Administration, and a fellow in the American College of Environmental Lawyers. He recently served as the chair of EPA's Environmental Finance Advisory Board, and as a member of the U.S. Department of Energy's Environmental Management Advisory Board. From 1992 to 1998 he was a member of the Board of Directors of the Long Island Lighting Company (LILCO). Professor Barnes received his B.A. from Michigan State University and a J.D. (*cum laude*) from Harvard Law School.

Arlen W. Langvardt, Professor of Business Law and the Graf Family Professor, joined the faculty of Indiana University's Kelley School of Business in 1985. From 2000 to 2009, he served as chair of the Department of Business Law & Ethics. He earned a B.A. (*summa cum laude)*, from Hastings College and a J.D. (with distinction), from the University of Nebraska. In private law practice before becoming a member of the Kelley School faculty, he tried cases in a variety of legal areas, including tort, contract, constitutional, and miscellaneous commercial cases.

Professor Langvardt has received a number of teaching awards at the graduate and undergraduate levels. His graduate teaching assignments have included legal environment, ethical leadership, and critical thinking courses, as well as specialized courses dealing with marketing law, intellectual property management, and legal issues for artists and arts organizations. He has also taught various undergraduate business law courses. Professor Langvardt's wide-ranging research interests are reflected in his articles on commercial speech, defamation, intellectual property, medical malpractice, and other healthcare-related subjects. The list of journals in which his numerous articles have appeared includes the *American Business Law Journal*, the *Minnesota Law Review*, the *Harvard Journal of Sports & Entertainment Law*, the *University of Pennsylvania Journal of Business Law*, the *Minnesota Journal of Law, Science & Technology*, the *Trademark Reporter*, and the *Journal of Marketing*. Professor Langvardt has won several research awards from professional associations, including the Holmes/Cardozo and Hoeber Awards from the Academy of Legal Studies in Business and the Ladas Memorial Award from the United States Trademark Association.

Jamie Darin Prenkert, Professor of Business Law and Arthur M. Weimer Faculty Fellow, joined the faculty of Indiana University's Kelley School of Business in 2002. He has served as chair of the Department of Business Law & Ethics since 2014. Professor Prenkert is a former Editor in Chief of the *American Business Law Journal* and member of the executive committee of the Academy of Legal Studies in Business. His research focuses on issues of employment discrimination and the human rights obligations of transnational corporations. He has published articles in the *American Business Law Journal*, the *North Carolina Law Review*, the *Berkeley Journal of Employment and Labor Law*, and the *University of Pennsylvania Journal of International Law*, among others. He also recently coedited a volume entitled *Law, Business and Human Rights: Bridging the Gap*. Professor Prenkert has taught undergraduate and graduate courses, both in-residence and online, focusing on the legal environment of business, employment law, law for entrepreneurs, and business and human rights. He is a recipient of the Harry C. Sauvain Undergraduate Teaching Award and the Kelley Innovative Teaching Award.

Professor Prenkert earned a B.A. (*summa cum laude*) from Anderson University and a J.D. (*magna cum laude*) from Harvard Law School. Prior to joining the faculty of the Kelley School, he was a senior trial attorney for the U.S. Equal Employment Opportunity Commission.

Martin A. McCrory is a member of the Department of Business Law & Ethics in the Kelley School of Business, Indiana University, Bloomington (IU). He joined the faculty in 1995. Professor McCrory is also IU's Vice Provost for Educational Inclusion and Diversity and, as such, is the chief diversity officer for Indiana University-Bloomington. Additionally, he is the university's Associate Vice President of Academic Support and Diversity. Prior to his academic career, he was a litigation attorney with the United States Department of Justice (the Environment and Natural Resources Division). During his tenure at the Department of Justice, he received the Department's Special Commendation Award for Outstanding Service. Professor McCrory was also a senior attorney with the Natural Resources Defense Council and later its Director of Public Health. He was a member of the Environmental Protection Agency's seven-member National Environmental Justice Task Force. He also sat on the Board of Directors for Friends of the Earth and chaired the organization's litigation committee. He has co-authored or edited several federal and state bills, has testified before Congress, and has worked with the White House on environmental legislation and regulations.

Focusing on environmental law (and environmental justice), sustainable development, corporations (and business organizations), contracts, secured transactions, commercial paper, and negotiations, Professor McCrory has taught courses in the graduate and undergraduate programs. He also served as chair of the Kelley School's Undergraduate Honors Program and was the Arcelor-Mittal Faculty Fellow. He has won numerous teaching awards. Professor McCrory's articles have been published in law reviews such as the *American Business Law Journal,* the *Stanford Environmental Law Review*, the *UCLA Journal of Environmental Law and Policy*, and the *University of Colorado Law Review*.

Preface

This is the 16th UCC Edition (and the twenty-second overall edition) of a business law text that first appeared in 1935. Throughout its 80 years of existence, this book has been a leader and an innovator in the fields of business law and the legal environment of business. One reason for the book's success is its clear and comprehensive treatment of the standard topics that form the traditional business law curriculum. Another reason is its responsiveness to changes in these traditional subjects and to new views about that curriculum. In 1976, this textbook was the first to inject regulatory materials into a business law textbook, defining the "legal environment" approach to business law. Over the years, this textbook has also pioneered by introducing materials on business ethics, corporate social responsibility, global legal issues, and e-commerce law. The 16th Edition continues to emphasize change by integrating these four areas into its pedagogy.

Continuing Strengths

The 16th UCC Edition continues the basic features that have made its predecessors successful. They include:

- *Comprehensive Coverage.* We believe that the text continues to excel both in the number of topics it addresses and the depth of coverage within each topic. This is true not only of the basic business law subjects that form the core of the book but also of the regulatory and other subjects that are said to constitute the "legal environment" curriculum.
- *Style and Presentation.* This text is written in a style that is direct, lucid, and organized, yet also relatively relaxed and conversational. For this reason, we often have been able to cover certain topics by assigning them as reading without lecturing on them. As always, key points and terms are emphasized; examples, charts, figures, and concept summaries are used liberally; and elements of a claim and lists of defenses are stated in numbered paragraphs.
- *Case Selection.* We try very hard to find cases that clearly illustrate important points made in the text, that should interest students, and that are fun to teach. Except when older decisions are landmarks or continue to provide the best illustrations of particular concepts, we also try to select recent cases. Our collective in-class teaching experience with recent editions has helped us determine which of those cases best meet these criteria.
- *AACSB Curricular Standards.* The AACSB's curriculum standards say that both undergraduate and MBA curricula should include ethical and global issues; should address the influence of political, social, legal and regulatory, environmental, and technological issues on business; and should address the impact of demographic diversity on organizations. In addition to its obvious emphasis on legal and regulatory issues, the book contains considerable material on business ethics, the legal environment for international business, and environmental law, as well as Ethics in Action boxes. By putting legal changes in their social, political, and economic context, several text chapters enhance students' understanding of how political and social changes influence business and the law. For instance, Chapter 1 considers such influences on the development of the common law; Chapter 3 includes very recent, high-profile Supreme Court decisions on major constitutional issues; Chapter 4 addresses ethical issues that are at once current and timeless; Chapters 42, 43, and 45 explore such topics as the current controversy over corporate inversions (American corporations moving income to countries with more favorable tax rates), the current debate regarding amounts of compensation paid to corporate CEOs and directors, and the recent mortgage lending crisis; and Chapter 51 explores the key subject of workplace diversity in its discussion of employment discrimination law. Finally, the 16th UCC Edition examines many specific legal issues involving e-commerce and the Internet.

Features This edition continues numerous features introduced by previous editions:

Opening Vignettes precede the chapter discussion in order to give students a context for the area of law they are about to study. Various opening vignettes raise issues that come from the corporate social responsibility crisis that students have read about during the past several years. Others place students in the position of executives and entrepreneurs making management decisions and creating new business.

Learning Objectives (LOs) open each chapter and are tied to AACSB standards. LOs inform students of specific outcomes they should realize after finishing the relevant chapter. Icons reference each LO's reference within the chapter.

Ethics in Action boxes are interspersed where ethical issues arise, asking students to consider the ethics of actions and laws. The ethics boxes often ask students to apply what they have learned in Chapter 4, the chapter on ethical and rational decision-making. Various boxes also feature the Sarbanes—Oxley Act of 2002, one of the most important pieces of corporate social responsibility legislation in the past two decades.

Cyberlaw in Action boxes discuss e-commerce and Internet law at the relevant points of the text.

The Global Business Environment boxes address the legal and business risks and obligations that arise in international business transactions, including those in which a U.S. firm may be subject to the laws of other countries. By the integration of the global business environment boxes in each chapter, students are taught that global issues are an integral part of business decision-making.

Log On boxes direct students to Internet sites where they can find additional legal and business materials that will aid their understanding of the law.

Concept Reviews appear frequently in the chapters. These features visually represent important concepts presented in the text to help summarize key ideas at a glance and simplify students' conceptualization of complicated issues.

Figures appear occasionally in certain chapters. These features typically furnish further detail on special issues introduced more generally elsewhere in the text.

Cases are edited versions of judicial opinions setting forth actual court decisions. These help to provide concrete, real-life examples of the legal rules stated in the text and offer students a useful sense of the analysis engaged in by courts.

Problem Cases are included at the end of each chapter to provide review questions for students.

Key Terms are bolded throughout the text and defined in the Glossary at the end of the text for better comprehension of important terminology.

Important Changes in This Edition

For this edition, we welcome two additions to the author team: Professors Jamie Darin Prenkert and Martin A. McCrory, our colleagues at Indiana University. Both have made significant contributions to the creation of the 16th Edition and will continue to play key authorship roles in future editions.

In this edition, there are many new cases, the text has been updated to include recent developments, and a good number of problem cases have been replaced with new ones. The book continues to include both hypothetical examples and real-life cases so that we can target particular issues that deserve emphasis. Examples of key additions for the 16th Edition include the following:

Chapter 1

- New case illustrating the development of the common law.
- New case interpreting the Americans with Disabilities Act in light of Colorado's legalization of medical marijuana in Colorado.

Chapter 2

- Increased coverage of *in personam* jurisdiction regarding out-of-state and foreign defendants.
- *Wal-Mart Stores, Inc. v. Dukes*, a key Supreme Court decision dealing with class-action certification.

Chapter 3

- *National Federation of Independent Business v. Sebelius*, the 2012 Supreme Court decision holding constitutional, on taxing power grounds, the Affordable Care Act's insurance mandate. A separate feature discusses the commerce power issues in the case.
- A note on *McCutcheon v. Federal Election Commission*, the Supreme Court's 2014 decision that served as a campaign finance follow-up to the 2010 *Citizens United* decision (which is retained in this edition).
- Discussion of recent Supreme Court decisions dealing with commercial speech, depictions of violence in video games, affirmative action, and federal preemption, as well as two 2013 Supreme Court decisions (*Hollingsworth v. Perry* and *United States v. Windsor*) on which lower courts have relied in issuing recent rulings on same-sex marriage bans.

Chapter 4

- New introductory problem designed to promote student buy-in to discussions of ethical corporate behavior by asking them to identify and analyze what they believe is ethical behavior.
- New ethics box addressing the minimum wage debate.
- Updated examples of critical thinking mistakes in current events and new problem cases addressing the ethics of current events, such as Los Angeles Clippers owner Donald Sterling's racial remarks and failures to stop former Penn State football coach Jerry Sandusky's abuse of minors.

Chapter 5

- Discussion of criminal proceedings against BP regarding the Deepwater Horizon oil spill, as well as recent criminal investigations faced by Toyota and General Motors.
- Discussion of recent Supreme Court and lower court decisions dealing with financial fraud and other crimes of a supposed white-collar nature.
- *United States v. Jones*, the 2012 Supreme Court decision holding that law enforcement officers' warrantless placement of a GPS device on the underside of an individual's car violated the Fourth Amendment.
- Special feature dealing with *Riley v. California*, the 2014 Supreme Court decision holding that police must normally obtain a warrant before searching the content of an arrested suspect's cell phone or smartphone even though other items in the arrestee's possession at the time of arrest may ordinarily be searched without a warrant.

Chapter 6

- *Jordan v. Jewel Food Stores, Inc*., a 2014 federal court of appeals decision dealing with whether a supermarket chain's advertisement congratulating Michael Jordan on his induction into a basketball hall of fame potentially violated his right of publicity or, instead, was noncommercial speech protected by the First Amendment.
- Discussion of the current controversy over whether college athletes should be entitled to the right of publicity.

Chapter 7

- New cases dealing with employers' liability to persons harmed by employees' negligence, property owners' liability for potentially dangerous conditions on the premises, and property owners' potential duties to take steps to protect persons on the premises from criminal acts of third parties.

Chapter 8

- Discussion of key patent law changes brought about by the America Invents Act, which took effect in 2013.
- Various recent Supreme Court decisions: *Association for Molecular Pathology v. Myriad Genetics, Inc.* (2013 decision holding that human genes are not patent-eligible); *Alice Corp. v. CLS Bank International* (2014 decision dealing with whether a computer-implemented scheme for mitigating settlement risk

is patentable); *Bowman v. Monsanto Co.* (2013 decision dealing with patented seeds and a defendant's attempt to rely on the first-sale doctrine); *Kirtsaeng v. John Wiley & Sons* (2013 decision dealing with the application of copyright law's first-sale doctrine to a situation presenting an international twist); and *American Broadcasting Companies v. Aereo, Inc.* (2014 decision addressing performance rights issues associated with transmissions of copyrighted television programs).
- Discussion of the U.S. Patent & Trademark Office's 2014 decision to cancel the Washington Redskins football organization's longstanding trademark registration on the Redskins name.

Chapter 10
- Three new cases illustrating the UCC's approach to defining an offer, reward offers, and counteroffers.

Chapter 11
- A short, simple application of UCC § 2-207 (the "Battle of the Forms") in the new case *Duro Textiles, LLC v. Sunbelt Corp*.
- New cases illustrating the operation of the common law mailbox rule and applying the six factors courts use to determine whether a formal written agreement is necessary to create a binding contract.

Chapter 12
- New cases dealing with promissory estoppel and with whether an unlimited cancellation clause creates an illusory promise.
- New case involving a claim against the Roman Catholic Archdiocese of Indianapolis, which reveals how even strong moral obligations cannot be the consideration upon which a valid contract is formed.

Chapter 13
- New cases dealing with nondisclosure issues and mutual mistake issues.

Chapter 15
- New cases dealing with the enforcement of a broad noncompetition clause and with interpretation of an exculpatory clause.

Chapter 20
- New case involving a computer manufacturer's failure to disclose a design defect in a laptop computer.

Chapter 22
- New case dealing with defective oil boom sold to an emergency response contractor for use in connection with the Deepwater Horizon oil rig explosion in the Gulf of Mexico.

Chapter 27
- New case discussing covered and excluded perils in a property insurance case.

Chapter 28
- New case dealing with a mechanic who made extensive repairs to a gospel music group's customized touring vehicle but was not entitled to an artisan's lien where he could not show that the repairs had been made with the consent of the vehicle's owner.

Chapter 30
- *Krieger v. Educational Credit Management Corp.,* a Seventh Circuit decision that reversed the district court and upheld a bankruptcy judge's grant of a discharge in bankruptcy of educational loans, explaining and sustaining a determination that not granting the exemption from discharge would impose an undue hardship on the former student.

Chapter 32
- New case concluding that a holder in due course of checks that had been counterfeited was not able to recover from the purported drawer, who had no knowledge of them and was entitled to a defense of illegality that could be asserted even against the holder in due course.

Chapter 35
- New case addressing CBS's responsibility for the Justin Timberlake-Janet Jackson wardrobe malfunction during the Super Bowl.

Chapter 37
- New case on the issue of creation of partnership.

Chapter 39
- Two new cases regarding the calculation of damages for wrongful dissociation and valuation of a partner's interest.

Chapter 40
- Discussion of the 2012 New York Court of Appeals case (*Pappas v. Tzolis*) addressing how to limit fiduciary duties between members of an LLC.
- New case addressing the liability of financial advisers for investing with convicted Ponzi schemer Bernard Madoff.

Chapter 41
- New case in which the court thoroughly considers 12 factors in deciding whether to pierce a corporation's veil.

Chapter 42
- Revision of the ethics box regarding tax havens and corporate inversions: American corporations moving income to states and countries with more favorable tax rates.
- New figure comprising a comprehensive example of a share transfer restriction.

Chapter 43
- Updated examples regarding director and CEO compensation and the size of corporate boards of directors, and new section defining the term *independent director*.
- Discussions of three 2013 and 2014 Georgia and Delaware Supreme Court cases applying the business judgment rule to decisions of board of directors.
- New ethics box on News Corporation's directors' historic settlement of a shareholder suit arising from the infamous phone hacking scandal.

Chapter 45
- Extensive discussion of the JOBS Act's crowdfunding exemption from 1933 Act registration provisions, especially the SEC's crowdfunding rules.
- Updated results of a study of Sarbanes—Oxley §404 compliance.
- Material on the use of social media such as Facebook and Twitter to comply with Regulation FD.
- Discussion of *Halliburton Co. v. Erica P. John Fund, Inc.,* the recent Supreme Court decision addressing how to rebut a fraud-on-the-market argument under 1934 Act Rule 10b-5.
- Update of the Foreign Corrupt Practices Act material, including discussion of Hewlett-Packard's historic $108 million settlement with the SEC and DOJ.

Chapter 46
- Extensive discussion of an accountant's and investment banker's *in pari delicto* defense, including cases in New York, New Jersey, and Pennsylvania addressing when a client's agent's fraud may be imputed to the client.
- Discussion of recent Texas and New Jersey rulings on the application of the *Ultramares* decision.

Chapter 47
- Discussion of recent First Amendment challenges to Food & Drug Administration regulation of tobacco product labels and advertising.
- *Utility Air Regulatory Group v. Environmental Protection Agency*, a 2014 Supreme Court decision considering whether the EPA erroneously interpreted the Clean Air Act when the agency promulgated certain regulations.

Chapter 48
- Discussion of recent developments and trends in FTC regulation of deceptive advertising.
- Cyberlaw in Action box on new FTC regulations that pertain to the Children's Online Privacy Protection Act.

Chapter 49
- Discussion of what appears to be increased federal attention to matters of price-fixing.

Chapter 50
- Discussion of federal regulators' recent careful attention to proposed mergers in the communications sector.

Chapter 51
- New case illustrating how the Americans with Disabilities Amendments Act and advancements in technology have significantly expanded the accommodation requirement, allowing an employee an accommodation to telecommute.
- Expanded discussion of the employment-at-will rule, with a new case illustrating how it permeates employment law in the United States and an "Ethics in Action" feature focused on information asymmetries between employers and employees relevant to the at-will rule.

Acknowledgments

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Melanie Stallings Williams, *California State University—Northridge*

We also acknowledge the assistance of Professor Sarah Jane Hughes of Indiana University's Maurer School of Law and the technical contributions of assistant Elise Boruvka.

Jane P. Mallor
A. James Barnes
Arlen W. Langvardt
Jamie Darin Prenkert
Martin A. McCrory

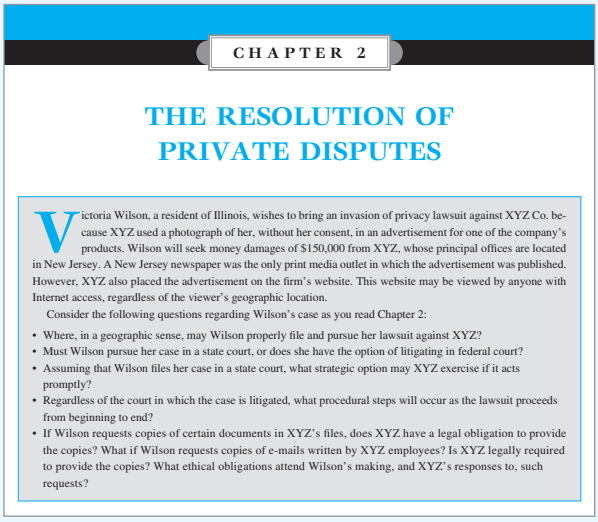
A Guided Tour

A New Kind of Business Law

The 16th Edition of **Business Law** continues to focus on global, ethical, and e-commerce issues affecting legal aspects of business. The new edition contains a number of new features as well as an exciting new supplements package. Please take a few moments to page through some of the highlights of this new edition.

OPENING VIGNETTES

Each chapter begins with an opening vignette that presents students with a mix of real-life and hypothetical situations and discussion questions. These stories provide a motivational way to open the chapter and get students interested in the chapter content.



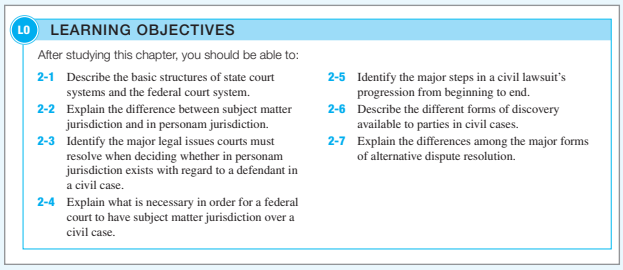
CHAPTER 2

THE RESOLUTION OF PRIVATE DISPUTES

Victoria Wilson, a resident of Illinois, wishes to bring an invasion of privacy lawsuit against XYZ Co. because XYZ used a photograph of her, without her consent, in an advertisement for one of the company's products. Wilson will seek money damages of $150,000 from XYZ, whose principal offices are located in New Jersey. A New Jersey newspaper was the only print media outlet in which the advertisement was published. However, XYZ also placed the advertisement on the firm's website. This website may be viewed by anyone with Internet access, regardless of the viewer's geographic location.

Consider the following questions regarding Wilson's case as you read Chapter 2:

- Where, in a geographic sense, may Wilson properly file and pursue her lawsuit against XYZ?
- Must Wilson pursue her case in a state court, or does she have the option of litigating in federal court?
- Assuming that Wilson files her case in a state court, what strategic option may XYZ exercise if it acts promptly?
- Regardless of the court in which the case is litigated, what procedural steps will occur as the lawsuit proceeds from beginning to end?
- If Wilson requests copies of certain documents in XYZ's files, does XYZ have a legal obligation to provide the copies? What if Wilson requests copies of e-mails written by XYZ employees? Is XYZ legally required to provide the copies? What ethical obligations attend Wilson's making, and XYZ's responses to, such requests?



LO LEARNING OBJECTIVES

After studying this chapter, you should be able to:

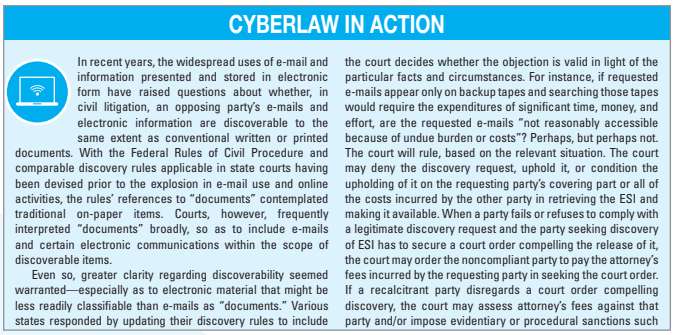
- **2-1** Describe the basic structures of state court systems and the federal court system.
- **2-2** Explain the difference between subject matter jurisdiction and in personam jurisdiction.
- **2-3** Identify the major legal issues courts must resolve when deciding whether in personam jurisdiction exists with regard to a defendant in a civil case.
- **2-4** Explain what is necessary in order for a federal court to have subject matter jurisdiction over a civil case.
- **2-5** Identify the major steps in a civil lawsuit's progression from beginning to end.
- **2-6** Describe the different forms of discovery available to parties in civil cases.
- **2-7** Explain the differences among the major forms of alternative dispute resolution.

LEARNING OBJECTIVES

Active **Learning Objectives** open each chapter, and are tied to AACSB standards. LOs inform you of specific outcomes you should have after finishing the chapter. Icons reference each LO's reference within the chapter.

CYBERLAW IN ACTION BOXES

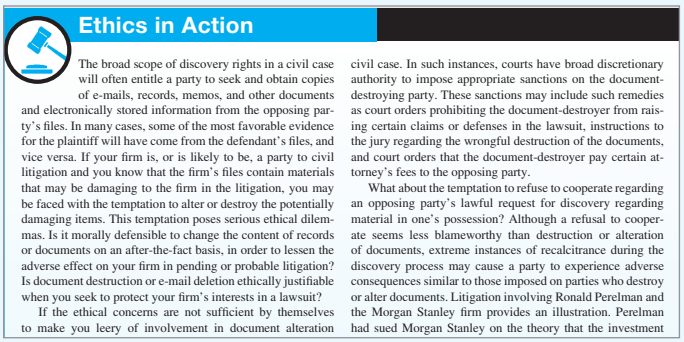
In keeping with today's technological world, these boxes describe and discuss actual instances of how e-commerce and the Internet are affecting business law today.



CYBERLAW IN ACTION

In recent years, the widespread uses of e-mail and information presented and stored in electronic form have raised questions about whether, in civil litigation, an opposing party's e-mails and electronic information are discoverable to the same extent as conventional written or printed documents. With the Federal Rules of Civil Procedure and comparable discovery rules applicable in state courts having been devised prior to the explosion in e-mail use and online activities, the rules' references to "documents" contemplated traditional on-paper items. Courts, however, frequently interpreted "documents" broadly, so as to include e-mails and certain electronic communications within the scope of discoverable items.

Even so, greater clarity regarding discoverability seemed warranted—especially as to electronic material that might be less readily classifiable than e-mails as "documents." Various states responded by updating their discovery rules to include the court decides whether the objection is valid in light of the particular facts and circumstances. For instance, if requested e-mails appear only on backup tapes and searching those tapes would require the expenditures of significant time, money, and effort, are the requested e-mails "not reasonably accessible because of undue burden or costs"? Perhaps, but perhaps not. The court will rule, based on the relevant situation. The court may deny the discovery request, uphold it, or condition the upholding of it on the requesting party's covering part or all of the costs incurred by the other party in retrieving the ESI and making it available. When a party fails or refuses to comply with a legitimate discovery request and the party seeking discovery of ESI has to secure a court order compelling the release of it, the court may order the noncompliant party to pay the attorney's fees incurred by the requesting party in seeking the court order. If a recalcitrant party disregards a court order compelling discovery, the court may assess attorney's fees against that party and/or impose evidentiary or procedural sanctions such



Ethics in Action

The broad scope of discovery rights in a civil case will often entitle a party to seek and obtain copies of e-mails, records, memos, and other documents and electronically stored information from the opposing party's files. In many cases, some of the most favorable evidence for the plaintiff will have come from the defendant's files, and vice versa. If your firm is, or is likely to be, a party to civil litigation and you know that the firm's files contain materials that may be damaging to the firm in the litigation, you may be faced with the temptation to alter or destroy the potentially damaging items. This temptation poses serious ethical dilemmas. Is it morally defensible to change the content of records or documents on an after-the-fact basis, in order to lessen the adverse effect on your firm in pending or probable litigation? Is document destruction or e-mail deletion ethically justifiable when you seek to protect your firm's interests in a lawsuit?

If the ethical concerns are not sufficient by themselves to make you leery of involvement in document alteration civil case. In such instances, courts have broad discretionary authority to impose appropriate sanctions on the document-destroying party. These sanctions may include such remedies as court orders prohibiting the document-destroyer from raising certain claims or defenses in the lawsuit, instructions to the jury regarding the wrongful destruction of the documents, and court orders that the document-destroyer pay certain attorney's fees to the opposing party.

What about the temptation to refuse to cooperate regarding an opposing party's lawful request for discovery regarding material in one's possession? Although a refusal to cooperate seems less blameworthy than destruction or alteration of documents, extreme instances of recalcitrance during the discovery process may cause a party to experience adverse consequences similar to those imposed on parties who destroy or alter documents. Litigation involving Ronald Perelman and the Morgan Stanley firm provides an illustration. Perelman had sued Morgan Stanley on the theory that the investment

ETHICS IN ACTION BOXES

These boxes appear throughout the chapters and offer critical thinking questions and situations that relate to ethical/public policy concerns.

THE GLOBAL BUSINESS ENVIRONMENT BOXES

Since global issues affect people in many different aspects of business, this material now appears throughout the text instead of in a separate chapter on international issues. This feature brings to life global issues that are affecting business law.

The Global Business Environment

Daimler AG v. Bauman, 134 S. Ct. 746 (U.S. Sup. Ct. 2014)

In 2004, 22 residents of Argentina filed suit in the U.S. District Court for the Northern District of California against (Daimler), a German company that manufactures Mercedes-Benz vehicles in Germany. The plaintiffs contended that during Argentina's 1976–1983 "Dirty War," Daimler's subsidiary, Mercedes-Benz Argentina (MB Argentina), collaborated with state security forces to kidnap, detain, torture, and kill certain MB Argentina workers. These workers included the plaintiffs and deceased persons closely related to the plaintiffs. No part of MB Argentina's alleged collaboration with Argentinian authorities took place in California or anywhere else in the United States.

The plaintiffs maintained that Daimler should be held vicariously liable for MB Argentina's actions. They brought whether the Due Process Clause of the Fourteenth Amendment precludes the district court from exercising jurisdiction over Daimler, given the absence of any California connection to the atrocities, perpetrators, or victims described in the complaint.

Plaintiffs invoked the court's general or all-purpose jurisdiction. California, they urge, is a place where Daimler may be sued on any and all claims against it, wherever in the world the claims may arise. For example, as plaintiffs' counsel affirmed, under the proffered jurisdictional theory, if a Daimler-manufactured vehicle overturned in Poland, injuring a Polish driver and passenger, the injured parties could maintain a design defect suit in California. [We must decide whether such] exercises of personal jurisdiction . . . are [permitted or, instead,] barred by due process constraints on the assertion of adjudicatory authority.

In *Goodyear Dunlop Tires Operations, S. A. v. Brown*, 131 S. Ct. 2846 (2011), we addressed the distinction between general or

LOG ON

For a great deal of information about the U.S. Supreme Court and access to the Court's opinions in recent cases, see the Court's website at **http://www.supremecourtus.gov.**

LOG ON BOXES

These appear throughout the chapters and direct students, where appropriate, to relevant websites that will give them more information about each featured topic. Many of these are key legal sites that may be used repeatedly by business law students and business professionals alike.

CONCEPT REVIEWS

These boxes visually represent important concepts presented in the text to help summarize key ideas at a glance and simplify students' conceptualization of complicated issues.

Concept Review

The First Amendment

Type of Speech	Level of First Amendment Protection	Consequences When Government Regulates Content of Speech
Noncommercial	Full	Government action is constitutional only if action is necessary to fulfillment of compelling government purpose. Otherwise, government action violates First Amendment.
Commercial (*nonmisleading and about lawful activity*)	Intermediate	Government action is constitutional if government has substantial underlying interest, action directly advances that interest, and action is no more extensive than necessary to fulfillment of that interest (i.e., action is narrowly tailored).
Commercial (*misleading*	None	Government action is constitutional.

CASES

The cases in each chapter help to provide concrete examples of the rules stated in the text. A list of cases appears at the front of the text.

Hertz Corp. v. Friend 559 U.S. 77 (U.S. Sup. Ct. 2010)

Alleging violations of California's wage and hour laws, California citizens Melinda Friend and John Nhieu sued Hertz Corporation in a California state court. Hertz filed a notice seeking removal of the case to a federal court on the basis of diversity-of-citizenship jurisdiction. The relevant federal statute provides that a federal court possesses diversity jurisdiction if the plaintiff and defendant are citizens of different states and the amount in controversy exceeds $75,000. The statute further provides that "a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business."

In seeking removal, Hertz argued that diversity jurisdiction was appropriate because the plaintiffs and the defendant were citizens of different states and more than $75,000 was in controversy. The plaintiffs contended, however, that Hertz was a California citizen (just as they were) and that the case should therefore remain in state court. Hertz submitted a declaration meant to demonstrate that its "principal place of business" was in New Jersey rather than in California. Besides stressing that Hertz was a national operation with car rental locations in 44 states, the declaration recited a series of statistics indicating that California accounted for approximately 20 percent of Hertz's rental locations, full-time employees, annual revenue, and annual car rental transactions. The declaration also listed Park Ridge, New Jersey, as the location of Hertz's corporate headquarters and stated that Hertz's core executive and administrative functions are conducted there.

In deciding whether Hertz was a California citizen for purposes of the diversity jurisdiction statute, the U.S. District Court for the Northern District of California applied Ninth Circuit Court of Appeals precedent instructing courts to identify a corporation's principal place of business by first determining the amount of a corporation's business activity state by state. Then, if

Problems and Problem Cases

1. Parker sues Davis. At trial, Parker's lawyer attempts to introduce certain evidence to help make his case. Davis's attorney objects, and the trial judge refuses to allow the evidence. Parker eventually loses the case at the trial court level. On appeal, his attorney argues that the trial judge's decision not to admit the evidence was erroneous. Davis's attorney argues that the appellate court cannot consider this question, because appellate courts review only errors of *law* (not fact) at the trial court level. Is Davis's attorney correct? Why or why not?
2. Alex Ferrer, a former judge who appeared as "Judge Alex" on a television program, entered into a contract with Arnold Preston, a California attorney who rendered services to persons in the entertainment industry. Seeking fees allegedly due under the con-

available for purchase but did not permit actual sales via the website. The Bomblisses traveled to Oklahoma to see the Cornelsens' puppies and ended up purchasing two of them. The Cornelsens provided a guarantee that the puppies were suitable for breeding purposes. Following the sale, the Cornelsens mailed, to the Bomblisses' home in Illinois, American Kennel Club registration papers for the puppies. Around this same time, Anne Cornelsen posted comments in an Internet chat room frequented by persons interested in Tibetan mastiffs. These comments suggested that the mother of certain Tibetan mastiff puppies (including one the Bomblisses had purchased) may have had a genetic disorder. The comments were made in the context of an apparent dispute between the Cornelsens and Richard Eichhorn, who owned the mother mastiff and had made it available to the Cornelsens for breeding purposes. The Bomblisses believed that the comments

PROBLEMS AND PROBLEM CASES

Problem cases appear at the end of each chapter for student review and discussion.

Supplements

POWERPOINT PRESENTATIONS

The PowerPoint presentations are authored by Timothy R. Durfield, Professor of Business and Real Estate, Citrus College. They provide lecture outline material, important concepts and figures in the text, photos for discussion, hyperlinks, and summaries of the cases in the book. Notes are also provided within the PowerPoint presentations for students and instructors to augment information and class discussion.

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The Test Bank consists of true-false, multiple choice, and short essay questions in each chapter. Approximately 50 questions are included per chapter. Questions adapted from previous CPA exams are also included and highlighted to help Accounting students review for the exam.

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CHAPTER 1

THE NATURE OF LAW

Assume that you have taken on a management position at MKT Corp. If MKT is to make sound business decisions, you and your management colleagues must be aware of a broad array of legal considerations. These may range, to use a nonexhaustive list, from issues in contract, agency, and employment law to considerations suggested by tort, intellectual property, securities, and constitutional law. Sometimes legal principles may constrain MKT's business decisions; at other times, the law may prove a valuable ally of MKT in the successful operation of the firm's business.

Of course, you and other members of the MKT management group will rely on the advice of in-house counsel (an attorney who is an MKT employee) or of outside attorneys who are in private practice. The approach of simply "leaving the law to the lawyers," however, is likely to be counterproductive. It will often be up to nonlawyers such as you to identify a potential legal issue or pitfall about which MKT needs professional guidance. If you fail to spot the issue in a timely manner and legal problems are allowed to develop and fester, even the most skilled attorneys may have difficulty rescuing you and the firm from the resulting predicament. If, on the other hand, your failure to identify a legal consideration means that you do not seek advice in time to obtain an advantage that applicable law would have provided MKT, the corporation may lose out on a beneficial opportunity. Either way—that is, whether the relevant legal issue operates as a constraint or offers a potential advantage—you and the firm cannot afford to be unfamiliar with the legal environment in which MKT operates.

This may sound intimidating, but it need not be. The process of acquiring a working understanding of the legal environment of business begins simply enough with these basic questions:

- What major types of law apply to the business activities and help shape the business decisions of firms such as MKT?
- What ways of examining and evaluating law may serve as useful perspectives from which to view the legal environment in which MKT and other businesses operate?
- What role do courts play in making or interpreting law that applies to businesses such as MKT and to employees of those firms, and what methods of legal reasoning do courts utilize?
- What is the relationship between legal standards of behavior and notions of **ethical** conduct?

LO LEARNING OBJECTIVES

After studying this chapter, you should be able to:

1-1 Identify the respective makers of the different types of law (constitutions, statutes, common law, and administrative regulations and decisions).

1-2 Identify the type of law that takes precedence when two types of law conflict.

1-3 Explain the basic differences between the *criminal law* and *civil law* classifications.

1-4 Describe key ways in which the major schools of jurisprudence differ from each other.

1-5 Describe the respective roles of adhering to precedent (*stare decisis*) and distinguishing precedent in case law reasoning.

1-6 Identify what courts focus on when applying the major statutory interpretation techniques (plain meaning, legislative purpose, legislative history, and general public purpose).

Types and Classifications of Law

The Types of Law

L01-1 Identify the respective makers of the different types of law (constitutions, statutes, common law, and administrative regulations and decisions).

Constitutions Constitutions, which exist at the state and federal levels, have two general functions.[1] First, they set up the structure of government for the political unit they control (a state or the federal government). This involves creating the branches and subdivisions of the government and stating the powers given and denied to each. Through its **separation of powers,** the U.S. Constitution establishes the Congress and gives it power to *make* law in certain areas, provides for a chief executive (the president) whose function is to execute or *enforce* the laws, and helps create a federal judiciary to *interpret* the laws. The U.S. Constitution also structures the relationship between the federal government and the states. In the process, it respects the principle of **federalism** by recognizing the states' power to make law in certain areas.

The second function of constitutions is to prevent the government from taking certain actions or passing certain laws, sometimes even if those actions or laws would otherwise appear to fall within the authority granted to the government under the first function. Constitutions do so mainly by prohibiting government action that restricts certain individual rights. The Bill of Rights to the U.S. Constitution is an example. You could see the interaction of those two functions, for instance, where Congress is empowered to regulate interstate commerce but cannot do so in a way that would abridge the First Amendment's free speech guarantee.

Statutes Statutes are laws created by elected representatives in Congress or a state legislature. They are stated in an authoritative form in statute books or codes. As you will see, however, their interpretation and application are often difficult.

Throughout this text, you will encounter state statutes that were originally drafted as **uniform acts.** Uniform acts are model statutes drafted by private bodies of lawyers and scholars. They do not become law until a legislature enacts them. Their aim is to produce state-by-state uniformity on the subjects they address. Examples include the Uniform Commercial Code (which deals with a wide range of commercial law subjects), the Revised Uniform Partnership Act, and the Revised Model Business Corporation Act.

Common Law The **common law** (also called judge-made law or case law) is law made and applied by judges as they decide cases not governed by statutes or other types of law. Although, as a general matter, common law exists only at the state level, both state courts and federal courts become involved in applying it. The common law originated in medieval England and developed from the decisions of judges in settling disputes. Over time, judges began to follow the decisions of other judges in similar cases, called **precedents.** This practice became formalized in the doctrine of *stare decisis* (let the decision stand). As you will see later in the chapter, *stare decisis* is not completely rigid in its requirement of adherence to precedent. It is flexible enough to allow the common law to evolve to meet changing social conditions. The common law rules in force today, therefore, often differ considerably from the common law rules of earlier times.

The common law came to America with the first English settlers, was applied by courts during the colonial period, and continued to be applied after the Revolution and the adoption of the Constitution. It still governs many cases today. For example, the rules of tort, contract, and agency discussed in this text are mainly common law rules. In some instances, states have codified (enacted into statute) some parts of the common law. States and the federal government have also passed statutes superseding the common law in certain situations. As discussed in Chapter 9, for example, the states have established special rules for contract cases involving the sale of goods by enacting Article 2 of the Uniform Commercial Code.

[1]Chapter 3 discusses constitutional law as it applies to government regulation of business.

This text's torts, contracts, and agency chapters often refer to the *Restatement*—or *Restatement (Second)* or (*Third*)—rule on a particular subject. The *Restatements* are collections of common law (and occasionally statutory) rules covering various areas of the law. Because they are promulgated by the American Law Institute rather than by courts, the *Restatements* are not law and do not bind courts. However, state courts often find *Restatement* rules persuasive and adopt them as common law rules within their states. The *Restatement* rules usually are the rules followed by a majority of the states. Occasionally, however, the *Restatements* stimulate changes in the common law by suggesting new rules that the courts later decide to follow.

Because the judge-made rules of common law apply only when there is no applicable statute or other type of law, common law fills in gaps left by other legal rules if sound social and public policy reasons call for those gaps to be filled. Judges thus serve as policy makers in formulating the content of the common law. In *Price v. High Pointe Oil Company, Inc.*, which follows shortly, the Court surveys the relevant legal landscape and concludes that a longstanding common law rule should remain in effect. A later section in the chapter will focus on the process of **case law reasoning,** in which courts engage when they make and apply common law rules. That process is exemplified by the first half of the *Price* opinion.

Price v. High Pointe Oil Company, Inc. 828 N.W.2d 660 (Mich. 2013)

In 2006, Beckie Price replaced the oil furnace in her house with a propane furnace. The oil furnace was removed, but the pipe that had been used to fill the furnace with oil remained in place.

At the time the furnace was replaced, Price canceled her contract for oil refills with the predecessor of High Pointe Oil Company, the defendant. Somehow, though, in November 2007, High Pointe mistakenly placed Price's address back on its "keep full list." Subsequently High Pointe truck driver pumped around 400 gallons of fuel oil into Price's basement through the oil fill pipe before realizing the mistake. Price's house and her belongings were destroyed. The house was eventually torn down, the site was remediated, and a new house was built on a different part of Price's property. Price's personal property was all cleaned or replaced. All of her costs related to her temporary homelessness were reimbursed to her, as well. Thus, she was fully compensated for all of her economic losses resulting from High Pointe's error.

Nevertheless, Price sued High Pointe alleging a number of claims. The only of her claims to survive to trial was one focused on her noneconomic losses—for example, pain and suffering, humiliation, embarrassment, and emotional distress. A jury found in Price's favor and awarded her $100,000 in damages.

High Pointe filed an appeal to the intermediate appellate court, to no avail. High Pointe subsequently appealed to the Michigan Supreme Court, excerpts of whose opinion is below.

Markman, J.

III. Analysis

The question in this case is whether noneconomic damages are recoverable for the negligent destruction of real property. Absent any relevant statute, the answer to that question is a matter of common law.

A. Common Law

As this Court explained in [a prior case], the common law "is but the accumulated expressions of the various judicial tribunals in their efforts to ascertain what is right and just between individuals in respect to private disputes[.]" The common law, however, is not static. By its nature, it adapts to changing circumstances. . . . The common law is always a work in progress and typically develops incrementally, i.e., gradually evolving as individual disputes are decided and existing common-law rules are considered and sometimes adapted to current needs in light of changing times and circumstances.

The common-law rule with respect to the damages recoverable in an action alleging the negligent destruction of property was set forth in [a 1933 case]:

> If injury to property caused by negligence is permanent or irreparable, the measure of damages is the difference in its market value before and after said injury, but if the injury is reparable, and the expense of making repairs is less than the value of the property, the measure of damages is the cost of making repairs.

Michigan common law has continually followed [that] rule. . . . Accordingly, the long-held common-law rule in Michigan is that the measure of damages for the negligent destruction of property is the cost of replacement or repair. Because replacement and repair costs reflect *economic* damages, the logical implication of this rule is that the measure of damages excludes *noneconomic* damages.

Lending additional support to this conclusion is the simple fact that, before the Court of Appeals' opinion below, *no* case ever in the history of the Michigan common law has approvingly discussed the recovery of noneconomic damages for the

negligent destruction of property. Indeed, no case has even broached this issue except through the negative implication arising from limiting damages for the negligent destruction or damage of property to replacement and repair costs. . . .

Moreover, the Court of Appeals has decided two relatively recent cases concerning injury to *personal* property in which noneconomic damages were disallowed. In *Koester v. VCA Animal Hospital*, the plaintiff dog owner sought noneconomic damages in a tort action against his veterinarian following the death of his dog resulting from the veterinarian's negligence. The trial court granted the defendant's motion for summary disposition, holding that "emotional damages for the loss of a dog do not exist." On appeal, the Court of Appeals affirmed, noting that pets are personal property under Michigan law and explaining that there "is no Michigan precedent that permits the recovery of damages for emotional injuries allegedly suffered as a consequence of property damage."

Later, in *Bernhardt v. Ingham Regional Medical Center*, the plaintiff [accidentally left] her grandmother's 1897 wedding ring (which was also her wedding ring) and a watch purchased in 1980 around the time of her brother's murder . . . in the [hospital's] washbasin and left the hospital. Upon realizing her mistake, the plaintiff contacted the defendant and was advised that she could retrieve the jewelry from hospital security. However, when she tried to retrieve the jewelry, it could not be located. The plaintiff sued, and the defendant moved for summary disposition, arguing that the plaintiff's damages did not exceed the $25,000 jurisdictional limit of the trial court. The plaintiff countered that her damages exceeded that limit because the jewelry possessed great sentimental value. The trial court granted the defendant's motion. On appeal, the Court of Appeals affirmed, citing *Koester* for the proposition that there "is no Michigan precedent that permits the recovery of damages for emotional injuries allegedly suffered as a consequence of property damage" . . . . In support of its conclusion, *Bernhardt* quoted the following language from the Restatement Second of Torts:

> If the subject matter cannot be replaced, however, as in the case of a destroyed or lost family portrait, the owner will be compensated for its special value to him, as evidenced by the original cost, and the quality and condition at the time of the loss. . . . In these cases, however, damages cannot be based on sentimental value. Compensatory damages are not given for emotional distress caused merely by the loss of the things, except that in unusual circumstances damages may be awarded for humiliation caused by deprivation, as when one is deprived of essential elements of clothing.

While *Koester* and *Bernhardt* both involved negligent injury to *personal* property, they speak of property generally. Although the Court of Appeals in the instant case seeks to draw distinctions between personal and real property, neither that Court nor plaintiff has explained how any of those distinctions, even if they had some pertinent foundation in the law, are relevant with regard to the propriety of awarding noneconomic damages. In short, while it is doubtlessly true that many people are highly emotionally attached to their houses, many people are also highly emotionally attached to their pets, their heirlooms, their collections, and any number of other things. But there is no legally relevant basis that would logically justify prohibiting the recovery of noneconomic damages for the negligent killing of a pet or the negligent loss of a family heirloom but allow such a recovery for the negligent destruction of a house. Accordingly, *Koester* and *Bernhardt* underscore [the long-standing] exclusion of noneconomic damages for negligent injury to real and personal property.

Finally, we would be remiss if we did not address *Sutter v. Biggs*, which the Court of Appeals cited as providing the "general rule" for the recovery of damages in tort actions. *Sutter* stated:

> The general rule, expressed in terms of damages, and long followed in this State, is that in a tort action, the [party that committed the tort] is liable for all injuries resulting directly from his wrongful act, whether foreseeable or not, provided the damages are the legal and natural consequences of the wrongful act, and are such as, according to common experience and the usual course of events, might reasonably have been anticipated. Remote contingent, or speculative damages are not considered in conformity to the general rule.

Although *Sutter* articulates a "general rule," it is a "general rule" that has never been applied to allow the recovery of noneconomic damages in a case involving only property damage, and it is a "general rule" that must be read in light of the more narrow and specific "general rule" [that Michigan has always followed with regard to the noneconomic damages exclusion in cases involving property damage].

The development of the common law frequently yields "general rules" from which branch more specific "general rules" that apply in limited circumstances. Where tension exists between those rules, the more specific rule controls. . . . With respect to this case, although *Sutter* articulated a general rule, [the rule excluding noneconomic damages for property damages is] a more specific "general rule" . . . . Accordingly, because this case involves only property damage, the [latter] rule . . . controls.

B. Altering the Common Law

Because the Court of Appeals determined that the "general rule" is that "in a tort action, the [party who committed the tort] is liable for *all* injuries," the Court of Appeals contended that it was not altering the common law but, rather, "declin[ing] to extend" to real property the personal property "exception" set forth in *Koester* and *Bernhardt*. However, as previously mentioned, the Court of Appeals' opinion constitutes the first and only Michigan case to support the recovery of noneconomic damages for

the negligent destruction of property. Accordingly, contrary to the Court of Appeals' own characterization and for the reasons discussed [above], the Court of Appeals' holding represents an alteration of the common law. With that understanding, we address whether the common law *should* be altered.

"This Court is the principal steward of Michigan's common law," . . . and it is "axiomatic that our courts have the constitutional authority to change the common law in the proper case . . . ." However, this Court has also explained that alteration of the common law should be approached cautiously with the fullest consideration of public policy and should not occur through sudden departure from longstanding legal rules. . . . Among them has been our attempt to "avoid capricious departures from bedrock legal rules as such tectonic shifts might produce unforeseen and undesirable consequences." . . . As this emphasis on incrementalism suggests, when it comes to alteration of the common law, the traditional rule must prevail absent compelling reasons for change. This approach ensures continuity and stability in the law.

With the foregoing principles in mind, we respectfully decline to alter the common-law rule that the appropriate measure of damages for negligently damaged property is the cost of replacement or repair. We are not oblivious to the reality that destruction of property or property damage will often engender considerable mental distress, and we are quite prepared to believe that the particular circumstances of the instant case were sufficient to have caused exactly such distress. However, we are persuaded that the present rule is a rational one and justifiable as a matter of reasonable public policy. We recognize that might also be true of alternative rules that could be constructed by this Court. In the final analysis, however, the venerability of the present rule and the lack of any compelling argument that would suggest its objectionableness in light of changing social and economic circumstances weigh, in our judgment, in favor of its retention. Because we believe the rule to be sound, if change is going to come, it must come by legislative alteration. A number of factors persuade us that the longstanding character of the present rule is not simply a function of serendipity or of judicial inertia, but is reflective of the fact that the rule serves legitimate purposes and values within our legal system.

First, one of the most fundamental principles of our economic system is that the market sets the price of property. This is so even though every individual values property differently as a function of his or her own particular preferences. . . . Second, economic damages, unlike noneconomic damages, are easily verifiable, quantifiable, and measurable. Thus, when measured only in terms of economic damages, the value of property is easily ascertainable. . . . Third, limiting damages to the economic value of the damaged or destroyed property limits disparities in damage awards from case to case. Disparities in recovery are inherent in legal matters in which the value of what is in dispute is neither tangible nor objectively determined, but rather intangible and subjectively determined. . . . Fourth, the present rule affords some reasonable level of certainty to businesses regarding the potential scope of their liability for accidents caused to property resulting from their negligent conduct. [U]nder the Court of Appeals' rule, those businesses that come into regular contact with real property—contractors, repairmen, and fuel suppliers, for example—would be exposed to the uncertainty of not knowing whether their exposure to tort liability will be defined by a plaintiff who has an unusual emotional attachment to the property or by a jury that has an unusually sympathetic opinion toward those emotional attachments.

Once again, it is not our view that the common-law rule in Michigan cannot be improved, or that it represents the best of all possible rules, only that the rule is a reasonable one and has survived for as long as it has because there is some reasonable basis for the rule and that no compelling reasons for replacing it have been set forth by either the Court of Appeals or plaintiff. We therefore leave it to the Legislature, if it chooses to do so at some future time, to more carefully balance the benefits of the current rule with what that body might come to view as its shortcomings.

IV. Conclusion

The issue in this case is whether noneconomic damages are recoverable for the negligent destruction of real property. No Michigan case has ever allowed a plaintiff to recover noneconomic damages resulting solely from the negligent destruction of property, either real or personal. Rather, the common law of this state has long provided that the appropriate measure of damages in cases involving the negligent destruction of property is simply the cost of replacement or repair of the negligently destroyed property. We continue today to adhere to this rule and decline to alter it. Accordingly, we reverse the judgment of the Court of Appeals and remand this case to the trial court for entry of summary disposition in defendant's favor.

Equity The body of law called **equity** historically concerned itself with accomplishing "rough justice" when common law rules would produce unfair results. In medieval England, common law rules were technical and rigid and the remedies available in common law courts were too few. This meant that some deserving parties could not obtain adequate relief. As a result, separate equity courts began hearing cases that the common law courts could not resolve fairly. In these equity courts, procedures were flexible, and rigid rules of law were deemphasized in favor of general moral maxims.

Equity courts also provided several remedies not available in the common law courts (which generally awarded

only money damages or the recovery of property). The most important of these *equitable remedies* was—and continues to be—the **injunction,** a court order forbidding a party to do some act or commanding him to perform some act. Others include the contract remedies of **specific performance** (whereby a party is ordered to perform according to the terms of her contract), **reformation** (in which the court rewrites the contract's terms to reflect the parties' real intentions), and **rescission** (a cancellation of a contract and a return of the parties to their precontractual position).

As was the common law, equity principles were brought to the American colonies and continued to be used after the Revolution and the adoption of the Constitution. Over time, however, the once-sharp line between law and equity has become blurred. Nearly all states have abolished separate equity courts and have enabled courts to grant whatever relief is appropriate, whether it be the legal remedy of money damages or one of the equitable remedies discussed above. Equitable principles have been blended together with common law rules, and some traditional equity doctrines have been restated as common law or statutory rules. An example is the doctrine of unconscionability discussed in Chapter 15.

Administrative Regulations and Decisions As Chapter 47 reveals, the administrative agencies established by Congress and the state legislatures have acquired considerable power, importance, and influence over business. A major reason for the rise of administrative agencies was the collection of social and economic problems created by the industrialization of the United States that began late in the 19th century. Because legislatures generally lacked the time and expertise to deal with these problems on a continuing basis, the creation of specialized, expert agencies was almost inevitable.

Administrative agencies obtain the ability to make law through a *delegation* (or grant) of power from the legislature. Agencies normally are created by a statute that specifies the areas in which the agency can make law and the scope of its power in each area. Often, these statutory delegations are worded so broadly that the legislature has, in effect, merely pointed to a problem and given the agency wide-ranging powers to deal with it.

The two types of law made by administrative agencies are **administrative regulations** and **agency decisions.** As do statutes, administrative regulations appear in a precise form in one authoritative source. They differ from statutes, however, because the body enacting regulations is not an elected body. Many agencies have an internal courtlike structure that enables them to hear cases arising under the statutes and regulations they enforce. The resulting agency decisions are legally binding, though appeals to the judicial system are sometimes allowed.

Treaties According to the U.S. Constitution, **treaties** made by the president with foreign governments and approved by two-thirds of the U.S. Senate become "the supreme Law of the Land." As will be seen, treaties invalidate inconsistent state (and sometimes federal) laws.

Ordinances State governments have subordinate units that exercise certain functions. Some of these units, such as school districts, have limited powers. Others, such as counties, municipalities, and townships, exercise various governmental functions. The enactments of counties and municipalities are called **ordinances;** zoning ordinances are an example. Ordinances resemble statutes, and the techniques of statutory interpretation described later in this chapter typically are used to interpret ambiguous language in ordinances.

Executive Orders In theory, the president or a state's governor is a chief executive who enforces the laws but has no law-making powers. However, these officials sometimes have limited power to issue laws called **executive orders.** This power normally results from a legislative delegation.

L01-2 Identify the type of law that takes precedence when two types of law conflict.

Priority Rules

Because the different types of law may, from time to time, conflict, rules for determining which type takes priority are necessary. Here, we briefly describe the most important such rules.

1. According to the principle of **federal supremacy,** the U.S. Constitution, federal laws enacted pursuant to it, and treaties are the supreme law of the land. This means that federal law defeats conflicting state law.
2. Constitutions defeat other types of law within their domain. Thus, a state constitution defeats all other state laws inconsistent with it. The U.S. Constitution, however, defeats inconsistent laws of whatever type.
3. When a treaty conflicts with a federal statute over a purely domestic matter, the measure that is later in time usually prevails.
4. Within either the state or the federal domain, statutes defeat conflicting laws that depend on a legislative

delegation for their validity. For example, a state statute defeats an inconsistent state administrative regulation.

5. Statutes and any laws derived from them by delegation defeat inconsistent common law rules. Accordingly, either a statute or an administrative regulation defeats a conflicting common law rule.

Courts are careful to avoid finding a conflict between the different types of law unless the conflict is clear. In fact, one maxim of statutory interpretation (described later in this chapter) instructs courts to choose an interpretation that avoids unnecessary conflicts with other types of law, particularly constitutions that would preempt the statute. Statutes will sometimes explicitly state the enacting legislature's intent to displace a common law rule. In the absence of that, though, courts will look for significant overlap and inconsistency between a statute and a common law rule to determine that there is a conflict for which the statute must take priority. The following *Advance Dental Care, Inc. v. SunTrust Bank* case illustrates this. Notice how the court first looks to the statutory language for explicit instruction regarding displacement of the common law rule. Then it considers whether the statute and common law rule overlap, particularly whether the statute offers a sufficient remedy to replace the common law rule. Finally, the court notes an important inconsistency between the statute and the common law rule.

Advance Dental Care, Inc. v. SunTrust Bank
816 F. Supp. 2d 268 (D. Md. 2011)

Michelle Rampersad was an employee of Advance Dental at its dental office in Prince George's County, Maryland. During a period of more than three years ending in fall 2007, Rampersad took approximately 185 insurance reimbursement checks that were written to Advance Dental and endorsed them to herself. She then took the checks to SunTrust Bank and deposited them into her personal accounts. The checks totaled $400,954.04.

Advance Dental filed a lawsuit against SunTrust after it discovered Rampersad's unauthorized endorsement and deposit of the checks. The lawsuit claimed SunTrust violated two provisions of the Maryland version of the Uniform Commercial Code (U.C.C.) dealing with negligence and conversion. It also stated a claim of negligence pursuant to the common law of Maryland. The court had previously dismissed the U.C.C. negligence claim for reasons not relevant here. In the opinion below, the court considers whether Advance Dental's common-law negligence claim has been displaced by the statutory U.C.C. conversion claim.

Alexander Williams, Jr., U.S. District Court Judge

In this case of first impression, the Court must determine whether section 3-420 of the Maryland U.C.C. [(the U.C.C. conversion provision)] displaces common-law negligence when a payee seeks to recover from a depositary bank that accepted unauthorized and fraudulently endorsed checks.

A. Availability of an Adequate U.C.C. Remedy

Maryland case law concerning a *drawer's* claims against a depositary bank [is] instructive. . . . Although [prior courts] allowed a common-law action to proceed, the drawer's lack of adequate remedy under the U.C.C. was fundamental to each ruling. . . . Additionally, other courts have held that common-law negligence claims can proceed only in the absence of an adequate U.C.C. remedy.

In the present case, it is indisputable that Advance Dental has an adequate U.C.C. remedy—conversion—for which Advance Dental has already filed a claim. Therefore, in light of the overwhelming case law, . . . [the U.C.C. conversion provision] displaces common-law negligence because Advance Dental has an adequate U.C.C. remedy.

B. Indistinct Causes of Action with Conflicting Defenses

Statutory authority also emphasizes the necessity of displacing common-law negligence in this case. Section 1-103(b) of the Maryland U.C.C. establishes the U.C.C.'s position regarding the survival of common-law actions alongside the U.C.C.: "[u]nless displaced by the particular provisions of Titles 1-10 of this article, the principles of law and equity . . . shall supplement its provisions . . . ." Since the U.C.C. has no express "displacement" provision, the Court must determine whether [the U.C.C. conversion provision] is a "particular provision" that displaces the common law.

The Court finds significant overlap between [the U.C.C. conversion provision] and common-law negligence. [The U.C.C. conversion provision] defines conversion as "payment with respect to [an] instrument for a person not entitled to enforce the instrument or receive payment." Here, Advance Dental alleges that SunTrust is liable in negligence for allowing Rampersad to fraudulently endorse and deposit checks made payable to Advance Dental into her personal account. Therefore, . . . both negligence and conversion require a consideration of whether there was payment over a wrongful endorsement.

The duplicative nature of these two theories suggests the U.C.C.'s intention to create a comprehensive regulation of payment over unauthorized or fraudulent endorsements. . . . In the presence of such intent, courts have preempted common-law claims. To do otherwise would destroy the U.C.C.'s attempt to establish reliability, uniformity, and certainty in commercial transactions.

Here, Advance Dental's common-law negligence action has no independent significance apart from section [the U.C.C. conversion provision]. In fact, when discussing common-law negligence, Advance Dental simply refers to the same conduct alleged in Count I (conversion) to argue that SunTrust has breached its duty of reasonable and ordinary care. . . . In other words, [the U.C.C. conversion provision] has effectively subsumed common-law negligence claims.

Not only is common-law negligence insufficiently distinct from [the U.C.C. conversion provision], but the conflicting defenses available for each cause of action are also problematic. The U.C.C. is based on the principle of comparative negligence. In contrast, contributory negligence remains a defense for common-law negligence.[2] Displacement is thus required since Maryland courts "hesitate to adopt or perpetuate a common law rule that would be plainly inconsistent with the legislature's intent . . . ."

IV. Conclusion

For the foregoing reasons [and reasons not included in this edited version of the opinion], the Court **GRANTS** Defendant's Renewed Motion to Dismiss Count III of Plaintiff's Complaint.

[2] The comparative and contributory negligence defenses are discussed in detail in Chapter 7. They address in different manners whether and to what extent a plaintiff's own negligence in the actions upon which a claim is based ought to excuse the defendant from liability. Here the defenses would be relevant in that SunTrust might argue that Advance Dental was at fault for failing to discover and to prevent Rampersad's fraudulent activities on its own.

Classifications of Law

Three common classifications of law cut across the different types of law. These classifications involve distinctions between (1) criminal law and civil law; (2) substantive law and procedural law; and (3) public law and private law. One type of law might be classified in each of these ways. For example, a burglary statute would be criminal, substantive, and public; a rule of contract law would be civil, substantive, and private.

LO1-3 Explain the basic differences between the *criminal law* and *civil law* classifications.

Criminal and Civil Law **Criminal law** is the law under which the government prosecutes someone for committing a crime. It creates duties that are owed to the public as a whole. **Civil law** mainly concerns obligations that private parties owe to each other. It is the law applied when one private party sues another. The government, however, may also be a party to a civil case. For example, a city may sue, or be sued by, a construction contractor. Criminal penalties (e.g., imprisonment or fines) differ from civil remedies (e.g., money damages or equitable relief). Although most of the legal rules in this text are civil law rules, Chapter 5 deals specifically with the criminal law.

Even though the civil law and the criminal law are distinct bodies of law, the same behavior will sometimes violate both. For instance, if A commits an intentional act of physical violence on B, A may face both a criminal prosecution by the state and B's civil suit for damages.

Substantive Law and Procedural Law **Substantive law** sets the rights and duties of people as they act in society. **Procedural law** controls the behavior of government bodies (mainly courts) as they establish and enforce rules of substantive law. A statute making murder a crime, for example, is a rule of substantive law. The rules describing the proper conduct of a trial, however, are procedural. This text focuses on substantive law. Chapters 2 and 5, however, examine some of the procedural rules governing civil and criminal cases.

Public and Private Law **Public law** concerns the powers of government and the relations between government and private parties. Examples include constitutional law, administrative law, and criminal law. **Private law** establishes a framework of legal rules that enables parties to set the rights and duties they owe each other. Examples include the rules of contract, property, and agency.

LO1-4 Describe key ways in which the major schools of jurisprudence differ from each other.

Jurisprudence

The various types of law sometimes are called *positive law*. Positive law comprises the rules that have been laid down by a recognized political authority. Knowing the types of positive law is essential to an understanding of