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SEVENTH EDITION

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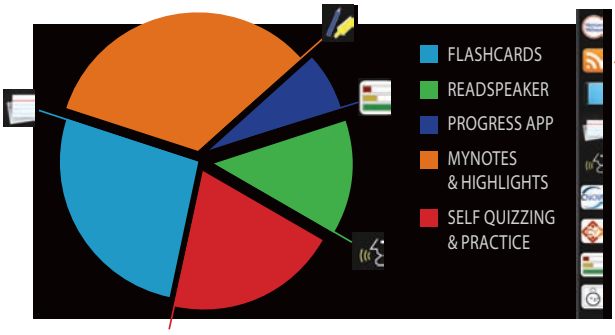

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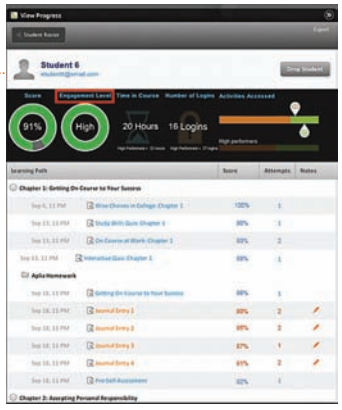

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SEVENTH EDITION

Business Law and the Legal Environment

STANDARD EDITION

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New to This Edition

Cyberlaw and Privacy

We all face profound issues about how to maintain privacy in a digital world. Yes, we want to use the Internet but we also want to protect our personal data. The cyberlaw chapter now includes a thorough discussion of privacy both on and offline. It is essential information for anyone who has ever connected to the Internet or worried that private data could become public. This chapter has been moved to the Torts unit.

A New Chapter: Employment Discrimination

Prior editions included one chapter on employment law and another on labor law. But because discrimination issues have become an increasingly important part of the employment landscape, this topic has been expanded to a full chapter. Other employment law issues are included in a joint chapter with labor law.

International Law

In a global world, students clamor for more international law and many schools require coverage of international issues in every course. The international law chapter has been completely rewritten to provide students with an understanding of the basic structure and impact of international law. It includes a discussion of: (1) how international law is created, (2) major treaties and other sources of international law, (3) the world's different legal systems, (4) the application of U.S. law overseas, and (5) the enforceability of foreign laws and treaties in the United States.

A Focus on Students

We have increased coverage of topics that are of particular interest to students, such as social media and technology. Also, the bankruptcy chapter includes a new section on student loans. The Crime chapter explores the application of constitutional standards of privacy to new technology such as DNA tests, digital cameras, social media, cellphones, and computers. The consumer law chapter looks at the legal issues raised when students spend money through direct debit, ATM cards, and prepaid debit cards.

Enhanced Digital Content—*MindTap*™

Our goal—and yours—is for the students to learn the material. With that goal in mind, we have created a *MindTap*™ product for this book. *MindTap*™ is a fully online, highly personalized learning experience that is easy to use and benefits both instructors and students. The MindTap for our book contains a prebuilt Learning Path consisting of four

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different activities: Worksheets that test basic knowledge of the chapter; Brief Hypotheticals that require students to apply what they have learned; Video Activities that reinforce course concepts; and Case Problem Blueprints that require critical thinking skills. **As an assurance to you, we (the authors) have reviewed every question in the *MindTap* product to ensure that it meets the high standards of our book.**

When students are assigned (and required) to complete the *MindTap* Worksheet questions prior to class, they will be **prepared** for class discussions and you will know the topics with which they struggle. Recent research indicates that students who are pretested in this way learn the material more fully and perform better on final exams.

MindTap guides students through their course with ease and engagement. Instructors can personalize the prebuilt 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 recognize that the online experience is as important to the students—and you—as the book itself. 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.

To view a demo video and learn more about *MindTap*, please visit **www.cengage.com/mindtap/**.

The Beatty/Samuelson Difference

It has been 21 years since we began work on the first edition of this textbook. At the time, publishers warned us that our undertaking was risky because there were already so many business law texts. Despite these warnings, we were convinced that there was a market for a business law book that was different from all the others. Our goal was to capture the passion and excitement, the sheer enjoyment, of the law. Business law is notoriously complex, and as authors, we are obsessed with accuracy. Yet this intriguing subject also abounds with human conflict and hard-earned wisdom, forces that we wanted to use to make this book sparkle.

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

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

Strong Narrative. The law is full of great stories, and we use them. Your students and ours should come to class curious and excited. Look at Chapter 3, on dispute resolution. No tedious list of next steps in litigation, this chapter teaches the subject by tracking a double-indemnity lawsuit. An executive is dead. Did he drown accidentally, obligating the insurance company to pay? Or did the businessman commit suicide, voiding the policy? The student follows the action from the discovery of the body, through each step of the lawsuit, to the final appeal.

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Every chapter begins with a story, either fictional or real, to illustrate the issues in the chapter. Over the years, we have learned how much more successfully we can teach when our students are intrigued. They only learn when they want to learn.

Context. Many of our students were not yet born when Bill Clinton was elected president. They come to college with varying levels of preparation; many arrive from other countries. We have found that to teach business law most effectively we must provide its context. In the chapter on employment discrimination, we provide an historical perspective to help students understand how the laws developed. In the chapter on securities laws, we discuss the impact of the Depression on the major statutes. Only with this background do students grasp the importance and impact of our laws.

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

This text has been used in courses for undergraduates, MBAs, and Executive MBAs, with students ranging in age from 18 to 55. This book works, as some unsolicited comments indicate:

From Amazon:

- "Glad I purchased this. It really helps put the law into perspective and allows me as a leader to make intelligent decisions. Thanks."
- "I enjoyed learning business law and was happy my college wanted this book. THUMBS UP!"

From Undergraduates:

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

From MBA students:

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

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

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

From business law professors:

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

From a state supreme court justice:

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

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Current. This seventh edition contains more than 50 new cases. Almost all were reported within the last two or three years, and many within the last 12 months. We never include a new court opinion merely because it is recent. Yet the law evolves continually, and our willingness to toss out old cases and add important new ones ensures that this book—and its readers—remain on the frontier of legal developments.

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

We reject the cloudy definitions and fuzzy explanations that can invade judicial opinions and legal scholarship. To highlight the most important rules, we use bold print, and then follow with vivacious examples written in clear, forceful English. We cheerfully venture into contentious areas, relying on very recent decisions. Can a creditor pierce the veil of an LLC? Are stop and frisk policies constitutional? Is discrimination based on attractiveness legal? Are employees protected against bullying in the workplace? Where there is doubt about the current (or future) status of a doctrine, we say so. In areas of particularly heated debate, we footnote our work: We want you to have absolute trust in this book.

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

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

Features

We chose the features for our book with great care. Each feature responds to an essential pedagogical goal. Here are some of those goals and the matching feature.

Exam Strategy

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

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

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You Be the Judge

GOAL: Get them thinking independently. When reading case opinions, students tend to accept the court's "answer." Judges, of course, try to write decisions that appear indisputable, when in reality they may be controversial—or wrong. From time to time we want students to think through the problem and reach their own answer. Virtually every chapter contains a You Be the Judge feature, providing the facts of the case and conflicting appellate arguments. The court's decision, however, appears only in the *Instructor's Manual*. Because students do not know the result, discussions are more complex and lively.

Ethics

GOAL: Make ethics real. We ask ethical questions about cases, legal issues, and commercial practices. Is it fair for one party to void a contract by arguing, months after the fact, that there was no consideration? What is a manager's ethical obligation when asked to provide a reference for a former employee? What is wrong with bribery? We believe that asking the questions, and encouraging discussion, reminds students that ethics is an essential element of justice, and of a satisfying life.

Cases

GOAL: Let the judges speak. Each case begins with a summary of the facts and a statement of the issue. Next comes a tightly edited version of the decision, in the court's own language, so that students "hear" the law developing in the diverse voices of our many judges. In the principal cases in each chapter, we provide the state or federal citation, unless it is not available, in which case we use the LEXIS and Westlaw citations. We also give students a brief description of the court.

End-of-Chapter Exam Review and Questions

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

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

Answers to all the odd-numbered questions are available in Appendix C of the book.

Author Transition

Jeffrey Beatty fought an unremitting ten-year battle against a particularly aggressive form of leukemia, which, despite his great courage and determination, he ultimately lost. Jeffrey, a gentleman to the core, was an immensely kind, funny, and thoughtful human being, someone who sang and danced, and who earned the respect and affection of colleagues and students alike. In writing these books he wanted students to see and understand the impact of law in their everyday lives as well as its role in supporting human dignity, and what's more, he wanted students to laugh.

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Jeffrey was a hard act to follow. We feel immensely grateful to have found a worthy successor in Patricia Sánchez Abril. A tenured member of the faculty at the University of Miami School of Business Administration, Patricia is a devoted teacher who has won awards for her teaching in both the undergraduate and graduate programs. She has also published widely in scholarly journals and has won awards for her scholarship. In 2011, the Academy of Legal Studies in Business honored her with its Distinguished Junior Faculty Award.

Teaching Materials

For more information about any of these ancillaries, contact your Cengage Learning/South-Western Legal Studies Sales Representative, or visit the Beatty & Samuelson Business Law (Standard Edition) website at **www.cengagebrain.com.**

MindTap. *MindTap*™ is a fully online, highly personalized learning experience combining readings, multimedia, activities, and assessments into a singular Learning Path. Instructors can personalize the Learning Path by customizing Cengage 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*, available on the Instructor's Support Site at **www.cengagebrain.com**, includes special features to enhance class discussion and student progress:

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

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PowerPoint slides are available for use by instructors for enhancing their lectures and to aid students in note taking. Download these slides at **www.cengagebrain.com.**

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Business Law Digital Video Library

This dynamic online video library features over 60 video clips that spark class discussion and clarify core legal principles. Access to the Business Law Digital Video Library is available as an optional package with each new student text at no additional charge. Students with used books can purchase access to the video clips online. For more information about the Business Law Digital Video Library, visit **www.cengagebrain.com.**

Interaction with the Authors

This is our standard: Every professor who adopts this book must have a superior experience. We are available to help in any way we can. Adopters of this text often call us or email us to ask questions, obtain a syllabus, offer suggestions, share pedagogical concerns, or inquire about ancillaries. (And if you would like to share your course syllabus, please send it to us so that we can post it on our blog, bizlawupdate.com.) One of the pleasures of working on this project has been this link to so many colleagues around the country. We value those connections, are eager to respond, and would be happy to hear from you.

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

Susan S. Samuelson is a professor of Business Law at Boston University's School of Management. After earning her A.B. at Harvard University and her J.D. at Harvard Law School, Professor Samuelson practiced with the firm of Choate, Hall and Stewart. She has written many articles on legal issues for scholarly and popular journals, including the *American Business Law Journal*, *Ohio State Law Journal*, *Boston University Law Review*, *Harvard Journal on Legislation*, *National Law Journal*, *Sloan Management Review*, *Inc. Magazine*, *Better Homes and Gardens*, and *Boston Magazine*. At Boston University she won the Broderick Prize for excellence in teaching. For more than a decade, Professor Samuelson was the faculty director of the Boston University Executive MBA program.

Patricia Sánchez Abril is an associate professor of Business Law at the University of Miami School of Business Administration. Professor Abril's research has appeared in the *American Business Law Journal*, *Harvard Journal of Law & Technology*, *Florida Law Review*, *Houston Law Review*, *Wake Forest Law Review*, *Northwestern Journal of Technology and Intellectual Property*, and *Columbia Business Law Journal*, among other journals. In 2011, the *American Business Law Journal* honored her with its Distinguished Junior Faculty Award, in recognition of exceptional early career achievement. In 2014, one of her articles on privacy won the Outstanding Proceedings competition at the annual conference of the Academy of Legal Studies in Business. Professor Abril has won awards for her teaching in both the undergraduate and graduate programs at the University of Miami.

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For Jeffrey, best of colleagues and dearest of friends.
s.s.s.

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UNIT 1

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The Legal Environment

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CHAPTER 1

Introduction to Law

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

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

Law is powerful, essential, and fascinating. We hope this book will persuade you of all three ideas. Law can also be surprising. Later in the chapter, we will return to the Pub Zone (with armed guards) and follow Rhino and Backdraft to the back of the pub. Yes, the pair engaged in street crime, which is hardly a focus of this text. However, their criminal acts will enable us to explore one of the law's basic principles—negligence. Should a pub owner pay money damages to the victim of gang violence? The owner herself did nothing aggressive. Should she have prevented the harm? Does her failure to stop the assault make her liable?

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

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

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1-1 The Role of Law in Society

1-1a Power

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

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

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

1-1b Importance

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

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

1-1c Fascination

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

Not only do Americans litigate—they watch each other do it. Every television season offers at least one new courtroom drama to a national audience breathless for more

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

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cross-examination. Almost all of the states permit live television coverage of real trials. The most heavily viewed event in the history of the medium was the O. J. Simpson murder trial, in which a famous football star was accused of killing his wife. In most nations, coverage of judicial proceedings is not allowed.[3]

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

1-2 Origins of Our Law

It would be nice if we could look up "the law" in one book, memorize it, and then apply it. But the law is not that simple, and *cannot* be that simple, because it reflects the complexity of contemporary life. In truth, there is no such thing as "the law." Principles and rules of law actually come from *many different* sources. This is so, in part, because we inherited a complex structure of laws from England.

Additionally, ours is a nation born in revolution, and created, in large part, to protect the rights of its people from the government. The Founding Fathers created a national government but insisted that the individual states maintain control in many areas. As a result, each state has its own government with exclusive power over many important areas of our lives. To top it off, the Founders guaranteed many rights to the people alone, ordering national *and* state governments to keep clear. This has worked, but it has caused a multilayered system, with 50 state governments and one federal government all creating and enforcing law.

1-2a English Roots

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

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

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

When cases did come before an Anglo-Saxon court, the parties would often be represented by a clergyman, by a nobleman, or by themselves. There were few professional lawyers. Each

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

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party produced "oath helpers," usually 12, who would swear that one version of events was correct. The Anglo-Saxon oath helpers were forerunners of our modern jury of 12 persons.

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

North Wind/North Wind Picture Archives

Medieval tenants in demesne harrowing, plowing and seeding a field.

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

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

Common law
Judge-made law

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

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

The Oculist's Case (1329)

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

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

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

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

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

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

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

1-2b Law in the United States

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

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

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

1-3 Sources of Contemporary Law

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

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1-3a United States Constitution

America's greatest legal achievement was the writing of the United States Constitution in 1787. It is the supreme law of the land.[5] Any law that conflicts with it is void. This federal Constitution does three basic things. First, it establishes the national government of the United States, with its three branches. Second, it creates a system of checks and balances among the branches. And third, the Constitution guarantees many basic rights to the American people.

Branches of Government

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

Legislative power gives the ability to create new laws. In Article I, the Constitution gives this power to the Congress, which is comprised of two chambers—a Senate and a House of Representatives. Voters in all 50 states elect representatives who go to Washington, D.C., to serve in the Congress and debate new legal ideas.

The House of Representatives has 435 voting members. A state's voting power is based on its population. Large states (Texas, California, and Florida) send dozens of representatives to the House. Some small states (Wyoming, North Dakota, and Delaware) send only one. The Senate has 100 voting members—two from each state.

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

Judicial power gives the right to interpret laws and determine their validity. Article III places the Supreme Court at the head of the judicial branch of the federal government. Interpretive power is often underrated, but it is often every bit as important as the ability to create laws in the first place. For instance, the Supreme Court ruled that privacy provisions of the Constitution protect a woman's right to abortion, although neither the word "privacy" nor "abortion" appears in the text of the Constitution.[6]

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

Checks and Balances

The authors of the Constitution were not content merely to divide government power three ways. They also wanted to give each part of the government some power over the other two branches. Many people complain about "gridlock" in Washington, but the government is slow and sluggish by design. The Founding Fathers wanted to create a system that, without broad agreement, would tend towards inaction.

The president can veto Congressional legislation. Congress can impeach the president. The Supreme Court can void laws passed by Congress. The president appoints judges to the federal courts, including the Supreme Court, but these nominees do not serve unless approved by the Senate. Congress (with help from the 50 states) can override the Supreme

[5]The Constitution took effect in 1788, when 9 of 13 colonies ratified it. Two more colonies ratified it that year, and the last of the 13 did so in 1789, after the government was already in operation. The complete text of the Constitution appears in Appendix A.
[6]Roe v. Wade, 410 U.S. 113 (1973).
[7]United States v. Alfonso Lopez, Jr., 514 U.S. 549 (1995).

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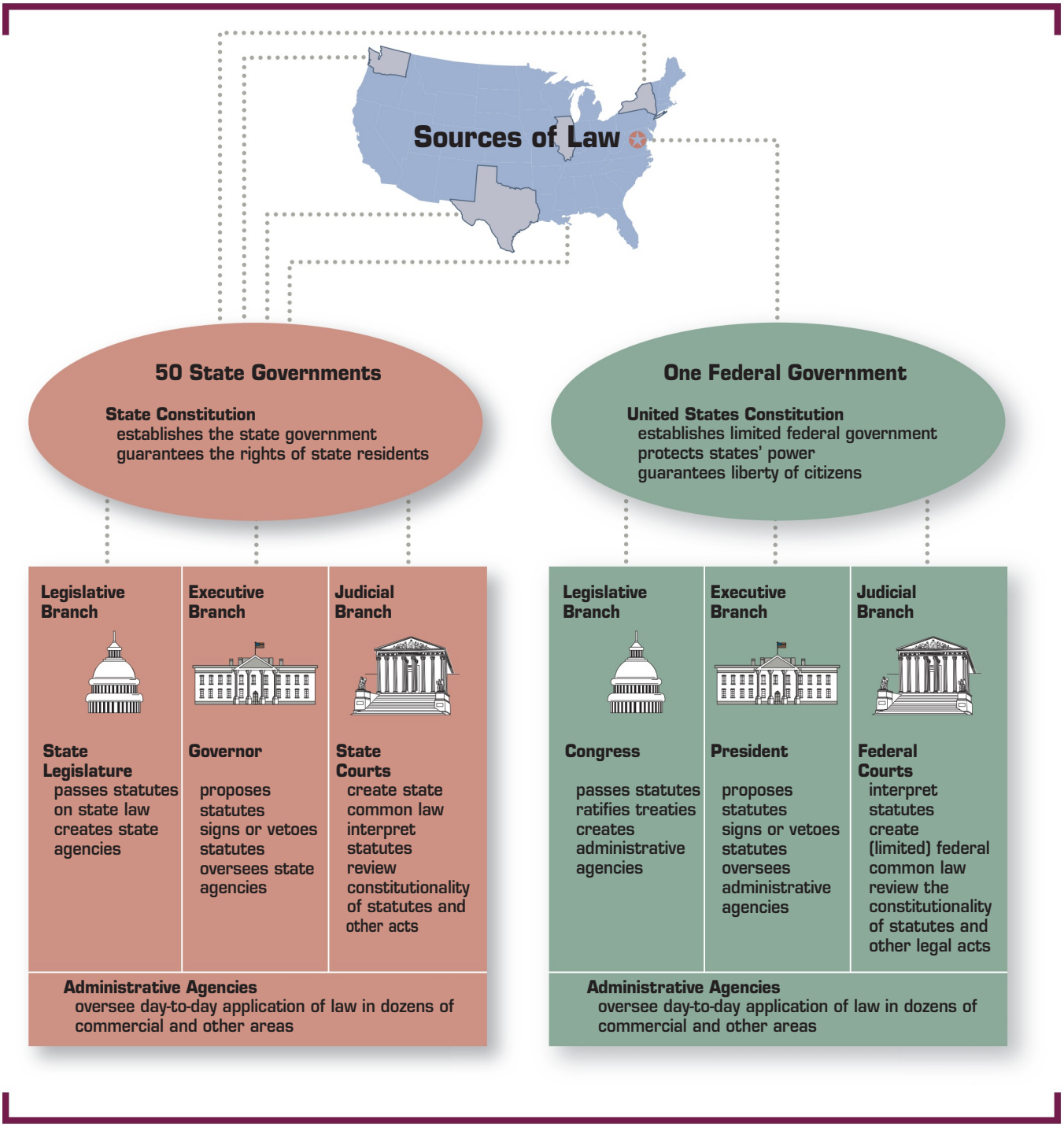

Federal Form of Government. Principles and rules of law come from many sources. The government in Washington creates and enforces law throughout the nation. But 50 state governments exercise great power in local affairs. And citizens enjoy constitutional protection from both state and federal government.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

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Court by amending the Constitution. The president and the Congress influence the Supreme Court by controlling who is placed on the court in the first place.

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

Fundamental Rights

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

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

1-3b Statutes

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

Statute
A law created by a legislature

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

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

1-3c Common Law

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

The principle that precedent is binding on later cases is called *stare decisis,* which means "let the decision stand." *Stare decisis* makes the law predictable and this, in turn, enables businesses and private citizens to plan intelligently.

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

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

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

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

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