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# BUSINESS LAW

## TEXT & EXERCISES



ROGER LEROY MILLER  
WILLIAM ERIC HOLLOWELL

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EIGHTH EDITION





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**EIGHTH EDITION**

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# Business Law

## TEXT & EXERCISES

### EIGHTH EDITION

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# Preface to the Instructor

It is no exaggeration to say that today's legal world is changing at a pace never before experienced. In many instances, technology is both driving and facilitating this change. The expanded use of the Internet for both business and personal transactions has led to new ways of doing business and, as a result, to a changing legal environment for the twenty-first century. In the midst of this evolving environment, however, one thing remains certain: for students entering the business world, an awareness of the legal and regulatory environment of business is critical.

Even for those students who do not enter the business world, legal problems will arise. Thus, a solid background in business law is essential for everyone. In *Business Law: Text and Exercises*, Eighth Edition, we present business law in a straightforward, practical manner. The essential aspects of every important topic are covered without overburdening the reader with numerous details and explanations of arcane exceptions.

## WHAT'S NEW IN THE EIGHTH EDITION

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Instructors have come to rely on the coverage, accuracy, and applicability of *Business Law: Text and Exercises*. That is why in the Eighth Edition we continue to engage student interest and provide a basic understanding of business law. Consequently, we have incorporated significant new details, timely examples, helpful exhibits, and recent cases in every chapter. You will find that every chapter in the Eighth Edition includes several exciting new changes:

**New Chapter Content** *Chapter 7 on Internet Law, Social Media, and Privacy* is completely new to this edition. Recognizing the significance of the Internet and social media in today's workplace, this chapter discusses issues such as spam, online defamation, domain name disputes, cybersquatting, digital copyright laws, and file sharing. In addition, we examine how social media have affected business policymaking and privacy issues.

*Chapter 28 on Employment Discrimination* has been reworked so that its entire content now focuses solely on issues regarding discrimination in the workplace. This chapter provides basic explanations and examples of the requirements under Title VII of the Civil Rights Act, as well as the Age Discrimination in Employment Act and the Americans with Disabilities Act.

**Real-World Case Examples** *Real-World Case Examples* are integrated appropriately throughout the text and present the facts, issues, and rulings from actual court cases. Students can quickly read through the *Real-World Case Examples* to see how courts apply legal principles to everyday scenarios. **Each Real-World Case Example is completely new to this edition and based on a 2013 or 2014 case.**

**Highlighting the Point** *Highlighting the Point* features help students understand how business law can apply to common situations. We have **added nearly forty new Highlighting the Point features**, and each chapter includes two or more of these helpful features.

**Numbered Examples** *Numbered Examples* are one of the more appreciated features of *Business Law: Text and Exercises* because they clarify legal principles for students. For the Eighth Edition, we have *added more than one hundred new Numbered Examples* throughout the chapters.

**Real-World Case Problems** All *Real-World Case Problems* are now based on cases from 2012, 2013, or 2014. Ninety-five percent of these case problems are new to this edition, and all of them have been condensed for an easier, more basic problem-solving process.

**Terms and Concepts for Review** The *Terms and Concepts for Review* sections with their lists of boldfaced terms help to increase student understanding of common business law terminology and concepts. For the Eighth Edition, we have *added fifty new Terms and Concepts to Review*. Each boldfaced term has a corresponding page number that directs students to its margin definition within a chapter. All boldfaced terms and their definitions can also be found in the book's *Glossary*.

## PRACTICAL AND EFFECTIVE LEARNING TOOLS

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To help students review chapter materials and prepare for testing, this text provides the following effective, practical features:

- **Learning Outcomes**—Every chapter starts with four to six *Learning Outcomes*. Within the body of the text, when the material being discussed relates to a specific *Learning Outcome*, we indicate this clearly in the page margin. Additionally, each *Chapter Summary* includes that chapter's *Learning Outcomes* with a succinct review of the major points students need to remember.
- **Facing (and Answering) a Legal Problem**—Each chapter opens with an appropriate and straightforward legal problem that is answered later in the text. The problem is set off in a distinctive manner that separates it from the text materials. At the end of the chapter, the problem is stated again, and the answer to the problem is given.
- **Linking Business Law to Your Career** features—Written in an easy-to-understand style, these features emphasize tips, pitfalls, and effective strategies for students to remember once they are working and applying their knowledge of basic business law to real-life workplace scenarios. In selected chapters, these features often reflect new business developments and examples. This edition added three new *Linking Business Law to Your Career* features.
- **Exhibits**—When appropriate, we have illustrated important aspects of the law in graphic or summary form in exhibits. These exhibits will help your students grasp the essential concepts pertaining to a specific area of the law or a particular legal doctrine.
- **Work Sets**—At the end of every chapter, there is a tear-out sheet called a *Work Set*, which features several true-false and multiple-choice questions, plus an *Answering More Legal Problems* feature. This in-text study guide helps students review the material covered in the chapter.
- **Issue Spotters**—The *Issue Spotters* provide students with two hypothetical situations that end with questions related to the topics discussed in the chapter. Students answer these questions by reviewing the topic material. They can then compare their answers with those provided in **Appendix C** at the end of this book.
- **Using Business Law**—These questions help students understand straightforward applications of the law.

- **Ethical Questions**—Located at the end of every chapter, these questions provide opportunities for critical thinking regarding ethical issues in a variety of actual business cases.
- **Appendices**—As a reference source for your students when studying chapter materials, we have included the following appendices:
  - A—The Constitution of the United States
  - B—Article 2 of the Uniform Commercial Code
  - C—Answers to *Issue Spotters*

## SUPPLEMENTS

*Business Law: Text and Exercises*, Eighth Edition, provides a comprehensive supplements package. The supplements were created with a single goal in mind: to make the tasks of teaching and learning more enjoyable and efficient. The following supplements are available for instructors.

### ***MindTap Business Law for Business Law: Text & Exercises, Eighth Edition***

*MindTap*<sup>™</sup> is a fully online, highly personalized learning experience built upon authoritative Cengage Learning content. By combining readings, multimedia, activities, and assessments into a singular Learning Path, *MindTap* guides students through their course with ease and engagement. Instructors 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.

Business law instructors have told us it is important to help students **Prepare** for class, **Engage** with the course concepts to reinforce learning, **Apply** these concepts in real-world scenarios, and use legal reasoning and critical thinking to **Analyze** business law content. Accordingly, the *Business Law MindTap* product provides a four-step Learning Path designed to meet these critical needs while also allowing instructors to measure skills and outcomes with ease.

- **Prepare**—Chapter review activities are guided readings designed to prepare students for classroom discussion by ensuring reading and comprehension.
- **Engage**—Real-world videos with related questions help engage students by displaying the relevance of business law in everyday life.
- **Apply**—Brief hypotheticals help students practice spotting issues and applying the law in the context of short factual scenarios.
- **Analyze**—Legal reasoning activities promote deeper critical thinking by building on acquired knowledge to truly assess students' understanding of legal principles.

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](http://www.cengage.com/mindtap).

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- Author, edit, and manage *Test Bank* content from multiple Cengage Learning solutions.

- Create multiple test versions in an instant.
- Deliver tests from their Learning Management System (LMS), classroom, or wherever they want.

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- ***Simplicity at every step.*** A desktop-inspired interface features drop-down menus and familiar intuitive tools that take instructors through content creation and management with ease.
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- ***Cross-compatible capability.*** Import and export content into other systems.

## Instructor's Companion Web Site

The *Instructor's Companion Web Site* for *Business Law: Text and Exercises*, Eighth Edition, contains the following supplements:

- ***Instructor's Manual.*** The *Instructor's Manual* contains all of the answers to the *Issue Spotters*, *Using Business Law* questions, *Real-World Case Problems*, and *Ethical Questions*. In addition, it provides the answers to each chapter's *Work Set*.
- ***Test Bank.*** The comprehensive *Test Bank* contains multiple-choice, true-false, and short essay questions.
- ***PowerPoint Slides.***

For more details, contact your Cengage Learning sales representative.

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We know we are not perfect. If you find something you don't like or want us to change, write to us via e-mail, using the text's Web site. That is how we can make *Business Law: Text and Exercises* an even better book in the future.

R.L.M.  
W.E.H.

## DEDICATION

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*To Margaret and Jack,  
It's just a wonderment  
how we enjoy  
so much.*

—R. L. M.

*Para mi esposa, Luisa,  
y mi hijas, Sandra y Mariel,  
con mucho amor.*

—W. E. H.





# THE LAW AND OUR LEGAL SYSTEM



## UNIT CONTENTS

CHAPTER 1 Introduction to the Law and Our Legal System

CHAPTER 2 Ethics in Business

CHAPTER 3 The Courts and Alternative Dispute Resolution

CHAPTER 4 Constitutional Law

CHAPTER 5 Tort Law

CHAPTER 6 Intellectual Property

CHAPTER 7 Internet Law, Social Media, and Privacy

CHAPTER 8 Criminal Law and Cyber Crime

# 1

# INTRODUCTION TO THE LAW AND OUR LEGAL SYSTEM

## LEARNING OUTCOMES

The four Learning Outcomes below are designed to help improve your understanding of the chapter. After reading this chapter, you should be able to:

- 1 Answer the question “What is law?”
- 2 List the major sources of law in our legal system.
- 3 Identify the supreme law of the land.
- 4 Explain the difference between our legal system and the legal systems of other nations.



## FACING A LEGAL PROBLEM

California passes a law that restricts carbon dioxide emissions from automobiles in that state. A group of automobile manufacturers files a suit against the state of California to prevent enforcement of the law. The automakers claim that a federal statute already sets national fuel economy standards. They assert that these standards are essentially the same as carbon dioxide emission standards.



Are the automakers seeking a legal remedy or an equitable remedy? What is the primary source of law at issue?

Persons entering the world of business today will find themselves subject to numerous laws and government regulations. An acquaintance with these laws and regulations is beneficial—if not essential—to anyone contemplating a successful career in business.

In this introductory chapter, we look at the nature of law in general. We also examine the history and sources—both domestic and international—of American law in particular.



## 1-1 WHAT IS LAW?

There have been, and will continue to be, different definitions of law. The Greek philosopher Aristotle (384–322 B.C.E.) saw law as a “pledge that citizens of a state will do justice to one another.” Aristotle’s teacher, Plato (427?–347 B.C.E.), believed that law was a form of social control. The Roman philosopher Cicero (106–43 B.C.E.) contended that law was the agreement of reason and nature, the distinction between the just and the unjust.

Later, the British jurist Sir William Blackstone (1723–1780) described law as “a rule of civil conduct prescribed by the supreme power in a state, commanding what is right, and prohibiting what is wrong.” In America, the eminent judge Oliver Wendell Holmes, Jr. (1841–1935), contended that law was a set of rules that allowed one to predict how a court would resolve a particular dispute—“the prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law.”

Although these definitions vary in their particulars, they all are based on the following general observation concerning the nature of **law**: *law consists of enforceable rules governing relationships among individuals and between individuals and their society.*

## LEARNING OUTCOME 1

Answer the question “What is law?”

### law

A body of rules of conduct with legal force and effect, set forth by the government of a society.



## 1–2 BUSINESS ACTIVITIES AND THE LEGAL ENVIRONMENT

Regardless of how law is defined, a knowledge of business law is essential for any businessperson. To make good business decisions, businesspersons must have a basic knowledge of the laws and regulations governing those decisions. Furthermore, in today's world, businesspersons are expected to make decisions that are ethical as well as legally sound. Thus, the study of business law involves an ethical dimension.

### 1–2a Many Different Laws May Affect a Single Business Transaction

As you will see, each chapter in this textbook covers a specific area of the law and shows how the legal rules in that area affect business activities. Dividing up the law in this manner makes learning easier. But it does not take account of an important fact: many different laws may apply to just one transaction.

Businesspersons should be aware of this and understand enough about the law to know when to hire an expert for advice. See the *Linking Business Law to Your Career* feature at the end of this chapter for more on this topic.

If a dispute cannot be resolved amicably, then a **lawsuit** may become necessary. At that point, it is also important to know about the laws and the rules concerning courts and court procedures that spell out the steps of a lawsuit.

#### lawsuit

A judicial proceeding for the resolution of a dispute between parties in which rights are enforced or protected, wrongs are prevented or redressed, or public offenses are prosecuted.

#### HIGHLIGHTING THE POINT

Bob is the president of NetSys, Inc., a company that creates and maintains computer network systems for its clients. NetSys also markets software for customers who need an internal computer network but cannot afford an individually designed intranet. One day, Janet, an operations officer for Southwest Distribution Corporation (SDC), contacts Bob by e-mail about a possible contract involving SDC's computer network. Bob and Janet appear to make a deal, but later, a dispute arises over the terms.

**Do these parties have an enforceable contract? If so, does NetSys have any options if SDC breaches the contract?** The answers to these questions are part of contract law and sales law. **How can NetSys guarantee that it will be paid? For example, if SDC pays with a check that is returned for insufficient funds, what are NetSys's options?** Answers to these questions can be found in the laws that relate to negotiable instruments (such as checks) and creditors' rights. **Who owns the rights to NetSys's software? Who is liable if the software is defective? Did Bob and Janet have the authority to make the deal in the first place?** Resolutions of these questions can be found in areas of the law that relate to intellectual property, e-commerce, torts, product liability, agency, and business organizations.

#### breach

The failure to perform a legal obligation.

## 1–2b The Role of the Law in a Small Business

Some of you may end up working in, or owning and operating, a small business. The small-business owner is the most general of managers. When you seek additional financing, you become a finance manager. As you go over the books, you become an accountant. When you direct an advertising campaign, you are the marketing manager. As you evaluate market trends and pricing, interest rates, and other macro phenomena, you take on the role of a managerial economist. Each of these roles has a link to the law.

Exhibit 1.1 shows some of the legal issues that can arise in managing a small—or large—business.



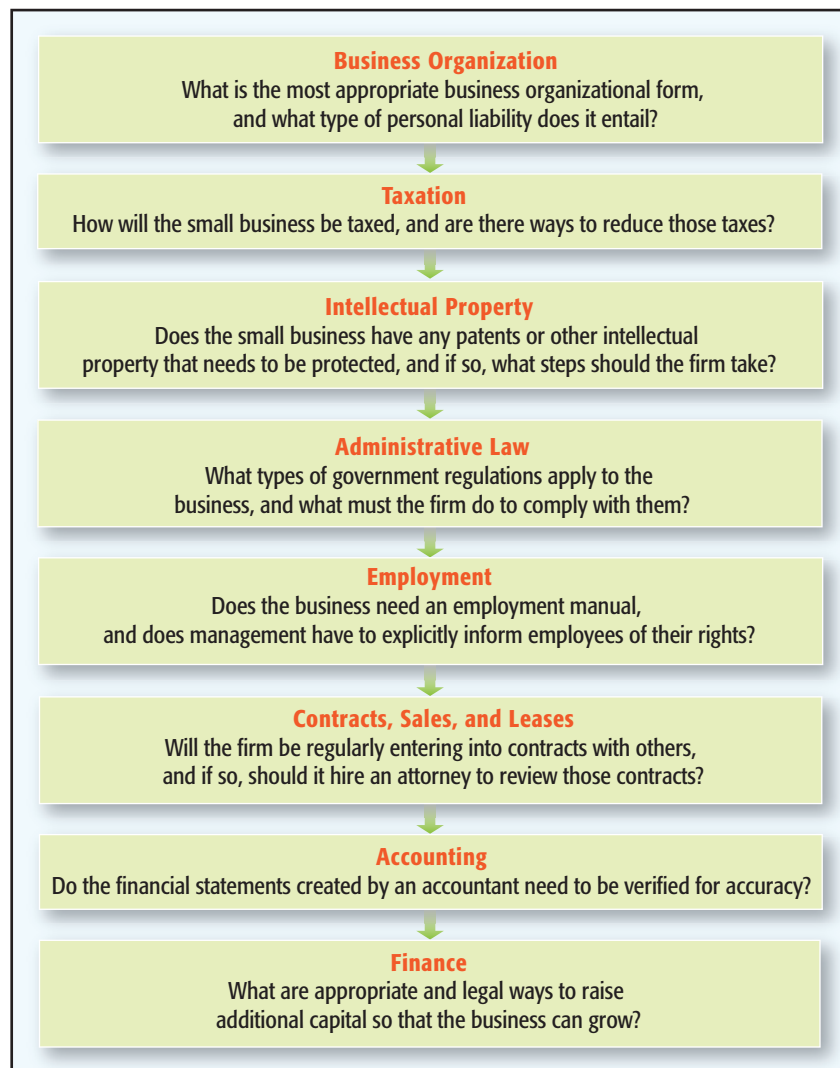
## 1–3 SOURCES OF AMERICAN LAW

To understand the law, you need to have some understanding of its origins. Thus, we begin our study with a discussion of the sources of American law. One major source is the *common law* tradition that originated in medieval England. Another is *constitutional law*, which includes the U.S. Constitution and the constitutions

### LEARNING OUTCOME 2

List the major sources of law in our legal system.

**EXHIBIT 1.1** Linking Business Law to the Management of a Small Business



of the states. The U.S. Constitution is the supreme law of the land. Within each state, the state constitution is supreme, so long as it does not conflict with the U.S. Constitution.

*Statutes*—the laws enacted by Congress and the state legislatures—comprise an additional source of American law. This source of the law is generally referred to as *statutory law*. Finally, yet another source of American law is *administrative law*, which consists of the numerous regulations created by administrative agencies (such as the U.S. Food and Drug Administration).

## 1–3a The Common Law Tradition

Because of our colonial heritage, much of American law is based on the English legal system. A knowledge of this tradition is necessary to understand the nature of our legal system today.

**Early English Courts of Law** In 1066, the Normans conquered England. William the Conqueror and his successors began the process of unifying the country under their rule. One of the means they used to this end was the establishment of the king's courts, or *curiae regis*. Before the Norman Conquest, disputes had been settled according to the local legal customs and traditions in various regions of the country. The king's courts sought to establish a uniform set of customs for the whole country. The body of rules that evolved in these courts was the beginning of the **common law**—a body of general rules that prescribed social conduct and was applied throughout the entire English realm.

Courts developed the common law rules from the principles behind the decisions in actual legal disputes. Judges attempted to be consistent. When possible, they based their decisions on the principles suggested by earlier cases. They sought to decide similar cases in a similar way. They considered new cases with care because they knew that their decisions would make new law. Each interpretation became part of the law on the subject and served as a legal **precedent** (a guide for future decisions). Later cases that involved similar legal principles or facts could be decided with reference to that precedent.

**Stare Decisis** The practice of deciding new cases with reference to former decisions, or precedents, eventually became a cornerstone of the English and American judicial systems. It forms a doctrine called **stare decisis** (pronounced *ster-ay dih-si-ses*), which means “to stand on decided cases.” Under this doctrine, judges are obligated to follow the precedents established within their jurisdictions.

The doctrine of *stare decisis* performs many useful functions. It helps the courts to be more efficient, because if other courts have carefully reasoned through a similar case, their legal reasoning and opinions can serve as guides. *Stare decisis* also makes the law more stable and predictable, because if the law on a given subject is well settled, someone bringing an **action** usually can rely on the court to make a decision based on what the law has been.

Often, a court will depart from the rule of precedent if it decides that the precedent should no longer be followed. If a court decides that a precedent is simply incorrect or that technological or social changes have rendered the precedent inapplicable, the court might rule contrary to the precedent. Cases that overturn precedent often receive a great deal of publicity.

Sometimes, there is no precedent on which to base a decision, or there are conflicting precedents. In these situations, courts may consider a number of factors. Judges may consider legal principles and policies underlying previous court decisions. They also may take into account existing statutes, fairness, social values and customs, public policy, and data and concepts drawn from the social sciences. Which of these sources is chosen or receives the greatest emphasis will depend on the nature of the case being considered and the particular judge hearing the case.

### common law

The body of law developed from custom or judicial decisions in English and U.S. courts.

### precedent

A court decision that furnishes an example or authority for deciding subsequent cases involving identical or similar facts.

### stare decisis

A doctrine of the courts under which judges are obligated to follow the precedents established within their jurisdictions.

### action

A proceeding by one person against another in a court to obtain the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense.

**remedy**

The relief given to innocent parties, by law or by contract, to enforce a right or to prevent or compensate for a wrong.

**damages**

Money sought as a remedy for a harm suffered.

**cause of action**

A situation or state of facts that gives a person a right to initiate a judicial proceeding.

**injunction**

A court decree ordering a person to do or to refrain from doing a certain act.

**Equity** A person brings a case to a court of law seeking a **remedy**, or relief from a wrong. Usually, that remedy is **damages**—the payment of money. **EXAMPLE 1.1** Elena is injured because of Rowan’s wrongdoing. If Elena files a lawsuit and is successful, a court can order Rowan to compensate Elena for the harm by paying her a certain amount of money (damages). The compensation is Elena’s remedy. ◀

Money may not be enough to make the situation right, however. *Equity* is that branch of law, founded in justice and fair dealing, that seeks to supply a fairer and more adequate remedy than monetary damages.

**Early History** In medieval England, when individuals did not have a **cause of action** through which they could obtain an adequate remedy in a court of law, they petitioned the king for relief. Most of these petitions were decided by an adviser to the king, called the *chancellor*. The chancellor was said to be the “keeper of the king’s conscience.” When the chancellor thought that the claim was a fair one, new and unique remedies were granted. In this way, a body of chancery rules and remedies came into being.

**Courts of Equity and Law** Eventually, formal chancery courts were established. These became known as *courts of equity*, granting *remedies in equity*. Thus, two distinct court systems—courts of law and courts of equity—were created, each having a different set of judges and a different set of remedies.

A court of law could grant only damages as a remedy. A court of equity, however, could order a party to perform what was promised. A court of equity could also issue an **injunction** to direct a party to do or not to do a particular act. In certain cases involving contracts, when the legal remedy of the payment of money for damages was unavailable or inadequate, a court of equity might have allowed for the cancellation of the contract so that the parties would be returned to the positions that they held before the contract’s formation.

Today, in most states, the courts of law and equity are merged. Thus, the distinction between the two courts has largely disappeared. A court may now grant both legal and equitable remedies in the same case. Yet the merging of law and equity does not diminish the importance of distinguishing legal remedies from equitable remedies. To request the proper remedy, one must know what remedies are available for specific kinds of harms suffered.



### Real-World Case Example

Experience Hendrix, LLC, owns trademarks—including the name “Hendrix”—that it uses to sell and license merchandise related to the famous musician, Jimi Hendrix. Andrew Pitsicalis owns, or has licenses to use, photos and other art depicting Hendrix. Pitsicalis did business through his Web sites, [hendrixlicensing.com](http://hendrixlicensing.com) and [hendrixartwork.com](http://hendrixartwork.com). Alleging trademark infringement, Experience Hendrix filed a suit in a federal court against Pitsicalis. From a judgment in Experience Hendrix’s favor, both parties appealed.

**Could Experience Hendrix obtain both an injunction and damages?** Yes. In a 2014 decision, *Experience Hendrix, LLC v. Hendrixlicensing.com, Ltd.*, the U.S. Court of Appeals for the Ninth Circuit affirmed that Pitsicalis infringed the “Hendrix” trademark. Pitsicalis defended his use of the mark as *nominative fair use*—which is a defense that applies when a defendant uses a plaintiff’s mark to describe the plaintiff’s product. The court

rejected this defense, however, concluding that Pitsicalis used “Hendrix” to sell his own products, not to refer to Experience Hendrix’s products. The court issued an injunction prohibiting Pitsicalis from using “Hendrix” in his business and domain names. As for the damages, evidence showed a “significant” decline in Experience Hendrix’s revenue during the period of Pitsicalis’s infringing conduct.

**The Common Law Today** The body of law that was first developed in England is still used today in the United States. It consists of the rules of law announced in court decisions, including court interpretations of constitutional provisions, of statutes enacted by legislatures, and of regulations created by administrative agencies. Today, this body of law is referred to variously as the common law, judge-made law, and **case law**.

The common law governs all areas not covered by *statutory law*, which, as will be discussed shortly, generally consists of laws enacted by state legislatures and, at the federal level, by Congress. The body of statutory law has expanded greatly since the founding of this nation. This expansion has resulted in a reduction in the scope and applicability of the common law. Nonetheless, the common law remains a significant source of legal authority. Even when legislation has been substituted for common law principles, courts often rely on the common law as a guide to interpreting the legislation, on the theory that the people who drafted the statute intended to codify an existing common law rule.

#### case law

Rules of law announced in court decisions.

## 1–3b Constitutional Law

The federal government and the states have separate constitutions that set forth the general organization, powers, and limits of their governments. The U.S. Constitution is the supreme law of the land. A law in violation of the Constitution, no matter what its source, will be declared unconstitutional and will not be enforced.

The Tenth Amendment to the U.S. Constitution, which defines the powers and limitations of the federal government, reserves all powers not granted to the federal government to the states. Unless they conflict with the U.S. Constitution, state constitutions are supreme within their respective borders. The complete text of the U.S. Constitution is presented in Appendix A.

#### LEARNING OUTCOME 3

Identify the supreme law of the land.

### HIGHLIGHTING THE POINT

Congress enacts a law prohibiting businesses engaged in interstate commerce from refusing to deal with the members of minority groups. Later, a state legislature enacts a law allowing businesses in the state to decline to deal with members of minority groups. Jill, a member of a minority, files a lawsuit against the state to stop the enforcement of this new state law. Jill explains that the commerce clause of the U.S. Constitution gives Congress the authority to regulate businesses involved in interstate commerce.

**Is the state law valid?** No. The U.S. Constitution is the supreme law of the land. A law in violation of the Constitution will be declared unconstitutional. The state law is in violation because it attempts to regulate an area over which the Constitution gives authority to the federal government (as well as infringing on some persons’ constitutional rights). **Can the court grant Jill the remedy that she requests?** Yes. The court can order the state to stop its enforcement of the law.

### 1–3c Statutory Law

#### statutory law

Laws enacted by a legislative body.

Statutes enacted by Congress and the various state legislative bodies make up another source of law, which is generally referred to as **statutory law**. The statutory law of the United States also includes the ordinances passed by cities and counties. None of these can violate the U.S. Constitution or the relevant state constitution.

Today, legislative bodies and regulatory agencies assume an ever-increasing share of lawmaking. Much of the work of modern courts consists of interpreting what the rulemakers meant when a law was passed and applying the law to a present set of facts.

**Uniform Laws** No two states in the United States have identical statutes, constitutions, and case law. In other words, state laws differ from state to state. The differences among state laws were even more notable in the 1800s, when conflicting state statutes frequently made the rapidly developing trade and commerce among the states very difficult. To counter these problems, a group of legal scholars and lawyers formed the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1892 to draft uniform statutes for adoption by the states. The NCCUSL still exists today and continues to issue uniform statutes.

Adoption of a uniform law is a state matter. Furthermore, a state may reject all or part of the statute or rewrite it as the state legislature wishes. Hence, even when a uniform law is said to have been adopted in many states, those states' laws may not be entirely "uniform." Once adopted by a state, a uniform act becomes a part of the statutory law of that state.

**The Uniform Commercial Code (UCC)** The Uniform Commercial Code (UCC), which was created through the joint efforts of the NCCUSL and the American Law Institute, was issued in 1952. The UCC has been adopted in forty-nine states, the District of Columbia, and the Virgin Islands. Louisiana has adopted Articles 1, 3, 4, 5, 7, 8, and 9. The UCC facilitates commerce among the states by providing a uniform, yet flexible, set of rules governing commercial transactions. The UCC assures businesspersons that their contracts, if validly entered into, will be enforced.

### 1–3d Administrative Law

#### administrative law

A body of law in the form of rules, orders, and decisions created by administrative agencies in order to carry out their duties and responsibilities.

**Administrative law** consists of the rules, orders, and decisions of administrative agencies (government bodies, such as departments, commissions, and boards, charged by Congress or a state legislature with carrying out the terms of particular laws). Regulations issued by various administrative agencies affect virtually every aspect of a business's operation, including capital structure and financing, hiring and firing procedures, relations with employees and unions, and the way a firm manufactures and markets its products.



## 1–4 CIVIL LAW VERSUS CRIMINAL LAW

The huge body of the law is broken down into several classifications. One important classification divides law into *civil law* and *criminal law*.

**Civil law** spells out the rights and duties that exist between persons and between citizens and their governments (*excluding* the duty not to commit crimes). In a civil case, one party (sometimes the government) tries to make the other party comply with a duty or pay for the damage caused by a failure to do so. Contract law is part of civil law. **EXAMPLE 1.2** If Craig fails to perform a contract with Mary, she may bring a lawsuit against Craig. The purpose of the lawsuit will be either to compel

#### civil law

The branch of law dealing with the definition and enforcement of all private and public rights, as opposed to criminal matters.



Craig to perform as promised or, more commonly, to obtain monetary damages for Craig's failure to perform. ◀

**Criminal law** has to do with a wrong committed against the public as a whole. Criminal acts are prohibited by local, state, or federal government statutes. In a criminal case, the government seeks to impose a penalty (a monetary penalty and/or imprisonment) on an allegedly guilty person.

#### **criminal law**

Law that governs and defines those actions that are crimes and that subject the convicted offender to punishment imposed by the government.



## 1–5 NATIONAL LAW AROUND THE WORLD

The common law system of England and the United States is one of the major legal systems of today's world. Generally, countries that were once colonies of Great Britain retained their English common law heritage after they achieved their independence. Today, common law systems exist in Australia, Canada, India, Ireland, and New Zealand.

In contrast to Great Britain and the other common law countries, most European nations base their legal systems on Roman civil law, or "code law." The term *civil law*, as used here, does not refer to civil as opposed to criminal law. It refers to *codified* law—an ordered grouping of legal principles enacted into law by a legislature or governing body.

In a **civil law system**, the primary source of law is a statutory code. Case precedents are not judicially binding, as they are in a common law system. This is not to say that precedents are unimportant in a civil law system. On the contrary, judges in such systems commonly refer to previous decisions as sources of legal guidance. The difference is that judges in a civil law system are not bound by precedent. The doctrine of *stare decisis* does not apply.

Today, the civil law system is followed in most of the continental European countries, as well as in the African, Asian, and Latin American countries that were once colonies of the continental European nations. In the United States, Louisiana, because of its historical ties to France, has a civil law system.

#### **LEARNING OUTCOME 4**

Explain the difference between our legal system and the legal systems of other nations.

#### **civil law system**

A system of law derived from that of the Roman Empire and based on a code rather than case law.



## 1–6 INTERNATIONAL LAW

**International law** can be defined as a body of written and unwritten laws observed by independent nations in their relations with other nations. It governs the acts of individuals as well as governments. International customs and treaties are generally considered to be two of the most important sources of international law.

The key difference between *national law* (the law of a particular nation) and international law is the fact that national law can be enforced by government authorities. What government can enforce international law, however? By definition, a *nation* is a sovereign entity, which means that there is no higher authority to which that nation must submit. If a nation violates an international law, the most that other countries or international organizations can do (if persuasive tactics fail) is resort to coercive actions against the violating nation. Coercive actions range from severance of diplomatic relations and boycotts to, as a last resort, war.

In essence, international law is the result of centuries-old attempts to reconcile the traditional need of each nation to be the final authority over its own affairs with the desire of nations to benefit economically from trade and harmonious relations with one another. Although no sovereign nation can be compelled to obey a law external to itself, nations can and do voluntarily agree to be governed in certain respects by international law for the purpose of facilitating international trade and commerce, as well as for civilized discourse.

#### **international law**

The law that governs relations among nations.