

HENRY CHEESEMAN

CONTEMPORARY BUSINESS LAW

Eighth Edition



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CONTEMPORARY BUSINESS LAW

EIGHTH EDITION

Henry R. Cheeseman

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Marshall School of Business
University of Southern California

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Students and Professors



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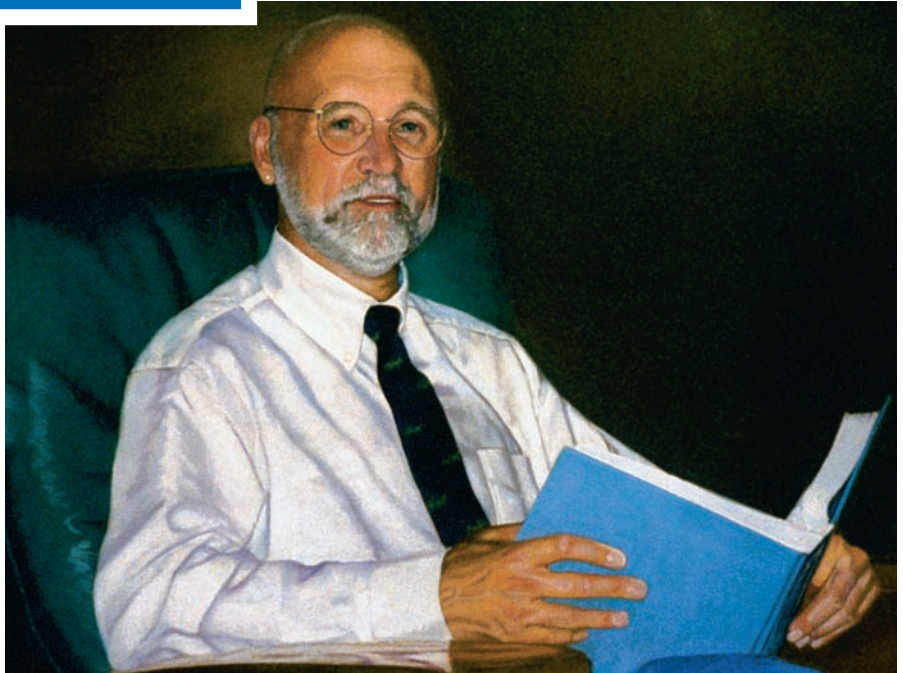
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ABOUT THE AUTHOR

Henry R. Cheeseman is professor emeritus of the Marshall School of Business of the University of Southern California (USC), Los Angeles, California.

Professor Cheeseman earned a bachelor's degree in finance from Marquette University, both a master's in business administration (MBA) and a master's in business taxation (MBT) from the University of Southern California, a juris doctor (JD) degree from the University of California at Los Angeles (UCLA) School of Law, a master's degree with an emphasis on law and economics from the University of Chicago, and a master's in law (LLM) degree in financial institutions law from Boston University.



Professor Cheeseman was director of the Legal Studies in Business Program at the University of Southern California. Professor Cheeseman taught business law, legal environment, and ethics courses in both the Master of Business Administration (MBA) and undergraduate programs of the Marshall School of Business of the University of Southern California. At the MBA level, he developed and taught courses on corporate governance, securities regulation, mergers and acquisitions, and bankruptcy law. At the undergraduate level, he taught courses on business law, the legal environment of business, ethics, business organizations, cyber law, and intellectual property.

Professor Cheeseman received the Golden Apple Teaching Award on many occasions by being voted by the students as the best professor at the Marshall School of Business of the University of Southern California. He was named a fellow of the Center for Excellence in Teaching at the University of Southern California by the dean of the Marshall School of Business. The USC's Torch and Tassel Chapter of the Mortar Board, a national senior honor society, tapped Professor Cheeseman for recognition of his leadership, commitment, and excellence in teaching.

Professor Cheeseman writes leading business law and legal environment textbooks that are published by Pearson Education, Inc. These include *Business Law: Legal Environment, Online Commerce, Business Ethics, and International Issues*; *Contemporary Business Law*; and *The Legal Environment of Business and Online Commerce*. Professor Cheeseman has also co-authored a textbook entitled *Contemporary Employment Law*.

Professor Cheeseman is an avid traveler and amateur photographer. The interior photographs for this book were taken by Professor Cheeseman.

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PREFACE

NEW TO THE EIGHTH EDITION

This edition of *Contemporary Business Law* is a significant revision of Professor Cheeseman's business law and legal environment textbook that includes many new cases, statutes, and features.

New U.S. Supreme Court Cases

More than 12 new U.S. Supreme Court cases, including:

- *Shelby County, Texas v. Holder* (Voting Rights Act)
- *United States v. Windsor* (federal Defense of Marriage Act violates equal protection clause)
- *Maryland v. King* (taking DNA of person at time of booking is reasonable search)
- *Kiobel v. Royal Dutch Petroleum Company* (Alien Tort Statute does not permit lawsuit in federal court for alleged crimes against humanity committed in another country)
- *Thompson v. North American Stainless, LP* (employer retaliation violates Title VII)
- *Mutual Pharmaceutical Company, Inc. v. Bartlett* (federal drug labeling law preempts state law)
- *Brown v. Entertainment Merchants Association* (state law regulating violent video games violates free speech)
- *Walmart Stores, Inc. v. Dukes* (certification of a class denied)
- *Snyder v. Phelps* (picketing near veteran's funeral is protected free speech)
- *Association for Molecular Pathology v. Myriad Genetics, Inc.* (naturally occurring segments of DNA is a product of nature and is not patentable)

New State and Federal Court Cases

More than 40 new state and federal court cases, including:

- *The Facebook, Inc. v. Winklevoss* (settlement agreement reached by founders of Facebook is enforced)
- *United States v. Barrington* (undergraduate student convicted of computer crimes for changing students' grades on university's internet grading system)
- *Hubbert v. Dell Corporation* (content reached by hyperlinks in licensing agreement is part of the contract)
- *National Labor Relations Board v. Starbucks Corporation* (Starbucks Corporation engaged in unfair labor practices)
- *Does I-XI, Workers in China, Bangladesh, Indonesia, Swaziland, and Nicaragua v. Walmart Stores, Inc.* (foreign

workers not intended beneficiaries of Wal-Mart's contracts with foreign suppliers)

- *Chanel, Inc. v. Banks* (Internet seller found subject to personal jurisdiction)
- *McPadden v. Sidhu* (directors of Delaware corporation not liable for negligence because of liability waiver in corporate documents)
- *V Secret Catalogue, Inc. and Victoria's Secret Stores, Inc. v. Moseley* (tarnishment of a senior mark by a junior mark)
- *Las Vegas Sands, LLC v. Nehme* (casino marker is a negotiable instrument)
- *Mitchell v. Fortas Insurance Company* (bad faith tort committed by insurance company)
- *Rainey v. Domino's Pizza, LLC* (franchisor not liable for an accident caused by franchisee's delivery person)
- *Intel Corporation v. Intelsys Software LLC* (trademark infringement found)
- *Stoll v. Xiong* (unconscionable contract not enforced)
- *Mance v. Mercedes-Benz USA* (arbitration clause in automobile purchase contract enforced)
- *Menendez v. O'Neill* (sole shareholder of corporation not liable for corporation's liabilities)
- *In re Estate of Haviland* (undue influence on elderly man in preparing estate documents)
- *Yarde Metals, Inc. v. New England Patriots Limited Partnership* (parol evidence not admitted to change terms of a ticketholder's contract)

New Statutes

Coverage of recent federal statutes, including:

- Jumpstart Our Business Startups Act (JOBS Act) of 2012
- Stop Trading on Congressional Knowledge Act (STOCKS Act) of 2012
- Leahy-Smith America Invents Act (AIA) of 2011
- Helping Families Save Their Homes Act of 2009

New Feature: "Critical Legal Thinking"

More than 15 new "Critical Legal Thinking Cases" have been introduced to this edition to prompt students to consider the policy implications of covered subject matters. These include:

- Campaign Financing Law (*Citizens United v. Federal Election Committee*)
- Class Action Waivers (*AT&T Mobility LLC v. Concepcion*)

- Sexual Harassment (*Pennsylvania State Police v. Suders*)
- Exclusionary Rule (*Arizona v. Gant*)
- Cyber Piracy (*BMG Music v. Gonzalez*)
- Strict Liability (*Domingue v. Cameco Industries, Inc.*)
- Eminent Domain (*Kelo v. City of New London, Connecticut*)
- Assisted Suicide (*Gonzales, Attorney General of the United States v. Oregon*)

More than seventy-five new “Critical Legal Thinking Questions” have been placed in the margins.

New Special Features on Ethics, Digital Law, Contemporary Environment, Business Environment, and Global Law

More than 20 new special features, including:

- Facebook’s IPO
- Foreign Intelligence Surveillance Court (FISA Court)
- Crowd Funding and Funding Portals
- Emerging Growth Company (EGC)
- Is Outsourcing of U.S. Jobs Ethical?
- Delaware Corporation Law
- Veterans and Military Personnel Employment Protections

- United Nations Children’s Fund (UNICEF)
- Law in the Digital Age
- E-Commerce and the Commerce Clause
- International Protection of Intellectual Property

SUPPLEMENTS THAT ACCOMPANY THE EIGHTH EDITION

For Instructors

We offer a variety of supplements to meet the unique teaching needs of each instructor. Electronic versions of the supplements that accompany this text are available for download at our Instructor Resource Center (www.pearsonhighered.com) and include the following:

- Instructor’s Manual
- Test Item File
- TestGen
- PowerPoint Presentation

To the Students

Contemporary students have different needs than previous generations. Having been exposed to the electronic world for your entire lives, you think, learn, and process information in different ways than prior generations. This new eighth edition of *Contemporary Business Law* and its electronic supplements have been designed especially for your needs.

Many of you may be apprehensive about taking a law course because it may seem daunting or different from studying many of your other courses. But it is not. As you embark on your study of the law, you will know that this course presents the “real world,” that is, real legal disputes involving real people like yourselves. The course also offers you an opportunity to develop your critical thinking skills that will serve you in addressing legal and other issues that you may encounter. And lastly, learning the subject matter of this course will help you make more informed and confident decisions in your business and personal life.

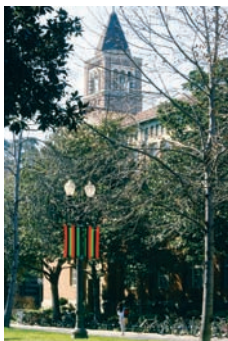
Each semester, as I stand in front of a new group of students in my business law and legal environment classes, I am struck by the thought that I draw as much from them as they do from me. Their youth, enthusiasm, and questions—and even the doubts a few of them hold about the relevance of law to their futures—fuel my teaching. They don’t know that every time they open their minds to look at an issue from a new perspective or critically question something, I have gotten a wonderful reward for the work I do.

I remind myself of this every time I sit down to work on writing and revising *Contemporary Business Law*, as well. My goal is to present business law, the legal environment, business ethics, and digital law in a way that will spur students to ask questions, to go beyond rote memorization.

Business law is an evolving outgrowth of its environment, and the legal environment keeps changing. This new eighth edition of *Contemporary Business Law* emphasizes coverage of online law and e-commerce as key parts of the legal environment. In addition, this book covers social, ethical, and global issues that are important to the study of business law.

It is my wish that my commitment to these goals shines through in this labor of love, and I hope you have as much pleasure in using it as I have had in creating it for you.

Henry Cheeseman



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ACKNOWLEDGMENTS

When I first began writing this book, I was a solitary figure, researching cases online and in the law library and writing text on the computer and by hand at my desk. As time passed, others entered upon the scene—copy editors, developmental editors, research assistants, reviewers, and production personnel—and touched the project and made it better. Although my name appears on the cover of this book, it is no longer mine alone. I humbly thank the following persons for their contributions to this project.

THE EXCEPTIONAL PEARSON PROFESSIONALS

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AUTHOR'S PERSONAL STATEMENT

While writing this Preface and Acknowledgment, I have thought about the thousands of hours I have spent researching, writing, and preparing this manuscript. I've loved every minute, and the knowledge gained has been sufficient reward for the endeavor.

I hope this book and its supplementary materials will serve you as well as they have served me.

*With joy and sadness,
emptiness and fullness,
honor and humility,
I surrender the fruits of this labor*

Henry R. Cheese

Part I

LEGAL, ETHICAL, AND DIGITAL ENVIRONMENT



1

LEGAL HERITAGE AND THE DIGITAL AGE



▲ **Statue of Liberty, New York Harbor** *The Statue of Liberty stands majestically in New York Harbor. During the American Revolution, France gave the colonial patriots substantial support in the form of money for equipment and supplies, officers and soldiers who fought in the war, and ships and sailors who fought on the seas. Without the assistance of France, it is unlikely that the American colonists would have won their independence from Britain. In 1886, the people of France gave the Statue of Liberty to the people of the United States in recognition of the friendship that was established during the American Revolution. Since then, the Statue of Liberty has become a symbol of liberty and democracy throughout the world.*

LEARNING OBJECTIVES

After studying this chapter, you should be able to:

1. Define *law*.
2. Describe the functions of law.
3. Explain the development of the U.S. legal system.
4. List and describe the sources of law in the United States.
5. Discuss the importance of the U.S. Supreme Court's decision in *Brown v. Board of Education*.

CHAPTER OUTLINE

- **INTRODUCTION TO LEGAL HERITAGE AND THE DIGITAL AGE**
- **WHAT IS LAW?**
Landmark U.S. Supreme Court Case · *Brown v. Board of Education*
- **SCHOOLS OF JURISPRUDENTIAL THOUGHT**
Global Law · Command School of Jurisprudence of Cuba
- **HISTORY OF AMERICAN LAW**
Landmark Law · Adoption of English Common Law in America
Global Law · Civil Law System of France and Germany

► **SOURCES OF LAW IN THE UNITED STATES**

Contemporary Environment · *How a Bill Becomes Law*
Digital Law · *Law in the Digital Age*

► **CRITICAL LEGAL THINKING**

Case 1.1 · U.S. Supreme Court Case · *Shelby County, Texas v. Holder*

“Where there is no law, there is no freedom.”

John Locke

Second Treatise of Government, Sec. 57

► **INTRODUCTION TO LEGAL HERITAGE AND THE DIGITAL AGE**

In the words of Judge Learned Hand, “Without law we cannot live; only with it can we insure the future which by right is ours. The best of men’s hopes are enmeshed in its success.”¹ Every society makes and enforces laws that govern the conduct of the individuals, businesses, and other organizations that function within it.

Although the law of the United States is primarily based on English common law, other legal systems, such as Spanish and French civil law, also influence it. The sources of law in this country are the U.S. Constitution, state constitutions, federal and state statutes, ordinances, administrative agency rules and regulations, executive orders, and judicial decisions by federal and state courts.

Businesses that are organized in the United States are subject to its laws. They are also subject to the laws of other countries in which they operate. Businesses organized in other countries must obey the laws of the United States when doing business here. In addition, businesspeople owe a duty to act ethically in the conduct of their affairs, and businesses owe a responsibility not to harm society.

This chapter discusses the nature and definition of law, theories about the development of law, and the history and sources of law in the United States.

“Human beings do not ever make laws; it is the accidents and catastrophes of all kinds happening in every conceivable way that make law for us.”

Plato,
Laws IV, 709

► **WHAT IS LAW?**

The law consists of rules that regulate the conduct of individuals, businesses, and other organizations in society. It is intended to protect persons and their property against unwanted interference from others. In other words, the law forbids persons from engaging in certain undesirable activities. Consider the following passage:

Hardly anyone living in a civilized society has not at some time been told to do something or to refrain from doing something, because there is a law requiring it, or because it is against the law. What do we mean when we say such things?

At the end of the 18th century, Immanuel Kant wrote of the question “What is law?” that it “may be said to be about as embarrassing to the jurist as the well-known question ‘What is truth?’ is to the logician.”²

Definition of Law

The concept of **law** is broad. Although it is difficult to state a precise definition, *Black’s Law Dictionary* gives one that is sufficient for this text:

Law, in its generic sense, is a body of rules of action or conduct prescribed by controlling authority, and having binding legal force. That which must be obeyed and followed by citizens subject to sanctions or legal consequences is a law.³

law

That which must be obeyed and followed by citizens, subject to sanctions or legal consequences; a body of rules of action or conduct prescribed by controlling authority and having binding legal force.

“Commercial law lies within a narrow compass, and is far purer and freer from defects than any other part of the system.”

Henry Peter Brougham
House of Commons,
February 7, 1828

Functions of the Law

The law is often described by the function it serves in a society. The primary *functions* served by the law in this country are:

1. Keeping the peace

Example Some laws make certain activities crimes.

2. Shaping moral standards

Example Some laws discourage drug and alcohol abuse.

3. Promoting social justice

Example Some laws prohibit discrimination in employment.

4. Maintaining the status quo

Example Some laws prevent the forceful overthrow of the government.

5. Facilitating orderly change

Example Laws are enacted only after considerable study, debate, and public input.

6. Facilitating planning

Example Well-designed commercial laws allow businesses to plan their activities, allocate their productive resources, and assess the risks they take.

7. Providing a basis for compromise

Example Laws allow for the settlement of cases prior to trial. Approximately 95 percent of all lawsuits are settled in this manner.

8. Maximizing individual freedom

Example The rights of freedom of speech, religion, and association are granted by the First Amendment to the U.S. Constitution.

CONCEPT SUMMARY

FUNCTIONS OF THE LAW

- | | |
|----------------------------|-----------------------------------|
| 1. Keep the peace | 5. Facilitate orderly change |
| 2. Shape moral standards | 6. Facilitate planning |
| 3. Promote social justice | 7. Provide a basis for compromise |
| 4. Maintain the status quo | 8. Maximize individual freedom |

Fairness of the Law

“The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges.”

Anatole France

On the whole, the U.S. legal system is one of the most comprehensive, fair, and democratic systems of law ever developed and enforced. Nevertheless, some misuses and oversights of our legal system—including abuses of discretion and mistakes by judges and juries, unequal applications of the law, and procedural mishaps—allow some guilty parties to go unpunished.

Example In *Standefer v. United States*,⁴ Chief Justice Warren Burger of the U.S. Supreme Court stated, “This case does no more than manifest the simple, if discomfoting, reality that different juries may reach different results under any criminal statute. That is one of the consequences we accept under our jury system.”

Flexibility of the Law

U.S. law evolves and changes along with the norms of society, technology, and the growth and expansion of commerce in the United States and the world. The following quote by Judge Jerome Frank discusses the value of the adaptability of law:

The law always has been, is now, and will ever continue to be, largely vague and variable. And how could this be otherwise? The law deals with human relations in their most complicated aspects. The whole confused, shifting helter-skelter of life parades before it—more confused than ever, in our kaleidoscopic age.

The constant development of unprecedented problems requires a legal system capable of fluidity and pliancy. Our society would be straightjacketed were not the courts, with the able assistance of the lawyers, constantly overhauling the law and adapting it to the realities of ever-changing social, industrial, and political conditions; although changes cannot be made lightly, yet rules of law must be more or less impermanent, experimental and therefore not nicely calculable.

Much of the uncertainty of law is not an unfortunate accident; it is of immense social value.⁵

A landmark U.S. Supreme Court case—*Brown v. Board of Education*—is discussed in the following feature. This case shows the flexibility of the law—because the U.S. Supreme Court overturned a past decision of the U.S. Supreme Court.

“Law must be stable and yet it cannot stand still.”

Roscoe Pound
Interpretations of Legal History
(1923)

CRITICAL LEGAL THINKING

Are there any benefits for the law being “vague and variable”? Are bright line tests possible for the law? Explain the statement, “Much of the uncertainty of law is not an unfortunate accident; it is of immense social value.”



Landmark U.S. Supreme Court Case

Brown v. Board of Education

“We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place.”

—Warren, Justice

Slavery was abolished by the Thirteenth Amendment to the Constitution in 1865. The Fourteenth Amendment, added to the Constitution in 1868, contains the Equal Protection Clause, which provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” The original intent of this amendment was to guarantee equality to freed African Americans. But equality was denied to African Americans for years. This included discrimination in housing, transportation, education, jobs, service at restaurants, and other activities.

In 1896, the U.S. Supreme Court decided the case *Plessy v. Ferguson*.⁶ In that case, the state of Louisiana had a law that provided for separate but equal accommodations for African American and white railway passengers. The Supreme Court held that the “separate but equal” state law did not violate the Equal Protection Clause of the Fourteenth Amendment. The “separate but equal” doctrine was then applied to all areas of life, including public education. Thus, African American and white

children attended separate schools, often with unequal facilities.

It was not until 1954 that the U.S. Supreme Court decided a case that challenged the “separate but equal” doctrine as it applied to public elementary and high schools. In *Brown v. Board of Education*, a consolidated case that challenged the separate school systems of four states—Kansas, South Carolina, Virginia, and Delaware—the Supreme Court decided to revisit the “separate but equal” doctrine announced by its forbearers in another century. This time, a unanimous Supreme Court, in an opinion written by Chief Justice Earl Warren, reversed prior precedent and held that the “separate but equal” doctrine violated the Equal Protection Clause of the Fourteenth Amendment to the Constitution. In its opinion, the Court stated:

Today, education is perhaps the most important function of state and local governments. We conclude that in the field of public education the doctrine of “separate but equal” has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom actions have been brought are, by reason of the segregation complained (case continues)

of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.

After *Brown v. Board of Education* was decided, it took court orders as well as U.S. Army enforcement to integrate many of the public schools in this country. *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873, Web 1954 U.S. Lexis 2094 (Supreme Court of the United States, 1954).

Critical Legal Thinking Questions

It has been said that the U.S. Constitution is a “living document”—that is, one that can adapt to changing times. Do you think this is a good policy? Or should the U.S. Constitution be interpreted narrowly and literally, as originally written?

WEB EXERCISE

To view court documents related to *Brown v. Board of Education*, go to www.loc.gov/exhibits/brown/brown-brown.html.

jurisprudence

The philosophy or science of law.

“The law is not a series of calculating machines where definitions and answers come tumbling out when the right levers are pushed.”

William O. Douglas
Dissent, A Safeguard of Democracy
(1948)

► SCHOOLS OF JURISPRUDENTIAL THOUGHT

The philosophy or science of the law is referred to as **jurisprudence**. There are several different philosophies about how the law developed, ranging from the classical natural theory to modern theories of law and economics and critical legal studies. Classical legal philosophies are discussed in the following paragraphs.

Natural Law School

The **Natural Law School** of jurisprudence postulates that the law is based on what is “correct.” Natural law philosophers emphasize a **moral theory of law**—that is, law should be based on morality and ethics. Natural law is “discovered” by humans through the use of reason and choosing between good and evil.

Examples Documents such as the U.S. Constitution, the Magna Carta, and the United Nations Charter reflect this theory.

Historical School

The **Historical School** of jurisprudence believes that the law is an aggregate of social traditions and customs that have developed over the centuries. It believes that changes in the norms of society will gradually be reflected in the law. To these legal philosophers, the law is an evolutionary process.

Example Historical legal scholars look to past legal decisions (precedent) to solve contemporary problems.

Analytical School

The **Analytical School** of jurisprudence maintains that the law is shaped by logic. Analytical philosophers believe that results are reached by applying principles of logic to the specific facts of a case. The emphasis is on the logic of the result rather than on how the result is reached.

Example If the U.S. Constitution had freed the slaves or granted females the right to vote, it would not have been ratified by the states in 1788.

Sociological School

The **Sociological School** of jurisprudence asserts that the law is a means of achieving and advancing certain sociological goals. The followers of this philosophy, known as *realists*, believe that the purpose of law is to shape social behavior. Sociological philosophers are unlikely to adhere to past law as precedent.

Example Laws that impose penalties for drunk driving reflect this theory.

Command School

The philosophers of the **Command School** of jurisprudence believe that the law is a set of rules developed, communicated, and enforced by the ruling party rather than a reflection of the society's morality, history, logic, or sociology. This school maintains that the law changes when the ruling class changes.

Example During certain military conflicts, such as World War II and the Vietnam Conflict, the federal government has enacted draft laws that require men of a certain age to serve in the military if they meet certain physical and other requirements.

Critical Legal Studies School

The **Critical Legal Studies School** proposes that legal rules are unnecessary and are used as an obstacle by the powerful to maintain the status quo. Critical legal theorists argue that legal disputes should be solved by applying arbitrary rules that are based on broad notions of what is “fair” in each circumstance. Under this theory, subjective decision making by judges would be permitted.

Example This school postulates that often rape laws make it difficult for women to prove legally that they have been raped because these laws have mostly been drafted from a male's perspective. Therefore, says this school, these laws should be ignored and the judge should be free to decide whether rape has occurred in his or her subjective decision-making.

“A lawyer without history or literature is a mechanic, a mere working mason: if he possesses some knowledge of these, he may venture to call himself an architect.”

Sir Walter Scott
Guy Mannering, Ch. 37 (1815)

Law and Economics School

The **Law and Economics School** believes that promoting market efficiency should be the central goal of legal decision making. This school is also called the **Chicago School**, named after the University of Chicago, where it was first developed.

Example Proponents of law and economics theory suggest that the practice of appointing counsel, free of charge, to prisoners who bring civil rights cases should be abolished. They believe that if a prisoner cannot find a lawyer who will take the case on a contingency-fee basis or *pro bono* (free of charge), the case is probably not worth bringing.

CONCEPT SUMMARY

SCHOOLS OF JURISPRUDENTIAL THOUGHT

School	Philosophy
Natural Law	Postulates that law is based on what is “correct.” It emphasizes a moral theory of law—that is, law should be based on morality and ethics.
Historical	Believes that law is an aggregate of social traditions and customs.
Analytical	Maintains that law is shaped by logic.
Sociological	Asserts that the law is a means of achieving and advancing certain sociological goals.
Command	Believes that the law is a set of rules developed, communicated, and enforced by the ruling party.
Critical Legal Studies	Maintains that legal rules are unnecessary and that legal disputes should be solved by applying arbitrary rules based on fairness.
Law and Economics	Believes that promoting market efficiency should be the central concern of legal decision making.

The following feature discusses the Command School of jurisprudence of Cuba.



GLOBAL LAW

Command School of Jurisprudence of Cuba



Courtesy of Henry Cheeseman

▲ **Havana, Cuba** Cuba is an island-nation located in the Caribbean Sea less than 100 miles south of Key West, Florida. In 1959, Fidel Castro led a revolution that displaced the existing dictatorial government. Castro installed a communist government which expropriated and nationalized much private property. The communist government installed a one-party rule over the country and installed a command economy and system of jurisprudence. More than one million Cubans fled the island to the United States where many created a thriving community and economy in Miami, Florida. Under a state-controlled planned economy based on socialist principles, production of goods and food items fell substantially and major shortages of houses, medical supplies, and other goods and services occurred. After more than five decades of a command economy, Cuba is permitting limited free-market measures, but ninety percent of workers are still employed by the government.

► HISTORY OF AMERICAN LAW

When the American colonies were first settled, the English system of law was generally adopted as the system of jurisprudence. This was the foundation from which American judges developed a common law in America.

English Common Law

English common law was law developed by judges who issued their opinions when deciding cases. The principles announced in these cases became *precedent* for later judges deciding similar cases. The English common law can be divided into cases decided by the *law courts*, *equity courts*, and *merchant courts*.

Law Courts Prior to the Norman Conquest of England in 1066, each locality in England was subject to local laws, as established by the lord or chieftain in control of the local area. There was no countrywide system of law. After 1066, William the Conqueror and his successors to the throne of England began to replace the various local laws with one uniform system of law. To accomplish this, the king or queen appointed loyal followers as judges in all local areas. These judges were charged with administering the law in a uniform manner, in courts that were called **law courts**. Law at that time tended to emphasize the form (legal procedure) over the substance (merit) of a case. The only relief available at law courts was a monetary award for damages.

Chancery (Equity) Courts Because of some unfair results and limited remedies available in the law courts, a second set of courts—the **Court of Chancery** (or **equity court**)—was established. These courts were under the authority of the Lord Chancellor. Persons who believed that the decision of a law court was unfair or believed that the law court could not grant an appropriate remedy could seek relief in the Court of Chancery. Rather than emphasize legal procedure, the chancery court inquired into the merits of the case. The chancellor’s remedies were called *equitable remedies* because they were shaped to fit each situation. Equitable orders and remedies of the Court of Chancery took precedence over the legal decisions and remedies of the law courts.

Merchant Courts As trade developed during the Middle Ages, merchants who traveled about England and Europe developed certain rules to solve their commercial disputes. These rules, known as the “law of merchants,” or the **Law Merchant**, were based on common trade practices and usage. Eventually, a separate set of courts was established to administer these rules. This court was called the **Merchant Court**. In the early 1900s, the Merchant Court was absorbed into the regular law court system of England.

The following feature discusses the adoption of English common law in the United States.

English common law

Law developed by judges who issued their opinions when deciding a case. The principles announced in these cases became precedent for later judges deciding similar cases.

“Two things most people should never see made: sausages and laws.”

An old saying



LANDMARK LAW

Adoption of English Common Law in America

All the states of the United States of America except Louisiana base their legal systems primarily on the English common law. In the United States, the law, equity, and merchant courts have been merged. Thus, most U.S. courts permit the aggrieved party to seek both legal and equitable orders and remedies.

The importance of common law to the American legal system is described in the following excerpt from Justice Douglas’s opinion in the 1841 case *Penny v. Little*:

The common law is a beautiful system, containing the wisdom and experiences of ages. Like the people it ruled and protected, it was simple and crude in its

infancy and became enlarged, improved, and polished as the nation advanced in civilization, virtue, and intelligence. Adapting itself to the conditions and circumstances of the people and relying upon them for its administration, it necessarily improved as the condition of the people was elevated. The inhabitants of this country always claimed the common law as their birthright, and at an early period established it as the basis of their jurisprudence.⁷

Currently, the law of the United States is a combination of law created by the judicial system and by congressional legislation.