*Chapter 1*

**Law and Legal Reasoning**

Answers to Learning Objectives

at the Beginning of the Chapter

**1A.** ***What are four primary sources of law in the United States?*** Primary sources of law are sources that establish the law. In the United States, these include the U.S. Constitution and the state constitutions, statutes passed by Congress and the state legislatures, regulations created by adminis­trative agencies, and court decisions, or case law.

**2A.** ***What is a precedent? When might a court depart from precedent?*** Judges attempt to be consistent, and when possible, they base their decisions on the principles suggested by earlier cases. They seek to decide similar cases in a similar way and consider new cases with care, because they know that their conflicting decisions make new law. Each interpretation becomes part of the law on the subject and serves as a legal precedent—a decision that fur­nishes an example or authority for deciding subsequent cases involving simi­lar legal principles or facts.

A court will depart from the rule of a precedent when it decides that the rule 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.

**3A.** ***What is the difference between remedies at law and remedies in equity?*** An award of compensation in either money or property, including land, is a remedy at law. Remedies in equity include the following:

**1.** A decree for specific performance—that is, an order to perform what was promised.

**2.** An injunction, which is an order directing a party to do or refrain from doing a particular act.

**3.** A rescission, or cancellation, of a contract and a return of the parties to the positions that they held before the contract’s formation.

As a rule, courts will grant an equitable remedy only when the remedy at law (money damages) is inadequate. Remedies in equity on the whole are more flexible than remedies at law.

**4A.** ***What are some important differences between civil law and criminal law?*** Civil law spells out the rights and duties that exist between persons and be­tween persons and their governments, and the relief available when a person’s rights are violated. In a civil case, a private party may sue another private party (the government can also sue a party for a civil law violation) to make that other party comply with a duty or pay for damage caused by a failure to comply with a duty.

Criminal law has to do with wrongs committed against so­ciety for which society demands redress. Local, state, or federal statutes pro­scribe criminal acts. Public officials, such as district attorneys, not victims or other private parties, prosecute criminal defendants on behalf of the state.

In a civil case, the object is to obtain remedies (such as damages) to compensate an injured party. In a criminal case, the object is to punish a wrongdoer to deter others from similar actions. Penalties for violations of criminal statutes in­clude fines and imprisonment, and in some cases, death.

Answers to Critical Thinking Questions

in the Features

**Beyond Our Borders—Critical Thinking**

***Does the civil law system offer any advantages over the common law system, or vice versa? Explain.*** The positive and negative aspects of the characteris­tics of each legal system make up its advantages and disadvantages. For ex­ample, on the one hand, a civil law system relies on a code of laws without re­gard to precedent. When a statute is clear, this can make the application of law more standard. When a statute is ambiguously phrased, it can be subject to dif­ferent interpretations, however, which can lead to unpredictable applications. On the other hand, in a common law system, reliance on precedent is required, which can render the application of an unclear statute more predictable, at least in a give jurisdiction. But a statute that is not clearly phrased may not be uniformly interpreted and applied across jurisdictions.

**Linking Business Law to Corporate Management—Critical Thinking**

***Why are owner/operators of small businesses at a disad­vantage relative to large corporations when they attempt to decipher complex regulations that apply to their businesses?*** The larger the corpo­ration, the larger the staff of attorneys either within the company or available outside the company (so-called outside counsel). Consequently, when a new complex regulation is put into place by an administrative agency, the staff of the large corporation can focus on that new regulation. Whatever the cost of deciphering such a new regulation, that cost will be spread out over a much larger volume of goods or services that the large corporation sells. In contrast, a small business owner/operator rarely can pay significant fees to a specialized attorney who might help in deciphering the new regulation. Not only does the small business owner/operator have fewer financial resources, she or he can­not spread the cost of the specialized attorney over a large volume of goods or services sold.

Answers to Questions in the Practice and Review Feature

at the End of the Chapter

**1A.** ***Parties***

In this situation, the automobile manufacturers are the plaintiffs, and the state of California is the defendant.

**2A.** ***Remedy***

The plaintiffs are seeking an injunction, which is an equitable remedy, to pre­vent the state of California from enforcing its statute restricting carbon diox­ide emissions.

**3A.** ***Source of law***

This case involves a law passed by the California legislature and a federal statute, thus the primary source of law is statutory law.

**4A.** ***Finding the law***

Federal statutes are found in the *United States Code,* and California statutes are published in the *California Code*. You would look in both of these sources to find the relevant state and federal statutes.

Answer to Debate This Question in the Practice and Review Feature at the End of the Chapter

***Under the doctrine of* stare decisis*, courts are obligated to follow the precedents established in their jurisdictions unless there is a compelling reason not to. Should U.S. courts continue to adhere to this common law principle, given that our government now regulates so many areas by statute?*** Both England and the U.S. legal systems were constructed on the common law system. The doctrine of *stare decisis* has always been a major part of this system—courts should follow precedents when they are clearly established, excepted under compelling reasons. Even though more common law is being turned into statutory law, the doctrine of *stare decisis* is still valid. After all, even statutes have to be interpreted by courts. What better basis for judges to render their decisions than by basing them on precedents related to the subject at hand?

In contrast, some students may argue that the doctrine of *stare decisis* is passé. There is certainly less common law governing, say, environmental law than there was 100 years ago. Given that federal and state governments increasingly are regulating more aspects of commercial transactions between merchants and consumers, perhaps the courts should simply stick to statutory language when disputes arise.

Answers to Issue Spotters

at the End of the Chapter

**1A.** ***The First Amendment to the U.S. Constitution provides protection for the free exercise of religion. A state legis­lature enacts a law that outlaws all religions that do not derive from the Judeo-Christian tradition. Is this law valid within that state? Why or why not?*** No. The U.S. Constitution is the su­preme law of the land, and applies to all jurisdictions. A law in vio­lation of the Constitution (in this ques­tion, the First Amendment to the Constitution) will be declared un­constitutional.

**2A.** ***Apex Corporation learns that a federal administra­tive agency is considering a rule that will have a negative impact on the firm’s ability to do business. Does the firm have any opportunity to express its opin­ion about the pending rule? Explain.*** Yes. Administrative rulemaking starts with the publication of a notice of the rulemaking in the *Federal Register.* Among other details, this notice states where and when the proceedings, such as a public hearing, will be held. Proponents and opponents can of­fer their comments and concerns regarding the pending rule. After reviewing all the comments from the proceedings, the agency’s decision makers consider what was presented and draft the final rule.

Answers to Business Scenarios and Case Problems

**at the End of the Chapter**

**1–1A.**  ***Binding v. persuasive authority***

A decision of a court is binding on all inferior courts. Because no state’s court is inferior to any other state’s court, no state’s court is obligated to follow the decision of another state’s court on an issue. The decision may be persuasive, however, depending on the nature of the case and the particular judge hearing it. A decision of the United States Supreme Court on an issue is binding, like the decision of any court, on all inferior courts. The United States Supreme Court is the nation’s highest court, however, and thus, its decisions are bind­ing on all courts, including state courts.

**1**–**2A.** ***Sources of law***

**1.** The U.S. Constitution—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.

**2.** The federal statute—Under the U.S. Constitution, when there is a con­flict be­tween a federal law and a state law, the state law is rendered invalid.

**3.** The state statute—State statutes are enacted by state legislatures. Areas not covered by state statutory law are governed by state case law.

**4.** The U.S. Constitution—State constitutions are supreme within their respec­tive borders unless they conflict with the U.S. Constitution, which is the supreme law of the land.

**1–3A. *Remedies***

**1.** In a suit by Arthur Rabe against Xavier Sanchez, Rabe is the plain­tiff and San­chez is the defendant.

**2.** Specific performance is the remedy that includes an order to a party to perform a contract as promised.

**3.** Rescission is a remedy that includes an order to cancel a contract.

**4.** In both cases, these remedies are remedies in equity.

**1–4A.**  ***Philosophy of law***

Crimes against humanity constituted, at the time of the Nuremberg trials, a new in­ternational crime, consisting of “murder, extermination, enslavement, deporta­tion, and other inhumane acts committed against any civilian popula­tion, be­fore or during the war, or persecutions on political, racial or religious ground.” In response to the defendants’ assertion that they had only been fol­lowing or­ders, the Nuremberg judges explained in part that these were famil­iar crimes within domestic jurisdictions and that thus the accused must have known, when they committed their acts, that they would be considered crimi­nal.

In terms of a philosophy of law, it might be said that these criminals vio­lated “natural law.” The oldest and one of the most significant schools of juris­pru­dence is the natu­ral law school. Those who adhere to the natural law school of thought believe that government and the legal system should reflect universal moral and ethi­cal principles that are inherent in human nature. Because natural law is uni­versal, it takes on a higher order than positive, or conven­tional, law. The natu­ral law tradition presupposes that the legitimacy of con­ventional, or positive, law derives from natural law. Whenever it con­flicts with natural law, conven­tional law loses its legitimacy. For example, a precept of natural law may be that murder is wrong, which is a value reflected by specific laws prohibiting murder. If a specific, written law *requires* murder, it conflicts with the natural law precept, in which case individuals should dis­obey the written law and obey the natural law.

**1–5A. Spotlight on AOL*—Common law***

The doctrine of *stare decisis* is the process of deciding case with reference to former decisions, or precedents. Under this doctrine, judges are obligated to follow the precedents established within their jurisdiction.

In this problem, the enforceability of a forum selection clause is at issue. There are two precedents mentioned in the facts that the court can apply The United States Supreme Court has held that a forum selection clause is unenforceable “if enforcement would contravene a strong public policy of the forum in which suit is brought.” And California has declared in other cases that the AOL clause contravenes a strong public policy. If the court applies the doctrine of *stare decisis*, it will dismiss the suit.

In the actual case on which this problem is based, the court determined that the clause is not enforceable under those precedents.

**1–6A. Business Case Problem with Sample Answer*—Reading citations***

The court’s opinion in this case—*WorldwideTechServices, LLC v. Commissioner of Revenue,* 479 Mass. 20, 91 N.E.3d 650 (2018)—can be found in Volume 479 of the *Massachusetts Reports* on page 20, and in Volume 91 of West’s *North Eastern Reporter*, Third Series, on page 650. The Supreme Judicial Court of Massachusetts issued the opinion in 2018.

**1–7A. A Question of Ethics—*The doctrine of precedent***

**1.** In this problem, White operated a travel agency. To obtain low fares for her clients, she submitted fake military identification cards to the airlines. She was charged with the crime of identity theft, which requires the “use” of another’s identification. In a previous case, David Miller, to obtain a loan, represented that certain investors approved of the loan when they did not. Miller’s conviction for identity theft was overturned on the ground that he had not “used” the investors’ identities—he had only *said* that they had done something when they had not. In a second case, Kathy Medlock, the operator of an ambulance service, obtained payment for transporting patients for whom there was no medical necessity to do so by forging a physician’s signature. White’s actions most closely resemble Medlock’s forgery. White not only told the airlines that her clients were members of the military—she created false identification cards and sent them to the airlines.

In all of these cases, the defendants lied about their actions. Whether or not their conduct fell within the meaning of a word within a statute, or matched the actions of a perpetrator in another case, none of these parties can claim to have acted ethically. Honesty is a part of ethical behavior in any set of circumstances, and none these defendants were truthful about their actions.

In the actual case on which this problem is based, the court concluded that White’s actions were most similar to Medlock’s. White was convicted of identity theft. On appeal, the U.S. Court of Appeals for the Sixth Circuit affirmed the conviction.

**2.** No, in the two cases cited by the *White* court—and in the *White* case—there were no ethical differences in the actions of the parties.

Almost any definition of ethics, and any set of ethical standards, includes honesty as a component. In the *White* case, Sandra White lied to the airlines that her clients were members of the military, and created false identification cards to obtain cheaper fares. In the first case cited by the *White* court, David Miller, to obtain a loan, represented that certain investors approved of the loan when they did not. In the second case cited by the *White* court, Kathy Medlock, the operator of an ambulance service, obtained payment for transporting patients for whom there was no medical necessity to do so by forging a physician’s signature.

In all of these cases, the defendants lied. Whether or not their conduct fell within the meaning of a word within a statute, or matched the unlawful actions of each other, none of these parties can claim to have acted ethically. Honesty is a part of ethical behavior in any set of circumstances, and none these defendants were truthful.

**Critical Thinking and Writing Assignments**

**1–8A. Business Law Writing**

John’s argument is valid. Under the doctrine of *stare decisis*, judges are gener­ally bound to follow the precedents set in their jurisdictions by the judges who have decided similar cases. A judge does not always have to rule as other judges have, however. A judge can depart from precedent. One argument that a party might offer to counter an assertion of precedent is that the times have changed—the social, economic, political, or other cir­cumstances have changed—and thus it is time to change the law.

**1–9A. Time-Limited Group Assignment—*Court opinions***

**1.** A majority opinion is a written opinion outlining the views of the majority of the judges or justices deciding a particular case. A concurring opinion is a written opinion by a judge or justice who agrees with the conclusion reached by the ma­jority of the court but not necessarily with the legal reasoning that led the con­clusion.

**2.** A concurring opinion will voice alternative or additional reasons as to why the conclusion is warranted or clarify certain legal points concerning the issue. A dissenting opinion is a written opinion in which a judge or justice, who does not agree with the conclusion reached by the major­ity of the court, ex­pounds his or her views on the case.

**3.** Obviously, a concurring or dissenting opinion will not affect the case involved—because it has already been decided by majority vote. Nevertheless, such opinions often are used by another court later to support its position on a similar issue.

Answer to Critical Thinking Question

**in Appendix Exhibit 1A–3**

**Exhibit 1A–3—Critical Thinking—Legal Environment**

***Did the court hold that Yeasin had a right to post his tweets without being disciplined by the university? Explain.*** No, the court did not decide whether Yeasin had a First Amendment right to post his tweets without being disciplined by the university. The question before the court was whether KU and Dr. Durham violated clearly established law when Yeasin was expelled for his tweets and his misconduct. The court held that Yeasin, the plaintiff and appellant, failed to show such a violation.

The First Amendment states, “Congress shall make no law .  .  . abridging the freedom of speech.” The United States Supreme Court and other federal courts, however, permit schools to circumscribe students’ free speech rights in certain contexts. In the *Yeasin* case, in the court’s view, these broad statements of legal principle do not qualify as clearly established law. The court further concluded that the cases cited by Yeasin to argue the university could not discipline him for his tweets did not apply to his situation because the facts were not similar.

Considering these principles and cases, the court iterated that “at the intersection of university speech and social media, First Amendment doctrine is unsettled.” Yeasin could not establish that Dr. Durham violated clearly established law when she expelled him. And, the court concluded, in this case Dr. Durham and KU had a reasonable basis—Yeasin’s conduct and his tweets—to expel him from the university. His presence on campus would disrupt A.W.’s education and interfere with her rights.