Part One:

The Legal Environment of Business

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ETHICS QUESTIONS RAISED IN THIS PART

1. Are all laws moral? Should all laws be moral? How should morality be determined?

2. Are laws always just?

3. Which is more important, morality or justice?

4. Why is there a difference between the treatment of cases brought under civil law and those brought under criminal law? Should there be a difference?

5. In some cultures being involved in a lawsuit is something about which to be ashamed. Our society has been criticized for being overly litigious. In fact, we even go on television to sue in "Judge Judy" and other similar shows. Is our culture “sue-happy?” Should access to the court system be restricted?

6. From an ethical perspective, what obligations does a person who has been harmed by another person or by a business have to attempt settlement of the matter through negotiation before resorting to a lawsuit?

7. The Bill of Rights was drafted to protect individuals from their own government, not from criminals. Because of this, the defendant in a criminal case has rights that are constitutionally protected. The victims of the crime do not have as many rights in the criminal trial as does the defendant. Should our legal system pay more attention to the victims of crime? How should the victim's rights be protected in a criminal trial?

8. Is a no-fault system covering torts ethically preferable to the fault-based negligence system we now have?

9. Are businesses morally responsible for injuries that are caused by products they sell or manufacture? What about copy-cat injuries?

ACTIVITIES AND RESEARCH PROBLEMS

1. Have students draw a diagram of two overlapping circles, with one circle labeled “Moral” and the other labeled “Legal.” The area of overlap would be both moral and legal. Then list several controversial topics of current interest (e.g., abortion, capital punishment, marijuana smoking, etc.) for students to place within an area of the diagram (or outside the circles if it is neither moral nor legal). Can any of these issues be absolutely determined to be moral or immoral?
2. Are there any laws in our country’s history that have been repealed on the basis of their immorality? Are there any laws still in existence that should be repealed? Have students discuss their opinions.
3. How does American common law differ from English common law?
4. Have students write a fictitious case involving questionable ethics in a business decision.
5. For a general discussion of law, or preceding the study of criminal law and procedure recruit someone outside the class to rush in and commit a "crime" such as stealing the professor's textbook. After the stranger leaves, have the students write a description of what happened. Then compare the details of the eyewitnesses and discuss the legal implications of the event.
6. Have students make a list of the key events in their lives, then have them list and discuss laws that relate to those events.
7. Research the historic legal codes of other civilizations, such as the Hebrews and Babylonians, or of other societies around the world today, and compare the crimes, punishments, and criminal procedures to those in the United States today.
8. Have students prepare a survey form on crimes affecting businesses. The form could include types of crime that affect the business (such as customer theft, employee theft, and bad checks); the amount of loss; the cost of the crimes; and the cost of security. Then have the whole or part of the class interview the managers of businesses. Have the students report to the class and compare the results with local and national statistics available from law enforcement professionals.

9. In recent years many states have instituted victim's assistance programs and crime victim's restitution programs. Investigate to find whether your state has such programs. Compare programs in various states.

Chapter 1

Introduction To Law

Nature of Law [1-1] Sources of Law [1-3]

Definition of Law [1-1a] Constitutional Law [1-3a]

Functions of Law [1-1b] Judicial Law [1-3b]

Law and Morals [1-1c] Common Law

Law and Justice [1-1d] Equity

Classification of Law [1-2] Restatements of Law

Substantive and Procedural Law [1-2a] Legislative Law [1-3c]

Public and Private Law [1-2b] Treaties

Civil and Criminal Law [1-2c] Executive Orders

Administrative Law [1-3d]

Legal Analysis [1-4]

Cases in This Chapter

Ryan v. Friesenhahn (Given as an example of how to brief a case)

Chapter Outcomes

After reading and studying this chapter, the student should be able to:

* Identify and describe the basic functions of law.
* Distinguish between (1) law and justice and (2) law and morals.
* Distinguish between (1) substantive and procedural law, (2) public and private law, and (3) civil and criminal law.
* Identify and describe the sources of law.
* Explain the principle of *stare decisis*.

TEACHING NOTES

Law concerns the relations between and among individuals as those relations affect social and economic order. It affects the rights and duties of every citizen and many non-citizens.

Law is both **prohibitory**, meaning certain acts must not be committed, and **mandatory**, meaning certain acts must be done, sometimes in a set way. Additionally, law is **permissive**: certain acts are allowed, but not required by the law.

1-1 Nature of Law

The law is a continuously changing process of developing a workable set of rules that balance the individual and group rights of an evolving society.

1-1a Definition of Law

Legal scholars have defined law in various ways, including:

* “predictions of the way that a court will decide specific legal questions”
* “a rule of civil conduct prescribed by the supreme power in a state, commanding what is right, and prohibiting what is wrong”
* a general command that a state or sovereign makes to those who are subject to its authority by laying down a course of action enforced by judicial or administrative tribunals.

Most legal scholars would agree with Rosco Pound, that the term “law” has multiple meanings and that defining it is not a simple task.

\*\*\* Chapter Outcome \*\*\*

Identify and describe the basic functions of law.

1-1b Functions of Law

The functions of law are to maintain stability in the social, political, and economic system through (1) dispute resolution, (2) protection of property, and (3) the preservation of the state while at the same time permitting ordered change.

1. Disputes are inevitable in a complex society and may involve criminal or non-criminal matters. Law provides rules to resolve disputes and avoid personal revenge.

2. Law protects ownership of property and allows for agreements (contracts) to exchange property. (This text deals with many aspects of this including contracts, sales, commercial paper, and business associations.)

1. Law preserves the state. It ensures that changes are result of elections, legislation, and referenda rather than revolution, sedition, and rebellion.

1-1c Legal Sanctions

Sanctions are the means by which the law enforces the decisions of the court, such as fines, imprisonment and capital punishment.

\*\*\* Chapter Outcome \*\*\*

Distinguish between law and justice. Distinguish between law and morals.

1-1d Law and Morals

Though law is affected by morals, law and morality are not the same. Some actions have no moral implications but have legal sanctions, whereas other actions have no legal sanctions but do have moral implications. Some actions have both moral impact and legal sanction.

NOTE: See Figure 1-1: Law and Morals.

1-1e Law and Justice

Law and justice are distinct but interrelated concepts.

• Justice may be defined as “the fair, equitable, and impartial treatment of the competing interests and desires of individuals and groups, with due regard for the common good.”

• Justice depends on the law, but the law does not guarantee justice, since laws can be unjust. (Think back to “legal” slavery and the “legal” actions of Nazi Germany or of the South African apartheid government.)

1-2 Classification of Law

Because the law is vast, it is helpful to organize it into categories such as: (1) substantive and procedural, (2) public and private, and (3) civil and criminal.

Basic to understanding these classifications are the terms right and duty. A **right** is the ability of a person, with the aid of the law, to require another person to perform or to refrain from performing a certain act. A **duty** is the obligation the law imposes upon a person to perform or to refrain from performing a certain act. Duty and right exist together: a person cannot have a right without some other person (or all persons) having the corresponding duty.

NOTE: See textbook Figure 1-2 which outlines the classifications of law.

\*\*\* Chapter Outcome \*\*\*

Distinguish between (1) substantive and procedural law, (2) public law and private law,   
and (3) civil law and criminal law.

1-2a Substantive and Procedural Law

Substantive law creates, defines, and regulates legal rights and duties. Procedural law sets forth rules for enforcing those rights that are created by the substantive law.

1-2b Public and Private Law

Public law is the branch of substantive law that deals with the government's rights and powers and its relationship to individuals or groups.

Private law is that part of substantive law governing individuals and legal entities (such as corporations) in their relationships with one another.

1-2c Civil and Criminal Law

Civil law defines duties and deals with the rights and duties of individuals among themselves. (It is part of private law.)

NOTE: Civil law is not the same as a civil law system, discussed later in this chapter.

Criminal law establishes duties and involves offenses against the community. (It is part of public law.)

The purpose of the civil law is to compensate the injured party (plaintiff), while the purpose of criminal law is to punish the wrongdoer. Typically, the civil law awards money for damages or an order for the defendant to behave in a certain way, while criminal law imposes a fine or imprisonment on the guilty party. The party bringing a civil action has the burden of proof, which he must support with a preponderance of the evidence (meaning the greater weight). The government bringing a criminal case must proof the defendant’s guilt beyond a reasonable doubt, which is a significantly higher burden of proof than that in a civil case.

NOTE: See textbook Figure 1-3, which compares civil and criminal law.

\*\*\* Chapter Outcomes \*\*\*

Identify and describe the sources of law. Explain the principle of *stare decisis*.

1-3 SOURCES OF LAW

• Federal and state constitutions

• Federal treaties (agreements between or among independent nations)

• Federal and state statutes (laws passed by a legislative body such as the U.S. Congress or the legislature of a state)

• Executive orders (legislation issued by a President or governor)

• Ordinances of local municipal governments

• Rules and regulations of federal and state administrative agencies

• Federal and state court decisions

NOTE: See Figure 1-3, Hierarchy of Law

1-3a Constitutional Law

A constitution sets forth the basic principles by which a government is guided, as well as the limitations on governmental authority. The U.S. Constitution is the supreme law of the nation; a state constitution is the highest law within that state. Federal law is supreme in cases of conflict with state law.

One of the fundamental principles of the U.S. Constitution is **Judicial Review**, which is the power of courts to determine constitutionality of all laws.

1-3b Judicial Law

Case decisions establish precedent in our **common law system** and must also be consulted when researching a legal question. In the common law system, parties to a dispute initiate and conduct litigation (an **adversary system**). The principle of *stare decisis* requires that inferior courts stay consistent with prior decisions of higher courts on cases with similar facts.

A **civil law system**, which is less prevalent than common law within the United States, depends on comprehensive legislative enactments (called codes) and an inquisitorial system of determining disputes. In the **inquisitorial system**, the court, rather than the parties, initiates litigation, investigates pertinent facts, and conducts the presentation of evidence.

**Common Law —** a body of law established by previous rulings of courts in a common law system. These decisions serve as precedents for later cases.

**Equity —** a supplementary system of judicial relief separate from the common law, based upon settled rules of fairness, justice and honesty. Remedies include: **specific performance, injunction, reformation,** and **rescission**.

In most jurisdictions, a single court administers both common law and equity.

**Restatements of Law —** The large and growing volume of court decisions in the United States led to the Restatements of Law, an orderly restatement of the general common law. It is now regarded as the authoritative statement of the common law of the United States. It covers many areas, including torts, contracts, agency, property, and trusts. The Restatements were written by the American Law Institute (ALI), a distinguished group of lawyers, judges, and law professors. Currently the ALI is made up of more than 4,300 members.

1-3c Legislative Law

Legislative law consists of statutes passed by legislatures. Statutes may repeal judge-made law as long as the statute is not unconstitutional. Today, most new laws come through the legislative branch because they can choose the issues that need attention while courts can only deal with issues in the cases brought before them.

The need for uniformity among state statutes led to the codification of large parts of business law. The most successful example of this effort is the **Uniform Commercial Code (UCC)**, prepared under the joint sponsorship and direction of the ALI and the Uniform Law Commission (ULC), which is also known as the National Conference of Commissioners on Uniform State Laws. All fifty states, the District of Columbia, and the Virgin Islands have adopted the UCC. (Louisiana has adopted only part of the UCC.)

The ULC has drafted more than 300 uniform laws including the Uniform Partnership Act, the Uniform Limited Partnership Act, and the Uniform Probate Code. The ALI has developed a number of model statutory formulations, including the Model Code of Evidence, the Model Penal Code, a Model Land Development Code, and a proposed Federal Securities Code. In addition, the American Bar Association has promulgated the Model Business Corporation Act.

**Treaties —** Agreements between or among independent nations; if signed by the President and approved by the Senate, it has the legal force of a federal statute.

**Executive Orders —** The President has the power to issue executive orders, which carry the authority of a law.

1-3d Administrative Law

The branch of public law that governs the powers and procedures of governmental entities (other than courts and legislatures); often involves public health, safety and welfare. Administrative law is created by administrative agencies in the form of rules, regulations, orders, and decisions to carry out the regulatory powers and duties of those agencies.

1-4 Legal Analysis

While all U.S. Supreme Court decisions are reported, not every case decided by the U.S. District Courts and the U.S. Courts of Appeals are reported. Each circuit has established rules determining which decisions are published. Decisions in state trial courts generally are not published but are filed in the office of the clerk of the court. Decisions of state courts of appeals are published in volumes called “reports,” numbered consecutively. Some states rely on a commercial reporter and no longer publish official reports. The decisions of courts in the federal system are found in a number of reports.

For instance, *Lefkowitz v. Great Minneapolis Surplus Store, Inc*., 251 Minn. 188, 86 N.W.2d 689 (1957), indicates that the opinion in this case may be found in Volume 251 of the official Minnesota Reports at page 188; and in Volume 86 of the North Western Reporter, Second Series, at page 689; and that the opinion was delivered in 1957.

Normally, the reported opinion in a case includes:

1. the essential facts, the nature of the action, the parties, what happened to bring about the controversy, what happened in the lower court, and what pleadings are material;

2. the issues of law or fact;

3. the legal principles involved;

4. the application of these principles; and the decision.

A serviceable method by which students may analyze and brief cases after reading and comprehending the opinion is to write a brief containing the following:

1. the facts of the case
2. the issue or question involved
3. the decision of the court
4. the reasons for the decision

Example of Briefed Case

The following case is printed both in its entirety and in briefed form in the student’s textbook. It is printed only in briefed form here. The purpose of including this case is to give an example of how to brief a case.

Brief of CASE

Ryan v. Friesenhahn

**I. Facts:** Todd Friesenhahn, son of Nancy and Frederick Friesenhahn, held an open invitation party at his parent's home that encouraged guests to bring their own bottle. Sabrina Ryan attended the party, became intoxicated, and was involved in a fatal accident after she left the party. Sandra and Stephen Ryan, Sabrina’s parents, sued the Friesenhahns for negligence, alleging that the Friesenhahns were aware of underage drinking at the party and of Sabrina's condition when she left the party. The trial court granted summary judgment for the Friesenhahns.

**II. Issue:** Is a social host who serves alcoholic beverages to a minor liable in negligence for harm suffered by the minor as a result of the minor’s intoxication?

**III. Decision:** In favor of the Ryans. Summary judgment reversed and case remanded to the trial court.

**IV. Reasons:** Accepting the Ryans’ allegations as true, the Friesenhahns were aware that minors possessed and consumed alcohol on their property and specifically allowed Sabrina to become intoxicated. The Texas Alcoholic Beverage Code provides that a person commits an offense if, with criminal negligence, he “makes available an alcoholic beverage to a minor.” A violation of a statute constitutes negligence *per* *se* if the injured party is a member of the class protected by the statute. Since the Alcoholic Beverage Code was designed to protect the general public and minors in particular, Sabrina is a member of the class protected by the Code. Therefore, we find that the Ryans stated a cause of action against the Friesenhahns for the violation of the Alcoholic Beverage Code

In considering common-law negligence as a basis for social host liability, the Texas Supreme Court has held that there are two practical reasons for not imposing a third-party duty on social hosts who provide alcohol to adult guests: first, the host cannot reasonably know the extent of his guests' alcohol consumption level; second, the host cannot reasonably be expected to control his guests' conduct. However, this rationale does not apply where the guest is a minor. The adult social host need not estimate the extent of a minor's alcohol consumption because serving minors any amount of alcohol is a criminal offense. Furthermore, the social host may control the minor, with whom there is a special relationship, analogous to that of parent-child.