Eleventh Edition

BUSINESS LAW

Text and Cases

Legal, Ethical, Global, and E-Commerce Environment

Clarkson Miller Jentz Cross

BUSINESS LAW, 11th Edition
TEXT & CASES
Legal, Ethical, Global, and E-Commerce Environments

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Library of Congress Control Number: 2008921490

Student's Edition:
ISBN-13: 978-0-324-65522-3
ISBN-10: 0-324-65522-3

Instructor's Edition:
ISBN-13: 978-0-324-65531-5
ISBN-10: 0-324-65531-2

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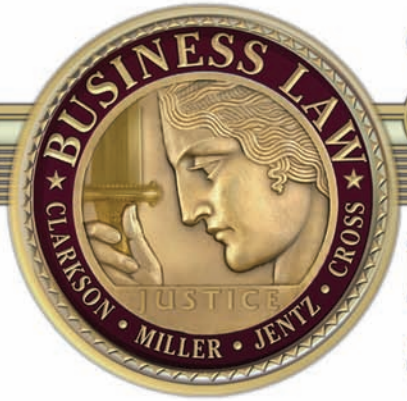


CHAPTER 1

Introduction to Law and Legal Reasoning

One of the important functions of law in any society is to provide stability, predictability, and continuity so that people can be sure of how to order their affairs. If any society is to survive, its citizens must be able to determine what is legally right and legally wrong. They must know what sanctions will be imposed on them if they commit wrongful acts. If they suffer harm as a result of others' wrongful acts, they must know how they can seek redress. By setting forth the rights, obligations, and privileges of citizens, the law enables individuals to go about their business with confidence and a certain degree of predictability. The stability and predictability created by the law provide an essential framework for all civilized activities, including business activities.

What do we mean when we speak of "the law"? Although this term has had, and will continue to have, different definitions, they are all based on a general observation: at a minimum, **law** consists of *enforceable rules governing relationships among individuals and between individuals and their society*. These "enforceable rules" may consist of unwritten principles of behavior established by a nomadic tribe. They may be set forth in a law code, such as the Code of Hammurabi in ancient Babylon (c. 1780 B.C.E.) or the law code of one of today's European nations. They may consist of written laws and court decisions created by modern legislative and judicial bodies, as in the United States. Regardless of how such rules are created, they all have one thing in common: they establish rights, duties, and privileges that are consistent with the values and beliefs of their society or its ruling group.

Those who embark on a study of law will find that these broad statements leave unanswered some important questions concerning the nature of law. Part of the study of law, often referred to as **jurisprudence,** involves learning about different schools of jurisprudential thought and discovering how the approaches to law characteristic of each school can affect judicial decision making.

We open this introductory chapter with an examination of that topic. We then look at an important question for any student reading this text: How does the legal environment affect business decision making? We next describe the basic sources of American law, the common law tradition, and some general classifications of law. We conclude the chapter with sections offering practical guidance on several topics, including how to find the sources of law discussed in this chapter (and referred to throughout the text) and how to read and understand court opinions.

Schools of Jurisprudential Thought

You may think that legal philosophy is far removed from the practical study of business law and the legal environment. In fact, it is not. As you will learn in the chapters of this text, how judges apply the law to specific disputes, including disputes relating to the business world, depends in part on their philosophical approaches to law.

Clearly, judges are not free to decide cases solely on the basis of their personal philosophical views or on their opinions about the issues before the court. A judge's function is not to *make* the laws—that is the function of the legislative branch of government—but

to interpret and apply them. From a practical point of view, however, the courts play a significant role in defining what the law is. This is because laws enacted by legislative bodies tend to be expressed in general terms. Judges thus have some flexibility in interpreting and applying the law. It is because of this flexibility that different courts can, and often do, arrive at different conclusions in cases that involve nearly identical issues, facts, and applicable laws. This flexibility also means that each judge's unique personality, legal philosophy, set of values, and intellectual attributes necessarily frame the judicial decision-making process to some extent.

Over time several significant schools of legal, or jurisprudential, thought have evolved. We now look at some of them.

The Natural Law School

An age-old question about the nature of law has to do with the finality of a nation's laws, such as the laws of the United States at the present time. For example, what if a particular law is deemed to be a "bad" law by a substantial number of that nation's citizens? Must a citizen obey the law if it goes against his or her conscience to do so? Is there a higher or universal law to which individuals can appeal? One who adheres to the natural law tradition would answer these questions in the affirmative. **Natural law** denotes a system of moral and ethical principles that are inherent in human nature and that people can discover through the use of their natural intelligence, or reason.

The natural law tradition is one of the oldest and most significant schools of jurisprudence. It dates back to the days of the Greek philosopher Aristotle (384–322 B.C.E.), who distinguished between natural law and the laws governing a particular nation. According to Aristotle, natural law applies universally to all humankind.

The notion that people have "natural rights" stems from the natural law tradition. Those who claim that a specific foreign government is depriving certain citizens of their human rights implicitly are appealing to a higher law that has universal applicability. The question of the universality of basic human rights also comes into play in the context of international business operations. Should rights extended to workers in the United States, such as the right to be free of discrimination in the workplace, be extended to workers employed by a U.S. firm doing business in another country that does not provide for such rights? This question is rooted implicitly in a concept of universal rights that has its origins in the natural law tradition.

The Positivist School

In contrast, **positive law,** or national law (the written law of a given society at a particular point in time), applies only to the citizens of that nation or society. Those who adhere to the **positivist school** believe that there can be no higher law than a nation's positive law. According to the positivist school, there is no such thing as "natural rights." Rather, human rights exist solely because of laws. If the laws are not enforced, anarchy will result. Thus, whether a law is "bad" or "good" is irrelevant. The law is the law and must be obeyed until it is changed—in an orderly manner through a legitimate lawmaking process. A judge with positivist leanings probably would be more inclined to defer to an existing law than would a judge who adheres to the natural law tradition.

The Historical School

The **historical school** of legal thought emphasizes the evolutionary process of law by concentrating on the origin and history of the legal system. Thus, this school looks to the past to discover what the principles of contemporary law should be. The legal doctrines that have withstood the passage of time—those that have worked in the past—are deemed best suited for shaping present laws. Hence, law derives its legitimacy and authority from adhering to the standards that historical development has shown to be workable. Adherents of the historical school are more likely than those of other schools to strictly follow decisions made in past cases.

Legal Realism

In the 1920s and 1930s, a number of jurists and scholars, known as legal realists, rebelled against the historical approach to law. **Legal realism** is based on the idea that law is just one of many institutions in society and that it is shaped by social forces and needs. The law is a human enterprise, and judges should take social and economic realities into account when deciding cases. Legal realists also believe that the law can never be applied with total uniformity. Given that judges are human beings with unique personalities, value systems, and intellects, different judges will obviously bring different reasoning processes to the same case.

Legal realism strongly influenced the growth of what is sometimes called the **sociological school** of jurisprudence. This school views law as a tool for promoting justice in society. In the 1960s, for example, the justices of the United States Supreme Court played a leading role in the civil rights movement by upholding long-neglected laws calling for equal treatment for all Americans, including African Americans and other minorities. Generally, jurists who adhere to this philosophy of law are more likely to depart from past decisions than are those jurists who adhere to the other schools of legal thought. *Concept Summary 1.1* reviews the schools of jurisprudential thought.

SECTION 2 Business Activities and the Legal Environment

As those entering the world of business will learn, laws and government regulations affect virtually all business activities—from hiring and firing decisions to workplace safety, the manufacturing and marketing of products, business financing, and more. To make good business decisions, a basic knowledge of the laws and regulations governing these activities is beneficial—if not essential. Realize also that in today's world a knowledge of "black-letter" law is not enough. Businesspersons are also pressured to make ethical decisions. Thus, the study of business law necessarily involves an ethical dimension.

Many Different Laws May Affect a Single Business Transaction

As you will note, each chapter in this text covers a specific area of the law and shows how the legal rules in that area affect business activities. Though compartmentalizing the law in this fashion promotes conceptual clarity, it does not indicate the extent to which a number of different laws may apply to just one transaction.

Consider an example. Suppose that you are the president of NetSys, Inc., a company that creates and maintains computer network systems for its clients, including business firms. NetSys also markets software for customers who require an internal computer network. One day, Hernandez, an operations officer for Southwest Distribution Corporation (SDC), contacts you by e-mail about a possible contract concerning SDC's computer network. In deciding whether to enter

CONCEPT SUMMARY 1.1 Schools of Jurisprudential Thought

School of Thought	Description
THE NATURAL LAW SCHOOL	One of the oldest and most significant schools of legal thought. Those who believe in natural law hold that there is a universal law applicable to all human beings. This law is discoverable through reason and is of a higher order than positive (national) law.
THE POSITIVIST SCHOOL	A school of legal thought centered on the assumption that there is no law higher than the laws created by the government. Laws must be obeyed, even if they are unjust, to prevent anarchy.
THE HISTORICAL SCHOOL	A school of legal thought that stresses the evolutionary nature of law and that looks to doctrines that have withstood the passage of time for guidance in shaping present laws.
LEGAL REALISM	A school of legal thought, popular during the 1920s and 1930s, that left a lasting imprint on American jurisprudence. Legal realists generally advocated a less abstract and more realistic and pragmatic approach to the law, an approach that would take into account customary practices and the circumstances in which transactions take place. Legal realism strongly influenced the growth of the *sociological school* of jurisprudence, which views law as a tool for promoting social justice.

into a contract with SDC, you should consider, among other things, the legal requirements for an enforceable contract. Are there different requirements for a contract for services and a contract for products? What are your options if SDC **breaches** (breaks, or fails to perform) the contract? The answers to these questions are part of contract law and sales law.

Other questions might concern payment under the contract. How can you guarantee that NetSys will be paid? For example, if payment is made with a check that is returned for insufficient funds, what are your options? Answers to these questions can be found in the laws that relate to negotiable instruments (such as checks) and creditors' rights. Also, a dispute may occur over the rights to NetSys's software, or there may be a question of liability if the software is defective. Questions may even be raised as to whether you and Hernandez had the authority to make the deal in the first place. A disagreement may arise from other circumstances, such as an accountant's evaluation of the contract. Resolutions of these questions may be found in areas of the law that relate to intellectual property, e-commerce, torts, product liability, agency, business organizations, or professional liability.

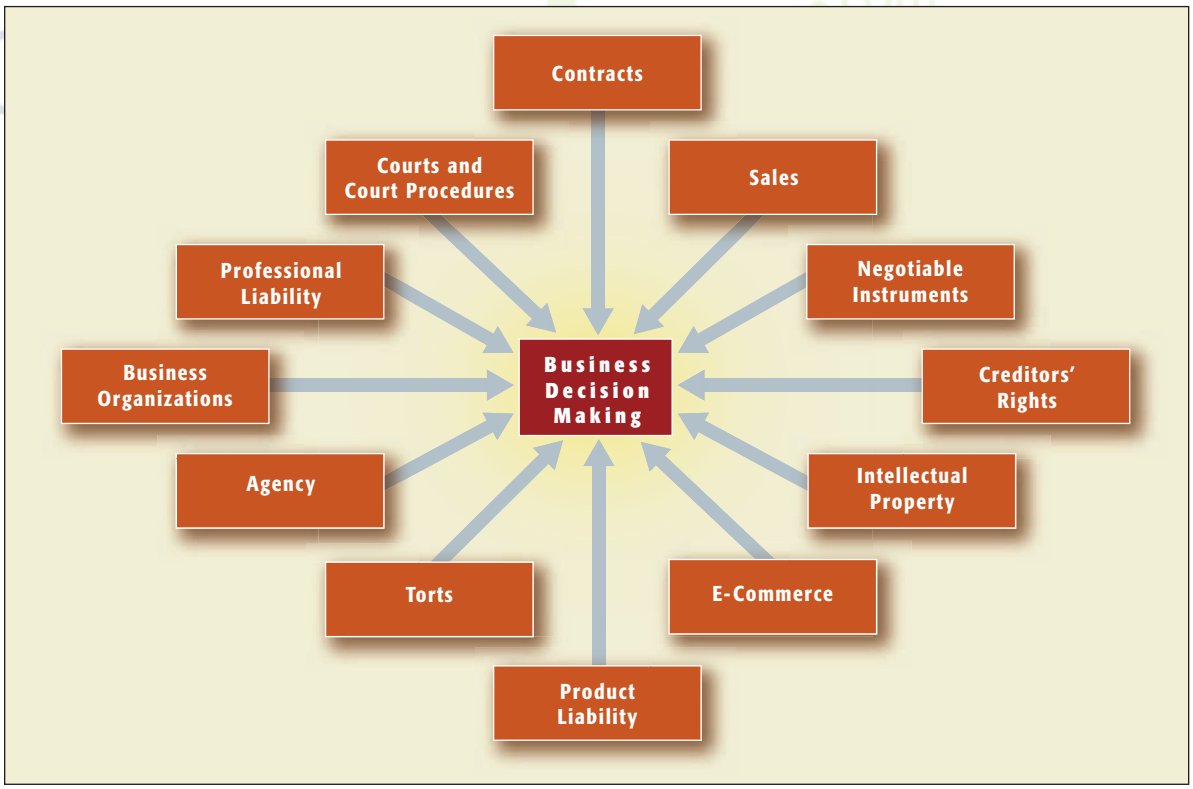
Finally, if any dispute cannot be resolved amicably, then the laws and the rules concerning courts and court procedures spell out the steps of a lawsuit. Exhibit 1–1 illustrates the various areas of law that may influence business decision making.

Ethics and Business Decision Making

Merely knowing the areas of law that may affect a business decision is not sufficient in today's business world. Businesspersons must also take ethics into account. As you will learn in Chapter 5, *ethics* is generally defined as the study of what constitutes right or wrong behavior. Today, business decision makers need to consider not just whether a decision is legal, but also whether it is ethical.

Throughout this text, you will learn about the relationship between the law and ethics, as well as about some of the types of ethical questions that often arise in the business context. For example, the unit-ending *Focus on Ethics* features in this text are devoted solely to the exploration of ethical questions pertaining to selected topics treated within the unit. We have also added several new features for this edition that stress

EXHIBIT 1–1 • Areas of the Law That May Affect Business Decision Making



the importance of ethical considerations in today's business climate. These include the new *Ethical Dimension* questions that conclude many of the cases presented in this text and the *Insight into Ethics* features that appear in selected chapters. We have also included *A Question of Ethics* case problems at the ends of the chapters to introduce you to the ethical aspects of specific cases involving real-life situations. Additionally, Chapter 5 offers a detailed look at the importance of ethical considerations in business decision making.

SECTION 3 Sources of American Law

There are numerous sources of American law. *Primary sources of law*, or sources that establish the law, include the following:

1. The U.S. Constitution and the constitutions of the various states.
2. Statutory law—including laws passed by Congress, state legislatures, or local governing bodies.
3. Regulations created by administrative agencies, such as the Food and Drug Administration.
4. Case law and common law doctrines.

We describe each of these important sources of law in the following pages.

Secondary sources of law are books and articles that summarize and clarify the primary sources of law. Examples include legal encyclopedias, treatises, articles in law reviews, and compilations of law, such as the *Restatements of the Law* (which will be discussed shortly). Courts often refer to secondary sources of law for guidance in interpreting and applying the primary sources of law discussed here.

Constitutional Law

The federal government and the states have separate written constitutions that set forth the general organization, powers, and limits of their respective governments. **Constitutional law** is the law as expressed in these constitutions.

According to Article VI of the U.S. Constitution, the Constitution is the supreme law of the land. As such, it is the basis of all law in the United States. A law in violation of the Constitution, if challenged, will be declared unconstitutional and will not be enforced, no matter what its source. Because of its importance in the American legal system, we present the complete text of the U.S. Constitution in Appendix B.

The Tenth Amendment to the U.S. Constitution reserves to the states all powers not granted to the federal government. Each state in the union has its own constitution. Unless it conflicts with the U.S. Constitution or a federal law, a state constitution is supreme within the state's borders.

Statutory Law

Laws enacted by legislative bodies at any level of government, such as the statutes passed by Congress or by state legislatures, make up the body of law generally referred to as **statutory law.** When a legislature passes a statute, that statute ultimately is included in the federal code of laws or the relevant state code of laws (these codes are discussed later in this chapter).

Statutory law also includes local **ordinances**—statutes (laws, rules, or orders) passed by municipal or county governing units to govern matters not covered by federal or state law. Ordinances commonly have to do with city or county land use (zoning ordinances), building and safety codes, and other matters affecting the local community.

A federal statute, of course, applies to all states. A state statute, in contrast, applies only within the state's borders. State laws thus may vary from state to state. No federal statute may violate the U.S. Constitution, and no state statute or local ordinance may violate the U.S. Constitution or the relevant state constitution.

Uniform Laws The differences among state laws were particularly notable in the 1800s, when conflicting state statutes frequently made trade and commerce among the states difficult. To counter these problems, in 1892 a group of legal scholars and lawyers formed the National Conference of Commissioners on Uniform State Laws (NCCUSL) to draft **uniform laws,** or model laws, for the states to consider adopting. The NCCUSL still exists today and continues to issue uniform laws.

Each state has the option of adopting or rejecting a uniform law. *Only if a state legislature adopts a uniform law does that law become part of the statutory law of that state.* Note that a state legislature may adopt all or part of a uniform law as it is written, or the legislature may rewrite the law however the legislature wishes. Hence, even though many states may have adopted a uniform law, those states' laws may not be entirely "uniform."

The earliest uniform law, the Uniform Negotiable Instruments Law, was completed by 1896 and adopted

in every state by the early 1920s (although not all states used exactly the same wording). Over the following decades, other acts were drawn up in a similar manner. In all, more than two hundred uniform acts have been issued by the NCCUSL since its inception. The most ambitious uniform act of all, however, was the Uniform Commercial Code.

The Uniform Commercial Code The Uniform Commercial Code (UCC), which was created through the joint efforts of the NCCUSL and the American Law Institute,[1] was first issued in 1952. All fifty states,[2] the District of Columbia, and the Virgin Islands have adopted the UCC. It 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, normally will be enforced.

As you will read in later chapters, from time to time the NCCUSL revises the articles contained in the UCC and submits the revised versions to the states for adoption. During the 1990s, for example, four articles (Articles 3, 4, 5, and 9) were revised, and two new articles (Articles 2A and 4A) were added. Amendments to Article 1 were approved in 2001 and have now been adopted by a majority of the states. Because of its importance in the area of commercial law, we cite the UCC frequently in this text. We also present the UCC in Appendix C.

Administrative Law

Another important source of American law is **administrative law,** which consists of the rules, orders, and decisions of administrative agencies. An **administrative agency** is a federal, state, or local government agency established to perform a specific function. Administrative law and procedures, which will be examined in detail in Chapter 43, constitute a dominant element in the regulatory environment of business. Rules issued by various administrative agencies now affect virtually every aspect of a business's operations, including its capital structure and financing, its hiring and firing procedures, its relations with employees and unions, and the way it manufactures and markets its products.

Federal Agencies At the national level, numerous **executive agencies** exist within the cabinet departments of the executive branch. The Food and Drug Administration, for example, is an agency within the Department of Health and Human Services. Executive agencies are subject to the authority of the president, who has the power to appoint and remove officers of federal agencies. There are also major **independent regulatory agencies** at the federal level, such as the Federal Trade Commission, the Securities and Exchange Commission, and the Federal Communications Commission. The president's power is less pronounced in regard to independent agencies, whose officers serve for fixed terms and cannot be removed without just cause.

State and Local Agencies There are administrative agencies at the state and local levels as well. Commonly, a state agency (such as a state pollution-control agency) is created as a parallel to a federal agency (such as the Environmental Protection Agency). Just as federal statutes take precedence over conflicting state statutes, so federal agency regulations take precedence over conflicting state regulations.

Case Law and Common Law Doctrines

The rules of law announced in court decisions constitute another basic source of American law. These rules of law include interpretations of constitutional provisions, of statutes enacted by legislatures, and of regulations created by administrative agencies. Today, this body of judge-made law is referred to as **case law.** Case law—the doctrines and principles announced in cases—governs all areas not covered by statutory law or administrative law and is part of our common law tradition. We look at the origins and characteristics of the common law tradition in some detail in the pages that follow. See *Concept Summary 1.2* on the next page for a review of the sources of American law.

The Common Law Tradition

Because of our colonial heritage, much of American law is based on the English legal system, which originated in medieval England and continued to evolve in the following centuries. Knowledge of this system is necessary to understanding the American legal system today.

1. This institute was formed in the 1920s and consists of practicing attorneys, legal scholars, and judges.
2. Louisiana has not adopted Articles 2 and 2A (covering contracts for the sale and lease of goods), however.

CONCEPT SUMMARY 1.2
Sources of American Law

Source	Description
CONSTITUTIONAL LAW	The law as expressed in the U.S. Constitution and the state constitutions. The U.S. Constitution is the supreme law of the land. State constitutions are supreme within state borders to the extent that they do not violate a clause of the U.S. Constitution or a federal law.
STATUTORY LAW	Laws (statutes and ordinances) created by federal, state, and local legislatures and governing bodies. None of these laws may violate the U.S. Constitution or the relevant state constitution. Uniform statutes, when adopted by a state, become statutory law in that state.
ADMINISTRATIVE LAW	The rules, orders, and decisions of federal, state, or local government administrative agencies.
CASE LAW AND COMMON LAW DOCTRINES	Judge-made law, including interpretations of constitutional provisions, of statutes enacted by legislatures, and of regulations created by administrative agencies.

Early English Courts

The origins of the English legal system—and thus the U.S. legal system as well—date back to 1066, when 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 do this 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 country as a whole. What evolved in these courts was the beginning of the **common law**—a body of general rules that applied throughout the entire English realm. Eventually, the common law tradition became part of the heritage of all nations that were once British colonies, including the United States.

Courts of Law and Remedies at Law The early English king's courts could grant only very limited kinds of **remedies** (the legal means to enforce a right or redress a wrong). If one person wronged another in some way, the king's courts could award as compensation one or more of the following: (1) land, (2) items of value, or (3) money. The courts that awarded this compensation became known as **courts of law,** and the three remedies were called **remedies at law.** (Today, the remedy at law normally takes the form of monetary **damages**—an amount given to a party whose legal interests have been injured.) Even though the system introduced uniformity in the settling of disputes, when a complaining party wanted a remedy other than economic compensation, the courts of law could do nothing, so "no remedy, no right."

Courts of Equity and Remedies in Equity Equity is a branch of law, founded on what might be described as notions of justice and fair dealing, that seeks to supply a remedy when no adequate remedy at law is available. When individuals could not 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 a **chancellor,** who had the power to grant new and unique remedies. Eventually, formal chancery courts, or **courts of equity,** were established.

The remedies granted by the equity courts became known as **remedies in equity,** or equitable remedies. These remedies include *specific performance* (ordering a party to perform an agreement as promised), an *injunction* (ordering a party to cease engaging in a specific activity or to undo some wrong or injury), and *rescission* (the cancellation of a contractual obligation). We discuss these and other equitable remedies in more detail at appropriate points in the chapters that follow, particularly in Chapter 18.

As a general rule, today's courts, like the early English courts, will not grant equitable remedies

unless the remedy at law—monetary damages—is inadequate. For example, suppose that you form a contract (a legally binding agreement—see Chapter 10) to purchase a parcel of land that you think will be just perfect for your future home. Further suppose that the seller breaches this agreement. You could sue the seller for the return of any deposits or down payment you might have made on the land, but this is not the remedy you really seek. What you want is to have the court order the seller to go through with the contract. In other words, you want the court to grant the equitable remedy of specific performance because monetary damages are inadequate in this situation.

Equitable Maxims In fashioning appropriate remedies, judges often were (and continue to be) guided by so-called **equitable maxims**—propositions or general statements of equitable rules. Exhibit 1–2 lists some important equitable maxims. The last maxim listed in that exhibit—"Equity aids the vigilant, not those who rest on their rights"—merits special attention. It has become known as the equitable doctrine of **laches** (a term derived from the Latin *laxus,* meaning "lax" or "negligent"), and it can be used as a defense. A **defense** is an argument raised by the **defendant** (the party being sued) indicating why the **plaintiff** (the suing party) should not obtain the remedy sought. (Note that in equity proceedings, the party bringing a lawsuit is called the **petitioner,** and the party being sued is referred to as the **respondent.**)

The doctrine of laches arose to encourage people to bring lawsuits while the evidence was fresh. What constitutes a reasonable time, of course, varies according to the circumstances of the case. Time periods for different types of cases are now usually fixed by **statutes of limitations.** After the time allowed under a statute of limitations has expired, no action (lawsuit) can be brought, no matter how strong the case was originally.

Legal and Equitable Remedies Today

The establishment of courts of equity in medieval England resulted in two distinct court systems: courts of law and courts of equity. The systems had different sets of judges and granted different types of remedies. During the nineteenth century, however, most states in the United States adopted rules of procedure that resulted in the combining of courts of law and equity. A party now may request both legal and equitable remedies in the same action, and the trial court judge may grant either or both forms of relief.

The distinction between legal and equitable remedies remains relevant to students of business law, however, because these remedies differ. To seek the proper remedy for a wrong, one must know what remedies are available. Additionally, certain vestiges of the procedures used when there were separate courts of law and equity still exist. For example, a party has the right to demand a jury trial in an action at law, but not in an action in equity. Exhibit 1–3 on page 10 summarizes the procedural differences (applicable in most states) between an action at law and an action in equity.

The Doctrine of *Stare Decisis*

One of the unique features of the common law is that it is *judge-made* law. The body of principles and doctrines that form the common law emerged over time as judges decided legal controversies.

EXHIBIT 1–2 • Equitable Maxims

1. *Whoever seeks equity must do equity.* (Anyone who wishes to be treated fairly must treat others fairly.)
2. *Where there is equal equity, the law must prevail.* (The law will determine the outcome of a controversy in which the merits of both sides are equal.)
3. *One seeking the aid of an equity court must come to the court with clean hands.* (Plaintiffs must have acted fairly and honestly.)
4. *Equity will not suffer a wrong to be without a remedy.* (Equitable relief will be awarded when there is a right to relief and there is no adequate remedy at law.)
5. *Equity regards substance rather than form.* (Equity is more concerned with fairness and justice than with legal technicalities.)
6. *Equity aids the vigilant, not those who rest on their rights.* (Equity will not help those who neglect their rights for an unreasonable period of time.)

EXHIBIT 1–3 • Procedural Differences between an Action at Law and an Action in Equity

Procedure	Action at Law	Action in Equity
Initiation of lawsuit	By filing a complaint	By filing a petition
Parties	Plaintiff and defendant	Petitioner and respondent
Decision	By jury or judge	By judge (no jury)
Result	Judgment	Decree
Remedy	Monetary damages	Injunction, specific performance, or rescission

Case Precedents and Case Reporters When possible, judges attempted to be consistent and to base their decisions on the principles suggested by earlier cases. They sought to decide similar cases in a similar way and 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**—that is, a decision that furnished an example or authority for deciding subsequent cases involving similar legal principles or facts.

In the early years of the common law, there was no single place or publication where court opinions, or written decisions, could be found. By the early fourteenth century, portions of the most important decisions of each year were being gathered together and recorded in *Year Books*, which became useful references for lawyers and judges. In the sixteenth century, the *Year Books* were discontinued, and other forms of case publication became available. Today, cases are published, or "reported," in volumes called **reporters,** or *reports*. We describe today's case reporting system in detail later in this chapter.

Stare Decisis* and the Common Law Tradition** The practice of deciding new cases with reference to former decisions, or precedents, became a cornerstone of the English and American judicial systems. The practice formed a doctrine known as ***stare decisis[3] (a Latin phrase meaning "to stand on decided cases").

Under this doctrine, judges are obligated to follow the precedents established within their jurisdictions. The term *jurisdiction* refers to an area in which a court or courts have the power to apply the law—see Chapter 2. Once a court has set forth a principle of law as being applicable to a certain set of facts, that court and courts of lower rank (within the same jurisdiction) must adhere to that principle and apply it in future cases involving similar fact patterns. Thus, *stare decisis* has two aspects: first, that decisions made by a higher court are binding on lower courts; and second, that a court should not overturn its own precedents unless there is a compelling reason to do so.

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

A Typical Scenario To illustrate how the doctrine of *stare decisis* works, consider an example. Suppose that the lower state courts in Georgia have reached conflicting conclusions on whether drivers are liable for accidents they cause while merging into freeway traffic. Some courts have held drivers liable even though the drivers looked and did not see any oncoming traffic and even though witnesses (passengers in their cars) testified to that effect. To settle the law on this issue, the Georgia Supreme Court decides to review a case involving this fact pattern. The court rules that, in such a situation, the driver who is merging into traffic is liable for any accidents caused by the driver's failure to yield to freeway traffic—even if the driver looked carefully and did not see an approaching vehicle.

The Georgia Supreme Court's decision on this matter is a **binding authority**—a case precedent, statute, or other source of law that a court must follow when

3. Pronounced *ster*-ay dih-*si*-ses.

deciding a case. In other words, the Georgia Supreme Court's decision will influence the outcome of all future cases on this issue brought before the Georgia state courts. Similarly, a decision on a given question by the United States Supreme Court (the nation's highest court), no matter how old, is binding on all courts.

Departures from Precedent Although courts are obligated to follow precedents, sometimes 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 ruling 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.

Note that judges do have some flexibility in applying precedents. For example, a lower court may avoid applying a precedent set by a higher court in its jurisdiction by distinguishing the two cases based on their facts. When this happens, the lower court's ruling stands unless it is appealed to a higher court and that court overturns the decision.

When There Is No Precedent Occasionally, the courts must decide cases for which no precedents exist, called *cases of first impression.* For example, as you will read throughout this text, the extensive use of the Internet has presented many new and challenging issues for the courts to decide. In deciding cases of first impression, courts often look at *persuasive authorities* (precedents from other jurisdictions) for guidance. A court may also consider a number of factors, including legal principles and policies underlying previous court decisions or existing statutes, fairness, social values and customs, **public policy** (governmental policy based on widely held societal values), and data and concepts drawn from the social sciences. Which of these sources is chosen or receives the greatest emphasis depends on the nature of the case being considered and the particular judge or judges hearing the case.

Stare Decisis and Legal Reasoning

Legal reasoning is the reasoning process used by judges in deciding what law applies to a given dispute and then applying that law to the specific facts or circumstances of the case. Through the use of legal reasoning, judges harmonize their decisions with those that have been made before, as the doctrine of *stare decisis* requires.

Students of business law and the legal environment also engage in legal reasoning. For example, you may be asked to provide answers for some of the case problems that appear at the end of every chapter in this text. Each problem describes the facts of a particular dispute and the legal question at issue. If you are assigned a case problem, you will be asked to determine how a court would answer that question, and why. In other words, you will need to give legal reasons for whatever conclusion you reach.[4] We look here at the basic steps involved in legal reasoning and then describe some forms of reasoning commonly used by the courts in making their decisions.

Basic Steps in Legal Reasoning At times, the legal arguments set forth in court opinions are relatively simple and brief. At other times, the arguments are complex and lengthy. Regardless of the length of a legal argument, however, the basic steps of the legal reasoning process remain the same. These steps, which you also can follow when analyzing cases and case problems, form what is commonly referred to as the *IRAC method* of legal reasoning. IRAC is an acronym formed from the first letters of the following words: Issue, Rule, Application, and Conclusion. To apply the IRAC method, you would ask the following questions:

1. *What are the key facts and issues?* For example, suppose that a plaintiff comes before the court claiming *assault* (a wrongful and intentional action in which one person makes another fearful of immediate physical harm—part of a class of actions called *torts*). The plaintiff claims that the defendant threatened her while she was sleeping. Although the plaintiff was unaware that she was being threatened, her roommate heard the defendant make the threat. The legal issue, or question, raised by these facts is whether the defendant's actions constitute the tort of assault, given that the plaintiff was not aware of those actions at the time they occurred.
2. *What rules of law apply to the case?* A rule of law may be a rule stated by the courts in previous decisions, a state or federal statute, or a state or federal administrative agency regulation. In our hypothetical case, the plaintiff **alleges** (claims) that the defendant committed a tort. Therefore, the applicable law is the common law of torts—specifically, tort law governing assault (see Chapter 6 for more

4. See Appendix A for further instructions on how to analyze case problems.

detail on intentional torts). Case precedents involving similar facts and issues thus would be relevant. Often, more than one rule of law will be applicable to a case.

3. *How do the rules of law apply to the particular facts and circumstances of this case?* This step is often the most difficult because each case presents a unique set of facts, circumstances, and parties. Although cases may be similar, no two cases are ever identical in all respects. Normally, judges (and lawyers and law students) try to find **cases on point**—previously decided cases that are as similar as possible to the one under consideration. (Because of the difficulty—and importance—of this step in the legal reasoning process, we discuss it in more detail in the next subsection.)
4. *What conclusion should be drawn?* This step normally presents few problems. Usually, the conclusion is evident if the previous three steps have been followed carefully.

Forms of Legal Reasoning Judges use many types of reasoning when following the third step of the legal reasoning process—applying the law to the facts of a particular case. Three common forms of reasoning are deductive reasoning, linear reasoning, and reasoning by analogy.

Deductive Reasoning. Deductive reasoning is sometimes called *syllogistic reasoning* because it employs a **syllogism**—a logical relationship involving a major premise, a minor premise, and a conclusion. For example, consider the hypothetical case presented earlier, in which the plaintiff alleged that the defendant committed assault by threatening her while she was sleeping. The judge might point out that "under the common law of torts, an individual must be *aware* of a threat of danger for the threat to constitute assault" (major premise); "the plaintiff in this case was unaware of the threat at the time it occurred" (minor premise); and "therefore, the circumstances do not amount to an assault" (conclusion).

Linear Reasoning. A second important form of legal reasoning that is commonly employed might be thought of as "linear" reasoning because it proceeds from one point to another, with the final point being the conclusion. An analogy will help make this form of reasoning clear. Imagine a knotted rope, with each knot tying together separate pieces of rope to form a tightly knotted length. As a whole, the rope represents a linear progression of thought logically connecting various points, with the last point, or knot, representing the conclusion. For example, suppose that a tenant in an apartment building sues the landlord for damages for an injury resulting from an allegedly inadequately lit stairway. The court may engage in a reasoning process involving the following "pieces of rope":

1. The landlord, who was on the premises the evening the injury occurred, testifies that none of the other nine tenants who used the stairway that night complained about the lights.
2. The fact that none of the tenants complained is the same as if they had said the lighting was sufficient.
3. That there were no complaints does not prove that the lighting was sufficient but does prove that the landlord had no reason to believe that it was not.
4. The landlord's belief was reasonable because no one complained.
5. Therefore, the landlord acted reasonably and was not negligent with respect to the lighting in the stairway.

From this reasoning, the court concludes that the tenant is not entitled to compensation on the basis of the stairway's allegedly insufficient lighting.

Reasoning by Analogy. Another important type of reasoning that judges use in deciding cases is reasoning by *analogy*. To reason by **analogy** is to compare the facts in the case at hand to the facts in other cases and, to the extent that the patterns are similar, to apply the same rule of law to the present case. To the extent that the facts are unique, or "distinguishable," different rules may apply. For example, in case A, the court held that a driver who crossed a highway's center line was negligent. Case B involves a driver who crosses the line to avoid hitting a child. In determining whether case A's rule applies in case B, a judge would consider what the reasons were for the decision in A and whether B is sufficiently similar for those reasons to apply. If the judge holds that B's driver is not liable, that judge must indicate why case A's rule is not relevant to the facts presented in case B.

There Is No One "Right" Answer

Many persons believe that there is one "right" answer to every legal question. In most situations involving a legal controversy, however, there is no single correct result. Good arguments can often be made to support either side of a legal controversy. Quite often, a case

does not involve a "good" person suing a "bad" person. In many cases, both parties have acted in good faith in some measure or in bad faith to some degree.

Additionally, each judge has her or his own personal beliefs and philosophy, which shape, at least to some extent, the process of legal reasoning. This means that the outcome of a particular lawsuit before a court cannot be predicted with absolute certainty. In fact, in some cases, even though the weight of the law would seem to favor one party's position, judges, through creative legal reasoning, have found ways to rule in favor of the other party in the interests of preventing injustice. Legal reasoning and other aspects of the common law tradition are reviewed in *Concept Summary 1.3*.

SECTION 5 The Common Law Today

Today, the common law derived from judicial decisions continues to be applied throughout the United States. Common law doctrines and principles govern all areas *not* covered by statutory or administrative law. In a dispute concerning a particular employment practice, for example, if a statute regulates that practice, the statute will apply rather than the common law doctrine that applied prior to the enactment of the statute.

The Continuing Importance of the Common Law

Because the body of statutory law has expanded greatly since the beginning of this nation, thus narrowing the applicability of common law doctrines, it might seem that the common law has dwindled in importance. This is not true, however. For one thing, even in areas governed by statutory law, there is a significant interplay between statutory law and the common law. For example, many statutes essentially codify existing common law rules, and regulations issued by various administrative agencies usually are based, at least in part, on common law principles. Additionally, the courts, in interpreting statutory law, often rely on the

CONCEPT SUMMARY 1.3 The Common Law Tradition

Aspect	Description
Origins of the Common Law	The American legal system is based on the common law tradition, which originated in medieval England. Following the conquest of England in 1066 by William the Conqueror, king's courts were established throughout England, and the common law was developed in these courts.
Legal and Equitable Remedies	The distinction between remedies at law (money or items of value, such as land) and remedies in equity (including specific performance, injunction, and rescission of a contractual obligation) originated in the early English courts of law and courts of equity, respectively.
Case Precedents and the Doctrine of *Stare Decisis*	In the king's courts, judges attempted to make their decisions consistent with previous decisions, called precedents. This practice gave rise to the doctrine of *stare decisis*. This doctrine, which became a cornerstone of the common law tradition, obligates judges to abide by precedents established in their jurisdictions.
Stare Decisis and Legal Reasoning	Legal reasoning refers to the reasoning process used by judges in applying the law to the facts and issues of specific cases. Legal reasoning involves becoming familiar with the key facts of a case, identifying the relevant legal rules, applying those rules to the facts, and drawing a conclusion. In applying the legal rules to the facts of a case, judges may use deductive reasoning, linear reasoning, or reasoning by analogy.

common law as a guide to what the legislators intended.

Furthermore, how the courts interpret a particular statute determines how that statute will be applied. If you wanted to learn about the coverage and applicability of a particular statute, for example, you would necessarily have to locate the statute and study it. You would also need to see how the courts in your jurisdiction have interpreted and applied the statute. In other words, you would have to learn what precedents have been established in your jurisdiction with respect to that statute. Often, the applicability of a newly enacted statute does not become clear until a body of case law develops to clarify how, when, and to whom the statute applies.

Restatements of the Law

The American Law Institute (ALI) has drafted and published compilations of the common law called *Restatements of the Law*, which generally summarize the common law rules followed by most states. There are *Restatements of the Law* in the areas of contracts, torts, agency, trusts, property, restitution, security, judgments, and conflict of laws. The *Restatements*, like other secondary sources of law, do not in themselves have the force of law, but they are an important source of legal analysis and opinion on which judges often rely in making their decisions.

Many of the *Restatements* are now in their second, third, or fourth editions. We refer to the *Restatements* frequently in subsequent chapters of this text, indicating in parentheses the edition to which we are referring. For example, we refer to the second edition of the *Restatement of the Law of Contracts* as simply the *Restatement (Second) of Contracts*.

SECTION 6 Classifications of Law

The substantial body of the law may be broken down according to several classification systems. For example, one classification system divides law into substantive law and procedural law. **Substantive law** consists of all laws that define, describe, regulate, and create legal rights and obligations. **Procedural law** consists of all laws that delineate the methods of enforcing the rights established by substantive law. Other classification systems divide law into federal law and state law, private law (dealing with relationships between private entities) and public law (addressing the relationship between persons and their governments), and national law and international law. Here we look at still another classification system, which divides law into civil law and criminal law, as well as at what is meant by the term *cyberlaw*.

Civil Law and Criminal Law

Civil law spells out the rights and duties that exist between persons and between persons and their governments, as well as the relief available when a person's rights are violated. Typically, in a civil case, a private party sues another private party (although the government can also sue a party for a civil law violation) to make that other party comply with a duty or pay for the damage caused by failure to comply with a duty. Much of the law that we discuss in this text is civil law. Contract law, for example, covered in Chapters 10 through 19, is civil law. The whole body of tort law (see Chapters 6 and 7) is also civil law.

Criminal law, in contrast, is concerned with wrongs committed *against the public as a whole*. Criminal acts are defined and prohibited by local, state, or federal government statutes. Criminal defendants are thus prosecuted by public officials, such as a district attorney (D.A.), on behalf of the state, not by their victims or other private parties. (See Chapter 9 for a further discussion of the distinction between civil law and criminal law.)

Cyberlaw

As mentioned, the use of the Internet to conduct business transactions has led to new types of legal issues. In response, courts have had to adapt traditional laws to situations that are unique to our age. Additionally, legislatures have created laws to deal specifically with such issues. Frequently, people use the term **cyberlaw** to refer to the emerging body of law that governs transactions conducted via the Internet. Cyberlaw is not really a classification of law, nor is it a new *type* of law. Rather, it is an informal term used to describe traditional legal principles that have been modified and adapted to fit situations that are unique to the online world. Of course, in some areas new statutes have been enacted, at both the federal and state levels, to cover specific types of problems stemming from online communications. Throughout this book, you will read how the law in a given area is evolving to govern specific legal issues that arise in the online context.

SECTION 7

How to Find Primary Sources of Law

This text includes numerous citations to primary sources of law—federal and state statutes, the U.S. Constitution and state constitutions, regulations issued by administrative agencies, and court cases. (A **citation** is a reference to a publication in which a legal authority—such as a statute or a court decision or other source—can be found.) In this section, we explain how you can use citations to find primary sources of law. Note that in addition to the primary sources being published in sets of books as described next, most federal and state laws and case decisions are also available online.

Finding Statutory and Administrative Law

When Congress passes laws, they are collected in a publication titled *United States Statutes at Large.* When state legislatures pass laws, they are collected in similar state publications. Most frequently, however, laws are referred to in their codified form—that is, the form in which they appear in the federal and state codes. In these codes, laws are compiled by subject.

United States Code The *United States Code* (U.S.C.) arranges all existing federal laws by broad subject. Each of the fifty subjects is given a title and a title number. For example, laws relating to commerce and trade are collected in Title 15, "Commerce and Trade." Titles are subdivided by sections. A citation to the U.S.C. includes both title and section numbers. Thus, a reference to "15 U.S.C. Section 1" means that the statute can be found in Section 1 of Title 15. ("Section" may also be designated by the symbol §, and "Sections," by §§.) In addition to the print publication of the U.S.C., the federal government also provides a searchable online database of the *United States Code* at **www.gpoaccess.gov/uscode/index.html**.

Commercial publications of federal laws and regulations are also available. For example, West Group publishes the *United States Code Annotated* (U.S.C.A.). The U.S.C.A. contains the official text of the U.S.C., plus notes (annotations) on court decisions that interpret and apply specific sections of the statutes. The U.S.C.A. also includes additional research aids, such as cross-references to related statutes, historical notes, and library references. A citation to the U.S.C.A. is similar to a citation to the U.S.C.: "15 U.S.C.A. Section 1."

State Codes State codes follow the U.S.C. pattern of arranging law by subject. They may be called codes, revisions, compilations, consolidations, general statutes, or statutes, depending on the preferences of the states. In some codes, subjects are designated by number. In others, they are designated by name. For example, "13 Pennsylvania Consolidated Statutes Section 1101" means that the statute can be found in Title 13, Section 1101, of the Pennsylvania code. "California Commercial Code Section 1101" means that the statute can be found under the subject heading "Commercial Code" of the California code in Section 1101. Abbreviations are often used. For example, "13 Pennsylvania Consolidated Statutes Section 1101" is abbreviated "13 Pa. C.S. § 1101," and "California Commercial Code Section 1101" is abbreviated "Cal. Com. Code § 1101."

Administrative Rules Rules and regulations adopted by federal administrative agencies are initially published in the *Federal Register,* a daily publication of the U.S. government. Later, they are incorporated into the *Code of Federal Regulations* (C.F.R.). Like the U.S.C., the C.F.R. is divided into fifty titles. Rules within each title are assigned section numbers. A full citation to the C.F.R. includes title and section numbers. For example, a reference to "17 C.F.R. Section 230.504" means that the rule can be found in Section 230.504 of Title 17.

Finding Case Law

Before discussing the case reporting system, we need to look briefly at the court system (which will be discussed in detail in Chapter 2). There are two types of courts in the United States, federal courts and state courts. Both the federal and state court systems consist of several levels, or tiers, of courts. *Trial courts,* in which evidence is presented and testimony given, are on the bottom tier (which also includes lower courts that handle specialized issues). Decisions from a trial court can be appealed to a higher court, which commonly is an intermediate *court of appeals,* or an *appellate court.* Decisions from these intermediate courts of appeals may be appealed to an even higher court, such as a state supreme court or the United States Supreme Court.

State Court Decisions Most state trial court decisions are not published in books (except in New

York and a few other states, which publish selected trial court opinions). Decisions from state trial courts are typically filed in the office of the clerk of the court, where the decisions are available for public inspection. Written decisions of the appellate, or reviewing, courts, however, are published and distributed (both in print and via the Internet). As you will note, most of the state court cases presented in this book are from state appellate courts. The reported appellate decisions are published in volumes called *reports* or *reporters,* which are numbered consecutively. State appellate court decisions are found in the state reporters of that particular state. Official reports are volumes that are published by the state, whereas unofficial reports are privately published.

Regional Reporters. State court opinions appear in regional units of the National Reporter System, published by West Group. Most lawyers and libraries have the West reporters because they report cases more quickly, and are distributed more widely, than the state-published reporters. In fact, many states have eliminated their own reporters in favor of West's National Reporter System. The National Reporter System divides the states into the following geographic areas: *Atlantic* (A. or A.2d), *North Eastern* (N.E. or N.E.2d), *North Western* (N.W. or N.W.2d), *Pacific* (P., P.2d, or P.3d), *South Eastern* (S.E. or S.E.2d), *South Western* (S.W., S.W.2d, or S.W.3d), and *Southern* (So. or So.2d). (The *2d* and *3d* in the preceding abbreviations refer to *Second Series* and *Third Series,* respectively.) The states included in each of these regional divisions are indicated in Exhibit 1–4, which illustrates West's National Reporter System.

Case Citations. After appellate decisions have been published, they are normally referred to (cited) by the name of the case; the volume, name, and page number of the state's official reporter (if different from West's National Reporter System); the volume, name, and page number of the National Reporter; and the volume, name, and page number of any other selected reporter. (Citing a reporter by volume number, name, and page number, in that order, is common to all citations; often, as in this book, the year the decision was issued will be included in parentheses, just after the citations to reporters.) When more than one reporter is cited for the same case, each reference is called a *parallel citation.*

Note that some states have adopted a "public domain citation system" that uses a somewhat different format for the citation. For example, in Wisconsin, a Wisconsin Supreme Court decision might be designated "2008 WI 40," meaning that the case was decided in the year 2008 by the Wisconsin Supreme Court and was the fortieth decision issued by that court during that year. Parallel citations to the *Wisconsin Reports* and West's *North Western Reporter* are still included after the public domain citation.

Consider the following case citation: *Borelli v. H and H Contracting, Inc.,* 100 Conn.App. 680, 919 A.2d 500 (2007). We see that the opinion in this case can be found in Volume 100 of the official *Connecticut Appellate Reports,* on page 680. The parallel citation is to Volume 919 of the *Atlantic Reporter, Second Series,* page 500. In presenting appellate opinions in this text, in addition to the reporter, we give the name of the court hearing the case and the year of the court's decision. Sample citations to state court decisions are explained in Exhibit 1–5 on pages 18–20.

Federal Court Decisions Federal district (trial) court decisions are published unofficially in West's *Federal Supplement* (F.Supp. or F.Supp.2d), and opinions from the circuit courts of appeals (reviewing courts) are reported unofficially in West's *Federal Reporter* (F., F.2d, or F.3d). Cases concerning federal bankruptcy law are published unofficially in West's *Bankruptcy Reporter* (Bankr. or B.R.).

The official edition of the United States Supreme Court decisions is the *United States Reports* (U.S.), which is published by the federal government. Unofficial editions of Supreme Court cases include West's *Supreme Court Reporter* (S.Ct.) and the *Lawyers' Edition of the Supreme Court Reports* (L.Ed. or L.Ed.2d). Sample citations for federal court decisions are also listed and explained in Exhibit 1–5.

Unpublished Opinions Many court opinions that are not yet published or that are not intended for publication can be accessed through Westlaw® (abbreviated in citations as "WL"), an online legal database maintained by West Group. When no citation to a published reporter is available for cases cited in this text, we give the WL citation (see Exhibit 1–5 for an example). Can a court consider unpublished decisions as persuasive precedent? See this chapter's *Insight into E-Commerce* feature on pages 22 and 23 for a discussion of this issue.

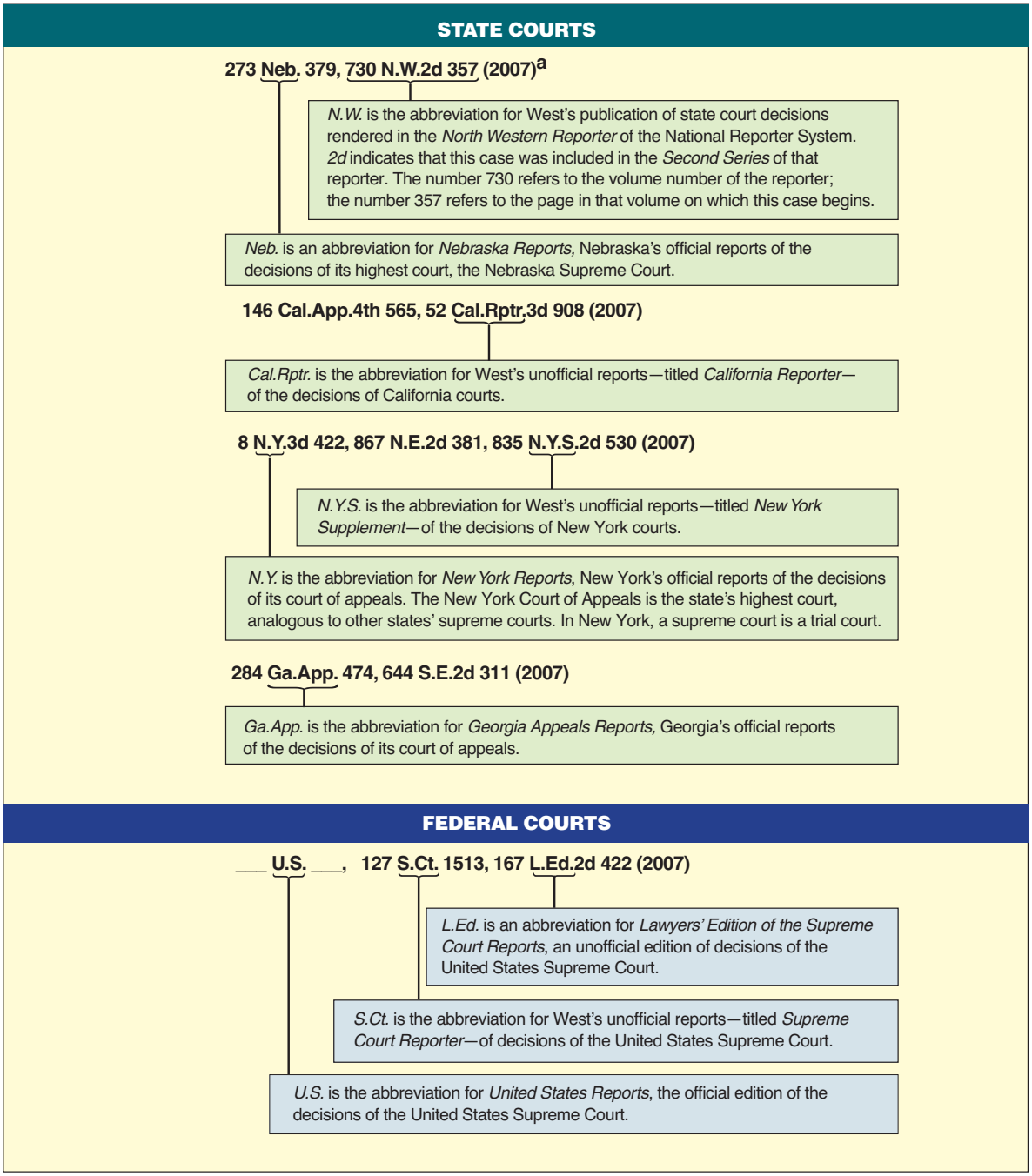
Old Case Law On a few occasions, this text cites opinions from old, classic cases dating to the nineteenth century or earlier; some of these are from the

EXHIBIT 1–4 • West's National Reporter System—Regional/Federal

Regional Reporters	Coverage Beginning	Coverage
Atlantic Reporter (A. or A.2d)	1885	Connecticut, Delaware, District of Columbia, Maine, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island, and Vermont.
North Eastern Reporter (N.E. or N.E.2d)	1885	Illinois, Indiana, Massachusetts, New York, and Ohio.
North Western Reporter (N.W. or N.W.2d)	1879	Iowa, Michigan, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin.
Pacific Reporter (P., P.2d, or P.3d)	1883	Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, Washington, and Wyoming.
South Eastern Reporter (S.E. or S.E.2d)	1887	Georgia, North Carolina, South Carolina, Virginia, and West Virginia.
South Western Reporter (S.W., S.W.2d, or S.W.3d)	1886	Arkansas, Kentucky, Missouri, Tennessee, and Texas.
Southern Reporter (So. or So.2d)	1887	Alabama, Florida, Louisiana, and Mississippi.
Federal Reporters		
Federal Reporter (F., F.2d, or F.3d)	1880	U.S. Circuit Courts from 1880 to 1912; U.S. Commerce Court from 1911 to 1913; U.S. District Courts from 1880 to 1932; U.S. Court of Claims (now called U.S. Court of Federal Claims) from 1929 to 1932 and since 1960; U.S. Courts of Appeals since 1891; U.S. Court of Customs and Patent Appeals since 1929; U.S. Emergency Court of Appeals since 1943.
Federal Supplement (F.Supp. or F.Supp.2d)	1932	U.S. Court of Claims from 1932 to 1960; U.S. District Courts since 1932; U.S. Customs Court since 1956.
Federal Rules Decisions (F.R.D.)	1939	U.S. District Courts involving the Federal Rules of Civil Procedure since 1939 and Federal Rules of Criminal Procedure since 1946.
Supreme Court Reporter (S.Ct.)	1882	United States Supreme Court since the October term of 1882.
Bankruptcy Reporter (Bankr.)	1980	Bankruptcy decisions of U.S. Bankruptcy Courts, U.S. District Courts, U.S. Courts of Appeals, and the United States Supreme Court.
Military Justice Reporter (M.J.)	1978	U.S. Court of Military Appeals and Courts of Military Review for the Army, Navy, Air Force, and Coast Guard.

NATIONAL REPORTER SYSTEM MAP

EXHIBIT 1–5 • How to Read Citations



a. The case names have been deleted from these citations to emphasize the publications. It should be kept in mind, however, that the name of a case is as important as the specific page numbers in the volumes in which it is found. If a citation is incorrect, the correct citation may be found in a publication's index of case names. In addition to providing a check on errors in citations, the date of a case is important because the value of a recent case as an authority is likely to be greater than that of older cases.

EXHIBIT 1–5 • How to Read Citations—Continued

FEDERAL COURTS (Continued)

477 F.3d 908 (8th Cir. 2007)

8th Cir. is an abbreviation denoting that this case was decided in the U.S. Court of Appeals for the Eighth Circuit.

478 F.Supp.2d 496 (S.D.N.Y. 2007)

S.D.N.Y. is an abbreviation indicating that the U.S. District Court for the Southern District of New York decided this case.

ENGLISH COURTS

9 Exch. 341, 156 Eng.Rep. 145 (1854)

Eng.Rep. is an abbreviation for *English Reports, Full Reprint,* a series of reports containing selected decisions made in English courts between 1378 and 1865.

Exch. is an abbreviation for *English Exchequer Reports*, which includes the original reports of cases decided in England's Court of Exchequer.

STATUTORY AND OTHER CITATIONS

18 U.S.C. Section 1961(1)(A)

U.S.C. denotes *United States Code*, the codification of *United States Statutes at Large*. The number 18 refers to the statute's U.S.C. title number and 1961 to its section number within that title. The number 1 in parentheses refers to a subsection within the section, and the letter A in parentheses to a subdivision within the subsection.

UCC 2–206(1)(b)

UCC is an abbreviation for *Uniform Commercial Code*. The first number 2 is a reference to an article of the UCC, and 206 to a section within that article. The number 1 in parentheses refers to a subsection within the section, and the letter b in parentheses to a subdivision within the subsection.

***Restatement (Second) of Torts,* Section 568**

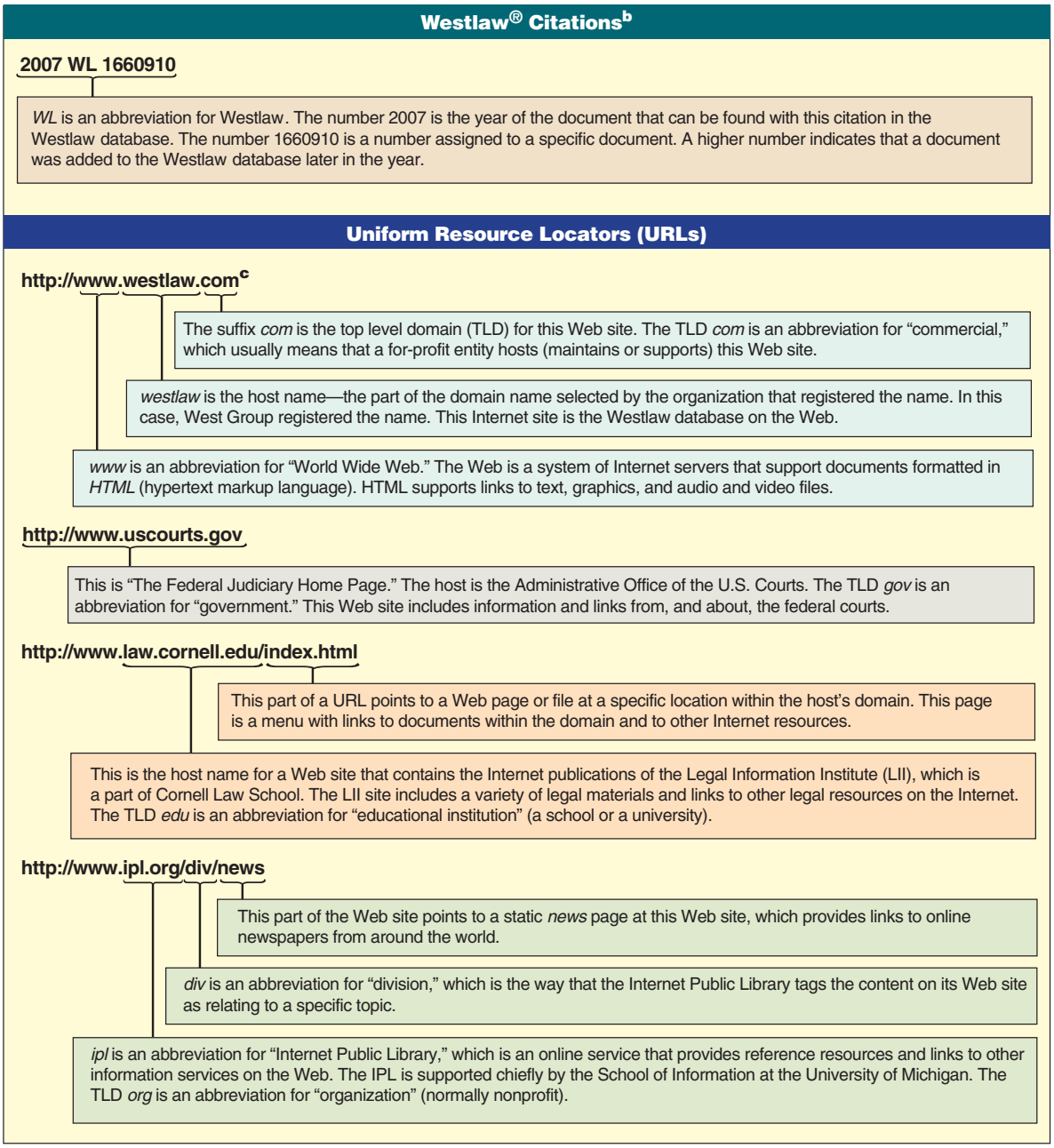
Restatement (Second) of Torts refers to the second edition of the American Law Institute's *Restatement of the Law of Torts*. The number 568 refers to a specific section.

17 C.F.R. Section 230.505

C.F.R. is an abbreviation for *Code of Federal Regulations*, a compilation of federal administrative regulations. The number 17 designates the regulation's title number, and 230.505 designates a specific section within that title.

EXHIBIT CONTINUES

EXHIBIT 1–5 • How to Read Citations—Continued



b. Many court decisions that are not yet published or that are not intended for publication can be accessed through Westlaw®, an online legal database.
c. The basic form for a URL is "service://hostname/path." The Internet service for all of the URLs in this text is *http* (hypertext transfer protocol). Because most Web browsers add this prefix automatically when a user enters a host name or a hostname/path, we have omitted the http:// from the URLs listed in this text.

English courts. The citations to these cases may not conform to the descriptions given above because the reporters in which they were published were often known by the names of the persons who compiled the reporters and have since been replaced.

SECTION 8 How to Read and Understand Case Law

The decisions made by the courts establish the boundaries of the law as it applies to virtually all business relationships. It thus is essential that businesspersons know how to read and understand case law. The cases that we present in this text have been condensed from the full text of the courts' opinions and are presented in a special format. In approximately two-thirds of the cases, we have summarized the background and facts, as well as the court's decision and remedy, in our own words and have included only selected portions of the court's opinion ("in the language of the court"). In the remaining one-third of the cases, we have provided a longer excerpt from the court's opinion without summarizing the background and facts or decision and remedy. For those who wish to review court cases as part of research projects or to gain additional legal information, the following sections will provide useful insights into how to read and understand case law.

Case Titles

The title of a case, such as *Adams v. Jones,* indicates the names of the parties to the lawsuit. The *v.* in the case title stands for *versus,* which means "against." In the trial court, Adams was the plaintiff—the person who filed the suit. Jones was the defendant. If the case is appealed, however, the appellate court will sometimes place the name of the party appealing the decision first, so the case may be called *Jones v. Adams* if Jones is appealing. Because some appellate courts retain the trial court order of names, it is often impossible to distinguish the plaintiff from the defendant in the title of a reported appellate court decision. You must carefully read the facts of each case to identify the parties. Otherwise, the discussion by the appellate court may be difficult to understand.

Terminology

The following terms, phrases, and abbreviations are frequently encountered in court opinions and legal publications. Because it is important to understand what is meant by these terms, phrases, and abbreviations, we define and discuss them here.

Parties to Lawsuits As mentioned previously, the party initiating a lawsuit is referred to as the *plaintiff* or *petitioner,* depending on the nature of the action, and the party against whom a lawsuit is brought is the *defendant* or *respondent*. Lawsuits frequently involve more than one plaintiff and/or defendant. When a case is appealed from the original court or jurisdiction to another court or jurisdiction, the party appealing the case is called the **appellant.** The **appellee** is the party against whom the appeal is taken. (In some appellate courts, the party appealing a case is referred to as the *petitioner,* and the party against whom the suit is brought or appealed is called the *respondent.*)

Judges and Justices The terms *judge* and *justice* are usually synonymous and represent two designations given to judges in various courts. All members of the United States Supreme Court, for example, are referred to as justices, and justice is the formal title often given to judges of appellate courts, although this is not always the case. In New York, a *justice* is a judge of the trial court (which is called the Supreme Court), and a member of the Court of Appeals (the state's highest court) is called a *judge.* The term *justice* is commonly abbreviated to J., and *justices,* to JJ. A Supreme Court case might refer to Justice Alito as Alito, J., or to Chief Justice Roberts as Roberts, C.J.

Decisions and Opinions Most decisions reached by reviewing, or appellate, courts are explained in written **opinions.** The opinion contains the court's reasons for its decision, the rules of law that apply, and the judgment.

Unanimous, Concurring, and Dissenting Opinions. When all judges or justices unanimously agree on an opinion, the opinion is written for the entire court and can be deemed a *unanimous opinion.* When there is not a unanimous opinion, a *majority opinion* is written; the majority opinion outlines the

INSIGHT INTO E-COMMERCE
How the Internet Is Expanding Precedent

The notion that courts should rely on precedents to decide the outcome of similar cases has long been a cornerstone of U.S. law. Nevertheless, the availability of "unpublished opinions" over the Internet is changing what the law considers to be precedent. An *unpublished opinion* is a decision made by an appellate court that is not intended for publication in a reporter (the bound books that contain court opinions).[a] Courts traditionally have not considered unpublished opinions to be "precedent," binding or persuasive, and attorneys were often not allowed to refer to these decisions in their arguments.

An Increasing Number of Decisions Are Not Published in Case Reporters but Are Available Online

The number of court decisions not published in printed books has risen dramatically in recent years. By some estimates, nearly 80 percent of the decisions of the federal appellate courts are unpublished. The number is equally high in some state court systems. California's intermediate appellate courts, for example, publish only about 7 percent of their decisions.

Even though certain decisions are not intended for publication, they are posted ("published") almost immediately on online legal databases, such as Westlaw and Lexis. With the proliferation of free legal databases and court Web sites, the general public also has almost instant access to the unpublished decisions of most courts. This situation has caused a substantial amount of debate over whether unpublished opinions should be given the same precedential effect as published opinions.

Should Unpublished Decisions Establish Precedent?

Prior to the Internet, one might have been able to justify not considering unpublished decisions to be precedent on the grounds of fairness. How could courts and lawyers be expected to consider the reasoning in unpublished decisions if they were not printed in the case reporters? Now that opinions are so readily available on the Web, however, this justification is no longer valid. Moreover, it now seems unfair not to consider these decisions as

a. Recently decided cases that are not yet published are also sometimes called *unpublished opinions,* but because these decisions will eventually be printed in reporters, we do not include them here.

view supported by the majority of the judges or justices deciding the case. If a judge agrees, or concurs, with the majority's decision, but for different reasons, that judge may write a *concurring opinion.* A *dissenting opinion* presents the views of one or more judges who disagree with the majority's decision. The dissenting opinion is important because it may form the basis of the arguments used years later in overruling the precedential majority opinion.

Other Types of Opinions. Occasionally, a court issues a *per curiam* opinion. *Per curiam* is a Latin phrase meaning "of the court." In *per curiam* opinions, there is no indication as to which judge or justice authored the opinion. This term may also be used for an announcement of a court's disposition of a case that is not accompanied by a written opinion. Some of the cases presented in this text are *en banc* decisions. When an appellate court reviews a case *en banc,* which is a French term (derived from a Latin term) for "in the bench," generally all of the judges "sitting on the bench" of that court review the case.

A Sample Court Case

To illustrate the elements in a court opinion, we present an annotated opinion in Exhibit 1–6 on pages 24–26. The opinion is from an actual case that the United States Supreme Court decided in 2007.

Background of the Case At a school-sanctioned and school-supervised event, a high school principal saw some of her students unfurl a banner conveying a message that she regarded as promoting illegal drug use. Consistent with school policy, which prohibited such messages at school events, the principal told the students to take down the banner. One student refused. The principal confiscated the banner and suspended the student. The student filed a suit in a federal district court against the principal and others, alleg-

precedent to some extent because they are so publicly accessible.

Another argument against allowing unpublished decisions to be precedent concerns the quality of the legal reasoning set forth in these decisions. Staff attorneys and law clerks frequently write unpublished opinions so that judges can spend more time on the opinions intended for publication. Consequently, some claim that allowing unpublished decisions to establish precedent could result in bad precedents because the reasoning may not be up to par. If the decision is regarded merely as persuasive precedent, however, then judges who disagree with the reasoning are free to reject the conclusion.

The United States Supreme Court Changes Federal Rules on Unpublished Opinions after 2007

In spite of objections from several hundred judges and lawyers, the United States Supreme Court made history in 2006 when it announced that it would allow lawyers to refer to (cite) unpublished decisions in all federal courts. The new rule, Rule 32.1 of the Federal Rules of Appellate Procedure, states that federal courts may not prohibit or restrict the citation of federal judicial opinions that have been designated as "not for publication," "non-precedential," or "not precedent." The rule applies only to federal courts and only to unpublished opinions issued after January 1, 2007. It does not specify the effect that a court must give to one of its unpublished opinions or to an unpublished opinion from another court. Basically, the rule simply makes all the federal courts follow a uniform rule that allows attorneys to cite—and judges to consider as persuasive precedent—unpublished decisions beginning in 2007.

The impact of this new rule remains to be seen. At present, the majority of states do not allow their state courts to consider the rulings in unpublished cases as persuasive precedent, and this rule does not affect the states. The Supreme Court's decision, however, provides an example of how technology—the availability of unpublished opinions over the Internet—has affected the law.

CRITICAL THINKING

INSIGHT INTO THE SOCIAL ENVIRONMENT

Now that the Supreme Court is allowing unpublished decisions to form persuasive precedent in federal courts, should state courts follow? Why or why not?

ing a violation of his rights under the U.S. Constitution. The court issued a judgment in the defendants' favor. On the student's appeal, the U.S. Court of Appeals for the Ninth Circuit reversed this judgment. The defendants appealed to the United States Supreme Court.

Editorial Practice You will note that triple asterisks (* * *) and quadruple asterisks (* * * *) frequently appear in the opinion. The triple asterisks indicate that we have deleted a few words or sentences from the opinion for the sake of readability or brevity. Quadruple asterisks mean that an entire paragraph (or more) has been omitted. Additionally, when the opinion cites another case or legal source, the citation to the case or other source has been omitted to save space and to improve the flow of the text. These editorial practices are continued in the other court opinions presented in this book. In addition, whenever we present a court opinion that includes a term or phrase that may not be readily understandable, a bracketed definition or paraphrase has been added.

Briefing Cases Knowing how to read and understand court opinions and the legal reasoning used by the courts is an essential step in undertaking accurate legal research. A further step is "briefing," or summarizing, the case. Legal researchers routinely brief cases by reducing the texts of the opinions to their essential elements. Generally, when you brief a case, you first summarize the background and facts of the case, as the authors have done for the cases presented within this text. You then indicate the issue (or issues) before the court. An important element in the case brief is, of course, the court's decision on the issue and the legal reasoning used by the court in reaching that decision. Detailed instructions on how to brief a case are given in Appendix A, which also includes a briefed version of the sample court case presented in Exhibit 1–6.

EXHIBIT 1–6 • A Sample Court Case

This section contains the citation—the name of the case, the name of the court that heard the case, the year of the decision, and reporters in which the court's opinion can be found.

MORSE v. FREDERICK
Supreme Court of the United States, 2007.
___ U.S. ___,
127 S.Ct. 2618,
168 L.Ed.2d 290.

This line provides the name of the justice (or judge) who authored the Court's opinion.

Chief Justice *ROBERTS* delivered the opinion of the Court.

* * * *

The Court divides the opinion into four parts, headed by Roman numerals. The first part of the opinion summarizes the factual background of the case.

I

On January 24, 2002, the Olympic Torch Relay passed through Juneau, Alaska, on its way to the winter games in Salt Lake City, Utah. The torchbearers were to proceed along a street in front of Juneau-Douglas High School (JDHS) while school was in session. * * * Deborah Morse, the school principal, decided to permit staff and students to participate in the Torch Relay as an approved social event or class trip. Students were allowed to leave class to observe the relay from either side of the street. Teachers and administrative officials monitored the students' actions.

* * * As the torchbearers and camera crews passed by, [Joseph Frederick, a senior] and his friends unfurled a 14-foot banner bearing the phrase: "BONG HiTS 4 JESUS." The large banner was easily readable by the students on the other side of the street.

Principal Morse immediately crossed the street and demanded that the banner be taken down. Everyone but Frederick complied. Morse confiscated the banner and * * * suspended him for 10 days. * * *

A federal trial court in which a lawsuit is initiated.

* * * [The] Juneau School District Board of Education upheld the suspension.

* * * *

The First Amendment to the Constitution guarantees, among other freedoms, the right of free speech—to express one's views without governmental restrictions. As this case illustrates, however, the right is not unlimited in all circumstances.

Frederick then filed suit [in a federal **district court** against Morse and others] * * *, alleging that the school board and Morse had violated his * * * **rights [under the First Amendment to the U.S. Constitution]**. * * * The District Court granted **summary judgment** for the school board and Morse * * *.

A judgment that a court enters without beginning or continuing a trial. This judgment can be entered only if no facts are in dispute and the only question is how the law applies to the facts.

EXHIBIT 1–6 • A Sample Court Case—Continued

[On Frederick's appeal, the **U.S. Court of Appeals for the Ninth Circuit**] reversed. [The defendants appealed to the U.S. Supreme Court.]

A federal court that hears appeals from the federal district courts located within its geographical boundaries.

* * * *

The second major section of the opinion responds to the plaintiff's first argument.

II

At the outset, we reject Frederick's argument that this is not a school speech case * * * . [W]e agree with the [Juneau] superintendent that Frederick cannot "stand in the midst of his fellow students, during school hours, at a school-sanctioned activity and claim he is not at school." * * *

The third major section of the opinion focuses on the interpretation of an important component of the facts in the case.

III

The message on Frederick's banner is **cryptic**. * * * Frederick himself claimed "that the words were just nonsense meant to attract television cameras." But Principal Morse thought the banner would be interpreted by those viewing it as promoting illegal drug use, and that interpretation is plainly a reasonable one.

Having or seeming to have a hidden or ambiguous meaning.

* * * *

* * * At least two interpretations of the words on the banner demonstrate that the sign **advocated** the use of illegal drugs. First, the phrase could be interpreted as an **imperative**: "[Take] bong hits * * * "—a message equivalent * * * to "smoke marijuana" or "use an illegal drug." Alternatively, the phrase could be viewed as celebrating drug use—"bong hits [are a good thing]," or "[we take] bong hits" * * * .

To speak in favor, support, or recommend publicly.

An order or command to influence others' behavior.

* * * *

* * * Frederick's * * * explanation for the message * * * is a description of Frederick's motive for displaying the banner; it is not an interpretation of what the banner says. * * *

* * * *

The fourth major section of the opinion considers the chief issue in this case—whether a high school principal may curtail certain student speech at a school event. Here, the Court states the law and applies it to this issue.

IV

The question thus becomes whether a principal may, consistent with the First Amendment, restrict student speech at a school event, when that speech is reasonably viewed as promoting illegal drug use. * * *

* * * *

EXHIBIT CONTINUES

EXHIBIT 1–6 • A Sample Court Case—Continued

To make known, manifest, or clear; to announce clearly an opinion or resolution.

Congress has **declared** that part of a school's job is educating students about the dangers of illegal drug use. It has provided billions of dollars to support state and local drug-prevention programs, and required that schools receiving federal funds under the Safe and Drug-Free Schools and Communities Act of 1994

To attest as being true or as represented.

certify that their drug prevention programs convey a clear and consistent message that * * * the illegal use of drugs is wrong and harmful.

To effect, bring about, or cause to come into being.

Thousands of school boards throughout the country—including JDHS—have adopted policies aimed at **effectuating** this message. Those school boards know that peer pressure is perhaps the single most important factor leading schoolchildren to take drugs, and that students are more likely to use drugs when the norms in school appear to tolerate such behavior. Student speech celebrating illegal drug use at a school event, in the presence of school administrators and teachers, thus poses a particular challenge for school officials working to protect those entrusted to their care from the dangers of drug abuse.

* * * *

School principals have a difficult job, and a vitally important one. When Frederick suddenly and unexpectedly unfurled his banner, Morse had to decide to act—or not act—on the spot. It was reasonable for her to conclude that the banner promoted illegal drug use—in violation of established school policy—and that failing to act would send a powerful message to the students in her charge, including Frederick, about how serious the school was about the dangers of illegal drug use. The First Amendment does not require schools to tolerate at school events student expression that contributes to those dangers.

In the final paragraph of this excerpt of the opinion, the Court states its decision and gives its order to send the case back to the lower court.

The judgment of the United States Court of Appeals for the Ninth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

REVIEWING Introduction to Law and Legal Reasoning

Suppose the California legislature passes a law that severely restricts carbon dioxide emissions from automobiles in that state. A group of automobile manufacturers files suit against the state of California to prevent the enforcement of the law. The automakers claim that a federal law already sets fuel economy standards nationwide and that fuel economy standards are essentially the same as carbon dioxide emission standards. According to the automobile manufacturers, it is unfair to allow California to impose more stringent regulations than those set by the federal law. Using the information presented in the chapter, answer the following questions.

1. Who are the parties (the plaintiffs and the defendant) in this lawsuit?
2. Are the plaintiffs seeking a legal remedy or an equitable remedy? Why?
3. What is the primary source of the law that is at issue here?
4. Where would you look to find the relevant California and federal laws?

TERMS AND CONCEPTS

administrative agency 7
administrative law 7
allege 11
analogy 12
appellant 21
appellee 21
binding authority 10
breach 5
case law 7
case on point 12
chancellor 8
citation 15
civil law 14
common law 8
constitutional law 6
court of equity 8
court of law 8
criminal law 14
cyberlaw 14
damages 8
defendant 9
defense 9
equitable maxims 9
executive agency 7
historical school 3
independent regulatory agency 7
jurisprudence 2
laches 9
law 2
legal realism 3
legal reasoning 11
natural law 3
opinion 21
ordinance 6
petitioner 9
plaintiff 9
positive law 3
positivist school 3
precedent 10
procedural law 14
public policy 11
remedy 8
remedy at law 8
remedy in equity 8
reporter 10
respondent 9
sociological school 4
***stare decisis* 10**
statute of limitations 9
statutory law 6
substantive law 14
syllogism 12
uniform law 6

QUESTIONS AND CASE PROBLEMS

1–1. How does statutory law come into existence? How does it differ from the common law? If statutory law conflicts with the common law, which law will govern?

1–2. QUESTION WITH SAMPLE ANSWER

After World War II, which ended in 1945, an international tribunal of judges convened at Nuremberg, Germany. The judges convicted several Nazis of "crimes against humanity." Assuming that the Nazi war criminals who were convicted had not disobeyed any law of their country and had merely been following their government's (Hitler's) orders, what law had they violated? Explain.

- **For a sample answer to Question 1–2, go to Appendix I at the end of this text.**

1–3. Assume that you want to read the entire court opinion in the case of *Menashe v. V Secret Catalogue, Inc.*, 409 F.Supp.2d 412 (S.D.N.Y. 2006). The case focuses on whether "SEXY LITTLE THINGS" is a suggestive or descriptive trademark and on which of the parties to the suit used the mark first in commerce. (Note that this case is presented in Chapter 8 of this text as Case 8.2.) Refer to the subsection entitled "Finding Case Law" in this chapter, and then explain specifically where you would find the court's opinion.

1–4. This chapter discussed a number of sources of American law. Which source of law takes priority in the following situations, and why?

(a) A federal statute conflicts with the U.S. Constitution.
(b) A federal statute conflicts with a state constitutional provision.
(c) A state statute conflicts with the common law of that state.
(d) A state constitutional amendment conflicts with the U.S. Constitution.

1–5. In the text of this chapter, we stated that the doctrine of *stare decisis* "became a cornerstone of the English and American judicial systems." What does *stare decisis* mean, and why has this doctrine been so fundamental to the development of our legal tradition?

1–6. What is the difference between a concurring opinion and a majority opinion? Between a concurring opinion and a dissenting opinion? Why do judges and justices write concurring and dissenting opinions, given that these opinions will not affect the outcome of the case at hand, which has already been decided by majority vote?

1–7. Courts can overturn precedents and thus change the common law. Should judges have the same authority to overrule statutory law? Explain.

1–8. "The judge's role is not to make the law but to uphold and apply the law." Do you agree or disagree with this statement? Discuss fully the reasons for your answer.

1–9. Assume that Arthur Rabe is suing Xavier Sanchez for breaching a contract in which Sanchez promised to sell Rabe a Van Gogh painting for $3 million.

(a) In this lawsuit, who is the plaintiff and who is the defendant?
(b) Suppose that Rabe wants Sanchez to perform the contract as promised. What remedy would Rabe seek from the court?
(c) Now suppose that Rabe wants to cancel the contract because Sanchez fraudulently misrepresented the painting as an original Van Gogh when in fact it is a copy. What remedy would Rabe seek?
(d) Will the remedy Rabe seeks in either situation be a remedy at law or a remedy in equity? What is the difference between legal and equitable remedies?
(e) Suppose that the trial court finds in Rabe's favor and grants one of these remedies. Sanchez then appeals the decision to a higher court. On appeal, which party will be the appellant (or petitioner), and which party will be the appellee (or respondent)?

1–10. A QUESTION OF ETHICS

*On July 5, 1884, Dudley, Stephens, and Brooks—"all able-bodied English seamen"—and a teenage English boy were cast adrift in a lifeboat following a storm at sea. They had no water with them in the boat, and all they had for sustenance were two one-pound tins of turnips. On July 24, Dudley proposed that one of the four in the lifeboat be sacrificed to save the others. Stephens agreed with Dudley, but Brooks refused to consent—and the boy was never asked for his opinion. On July 25, Dudley killed the boy, and the three men then fed on the boy's body and blood. Four days later, a passing vessel rescued the men. They were taken to England and tried for the murder of the boy. If the men had not fed on the boy's body, they would probably have died of starvation within the four-day period. The boy, who was in a much weaker condition, would likely have died before the rest. [*Regina v. Dudley and Stephens, *14 Q.B.D. (Queen's Bench Division, England) 273 (1884)]*

(a) The basic question in this case is whether the survivors should be subject to penalties under English criminal law, given the men's unusual circumstances. Were the defendants' actions necessary but unethical? Explain your reasoning. What ethical issues might be involved here?
(b) Should judges ever have the power to look beyond the written "letter of the law" in making their decisions? Why or why not?

LAW ON THE WEB

Today, business law and legal environment professors and students can go online to access information on almost every topic covered in this text. A good point of departure for online legal research is the Web site for *Business Law,* Eleventh Edition, which can be found at **academic.cengage.com/blaw/clarkson**. There you will find numerous materials relevant to this text and to business law generally, including links to various legal resources on the Web. Additionally, every chapter in this text ends with a *Law on the Web* feature that contains selected Web addresses.

You can access many of the sources of law discussed in Chapter 1 at the FindLaw Web site, which is probably the most comprehensive source of free legal information on the Internet. Go to

www.findlaw.com

The Legal Information Institute (LII) at Cornell Law School, which offers extensive information about U.S. law, is also a good starting point for legal research. The URL for this site is

www.law.cornell.edu

The Library of Congress offers extensive links to state and federal government resources at

www.loc.gov

The Virtual Law Library Index, created and maintained by the Indiana University School of Law, provides an index of legal sources categorized by subject at

www.law.indiana.edu/v-lib/index.html#libdoc

Legal Research Exercises on the Web

Go to **academic.cengage.com/blaw/clarkson**, the Web site that accompanies this text. Select "Chapter 1" and click on "Internet Exercises." There you will find the following Internet research exercises that you can perform to learn more about some of the important sources of law discussed in Chapter 1 and other useful legal sites on the Web.

Internet Exercise 1–1: Legal Perspective
Internet Sources of Law

Internet Exercise 1–2: Management Perspective
Online Assistance from Government Agencies

Internet Exercise 1–3: Social Perspective
The Case of the Speluncean Explorers