TWELFTH EDITION

BUSINESS LAW

TEXT AND CASES

Legal, Ethical, Global, and Corporate Environment

Clarkson • Miller • Cross

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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 know 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 the law has various definitions, they are all based on the general observation that 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.

In this introductory chapter, we first look at an important question for any student reading this text: How does the legal environment affect business decision making? We next describe the major sources of American law, the common law tradition, and some basic schools of legal thought. 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.

SECTION 1

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 business firms, and also markets related software. 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 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 ensure 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.

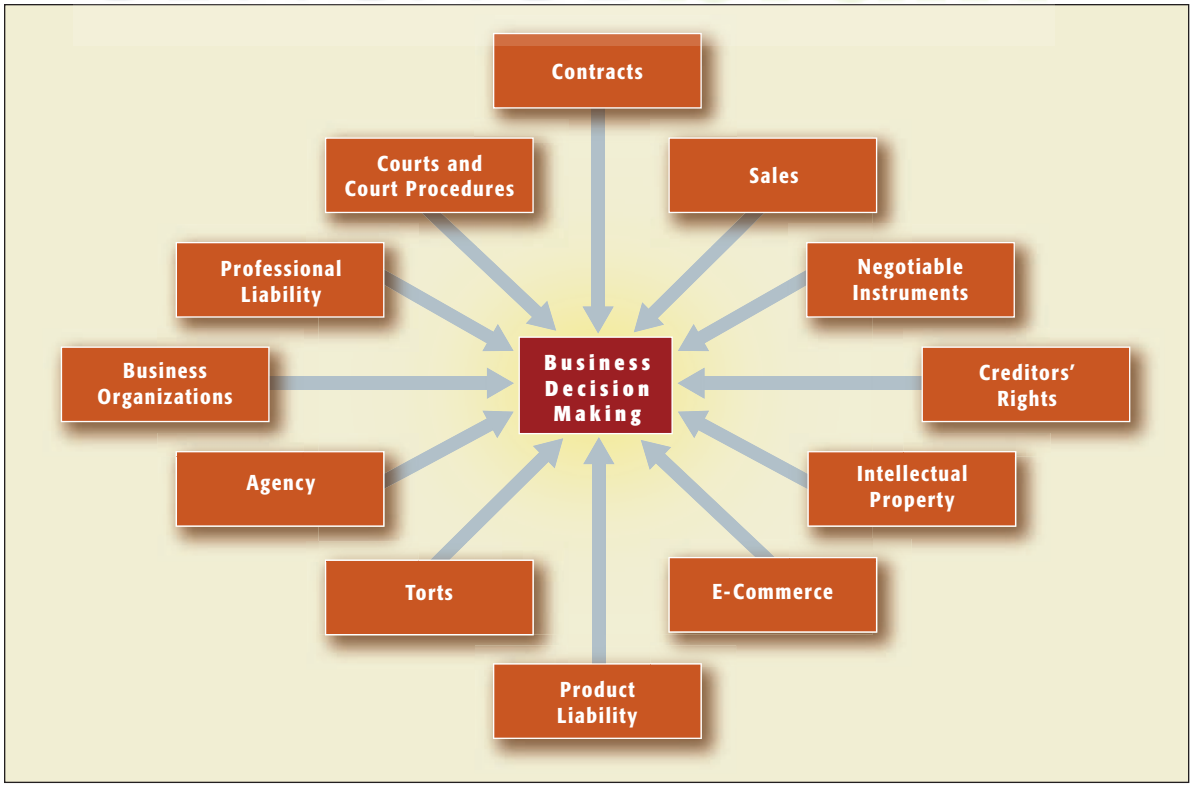
Finally, if any dispute cannot be resolved amicably, then the laws and the rules concerning courts and court procedures spell out the steps of a lawsuit. Exhibit 1–1 illustrates the various areas of law that may influence business decision making.

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* generally is 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

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



often arise in the business context. For example, the unit-ending *Focus on Ethics* features are devoted solely to the exploration of ethical questions pertaining to topics treated within the unit. We have also included *Ethical Dimension* questions for selected cases that stress the importance of ethical considerations in today's business climate and *Insight into Ethics* features that appear in selected chapters. A *Question of Ethics* case problem is included at the conclusion of every chapter 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 2

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 44, constitute a dominant element in the regulatory environment of business.

Rules issued by various administrative agencies now affect almost 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. Regulations enacted to protect the environment often play a significant role in business operations. See this chapter's *Shifting Legal Priorities for Business* feature on the following page for a discussion of the concept of sustainability and how some environmental regulations encourage it.

FEDERAL AGENCIES At the national level, the cabinet departments of the executive branch include numerous **executive agencies.** The U.S. Food and Drug Administration, for example, is an agency within the U.S. Department of Health and Human Services. Executive agencies are subject to the authority of the president, who has the power to appoint and remove their officers. 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 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 1.1* on page 7 for a review of the sources of American law.

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.

By now, almost everyone is aware that at the federal, state, and local levels there are numerous statutes that deal with the environment (environmental law will be discussed in Chapter 46). In the last few years, federal, state, and local statutes and administrative regulations have started to embrace the concept of sustainability.

What Does Sustainability Mean?

Although there is no one official definition, *sustainability* generally has been defined as economic development that meets the needs of the present while not compromising the ability of future generations to meet their own needs. By any definition, sustainability is a process rather than a tangible outcome. For business managers, it means that they should engage in long-range planning rather than focusing only on short-run profitability.

Federal Law and Sustainability

Certain provisions of federal environmental laws directly address the topic of sustainability. For example, the Resource Conservation and Recovery Act[a] requires waste minimization as the preferred means of hazardous waste management. Facilities that generate or manage hazardous waste must certify that they have a waste minimization program that reduces the toxicity and quantity of the hazardous waste.

The Pollution Prevention Act (PPA)[b] requires that facilities minimize or eliminate the release of pollutants into the environment whenever feasible. The PPA established a national policy to recycle any pollutants that cannot be prevented.

Finally, the federal Environmental Protection Agency (EPA) has undertaken a major effort to encourage sustainability. The agency's Web site (**www.epa.gov**) devotes numerous pages to sustainability, sustainable development, and sustainable agriculture. The EPA also has a "sector strategies program" that seeks industry-wide environmental gains through innovative actions.

Other nations have enacted legislation that requires sustainability to be taken into account when protecting the environment. An example is the Environmental Protection and Bio-Diversity Conservation Act in Australia.[c]

State Law and Sustainability

At least one state has legislatively committed itself to the concept of sustainable policies. More than a decade ago, the Oregon Sustainability Act was passed. This act officially defines *sustainability* as:

> Using, developing, and protecting resources in a manner that enables people to meet current needs and provides that future generations can also meet future needs, from the joint perspective of environmental, economic, and community objectives.

Oregon's seven-member sustainability board recommends and proposes sustainability legislation and also develops policies and programs related to sustainability.

Where Does the United States Rank in the World Sustainability Index?

Environmental experts from Yale and Columbia universities have created an Environmental Sustainability Index (ESI) that ranks countries according to how well they manage their environments, protect the global commons, and have the capacity to improve their environmental performance. Finland and Norway are at the top of the ESI. The United States ranks forty-fifth. This low ranking is due mainly to excessive waste generation and greenhouse gas emissions in this country.

Some Corporations Take the Lead by Creating the Position of a Chief Sustainability Officer

The giant chemical company DuPont has an official chief sustainability officer (CSO)—a position that did not exist a few years ago. This corporate officer is responsible not only for ensuring that the company complies with all federal, state, local, and international environmental regulations, but also for discovering so-called megatrends that can affect different markets.

DuPont, though best known as a chemical company, also sells agricultural seeds and crop-protection products. One megatrend that its CSO has identified is a growing world population that is going to require more production of corn, soybeans, and other crops from limited acreage. That is where sustainability comes in—producing more with less.

MANAGERIAL IMPLICATIONS

Managers cannot wait until the government tells them what sustainable business practices they must follow. A company that adopts sustainable business practices today not only will promote desirable economic, social, and environmental results, but at the same time will enhance productivity, reduce costs, and thereby increase profitability. A company that has a clear understanding of sustainability will be more competitive as increasing consumer demand for "green" products and global concerns about the environment put pressure on all producers.

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a. 42 U.S.C. Sections 6901 *et seq.* (1976).
b. 42 U.S.C. Sections 13101 *et seq.* (1990).
c. This act became effective in 1999 and has been amended many times since.

CONCEPT SUMMARY 1.1
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) enacted 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 laws, 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.

SECTION 3

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.

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 will 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. Suppose that Ted forms a contract (a legally binding agreement—see Chapter 10) to purchase a parcel of land that he thinks will be just perfect for his future home. Further suppose that the seller breaches this agreement. Ted could sue the seller for the return of any deposits or down payment he might have made on the land, but this is not the remedy he really seeks. What Ted wants is to have the court order the seller to perform the contract. In other words, Ted wants 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 courts 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 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.* (The plaintiff 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 identical or 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 from 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 a geographic 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.

Controlling precedents in a jurisdiction are referred to as binding authorities. A **binding authority** is any source of law that a court must follow when deciding a case. Binding authorities include constitutions, statutes, and regulations that govern the issue being decided, as well as court decisions that are controlling precedents within the jurisdiction. United States Supreme Court case decisions, no matter how old, remain controlling until they are overruled by a subsequent decision of the Supreme Court, by a constitutional amendment, or by congressional legislation (that has not been held unconstitutional).

STARE DECISIS AND LEGAL STABILITY 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.

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.

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

CASE IN POINT The United States Supreme Court expressly overturned precedent when it concluded that separate educational facilities for whites and blacks, which it had previously upheld as constitutional,[4] were inherently unequal.[5] The Court's departure from precedent in this case received a tremendous amount of publicity as people began to realize the ramifications of this change in the law.

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.[6] 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 can also 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?* Suppose that a plaintiff comes before the court claiming *assault* (the act of wrongfully and intentionally making another person 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 action constitutes the tort of assault, given that the plaintiff was not aware of that action at the time it 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 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.

4. See *Plessy v. Ferguson,* 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896). A later section in this chapter explains how to read legal citations.
5. *Brown v. Board of Education of Topeka*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).
6. See Appendix A for further instructions on how to analyze case problems.

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 deciding whether the defendant committed assault by threatening the plaintiff 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 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. To understand this form of reasoning, 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, 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 previous 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 crossed 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 people believe that there is one "right" answer to every legal question. In most legal controversies, 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 (see the discussion of

schools of jurisprudential thought later in this chapter), which shape the process of legal reasoning, at least to some extent. 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 1.2*.

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, however, govern only 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.

COURTS INTERPRET STATUTES Even in areas governed by statutory law, though, judge-made law continues to be important because 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 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* CLARIFY AND ILLUSTRATE THE COMMON 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,

CONCEPT SUMMARY 1.2
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 is 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.

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 third edition of the *Restatement of the Law of Contracts* as simply the *Restatement (Third) of Contracts*.

SECTION 4
SCHOOLS OF JURISPRUDENTIAL THOUGHT

How judges apply the law to specific cases, including disputes relating to the business world, depends in part on their philosophical approaches to 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.

Clearly, 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 the laws enacted by legislative bodies, which 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.

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? Those who adhere to the **natural law** theory believe that a higher or universal law exists that applies to all human beings and that written laws should imitate these inherent principles. If a written law is unjust, then it is not a true (natural) law and need not be obeyed.

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 are implicitly 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. For example, U.S. companies that have operations abroad often hire foreign workers as employees. Should the same laws that protect U.S. employees apply to these foreign employees? 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,* 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 **legal positivism** 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. 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 1.3 reviews the schools of jurisprudential thought.

SECTION 5

CLASSIFICATIONS OF LAW

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

CONCEPT SUMMARY 1.3
Schools of Jurisprudential Thought

School of Thought	Description
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.
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.
Historical School	A school of legal thought that stresses the evolutionary nature of law and looks to doctrines that have withstood the passage of time for guidance in shaping present laws.
Legal Realism	A school of legal thought that advocates a less abstract and more realistic and pragmatic approach to the law and takes into account customary practices and the circumstances surrounding the particular transaction. Legal realism strongly influenced the growth of the *sociological school* of jurisprudence, which views law as a tool for promoting social justice.

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 18, 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 at both the federal and the state levels 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 both new laws and modifications of traditional laws that relate to the online environment. 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 6

HOW TO FIND PRIMARY SOURCES OF LAW

This text includes numerous references, or *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** identifies the 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 being published in sets of books, as described next, most federal and state laws and case decisions are 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 be designated by the symbol §, and "Sections," by §§.) In addition to the print publication of the U.S.C., the federal government provides a searchable online database of the *United States Code* at **www.gpoaccess.gov/uscode**.

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 the 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 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., So.2d, or So.3d). (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.*

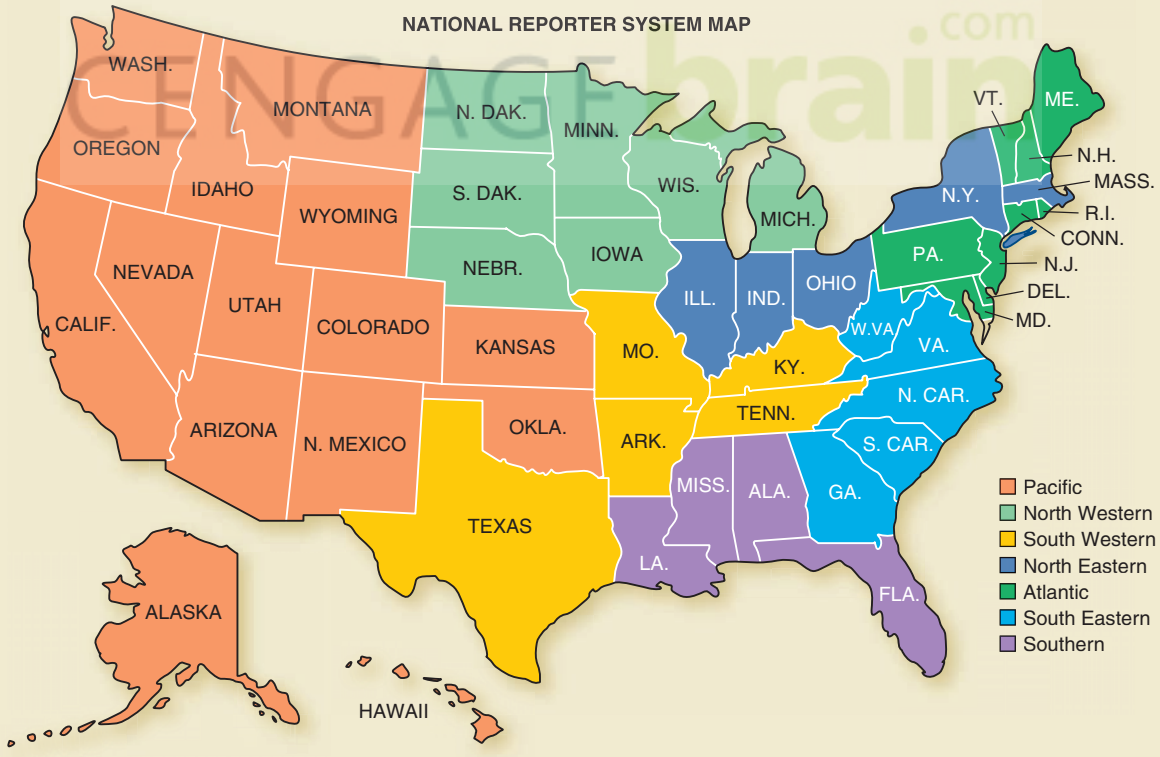
Note that some states have adopted a "public domain citation system" that uses a somewhat different format for the citation. For example, in Wisconsin, a Wisconsin Supreme Court decision might be designated "2010 WI 40," meaning that the case was decided in the year 2010 by the Wisconsin Supreme Court 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: *State v. Favoccia,* 119 Conn.App. 1, 986 A.2d 1081 (2010). We see that the opinion in this case can be found in Volume 119 of the official *Connecticut Appellate Reports,* on page 1. The parallel citation is to Volume 986 of the *Atlantic Reporter, Second Series,* page 1,081. In presenting appellate opinions in this text (starting in Chapter 2), 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

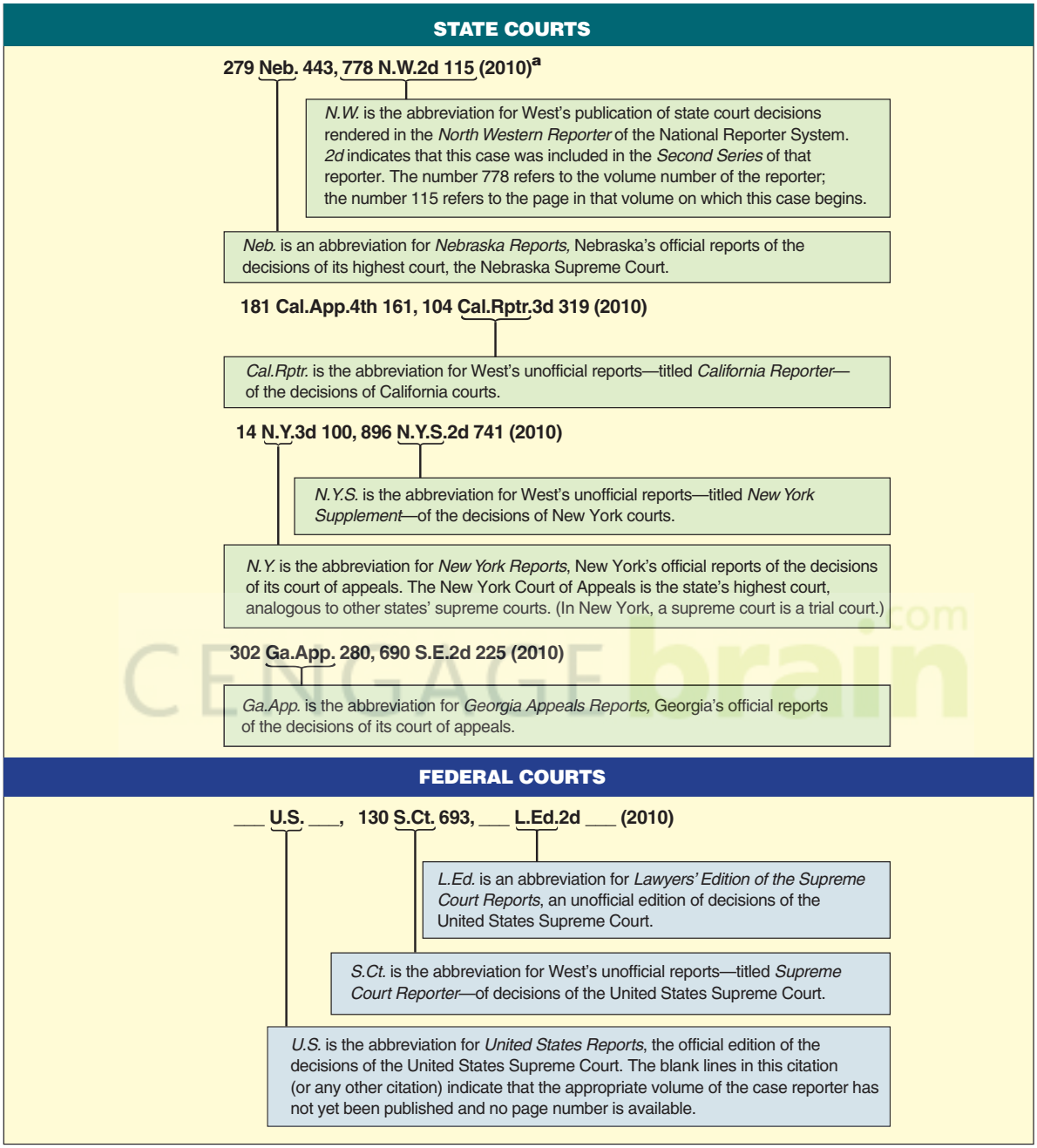
EXHIBIT 1–4 • West's National Reporter System—Regional/Federal

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., So.2d, or So.3d)	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.



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.).

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 from the same court.

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.

EXHIBIT 1–5 • How to Read Citations, Continued

FEDERAL COURTS (Continued)

590 F.3d 259 (4th Cir. 2010)

4th Cir. is an abbreviation denoting that this case was decided in the U.S. Court of Appeals for the Fourth Circuit.

683 F.Supp.2d 918 (W.D.Wis. 2010)

W.D.Wis. is an abbreviation indicating that the U.S. District Court for the Western District of Wisconsin 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 subsection 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 subsection within the subsection.

***Restatement (Third) of Torts*, Section 6**

Restatement (Third) of Torts refers to the third edition of the American Law Institute's *Restatement of the Law of Torts*. The number 6 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.

Continued

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 on the next page for an example).

EXHIBIT 1–5 • How to Read Citations, Continued

WESTLAW® CITATIONS[b]

2010 WL 348005

WL is an abbreviation for Westlaw. The number 2010 is the year of the document that can be found with this citation in the Westlaw database. The number 348005 is a number assigned to a specific document. A higher number indicates that a document was added to the Westlaw database later in the year.

UNIFORM RESOURCE LOCATORS (URLs)

http://www.westlaw.com[c]

The suffix *com* is the top level domain (TLD) for this Web site. The TLD *com* is an abbreviation for "commercial," which usually means that a for-profit entity hosts (maintains or supports) this Web site.

westlaw is the host name—the part of the domain name selected by the organization that registered the name. In this case, West registered the name. This Internet site is the Westlaw database on the Web.

www is an abbreviation for "World Wide Web." The Web is a system of Internet servers that support documents formatted in *HTML* (hypertext markup language) and other formats as well.

http://www.uscourts.gov

This is "The Federal Judiciary Home Page." The host is the Administrative Office of the U.S. Courts. The TLD *gov* is an abbreviation for "government." This Web site includes information and links from, and about, the federal courts.

http://www.law.cornell.edu/index.html

This part of a URL points to a Web page or file at a specific location within the host's domain. This page is a menu with links to documents within the domain and to other Internet resources.

This is the host name for a Web site that contains the Internet publications of the Legal Information Institute (LII), which is a part of Cornell Law School. The LII site includes a variety of legal materials and links to other legal resources on the Internet. The TLD *edu* is an abbreviation for "educational institution" (a school or a university).

http://www.ipl2.org/div/news

This part of the URL points to a static *news* page at this Web site, which provides links to online newspapers from around the world.

div is an abbreviation for "division," which is the way that ipl2 tags the content on its Web site as relating to a specific topic.

The site *ipl2* was formed from the merger of the Internet Public Library and the Librarians' Internet Index. It is an online service that provides reference resources and links to other information services on the Web. The site is supported chiefly by the *iSchool* at Drexel College of Information Science and Technology. The TLD *org* is an abbreviation for "organization" (normally nonprofit).

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 generally omitted the *http://* from the URLs listed in this text.

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

SECTION 7

HOW TO READ AND UNDERSTAND CASE LAW

The decisions made by the courts establish the boundaries of the law as it applies to almost 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. The following sections will provide useful insights into how to read and understand case law.

Case Titles and Terminology

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.

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 Sotomayor as Sotomayor, 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. 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 agreement, a *majority opinion* is written; the majority opinion outlines the view supported by the majority of the judges or justices deciding the case.

Often, a judge or justice who wishes to make or emphasize a point that was not made or emphasized in the unanimous or majority opinion will write a *concurring opinion*. This means that the judge or justice agrees, or concurs, with the majority's decision, but for different reasons. When there is not a unanimous 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. Occasionally, a court issues a *per curiam* (Latin for "by the court") opinion, which does not indicate the judge or justice who authored the opinion.

A Sample Court Case

To illustrate the various elements contained in a court opinion, we present an annotated court

opinion in Exhibit 1–6 on pages 23–25. The opinion is from an actual case decided by the U.S. Court of Appeals for the Seventh Circuit in 2010.

BACKGROUND OF THE CASE Kevin T. Singer, an inmate at a Wisconsin correctional facility, was a devoted player of Dungeons and Dragons (D&D), a popular fantasy role-playing game. While incarcerated, Singer was able to order and possess D&D materials for two years. In November 2004, however, the prison's gang expert received an anonymous letter stating that Singer and three other inmates were trying to recruit others to join a "gang" dedicated to playing D&D. Prison officials immediately searched Singer's cell, confiscated all of his D&D materials and prohibited him and other inmates from playing D&D. Singer filed a lawsuit in federal district court against the Wisconsin prison alleging that these actions violated his free speech and due process rights. The district court found in favor of the prison when it concluded that the D&D ban was rationally related to a legitimate government interest. Singer appealed to the U.S. Court of Appeals for the Seventh Circuit.

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 we 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.

THE SAMPLE COURT CASE STARTS ON THE FACING PAGE.

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.

SINGER v. RAEMISCH
United States Court of Appeals,
Seventh Circuit,
593 F.3d 529 (2010).

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

TINDER, Circuit Judge.

* * * *

The court divides the opinion into three sections, each headed by a Roman numeral and an explanatory heading. The first section summarizes the factual background of the case.

I. Background

Kevin T. Singer is an inmate at Wisconsin's Waupun Correctional Institution. He is also a devoted player of D&D [Dungeons and Dragons], a fantasy role-playing game in which players collectively develop a story around characters whose personae they adopt.

* * * Singer was able to order and possess his D&D materials without incident from June 2002 until November 2004. This all changed on or about November 14, 2004, when Waupun's long-serving Disruptive Group Coordinator, Captain Bruce Muraski, received an anonymous letter from an inmate. The letter expressed concern that Singer and three other inmates were forming a D&D gang and were trying to recruit others to join by passing around their D&D publications and touting the "rush" they got from playing the game. Muraski, Waupun's expert on gang activity, decided to heed the letter's advice and "check into this gang before it gets out of hand."

On November 15, 2004, Muraski ordered Waupun staff to search the cells of the inmates named in the letter. The search of Singer's cell turned up twenty-one books, fourteen magazines, and Singer's handwritten D&D manuscript, all of which were confiscated. * * * In a December 6, 2004, letter to Singer, Muraski informed Singer that "inmates are not allowed to engage in or possess written material that details rules, codes, dogma of games/activities such as 'Dungeons and Dragons' because it promotes fantasy role playing, competitive hostility, violence, addictive escape behaviors, and possible gambling."

Continued

EXHIBIT 1–6 • A Sample Court Case, Continued

To *lodge a complaint* is to file the appropriate legal documents with the clerk of a court to initiate a lawsuit.

The First Amendment to the U.S. Constitution guarantees the right of *free speech*—to express one's views without governmental restrictions. The Fifth and Fourteenth Amendments guarantee the right to *due process*—to enjoy life, liberty, and property without unfair government interference.

An *affidavit* is a written or printed voluntary statement of fact, confirmed by the oath or affirmation of the party making it and made before a person having the authority to administer the oath or affirmation.

A *summary judgment* is a judgment that a court enters without 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.

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

The court applies the principle established by the *Turner* case—which the United States Supreme Court decided—to the facts of the Singer case. The rulings in cases decided by higher courts are binding on the decisions of lower courts, according to the doctrine of *stare decisis* (see page 9).

Penological interests relate to the branch of criminology dealing with prison management and the treatment of offenders.

* * * *

* * * Singer **lodged a * * * complaint** in federal court * * *. He alleged that his **free speech** and **due process** rights were violated when Waupun officials confiscated his D&D materials and enacted a categorical ban against D&D. * * *

Singer collected fifteen **affidavits**—from other inmates, his brother, and three role-playing game experts. He contends that the affidavits demonstrate that there is no connection between D&D and gang activity. * * * The prison officials countered Singer's affidavit evidence by submitting an affidavit from Captain Bruce Muraski * * *. Muraski testified * * * that fantasy role-playing games like D&D have "been found to promote competitive hostility, violence, and addictive escape behavior, which can compromise not only the inmate's rehabilitation and effects of positive programming, but endanger the public and jeopardize the safety and security of the institution."

The prison officials moved for **summary judgment** on all of Singer's claims. The district court granted the motion in full, but Singer limits his appeal to the foreclosure of his First Amendment claims.

II. Discussion

* * * *

In [*Turner v. Safley*], the [United States] Supreme Court determined that prison regulations that restrict inmates' constitutional rights are nevertheless valid if they are reasonably related to legitimate **penological interests.**

* * * *

[Singer] attacks the district court's conclusion that the D&D ban bears a rational relationship to a legitimate governmental interest * * *.

The sole evidence the prison officials have submitted on this point is the affidavit of Captain Muraski, the gang specialist. Muraski testified that Waupun's prohibition on role-playing and fantasy games * * * was intended to promote prison security because co-operative games can mimic

EXHIBIT 1–6 • A Sample Court Case, Continued

Thereof here means "of gangs."

Something that is organized by a rigid, ranked order—here, by a ranked order of inmates depending on who is winning the most.

the organization of gangs and lead to the actual development **thereof.** * * * At bottom, his testimony about this policy aim highlighted Waupun's worries about cooperative activity among inmates, particularly that carried out in an organized, **hierarchical** fashion * * *. He [also] testified that D&D can "foster an inmate's obsession with escaping from the real life, correctional environment, fostering hostility, violence and escape behavior," which in turn "can compromise not only the inmate's rehabilitation and effects of positive programming but also endanger the public and jeopardize the safety and security of the institution."

* * * *

A *trove* is a collection or treasure.

It is true that Singer procured an impressive **trove** of affidavit testimony, including some from role-playing game experts, but none of his **affiants'** testimony addressed the inquiry at issue here. The question is not whether D&D has led to gang behavior in the past; the prison officials concede that it has not. The question is whether the prison officials are rational in their belief that, if left unchecked, D&D could lead to gang behavior among inmates and undermine prison security in the future. Singer's affiants * * * lack the qualifications necessary to determine whether the relationship between the D&D ban and the maintenance of prison security is so remote as to render the policy arbitrary or irrational. In other words, none of them is sufficiently versed in prison security concerns to raise a genuine issue of material fact about their relationship to D&D.

An *affiant* is a person who swears to an affidavit.

* * * *

In the third major section of the opinion, the court states its decision and gives its order.

III. Conclusion

A *large quantum* is a sizeable quantity.

Despite Singer's **large quantum** of affidavit testimony * * *, he has failed to demonstrate a genuine issue of material fact concerning the reasonableness of the relationship between Waupun's D&D ban and the prison's clearly legitimate penological interests. The district court's grant of summary judgment is therefore **AFFIRMED.**

To *affirm* a judgment is to declare that it is valid.

REVIEWING
Introduction to Law and Legal Reasoning

Suppose that 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?
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?

DEBATE THIS: *Under the doctrine of* stare decisis, *courts are obligated to follow the precedents established in their jurisdiction unless there is a compelling reason not to. Should U.S. courts continue to adhere to this common law principle, given that our government now regulates so many areas by statute?*

TERMS AND CONCEPTS

administrative agency 5
administrative law 5
allege 10
analogy 11
appellant 21
appellee 21
binding authority 9
breach 3
case law 5
case on point 11
chancellor 7
citation 15
civil law 14
common law 7
constitutional law 4
court of equity 7
court of law 7
criminal law 15
cyberlaw 15
damages 7
defendant 8
defense 8
equitable maxims 8
executive agency 5
historical school 13
independent regulatory agency 5
jurisprudence 13
laches 8
law 2
legal positivism 13
legal realism 14
legal reasoning 10
natural law 13
opinion 21
ordinance 4
petitioner 8
plaintiff 8
precedent 9
procedural law 14
public policy 10
remedy 7
remedy at law 7
remedy in equity 7
reporter 9
respondent 8
sociological school 14
stare decisis 9
statute of limitations 8
statutory law 4
substantive law 14
syllogism 11
uniform law 4

QUESTIONS AND CASE PROBLEMS

1–1. Sources of Law How does statutory law come into existence? How does it differ from the common law?

1–2. QUESTION WITH SAMPLE ANSWER: Schools of Jurisprudential Thought.

After World War II, an international tribunal of judges convened at Nuremberg, Germany and convicted several Nazis of "crimes against humanity." Assuming that these convicted war criminals had not disobeyed any law of their country and had merely been following their government'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. Reading Citations Assume that you want to read the entire court opinion in the case of *Pinard v. Dandy Lions,*

LLC, 119 Conn.App. 368, 987 A.2d 406 (2010). 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. Sources of Law 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. *Stare Decisis* In 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. Court Opinions 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. The Common Law Tradition Courts can overturn precedents and thus change the common law. Should judges have the same authority to overrule statutory law? Explain.

1–8. Schools of Judicial Thought "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. Remedies Assume that Arthur Rabe is suing Xavier Sanchez for breaching a contract in which Sanchez promised to sell Rabe a painting by Vincent van Gogh 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: The Common Law Tradition.

*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?

LEGAL RESEARCH EXERCISES ON THE WEB

Go to this text's Web site at **www.cengage.com/blaw/clarkson**, select "Chapter 1," and click on "Practical Internet Exercises." There you will find the following Internet research exercises that you can perform to learn more about the topics covered in this chapter.

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

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

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