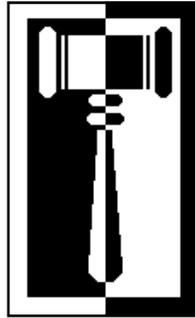


Chapter 1



Introduction to the Law and Our Legal System

INTRODUCTION

The first chapters in Unit 1 provide the background for the entire course. Chapter 1 sets the stage. At this point, it is important to establish goals and objectives. For your students to benefit from this course, they must understand that (1) the law is a set of general rules, (2) that, in applying these general rules, a judge cannot always fit a case to suit a rule, so must fit (or find) a rule to suit the case, (3) that, in fitting (or finding) a rule, a judge must also supply reasons for the decision.

The tension in the law between the need for stability and the need for change is one of the first major concepts introduced in this chapter. The answer to the question, “What is the law?,” includes how jurists have answered it, how common law courts originated, and the rationale for the doctrine of *stare decisis*.

The second major concept in the chapter involves the distinctions among today’s sources of law and distinctions in its different classifications. The sources include the federal constitution and federal laws, state constitutions and statutes (including the UCC), local ordinances, administrative agency regulations, and case law. The classifications include substantive and procedural, domestic and international, public and private, civil and criminal, and law and equity. These sources and categories give students a framework on which to hang the mass of principles known as the law.

ADDITIONAL RESOURCES—



VIDEO SUPPLEMENTS



The following video supplements relate to topics discussed in this chapter—

PowerPoint Slides

To highlight some of this chapter's key points, you might use the Lecture Review PowerPoint slides compiled for Chapter 1.

Business Law Digital Video Library

The Business Law Digital Video Library at www.cengage.com/blaw/dvl offers a variety of videos for group or individual review. These clips bring business law alive, particularly for visual learners, to apply legal concepts to common experiences, ignite discussions, and illustrate core concepts.

Topics indexed under more than twenty links are covered in the following series—

- Ask the Instructor

A business law instructor gives straightforward explanations of legal concepts for student review.

- Real World Legal

These videos explore conflicts that arise in a variety of business environments including: a large corporation, a local restaurant, and a retail store. The scenes promote students' understanding of the difficult but imperative need to consider the legal aspects of decision-making in the business world.

- LawFlix

Modern business scenarios illustrate legal conflicts at an ad agency and a dot.com company.

- Legal Conflicts in Business

Modern business scenarios illustrate legal conflicts at an ad agency and a dot.com company.

- Drama of the Law

Classic legal business scenarios feature scenes in a supermarket and at a car dealership.

Drama of the Law, LawFlix, and Legal Conflicts in Business clips are accompanied by critical thinking discussion questions—with answers provided to the instructor. References to videos suitable for use in conjunction with individual chapters in the text are included throughout this Instructor's Manual.

LECTURE OUTLINE FOR THIS CHAPTER

- I. What Is Law?
- II. Business Activities and the Legal Environment

- A. Many Different Laws May Affect a Single Business Transaction
 - B. Linking the Law to Your Career
 - C. The Role of the Law in a Small Business
- III. Sources of American Law
- A. The Common Law Tradition
 - 1. Early English Courts of Law
 - 2. Stare Decisis
 - 3. Equity
 - 4. The Common Law Today
 - B. Constitutional Law
 - C. Statutory Law
 - 1. Uniform Laws
 - 2. The Uniform Commercial Code (UCC)
 - D. Administrative Law
- IV. Civil Law versus Criminal Law
- V. Law around the World
- VI. International Law

DETAILED CHAPTER OUTLINE

I. What Is Law?

Law consists of enforceable rules governing relationships among individuals and between individuals and their society. The primary function of law is to simultaneously maintain stability and permit change. The law does this by providing for dispute resolution, the preservation of political, economic, and social institutions, and the protection of property.

II. Business Activities and the Legal Environment

A. MANY DIFFERENT LAWS MAY AFFECT A SINGLE BUSINESS TRANSACTION

The text presents and illustrates an example of how various areas of the law can affect a business decision (such as whether to enter into a contract). It is also explained that a businessperson should know enough about the law to know when to ask for advice.

B. LINKING THE LAW TO YOUR CAREER

The text introduces a feature that appears at the end of about half of the chapters to show how legal concepts can be useful to managers and other businesspersons in any discipline.

C. THE ROLE OF THE LAW IN A SMALL BUSINESS

The small-business owner/operator is the most general of managers, wearing many “hats,” with each including a link to the law.

III. Sources of American Law

A. COMMON LAW

1. Early English Courts of Law

American law is based on the English system, which unified English local courts in 1066. This system, based on the decisions judges make in cases, is the common law system.

2. Stare Decisis

The common law system involves the application of principles applied in earlier cases with similar facts. This use of precedent, known as the doctrine of *stare decisis*, permits a predictable, quick, and fair resolution of cases. *Stare decisis* is important because part of the function of law is to maintain stability. If the application of the law were unpredictable, there would be no consistent rules to follow and no stability. A judge may decide that a precedent is incorrect, however, if there may have been changes in technology, for example, business practices, or society’s attitudes. When determining which rules and policies to apply in a given case, and in applying them, a judge may examine: prior case law, the principles and policies behind the decisions, and their historical setting; statutes and the policies behind a legislature’s passing a specific statute; society’s values and custom; and data and principles from other disciplines (economics, sociology).

CITATION—

REAL-WORLD CASE EXAMPLE

This feature is based on the actual case of *Singer, Inc. v. Raemisch*, 593 F.3d 529 (7th Cir. 2010). In discussing this example, you might like to consider the following issues:

Could the ruling in this case be applied to other “co-operative” activities among prison inmates? Yes. The general principle is ““prison regulations that restrict inmates’ constitutional rights are nevertheless valid if they are reasonably related to legitimate penological interests.” If inmates’ activities threaten prison security, as perceived in this case, those activities could be legitimately curtailed.

Why is the doctrine of *stare decisis* important? *Stare decisis* is important because part of the function of the law is to maintain stability. If the application of the law was unpredictable, there would be no consistent rules to follow and no stability.

ENHANCING YOUR LECTURE—



9 IS AN 1875 CASE PRECEDENT STILL BINDING?



In a suit against the U.S. government for breach of contract, Boris Korczak sought compensation for services that he had allegedly performed for the Central Intelligence Agency (CIA) from 1973 to 1980. Korczak claimed that the government had failed to pay him an annuity and other compensation required by a secret oral agreement he had made with the CIA. The federal trial court dismissed Korczak's claim, and Korczak appealed the decision to the U.S. Court of Appeals for the Federal Circuit.

At issue on appeal was whether a Supreme Court case decided in 1875, *Totten v. United States*,^a remained the controlling precedent in this area. In *Totten*, the plaintiff alleged that he had formed a secret contract with President Lincoln to collect information on the Confederate army during the Civil War. When the plaintiff sued the government for compensation for his services, the Supreme Court held that the agreement was unenforceable. According to the Court, to enforce such agreements could result in the disclosure of information that “might compromise or embarrass our government” or cause other “serious detriment” to the public. In Korczak's case, the federal appellate court held that the *Totten* case precedent was still “good law,” and therefore Korczak, like the plaintiff in *Totten*, could not recover compensation for his services. Said the court, “*Totten*, despite its age, is the last pronouncement on this issue by the Supreme Court. . . . We are duty bound to follow the law given us by the Supreme Court unless and until it is changed.”^b

THE BOTTOM LINE

Supreme Court precedents, 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.

a. 92 U.S. 105 (1875).

b. *Korczak v. United States*, 124 F.3d 227 (Fed.Cir. 1997).

3. Equity

Equity is the branch of unwritten law, founded in justice and fair dealing, that seeks to supply a more equitable and adequate remedy than damages, which is the usual remedy at law. In medieval England, 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 the king's chancellor. Eventually, formal chancery courts, or courts of equity, evolved into a system of courts distinct from courts of law. A court of equity could grant new and unique remedies, including an injunction (ordering a party to do or not to do a particular act). Equitable remedies are discussed in more detail in Chapter 16.

4. The Common Law Today

Today, in most states, there are not two separate court systems—a court may grant both legal and equitable remedies in the same case. To request the proper remedy, however, one must know what remedies are available for specific kinds of harms suffered.

ADDITIONAL BACKGROUND—

The Publication of Court Decisions

When a court issues a decision, the judge often writes an opinion setting out that decision and explaining the reasons for it. To be informed about the law, other judges (and anyone else) can read that opinion as it is published in one or more publications. For example, federal court decisions are published unofficially in a variety of publications by West Publishing Company. West organizes these reports by court level and issues them chronologically. Opinions from the United States Court of Appeals, for example, are reported in West’s Federal Reporter. West publishes these decisions with headnotes condensing important legal points in the cases. The headnotes are assigned key numbers that cross-reference the points to similar points in cases reported in other West publications. These opinions are issued even earlier through West’s on-line computer database—WESTLAW. The following are excerpts from Ferguson v. Commissioner of Internal Revenue, as published with headnotes in West’s Federal Reporter and as it appears on WESTLAW.

Betty Ann FERGUSON, Petitioner-Appellant,
v.
COMMISSIONER OF INTERNAL REVENUE, Respondent-Appellee.

No. 90-4430

Summary Calendar.
United States Court of Appeals,
Fifth Circuit.

Jan. 22, 1991.

Taxpayer filed petition. The United States Tax Court, Korner, J., dismissed for lack of prosecution, and appeal was taken. The Court of Appeals held that court abused its discretion in refusing testimony of taxpayer, who refused, on religious grounds, to swear or affirm.

Reversed and remanded.

1. Constitutional Law 92K84(2)

Protection of free exercise clause extends to all sincere religious beliefs; courts may not evaluate religious truth. U.S.C.A. Const. Amend. 1. Ferguson v. C.I.R. 921 F.2d 588, 67 A.F.T.R.2d 91-459, 91-1 USTC P 50,052

2. Witnesses 410K227

Court abused its discretion in refusing testimony of witness who refused, on religious grounds, to swear or affirm, and who instead offered to testify accurately and completely and to be subject to penalties for perjury. U.S.C.A. Const. Amend. 1; Fed.Rules Evid.Rule 603, 28 U.S.C.A. *Ferguson v. C.I.R.* 921 F.2d 588, 67 A.F.T.R.2d 91-459, 91-1 USTC P 50,052

Betty Ann Ferguson, Metairie, La., pro se.

Peter K. Scott, Acting Chief Counsel, I.R.S., Gary R. Allen, David I. Pincus, William S. Rose, Jr., Asst. Attys. Gen., Dept. of Justice, Tax Div., Washington, D.C., for respondent-appellee.

Appeal from a Decision of the United States Tax Court.

Before JOLLY, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:

Betty Ann Ferguson appeals the Tax Court's dismissal of her petition for lack of prosecution after she refused to swear or affirm at a hearing. We find the Tax Court's failure to accommodate her objections inconsistent with both Fed.R.Evid. 603 and the First Amendment and reverse.

I.

This First Amendment case ironically arose out of a hearing in Tax Court. Although the government's brief is replete with references to income, exemptions, and taxable years, the only real issue is Betty Ann Ferguson's refusal to "swear" or "affirm" before testifying at the hearing. Her objection to oaths and affirmations is rooted in two Biblical passages, Matthew 5:33-37 and James 5:12. * * *

Ms. Ferguson, proceeding pro se, requested that Judge Korner consider the following statement set forth by the Supreme Court of Louisiana in *Staton v. Fought*, 486 So.2d 745 (La.1986), as an alternative to an oath or affirmation:

I, [Betty Ann Ferguson], do hereby declare that the facts I am about to give are, to the best of my knowledge and belief, accurate, correct, and complete.

Judge Korner abruptly denied her request, commenting that "[a]sking you to affirm that you will give true testimony does not violate any religious conviction that I have ever heard anybody had" and that he did not think affirming "violates any recognizable religious scruple." Because Ms. Ferguson could only introduce the relevant evidence through her own testimony, Judge Korner then dismissed her petition for lack of prosecution. She now appeals to this court.

II.

[1] The right to free exercise of religion, guaranteed by the First Amendment to the Constitution, is one of our most protected constitutional rights. The Supreme Court has stated that "only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion." *Wisconsin v. Yoder*, 406 U.S. 205, 215, 92 S.Ct. 1526, 1533, 32 L.Ed.2d 15 (1972). Accord *Hobbie v. Unemployment Appeals Comm'n of Florida*, 480 U.S. 136, 141, 107 S.Ct. 1046, 1049, 94 L.Ed.2d 190 (1987); and *Sherbert v. Verner*, 374 U.S. 398, 403, 83 S.Ct. 1790, 1793, 10 L.Ed.2d 965 (1963). The protection of the free exercise clause extends to all sincere religious beliefs; courts may not evaluate religious truth. *United States v. Lee*, 455 U.S. 252, 257, 102 S.Ct. 1051, 1055, 71 L.Ed.2d 127 (1982); and *United States v. Ballard*, 322 U.S. 78, 86-87, 64 S.Ct. 882, 886-887, 88 L.Ed. 1148 (1944). Fed.R.Evid.

603, applicable in Tax Court under the Internal Revenue Code, 26 U.S.C. § 7453, requires only that a witness “declare that [she] will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness’ conscience and impress the witness’ mind with the duty to do so.” As evidenced in the advisory committee notes accompanying Rule 603, Congress clearly intended to minimize any intrusion on the free exercise of religion:

The rule is designed to afford the flexibility required in dealing with religious adults, atheists, conscientious objectors, mental defectives, and children. Affirmation is simply a solemn undertaking to tell the truth; no special verbal formula is required. Accord *Wright and Gold*, *Federal Practice and Procedure* § 6044 (West 1990).

The courts that have considered oath and affirmation issues have similarly attempted to accommodate free exercise objections. In *Moore v. United States*, 348 U.S. 966, 75 S.Ct. 530, 99 L.Ed. 753 (1955) (per curiam), for example, the Supreme Court held that a trial judge erred in refusing the testimony of witnesses who would not use the word “solemnly” in their affirmations for religious reasons.

* * * *

[2] The government offers only two justifications for Judge Korner’s refusal to consider the *Staton* statement. First, the government contends that the Tax Court was not bound by a Louisiana decision. This argument misses the point entirely; Ms. Ferguson offered *Staton* as an alternative to an oath or affirmation and not as a precedent.

The government also claims that the *Staton* statement is insufficient because it does not acknowledge that the government may prosecute false statements for perjury. The federal perjury statute, 18 U.S.C. § 1621, makes the taking of “an oath” an element of the crime of perjury. Accord *Smith v. United States*, 363 F.2d 143 (5th Cir.1966). However, Ms. Ferguson has expressed her willingness to add a sentence to the *Staton* statement acknowledging that she is subject to penalties for perjury. The government has cited a number of cases invalidating perjury convictions where no oath was given, but none of the cases suggest that Ms. Ferguson’s proposal would not suffice as “an oath” for purposes of § 1621. See *Gordon*, 778 F.2d at 1401 n. 3 (statement by defendant that he understands he must accurately state the facts combined with acknowledgment that he is testifying under penalty of perjury would satisfy Fed.R.Civ.P. 43(d)).

The parties’ briefs to this court suggest that the disagreement between Ms. Ferguson and Judge Korner might have been nothing more than an unfortunate misunderstanding. The relevant portion of their dialogue was as follows:

MS. FERGUSON: I have religious objections to taking an oath.

THE COURT: All right. You may affirm. Then in lieu of taking an oath, you may affirm.

MS. FERGUSON: Sir, may I present this to you? I do not—

THE COURT: Just a minute. The Clerk will ask you.

THE CLERK: You are going to have to stand up and raise your right hand.

MS. FERGUSON: I do not affirm either. I have with me a certified copy of a case from the Louisiana Supreme Court.

THE COURT: I don’t care about a case from the Louisiana Supreme Court, Ms. Ferguson. You will either swear or you will affirm under penalties of perjury that the testimony you are about to give is

true and correct, to the best of your knowledge.

MS. FERGUSON: In that case, Your Honor, please let the record show that I was willing to go under what has been acceptable by the State of Louisiana Supreme Court, the State versus—

THE COURT: We are not in the state of Louisiana, Ms. Ferguson. You are in a Federal court and you will do as I have instructed, or you will not testify.

MS. FERGUSON: Then let the record show that because of my religious objections, I will not be allowed to testify.

Ms. Ferguson contends that Judge Korner insisted that she use either the word “swear” or the word “affirm”; the government suggests instead that Judge Korner only required an affirmation which the government defines as “an alternative that encompasses all remaining forms of truth assertion that would satisfy [Rule 603].” Even Ms. Ferguson’s proposed alternative would be an “affirmation” under the government’s definition.

If Judge Korner had attempted to accommodate Ms. Ferguson by inquiring into her objections and considering her proposed alternative, the entire matter might have been resolved without an appeal to this court. Instead, however, Judge Korner erred not only in evaluating Ms. Ferguson’s religious belief, and concluding that it did not violate any “recognizable religious scruple,” but also in conditioning her right to testify and present evidence on what she perceived as a violation of that belief. His error is all the more apparent in light of the fact that Ms. Ferguson was proceeding pro se at the hearing.

We therefore REVERSE the decision of the Tax Court and REMAND this case for further proceedings not inconsistent with this opinion.

ADDITIONAL BACKGROUND—

Restatement (Second) of Contracts

The principles set out in cases decided by the courts govern all areas not covered by statutory law. These principles have been summarized in the American Law Institute’s Restatements of the Law, which do not have the force of law but which are an important secondary source of legal analysis on which judges often base their decisions.

The American Law Institute, a group of American legal scholars, are responsible for the Restatements. These scholars also work with the National Conference of Commissioners on Uniform State Laws on some of the uniform state laws (see below). Members include law educators, judges, and attorneys. Their goal is to promote uniformity in state law to encourage the fair administration of justice.

The American Law Institute publishes summaries of common law rules on selected topics. Intended to clarify the rules, the summaries are published as the Restatements. Each Restatement is further divided into chapters and sections. Accompanying the sections are explanatory comments, examples illustrating the principles, relevant case citations, and other materials. The following is Restatement (Second) of Contracts, Section 1 (that is, Section 1 of the second edition of the Restatement of Contracts)

with excerpts from the Introductory Note to Chapter 1 and Comments accompanying the section.

Chapter 1 MEANING OF TERMS

* * * *

Introductory Note: A persistent source of difficulty in the law of contracts is the fact that words often have different meanings to the speaker and to the hearer. Most words are commonly used in more than one sense, and the words used in this Restatement are no exception. It is arguable that the difficulty is increased rather than diminished by an attempt to give a word a single definition and to use it only as defined. But where usage varies widely, definition makes it possible to avoid circumlocution in the statement of rules and to hold ambiguity to a minimum.

In the Restatement, an effort has been made to use only words with connotations familiar to the legal profession, and not to use two or more words to express the same legal concept. Where a word frequently used has a variety of distinct meanings, one meaning has been selected and indicated by definition. But it is obviously impossible to capture in a definition an entire complex institution such as “contract” or “promise.” The operative facts necessary or sufficient to create legal relations and the legal relations created by those facts will appear with greater fullness in the succeeding chapters.

§ 1. Contract Defined

A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.

Comment:

* * * *

c. Set of promises. A contract may consist of a single promise by one person to another, or of mutual promises by two persons to one another; or there may be, indeed, any number of persons or any number of promises. One person may make several promises to one person or to several persons, or several persons may join in making promises to one or more persons. To constitute a “set,” promises need not be made simultaneously; it is enough that several promises are regarded by the parties as constituting a single contract, or are so related in subject matter and performance that they may be considered and enforced together by a court.

B. CONSTITUTIONAL LAW

The federal constitution is a general document that distributes power among the branches of the government. It is the supreme law of the land. Any law that conflicts with it is invalid. The states also have constitutions, but the federal constitution prevails if their provisions conflict.

C. STATUTORY LAW

Statutes and ordinances are enacted by Congress, state legislatures, and local legislative bodies. Much of the work of courts is interpreting what lawmakers meant when a law was passed and applying that law to a set of facts (a case).

1. Uniform Laws

Uniform laws are created by panels of experts and scholars and adopted at the option of each state's legislature.

2. The Uniform Commercial Code (UCC)

The Uniform Commercial Code (UCC) assists parties involved in commercial transactions by helping to determine their intent and by providing for the enforcement of their agreement. The UCC has been adopted by all the states (only in part in Louisiana), the District of Columbia, and the Virgin Islands.

ADDITIONAL BACKGROUND—**The United States Code**

Until 1926, federal statutes were published in one volume of the Revised Statutes of 1875 and in each subsequent volume of the Statutes at Large. In 1926, these laws were rearranged into fifty subject areas and republished as the **United States Code**. In the United States Code, all federal laws of a public and permanent nature are compiled by subject. Subjects are assigned titles and title numbers. Within each title, subjects are further subdivided, and each statute is given a section number. The following is the text of Section 1 of Title 15 of the United States Code (15 U.S.C. § 1).

TITLE 15. COMMERCE AND TRADE**CHAPTER 1—MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE****§ 1. Trusts, etc., in restraint of trade illegal; penalty**

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

(July 2, 1890, c. 647, § 1, 26 Stat. 209; Aug. 17, 1937, c. 690, Title VIII, 50 Stat. 693; July 7, 1955, c. 281, 69 Stat. 282.)

(As amended Dec. 21, 1974, Pub.L. 93-528, § 3, 88 Stat. 1708; Dec. 12, 1975, Pub.L. 94-145, § 2, 89 Stat. 801.)

D. ADMINISTRATIVE LAW

Administrative law consists of the rules, orders, and decisions of administrative agencies (government bodies, such as departments, commissions, and boards, charged by Congress or a state legislature with carrying out the terms of particular laws). Regulations issued by various administrative agencies affect virtually every aspect of a business's operation, including capital structure and financing, hiring and firing procedures, relations with employees and unions, and the way a firm manufactures and markets its products. Administrative law is discussed more fully in Chapter 40.

ADDITIONAL BACKGROUND—

**National Conference of Commissioners on Uniform State Laws,
Co-sponsor of the Uniform Commercial Code**

The Uniform Commercial Code (UCC) is an ambitious codification of commercial common law principles. The UCC has been the most widely adopted, and thus the most successful, of the many uniform and model acts that have been drafted. The National Conference of Commissioners on Uniform State Laws is responsible for many of these acts. The National Conference of Commissioners on Uniform State Laws is an organization of state commissioners appointed by the governor of each state, the District of Columbia, and Puerto Rico. Their goal is to promote uniformity in state law where uniformity is desirable. The purpose is to alleviate problems that arise in an increasingly interdependent society in which a single transaction may cross many states. Financial support comes from state grants. The members meet annually to consider drafts of proposed legislation. The American Law Institute works with the National Conference of Commissioners on Uniform State Laws on some of the uniform state laws.

IV. Civil Law versus Criminal Law

Criminal law regulates relationships between individuals and society. Civil law regulates relationships between individuals.

V. Law around the World

Most of the world's legal systems are common law or civil law. Civil law systems grew out of the legal system of the Roman Empire (although modern systems differ from the Roman system). In a civil law system, the primary sources of law are statutes. The doctrine of *stare decisis* does not apply. Civil law systems exist in most continental European nations, and in countries that were once colonies of those nations. Japan has a civil law system. Louisiana and Puerto Rico have systems that can be characterized in part as civil law. Distinctions between the civil and common law systems are beginning to blur (for instance, case law precedents are widely followed by civil law courts, common law judges take a more active role in court proceedings, and statutes and administrative rules are of increasing importance in common law systems).

VI. International Law

National law is the law that pertains to a particular nation. International law is the body of written and unwritten laws that are observed by independent nations and govern the acts of individuals and governments. International law is discussed in more detail in Chapter 42.

ADDITIONAL BACKGROUND—

International Law—Public and Private

Public international law concerns the actions of nations in their dealings with one another (for example, in diplomatic relations) and sometimes in their dealings with foreign individuals. International organizations (such as the United Nations) often adopt resolutions and other standards that require certain behavior of nations. The International Court of Justice (World Court), which is the judicial arm of the United Nations, hears disputes between nations. The World Court has not been an important factor in resolving international disputes, because no nation can be compelled to submit to its jurisdiction or to abide by its decisions. Treaties are a source of public international law that may relate to individuals. Treaties are agreements between two or more nations that must be ratified by each (for instance, the U.S. Constitution requires approval of two-thirds of the Senate before a treaty executed by the president is binding). One important treaty is the United Nations Convention on Contracts for the International Sale of Goods (CISG). The CISG governs international sales contracts between firms and individuals in nations that have ratified the CISG (which include the United States).

Private international law concerns the actions of individuals. Private parties to an international transaction can choose the law that will govern their transaction, the forum in which any dispute will be decided, and the language that will be used to interpret their agreement.

 FACING A LEGAL PROBLEM 

QUESTIONS

When discussing this chapter's Facing a Legal Problem, you might like to ask the following questions.

1. What are the differences between remedies at law and in equity? Remedies at law were once limited to payments of money or property (including land) as damages. Remedies in equity were available only when there was no adequate remedy at law. Today, in most states, either or both may be granted in the same action. Remedies in equity are still discretionary, guided by equitable principles and maxims. Remedies at law still include payments of money or property as damages. Today, the major practical difference between actions at law and actions in equity is the right to demand a jury trial in an action at law.
2. What are statutes? Laws enacted by Congress or a state legislative body.

ANSWER TO ETHICAL QUESTION

Should legal problems be anticipated? Why and how? Legal problems should be anticipated to prevent legal liability before it arises. One method to anticipate legal problems is to learn about legal rights and duties ahead of time.

TEACHING SUGGESTIONS

1. Emphasize that the law is not simple—there are no simple solutions to complex problems. Legal principles are presented in this course as “black letter law”—that is, in the form of basic principles generally accepted by the courts or expressed in statutes. In fact, the law is not so concrete and static. One of the purposes of this course is to acquaint students with legal problems and issues that occur in society in general and in business in particular. The limits of time and space do not allow all of the principles to be presented against the background of their development and the reasoning in their application. By the end of the course, students should be able to recognize legal problems (“spot the issues”) when they arise. In the real world, this may be enough to seek professional legal assistance. In this course, students should also be able to recognize the competing interests involved in an issue and reason through opposing points of view to a decision.
2. Point out that the law assumes everyone knows it, or, as it’s often phrased, “Ignorance of the law is no excuse.” Of course, the volume and expanding proliferation of statutes, rules, and court decisions is beyond the ability of anyone to know it all. But pointing out the law’s presumption might encourage students to study. Also, knowing the law allows business people to make better business decisions.
3. As Oliver Wendell Holmes noted, “The life of the law has not been logic”—that is, the law does not respond to an internal logic. It responds to social change. Emphasize that laws (and legal systems) are manmade, that they can, and do, change over time as society changes. To what specific social forces does law respond? Are the changes always improvements? (These questions can also be discussed in connection with Chapter 2.)
4. One method of introducing the subject matter of each class is to give students a hypothetical at the beginning of the class. The hypothetical should illustrate the competing interests involved in some part of the law in the assigned reading. Students should be asked to make a decision about the case and to explain the reasons behind their decision. Once the law has been discussed, the same hypothetical can be considered from an ethical perspective.
5. You might want to remind your students that the facts in a case should be accepted as given. For example, under some circumstances, an oral contract may be enforceable. If there is a statement in a case about the existence of oral contract, it should be accepted that there was an oral contract. Arguing with the statement (“How could you prove that there was an oral contract?” for instance) will only undercut their learning. Once they have learned the principle for which a case is presented, then they can ask, “What if the facts were different?”

Cyberlaw Link

Ask your students, at this early stage in their study of business law, what they feel are the chief legal issues in developing a Web site or doing business online. What are the legal risks involved in transacting business over the Internet? As their knowledge of the law increases over the next few weeks, this question can be reconsidered.

DISCUSSION QUESTIONS

1. If justice is defined as the fair, impartial consideration of opposing interests, are law and justice the same thing? No. There can be law without justice—as happened in Nazi-occupied Europe, for example. There cannot be justice without law.
2. Discuss the primary function of law. To simultaneously maintain stability and permit change. The law does this by providing for dispute resolution, the preservation of political, economic, and social institutions, and the protection of property.
3. What is the common law? Students may most usefully understand common law to be case law—that is, the body of law derived from judicial decisions. The body of common law originated in England. The term common law is sometimes used to refer to the entire common law system to distinguish it from the civil law system.
4. What is the doctrine of stare decisis? Stare decisis is a doctrine that prescribes following earlier judicial decisions in deciding a current case if the facts and questions are similar. Courts attempt to be consistent with their own prior decisions and with the decisions of courts superior to them.
5. Define and discuss the sources of American law: What is the supreme law of the land? The U.S. Constitution. What are ordinances? Laws enacted by local legislative bodies. What are administrative rules? Laws issued by administrative agencies under the authority given to them in statutes.
6. What is the Uniform Commercial Code? A uniform law drafted by the National Conference of Commissioners on Uniform State Laws and the American Law Institute, governing commercial transactions (sales of goods, commercial paper, bank deposits and collections, letters of credit, bulk transfers, warehouse receipts, bills of lading, investment securities, and secured transactions). Uniform laws are often adopted in whole or in substantial part by the states. The UCC has been adopted by all states (except Louisiana which has not adopted Article 2).
7. Discuss the differences within the classification of law as civil law and criminal law. Civil law concerns rights and duties of individuals between themselves; criminal law concerns offenses against society as a whole. (Civil law is a term that is also used to refer to a legal system based on a code rather than on case law.)
8. Identify and describe remedies available in equity. Three are discussed briefly in the text. Specific performance is available only when a dispute involves a contract. The court may order a party to perform what was

promised. An injunction orders a person to do or refrain from doing a particular act. Rescission undoes an agreement, and the parties are returned to the positions they were in before the agreement.

ACTIVITY AND RESEARCH ASSIGNMENTS

1. Have students research the laws of other common law jurisdictions (England, India, Canada), other legal systems (civil law systems, contemporary China, Moslem nations), and ancient civilizations (the Hebrews, the Babylonians, the Romans), and compare the laws to those of the United States. In looking at other legal systems, have students consider how international law might develop, given the differences in legal systems, laws, traditions, and customs.
2. Ask students to read newspapers and news magazines, listen to radio news, and watch television news for developments in the law—new laws passed by Congress or signed by the president, laws interpreted by the courts, proposals for changes in the law. The omnipresent effect of law on society should be easy to see.

BEFORE THE TEST—



ISSUE SPOTTERS



1. Under what circumstances might a judge rely on case law to determine the intent and purpose of a statute? Case law includes courts' interpretations of statutes, as well as constitutional provisions and administrative rules. Statutes often codify common law rules. For these reasons, a judge might rely on the common law as a guide to the intent and purpose of a statute.
2. The First Amendment provides protection for the free exercise of religion. A state legislature enacts a law that outlaws all religions that do not derive from the Judeo-Christian tradition. Is this law valid within that state? Why or why not? No. The U.S. Constitution is the supreme law of the land, and applies to all jurisdictions. A law in violation of the Constitution (in this question, the First Amendment to the Constitution) will be declared unconstitutional.



MORE LEGAL QUESTIONS—



GAMEPOINTS



1. You see a spot in the market for a video game outlet. You open "GsmeBox" to profit from local sales, rentals, and exchanges. Hott Games Company promises to ship a certain assortment of games and gear for your grand opening. Despite this contract, Hott does not ship as agreed, and your grand opening is a bust, costing you a lot of money. Into which category of the law does Hott's breach of your contract fall? Which remedies, if any, are available to you? A breach of contract falls, of course, in the area of the law of

contracts. Contract law is a part of civil law, in contrast to criminal law. Civil law spells out duties that exist between persons. The remedies available for a breach of contract include money damages, which is the usual remedy at law. If this remedy is unavailable or inadequate, the breaching party might be ordered to perform as promised. Or the contract might be cancelled and the parties returned to the positions they held before the contract's formation.

2. You're a fan of the "Gods & Warriors" (GW) video game series. On the issue of GWX, you pick up your reserved copy and eagerly put it in your player. Anticipating a great game, you find instead that the graphics are two-dimensional, the response to your commands is slow, and the sound is out of sync. The game has to be rebooted repeatedly in mid-play. Which sources of the law are most likely to afford you an opportunity for relief, and why? Sources of law that might afford an opportunity for relief for a breach of contract or warranty, as this problem poses, include statutory law. In particular, the Uniform Commercial Code, which provides a uniform, yet flexible, set of rules governing commercial transactions, is most likely to be brought to bear on this issue. Administrative law is also a possibility, because regulations may affect every aspect of a business operation, including the way a firm makes and sells its products.



