

Instructor Manual

Twomey/Anderson, Anderson's Business Law & The Legal Environment 2022, Core ISBN: 9780357363744; Chapter 1: The Nature and Sources of Law

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Purpose and Perspectives of the Chapter

This chapter provides the students with a look at the nature, origin and importance of individual rights and how those rights are protected by laws and judicial process. The chapter provides a historical look at the evolution of rights of individuals and how technology requires that laws be revised to provide protection for those rights.

Students are introduced to the various sources of law and their interrelationships. Constitutional law, statutory law, administrative regulation, and case law (along with the principle of stare decisis and concept of precedent) are explained along with the role and historical significance of common law. The nature and role of the uniform state laws are explained along with a discussion of the distinction between substantive law and procedural law. The distinctions between legal and equitable remedies are also explained.

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Cengage Supplements

The following product-level supplements provide additional information that may help you in preparing your course. They are available in the Instructor Resource Center.

- Transition Guide (provides information about what's new from edition to edition)
- Test Bank (contains assessment questions and problems)
- Solution and Answer Guide (offers solutions, answers, and feedback)
- PowerPoint (provides text-based lectures and presentations)

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Learning Outcomes

The following objectives are addressed in this chapter (See PowerPoint Slide 1-1):

- LO.1: Discuss the nature of law and legal rights.
- LO.2: List the sources of law.
- LO.3: Describe the classifications of law.

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Key Terms

- **Administrative regulations:** rules made by state and federal administrative agencies
- **Case law:** law that includes principles that are expressed for the first time in court decisions
- **Civil law:** the laws that define the rights of one person against another
- **Common law:** the body of unwritten principles originally based upon the usages and customs of the community that were recognized and enforced by the courts
- **Constitution:** a body of principles that establishes the structure of a government and the relationship of the government to the people who are governed
- **Criminal law:** the laws that define wrongs against society
- **Duty:** an obligation of law imposed on a person to perform or refrain from performing a certain act
- **Equity:** the body of principles that originally developed because of the inadequacy of the rules then applied by the common law courts of England
- **Law:** the order or pattern of rules that society establishes to govern the conduct of individuals and the relationships among them
- **Precedent:** a decision of a court that stands as the law for a particular problem in the future
- **Private Law:** the rules and regulations parties agree to as part of their contractual relationships
- **Procedural Law:** the law that must be followed in enforcing rights and liabilities
- **Right:** legal capacity to require another person to perform or refrain from an action
- **Right Of Privacy:** the right to be free from unreasonable intrusion by others
- **Stare Decisis:** “let the decision stand”; the principle that the decision of a court should serve as a guide or precedent and control the decision of a similar case in the future
- **Statutory Law:** legislative acts declaring, commanding, or prohibiting something
- **Substantive Law:** the law that defines rights and liabilities

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What's New in This Chapter

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The

following elements are improvements in this chapter from the previous edition:

- New material, cases and discussion in the privacy and technology portion of the chapter (Section 1-1d), including a new case on Facebook, Instagram, and Twitter receiving subpoenas for release of all information on the accounts of a witness in a drive-by shooting, *Facebook, Inc. v. Superior Court*.
- In Section 1-3b, new Sports & Entertainment Law on a soccer team hiring a former player who served time for murdering his girlfriend for asking for support for their unborn child.
- New example in Section 1-2e on statutory interpretation—was throwing back a red grouper fish into the ocean to avoid citation for catching undersized fish obstruction of justice under Sarbanes-Oxley?
- In Section 1-2e, new case added to Obama care string of cases on precedent with March 2, 2020 grant of *certiorari* by U.S. Supreme Court on constitutionality of the statute, *Texas v. U.S.*
- Changed executive order example to “Trump” and challenges to immigration policy authority in Section 1-2f.
- New chapter problem #11 on how a court will define a “day” for tax purposes on an airplane.

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Instructor's Insights

Break the chapter down into three components—related Learning Outcomes are indicated in ():

1. *What is the nature of law and legal rights?* (LO.1)
 - Discuss the nature and origin of rights: legal rights; individual rights; right of privacy
 - Present the evolution of the protection of rights
2. *What are the sources of law?* (LO.2)
3. *What are the classifications of law?* (LO.3)
 - Discuss the types of laws: substantive and procedural
 - Cover the origins and current status of equitable relief
 - Explain uniform laws

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Chapter Outline

1-1 Nature of Law and Legal Rights (See PowerPoint Slides 1-2, 1-3, 1-4, and 1-5)

1-1a Legal Rights

Legal rights are part of the law—principles that govern conduct and can be enforced in courts or by administrative agencies

1-1b Individual Rights

1. Freedom of speech
2. Right to due process
3. Duties accompany rights

1-1c The Right of Privacy

1. An example of a legal right developed by courts
2. Provides protections against unreasonable searches and seizures
3. Privacy affords protection against intrusion by others
 - a. Educational privacy on grades—Buckley Amendment
 - b. Abortion stems from privacy right
 - c. Banking privacy rights

1-1d Privacy and Technology

1. New rules are needed as technology evolves
2. E-mail, cell phone
3. Some criminal sanctions

CASE BRIEF: *Facebook, Inc. v. Superior Court*
417 P.3d 725 (Cal. App. 2018)

FACTS: Jaquan Rice, Jr. was killed and his girlfriend, B.K., a minor, was seriously injured in a drive-by shooting at a bus stop in San Francisco. Through a confession, the police found that Q.H, a 14-year-old, was in the car and that he shot Rice six times. Q.H. also revealed that his brother, Derrick Hunter, was in the car, which was a rental car furnished to them by Renesha Lee.

Renesha initially lied to the police when asked whether her boyfriend, Lee Sullivan, had borrowed the car because, “I’m the one who still has to live on these streets.” After police threatened to charge her with murder, she offered more information. The three young men, including Sullivan, were part of a “cyber bangers” gang. Cyber bangers “disrespect” one another on Facebook and then make plans for shooting revenge by finding out where

and when they will be on the streets. Derrick and Sullivan (defendants) were indicted on charges of murder, attempted murder, and various gang and firearms charges.

The defendants served subpoenas on Twitter for Renesha's Twitter account (user information, e-mail addresses, activity logs, location data, photographs, videos, private messages, posts, status updates, and comments related to her account). Facebook also received subpoenas for the Facebook accounts of Rice and Renesha, asking for "any and all private and public content." Instagram received the same type of subpoena.

Lawyers for the defense said that they needed the access for building a defense, for cross-examination of the officers, and for rebutting the online information on gangs that the police had downloaded from the public access areas before the accounts were locked down.

The three companies responded to defendants' counsel by suggesting that they obtain the information from the account holders themselves. The companies then moved to quash the subpoenas.

The trial court denied the motions to quash and the parties appealed to the California Supreme Court.

**ISSUE
ON
APPEAL:**

Can social media platforms be forced to disclose user information pursuant to a subpoena in a criminal proceeding?

HOLDING: Yes, with some effort.

REASONING: The court noted that the case was one of the first dealing with subpoenas of online social network accounts in a criminal case. In civil cases, the standard established was that a variety of factors must be considered before granting broad access to social media accounts, including privacy settings by the holder of the account, relevancy of the information to the litigation, and protections afforded by the various social media sites. Under the decisions, the parties must first do discovery and then renew the request once more factual information is available for the analysis of these factors. *Fawcett v. Altieri*, 960 N.Y.S.2d 592 (2013).

The court reached a similar conclusion for this criminal case. The first

question is whether the account holders had taken steps to make their information private. If postings are in a public area, disclosure is appropriate. The second question is whether the SCA prohibits disclosure (such as the prohibition on disclosing private e-mails sent by the account holder). The third question is whether the requested disclosure is made to a social media user or a social media platform. The platform standard is higher for disclosure. The final question is: How necessary is the information sought to presenting a defense in the case? That need should be based on the other evidence gathered to determine if the social media information is really necessary to protect rights in the trial.

The court sent the matter back to the trial court for a determination of the answers to the questions in order to properly analyze whether the social media companies had to reveal the user information.

DISCUSSION POINTS: Ethics & the Law

Maybe Too Many Links

LinkedIn, the popular professional connection service, has a tool called “Reference Search.” A premium service, employers and recruiters are using the tool to cull their connections to see who knows job applicants in order to get background on them. Employers are checking with references that the applicants did not list, references that may not have all good things to say about them. The service provides employers with the list of LinkedIn contacts who worked at the same companies as the applicants and at the same time.*

Applicants are worried that employers are basing employment decisions on the information that they receive from these contacts, information that may not be true or verified or verifiable. The applicants do not always know that the employer is checking with other sources or which ones and do not have the opportunity to respond to negative information. Discuss the ethical issues in the use of this LinkedIn service by employers.

*Natasha Singer, “Funny, They Don’t Look Like My References,” *New York Times Magazine*, November 10, 2014, p. BU4.

This feature will generate great discussion among students. Most of them are encouraged by their colleges and universities to get on LinkedIn in order to establish connections and have a network of support. LinkedIn can be a great resource, but what is on the page is publicly available and, free. The premium service allows potential employers to get unvarnished information about applicants by checking with others who worked at the company at the same time. Some interesting questions to think about are the fact that we have to resort to such means to get the truth because we cannot get the truth from the references that applicants provide. Is this more of a question of solving a problem with

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references vs. whether employers should be permitted to use the information posted on the site?

All LinkedIn users have agreed to have their profiles available. The information is there—users are trying to hone its use or perhaps require notification when others are accessing information not generally available through the use of the site.

For employers, there is the issue of possibly tainting the hiring process—they find out more information on some applicants and not on others, which is disparate treatment and could result in inaccurate information and perhaps charges of discrimination because of different scrutiny given to different applicants.

As usual, the law on privacy has not yet caught up to the nuances of information use and refinement on the Internet.

DISCUSSION POINTS: E-Commerce & Cyberlaw

A University's Access to Your Computer

Scott Kennedy, a computer system administrator for Qualcomm Corporation in San Diego, California, discovered that somebody had obtained unauthorized access (or “hacked into,” in popular parlance) the company’s computer network. Kennedy contacted the Federal Bureau of Investigation (FBI). Working together, Kennedy and the FBI were able to trace the intrusion to a computer on the University of Wisconsin at Madison network.

They contacted Jeffrey Savoy, the University of Wisconsin computer network investigator, who found evidence that someone using a computer on the university network was in fact hacking into the Qualcomm system and that the user had gained unauthorized access to the university’s system as well. Savoy traced the source of intrusion to a computer located in university housing, the room of Jerome Heckenkamp, a computer science graduate student at the university. Savoy knew that Heckenkamp had been terminated from his job at the university computer help desk two years earlier for similar unauthorized activity.

While Heckenkamp was online and logged into the university’s system, Savoy, along with detectives, went to Heckenkamp’s room. The door was ajar, and nobody was in the room. Savoy entered the room and disconnected the network cord. In order to be sure that the computer was the one that had gained unauthorized access to the university server, Savoy wanted to run some commands on the computer.

Detectives located Heckenkamp, explained the situation, and asked for Heckenkamp’s password, which Heckenkamp voluntarily provided. Savoy then ran tests on the computer and copied the hard drive without a warrant. When Heckenkamp was

charged with several federal computer crimes, he challenged the university's access to his account and Savoy's steps that night, including the copy of the hard drive, as a breach of his privacy. Was Heckenkamp correct?

Was his privacy breached? [***U.S. v. Heckenkamp*, 482 F.3d 1142 (9th Cir. 2007)**]

Discuss with the students college and university policies on use of campus servers. They have signed paperwork that indicates they understand that the university monitors their use—indeed, the university is required to do so, so as not to get cross-wise with copyright issues. Again, privacy rights are limited. *U.S. v. Heckenkamp*, 482 F.3d 1142 (9th Cir. 2007).

1-2 Sources of Law (See PowerPoint Slides 1-6, 1-7, and 1-8)

1-2aConstitutional Law—federal and state; historical development

1-2bStatutory Law—federal and state

1-2cAdministrative Law

1-2dPrivate Law

1-2eCase Law, Statutory Interpretation, and Precedent

1. Statutory interpretation
2. Principle of *stare decisis*—precedent is followed unless there is a change in facts or need for change (e.g., separate but equal was abandoned)
3. Common law is developed and refined by the courts

1-2f Other Forms of Law: Treaties and Executive Orders

1-2gUniform State Laws

1. Written generally
2. Adopted on a state-by-state basis
3. Use the Uniform Commercial Code as an example

1-3 Classifications of Law (See PowerPoint Slides 1-9, 1-10, and 1-11)

1-3aSubstantive Law vs. Procedural Law

Explain the concept of common law as the body of unwritten principles based primarily on the usages and customs of the community that were organized and enforced by the courts. Describe how it fits into the legal system of today and how it is often altered by statute. The common law is referred to often in subsequent readings, and students tend to be confused about what it is, where it came from, and what role it plays in today's legal system.

1-3bCriminal Law v. Civil Law

1. One (criminal) is harm to society
2. Other (civil) is harm to individuals
3. The red light: ticket v. damages to others

DISCUSSION POINTS: Sports & Entertainment Law

“There is no law that prohibits hiring a murderer.”

Bruno Fernandes de Souza, a Brazilian soccer star, was convicted of the grisly murder of his then-girlfriend because she demanded child support for their unborn baby. He chopped her body into parts and fed some parts to the dogs. He was sentenced to 22 years in prison, served six, and was released. Upon being released he was given a two-year contract with Boa Esporte, a local favorite team. De Souza says that the contract is a means to start his life over. The locals debate the issue over lunch and wonder how the team could ignore the murder. “There is no law that prohibits hiring a murderer,” offered one person. Another said, “He has the right to earn a living.” Evaluate the ethics of the sports team.

The team did not break any laws. Indeed, they hired a man who had paid his debt to society, as determined by the courts and the prison system with his release. However, the nature of sports heroes and the adoration means that the role model has murdered his pregnant wife. The optics are not good. Is it good for the team? From a business perspective—will it affect attendance at matches? Will it harm the brand? There are potential business costs in hiring a fallen star.

1-3c Law vs. Equity

1. Initially remedies were separate
2. Now remedies are provided by the same courts
3. Injunctions—the red-soled designer shoe

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Movie Clips

1. *And Justice For All* (1979) (R)

An excellent film that gives an overview of the judicial system in Maryland. Rights, precedent and the role of lawyers are all topics for satire and analysis in the movie.

A number of scenes could be used for class viewing:

- Opening scene in which a defense lawyer (Al Pacino) fights to have a verdict set aside.
- Closing scene in which Al Pacino delivers a passionate opening statement in

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which he turns on his client who he believes to be a guilty man.

- Scene in the middle in which Pacino's friend and colleague fails to follow procedure which results in the incarceration and suicide of Pacino's client.

2. *Random Hearts* (2000) (R)

A movie that explores the issue of privacy when a couple is killed in an airplane crash. Their spouses grapple with their privacy in the public eye as well as obtaining information on the couple's travel plans and relationship.

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Appendix

Generic Rubrics

Providing students with rubrics helps them understand expectations and components of assignments. Rubrics help students become more aware of their learning process and progress, and they improve students' work through timely and detailed feedback.

Customize these rubric templates as you wish. The writing rubric indicates 40 points and the discussion rubric indicates 30 points.

Standard Writing Rubric

Criteria	Meets Requirements	Needs Improvement	Incomplete
Content	The assignment clearly and comprehensively addresses all questions in the assignment. 15 points	The assignment partially addresses some or all questions in the assignment. 8 points	The assignment does not address the questions in the assignment. 0 points
Organization and Clarity	The assignment presents ideas in a clear manner and with strong	The assignment presents ideas in a mostly clear manner and with a mostly	The assignment does not present ideas in a clear manner and with

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	organizational structure. The assignment includes an appropriate introduction, content, and conclusion. Coverage of facts, arguments, and conclusions are logically related and consistent. 10 points	strong organizational structure. The assignment includes an appropriate introduction, content, and conclusion. Coverage of facts, arguments, and conclusions are mostly logically related and consistent. 7 points	strong organizational structure. The assignment includes an introduction, content, and conclusion, but coverage of facts, arguments, and conclusions are not logically related and consistent. 0 points
Research	The assignment is based upon appropriate and adequate academic literature, including peer reviewed journals and other scholarly work. 5 points	The assignment is based upon adequate academic literature but does not include peer reviewed journals and other scholarly work. 3 points	The assignment is not based upon appropriate and adequate academic literature and does not include peer reviewed journals and other scholarly work. 0 points
Research	The assignment follows the required citation guidelines. 5 points	The assignment follows some of the required citation guidelines. 3 points	The assignment does not follow the required citation guidelines. 0 points
Grammar and Spelling	The assignment has two or fewer grammatical and spelling errors. 5 points	The assignment has three to five grammatical and spelling errors. 3 points	The assignment is incomplete or unintelligible. 0 points

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Standard Discussion Rubric

Criteria	Meets Requirements	Needs Improvement	Incomplete
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Participation	Submits or participates in discussion by the posted deadlines. Follows all instructions for initial post and responses. 5 points	Does not participate or submit discussion by the posted deadlines. Does not follow instructions for initial post and responses. 3 points	Does not participate in discussion. 0 points
Contribution Quality	Comments stay on task. Comments add value to discussion topic. Comments motivate other students to respond. 20 points	Comments may not stay on task. Comments may not add value to discussion topic. Comments may not motivate other students to respond. 10 points	Does not participate in discussion. 0 points
Etiquette	Maintains appropriate language. Offers criticism in a constructive manner. Provides both positive and negative feedback. 5 points	Does not always maintain appropriate language. Offers criticism in an offensive manner. Provides only negative feedback. 3 points	Does not participate in discussion. 0 points

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