*Chapter 1*

**The Legal Environment**

Answers to Learning Objectives/

Learning Objectives Check Questions

at the Beginning and the End of the Chapter

**Note that your students can find the answers to the even-numbered *Learning Objectives Check* questions in Appendix E at the end of the text. We repeat these answers here as a convenience to you.**

**1A.** ***What are four primary sources of law?*** Primary sources of law are sources that establish the law. In the United States, these include the U.S. Constitution and the state constitutions, statues passed by Congress and the state legislatures, regulations created by adminis­trative agencies, and court decisions, or case law.

**2A.** ***What is the common law tradition?*** Because of our colonial heritage, much of American law is based on the English legal system. After the Norman conquest of England in 1066, the king’s courts sought to establish a uniform set of rules for the entire country. What evolved in these courts was the common law—a body of general legal principles that applied throughout the entire English realm. Courts developed the common law rules from the principles underlying judges’ decisions in actual legal controversies.

**3A.** ***What is a precedent? When might a court depart from precedent?*** Judges attempt to be consistent, and when possible, they base their decisions on the principles suggested by earlier cases. They seek to decide similar cases in a similar way and consider new cases with care, because they know that their conflicting decisions make new law. Each interpretation becomes part of the law on the subject and serves as a legal precedent—a decision that fur­nishes an example or authority for deciding subsequent cases involving simi­lar legal principles or facts.

A court will depart from the rule of a precedent when it decides that the rule should no longer be followed. If a court decides that a precedent is simply incorrect or that technological or social changes have rendered the precedent inapplicable, the court might rule contrary to the precedent.

**4A.** ***What is the difference between remedies at law and remedies in equity?*** An award of compensation in either money or property, including land, is a remedy at law. Remedies in equity include the following:

**1.** A decree for specific performance—that is, an order to perform what was promised.

**2.** An injunction, which is an order directing a party to do or refrain from doing a particular act.

**3.** A rescission, or cancellation, of a contract and a return of the parties to the positions that they held before the contract’s formation.

As a rule, courts will grant an equitable remedy only when the remedy at law (money damages) is inadequate. Remedies in equity on the whole are more flexible than remedies at law.

**5A.** ***What are some important differences between civil law and criminal law?*** Civil law spells out the rights and duties that exist between persons and be­tween persons and their governments, and the relief available when a person’s rights are violated. In a civil case, a private party may sue another private party (the government can also sue a party for a civil law violation) to make that other party comply with a duty or pay for damage caused by a failure to comply with a duty.

Criminal law has to do with wrongs committed against so­ciety for which society demands redress. Local, state, or federal statutes pro­scribe criminal acts. Public officials, such as district attorneys, not victims or other private parties, prosecute criminal defendants on behalf of the state.

In a civil case, the object is to obtain remedies (such as damages) to compensate an injured party. In a criminal case, the object is to punish a wrongdoer to deter others from similar actions. Penalties for violations of criminal statutes in­clude fines and imprisonment, and in some cases, death.

Answers to Critical Thinking Questions

in the Features

**Adapting the Law to the Online Environment—Critical Thinking**

***What benefit would wearers of Google Glass obtain from using facial recognition technology?*** With facial recognition applications in Google Glass, paparazzi could take advantage of an increased ability to ferret out celebrities no matter where they are. Police, especially undercover detectives, could use this capacity to bring in fugitives. The “bad guys” could use the same system to find those in the witness protection program. Debt collectors might be able to find those behind on their loan payments.

**Beyond Our Borders—Critical Thinking**

***Does the civil law system offer any advantages over the common law system, or vice versa? Explain.*** The positive and negative aspects of the characteris­tics of each legal system make up its advantages and disadvantages. For ex­ample, on the one hand, a civil law system relies on a code of laws without re­gard to precedent. When a statute is clear, this can make the application of law more standard. When a statute is ambiguously phrased, it can be subject to dif­ferent interpretations, however, which can lead to unpredictable applications. On the other hand, in a common law system, reliance on precedent is required, which can render the application of an unclear statute more predictable, at least in a give jurisdiction. But a statute that is not clearly phrased may not be uniformly interpreted and applied across jurisdictions.

Answers to Questions in the Reviewing Feature

at the End of the Chapter

**1A.** ***Parties***

In this situation, the automobile manufacturers are the plaintiffs, and the state of California is the defendant.

**2A.** ***Remedy***

The plaintiffs are seeking an injunction, which is an equitable remedy, to pre­vent the state of California from enforcing its statute restricting carbon diox­ide emissions.

**3A.** ***Source of law***

This case involves a law passed by the California legislature and a federal statute, thus the primary source of law is statutory law.

**4A.** ***Finding the law***

Federal statutes are found in the *United States Code,* and California statutes are published in the *California Code*. You would look in both of these sources to find the relevant state and federal statutes.

Answer to Debate This Question in the Reviewing Feature

at the End of the Chapter

***Under the doctrine of* stare decisis*, courts are obligated to follow the precedents established in their jurisdictions 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?*** Both England and the U.S. legal systems were constructed on the common law system. The doctrine of *stare decisis* has always been a major part of this system—courts should follow precedents when they are clearly established, excepted under compelling reasons. Even though more common law is being turned into statutory law, the doctrine of *stare decisis* is still valid. After all, even statutes have to be interpreted by courts. What better basis for judges to render their decisions than by basing them on precedents related to the subject at hand?

In contrast, some students may argue that the doctrine of *stare decisis* is passé. There is certainly less common law governing, say, environmental law than there was 100 years ago. Given that federal and state governments increasingly are regulating more aspects of commercial transactions between merchants and consumers, perhaps the courts should simply stick to statutory language when disputes arise.

Answers to Issue Spotters

at the End of the Chapter

**1A.** ***The First Amendment to the U.S. Constitution 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.

**2A.** ***Under what circumstance 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.

Answers to Questions and Case Problems

**at the End of the Chapter**

**Business Scenarios and Case Problems**

**1–1A.**  ***Binding v. persuasive authority***

A decision of a court is binding on all inferior courts. Because no state’s court is inferior to any other state’s court, no state’s court is obligated to follow the decision of another state’s court on an issue. The decision may be persuasive, however, depending on the nature of the case and the particular judge hearing it. A decision of the United States Supreme Court on an issue is binding, like the decision of any court, on all inferior courts. The United States Supreme Court is the nation’s highest court, however, and thus, its decisions are bind­ing on all courts, including state courts.

**1–2A. *Remedies***

**1.** In a suit by Arthur Rabe against Xavier Sanchez, Rabe is the plain­tiff and San­chez is the defendant.

**2.** Specific performance is the remedy that includes an order to a party to perform a contract as promised.

**3.** Rescission is a remedy that includes an order to cancel a contract.

**4.** In both cases, these remedies are remedies in equity.

**5.** If Sanchez appeals the decision, Sanchez would be the appellant (or petitioner) and Rabe would be the appellee (or respondent).

**1–3A.**  ***Philosophy of law***

Crimes against humanity constituted, at the time of the Nuremberg trials, a new in­ternational crime, consisting of “murder, extermination, enslavement, deporta­tion, and other inhumane acts committed against any civilian popula­tion, be­fore or during the war, or persecutions on political, racial or religious ground.” In response to the defendants’ assertion that they had only been fol­lowing or­ders, the Nuremberg judges explained in part that these were famil­iar crimes within domestic jurisdictions and that thus the accused must have known, when they committed their acts, that they would be considered crimi­nal.

In terms of a philosophy of law, it might be said that these criminals vio­lated “natural law.” The oldest and one of the most significant schools of juris­pru­dence is the natu­ral law school. Those who adhere to the natural law school of thought believe that government and the legal system should reflect universal moral and ethi­cal principles that are inherent in human nature. Because natural law is uni­versal, it takes on a higher order than positive, or conven­tional, law. The natu­ral law tradition presupposes that the legitimacy of con­ventional, or positive, law derives from natural law. Whenever it con­flicts with natural law, conven­tional law loses its legitimacy. For example, a precept of natural law may be that murder is wrong, which is a value reflected by specific laws prohibiting murder. If a specific, written law *requires* murder, it conflicts with the natural law precept, in which case individuals should dis­obey the written law and obey the natural law.

**1–4A. Spotlight on AOL*—Common law***

The doctrine of *stare decisis* is the process of deciding case with reference to former decisions, or precedents. Under this doctrine, judges are obligated to follow the precedents established within their jurisdiction.

In this problem, the enforceability of a forum selection clause is at issue. There are two precedents mentioned in the facts that the court can apply The United States Supreme Court has held that a forum selection clause is unenforceable “if enforcement would contravene a strong public policy of the forum in which suit is brought.” And California has declared in other cases that the AOL clause contravenes a strong public policy. If the court applies the doctrine of *stare decisis*, it will dismiss the suit.

In the actual case on which this problem is based, the court determined that the clause is not enforceable under those precedents.

**1–5A. Business Case Problem with Sample Answer*—Law around the world***

The common law system spread throughout medieval England after the Norman Conquest in 1066. Courts developed the common law rules from the principles behind the deci­sions in actual legal controversies. Judges attempted to be consistent. When possible, they based 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. Later cases that involved similar legal principles or facts could be decided with reference to that precedent.

The practice of deciding new cases with refer­ence to former decisions, or precedents, eventually became a cornerstone of the English and American judicial systems. It forms a doctrine called *stare decisis.* Under this doctrine, judges are obligated to follow the precedents estab­lished within their jurisdictions. Generally, those countries that were once colonies of Great Britain retained their English common law heritage after they achieved their independence. Today, common law systems exist in Australia, Canada, India, Ireland, and New Zealand, as well as the United States.

Most of the other European nations base their legal systems on Roman civil law. Civil law is codi­fiedlaw—an ordered grouping of legal principles enacted into law by a legisla­ture or governing body. In a civil law system, the primary source of law is a statutory code, and case precedents are not judicially binding as they are in a common law system. Nonetheless, judges in such systems commonly refer to previous decisions as sources of legal guidance. The differ­ence is that in a civil law system, judges are not bound by precedent; in other words, the doctrine of *stare decisis* does not apply.

**1–6A.**  ***Reading citations***

The court’s opinion in this case—*Baker v. Premo,* 268 Or.App. 406, 342 P.3d 142 (2015)—can be found in volume 268 of the *Oregon Appellate Reports* on page 406, and in volume 342 of West’s *Pacific Reporter*, Third Series, on page 142. The Court of Appeals of Oregon issued the opinion in 2015.

**1–7A. A Question of Ethics—Stare decisis**

**1.** Your answer to this question and the reasons for that answer will likely follow one of the three schools of jurisprudential thought discussed in Chapter 1. In other words, your reasoning would indicate how you personally view the nature of law. If your sentiments are similar to those of the positivist school, you would have little difficulty. Your answer would be that the crimi­nal law of the nation should be applied. In contrast, if you hold that there is a higher, “natural” law to which all human beings are subject, you might have concluded that, given their circumstances, the men should not be subject to any nation’s particular laws but to that higher law. If you reached this con­clusion, then you would have to further decide whether that higher law would sanction the killing of another human being for the sake of survival in these circum­stances or absolutely prohibit the taking of another’s life under any cir­cum­stances. This is a question that would ultimately be based on your per­sonal eth­ical, religious, or philosophical leanings. Approaching the question from a le­gal realist’s perspective, you would probably attempt to balance your personal, subjective view of the men’s actions against the views held by the others—how do most people feel about the issue? How would they respond to whatever your decision might be? As a judge, do you have an obligation to be responsive to soci­ety’s ethical standards? If so, to what extent should this ob­ligation be a deter­mining factor in your decision, and how do you balance this obligation against your duty to uphold the law.

**2.** The legal realists believed that, just as each judge is influenced by the beliefs and attitudes unique to his or her personality, so, too, is each case at­tended by a unique set of circumstances. According to the legal realist school of thought, judges should tailor their decisions to take account of the specific cir­cumstances of each case, rather than rely on an abstract rule that may not re­late to those circumstances. Legal realists also believe that judges should con­sider extra-legal sources, such as economic and sociological data, in making decisions, to the extent that those sources illuminate the circum­stances and is­sues involved in specific cases. A counterargument can be de­rived from the pos­itivist school: the law is the law, and there is no need to look beyond it to apply it. In fact, a legal positivist might argue that looking at ex­tra-legal sources would be acting contrary to the law.

**Critical Thinking and Writing Assignments**

**1–8A. Business Law Writing**

John’s argument is valid. Under the doctrine of *stare decisis*, judges are gener­ally bound to follow the precedents set in their jurisdictions by the judges who have decided similar cases. A judge does not always have to rule as other judges have, however. A judge can depart from precedent. One argument that a party might offer to counter an assertion of precedent is that the times have changed—the social, economic, political, or other cir­cumstances have changed—and thus it is time to change the law.

**1–9A. Business Law Critical Thinking Group Assignment—*Court opinions***

**1.** A majority opinion is a written opinion outlining the views of the majority of the judges or justices deciding a particular case. A concurring opinion is a written opinion by a judge or justice who agrees with the conclusion reached by the ma­jority of the court but not necessarily with the legal reasoning that led the con­clusion.

**2.** A concurring opinion will voice alternative or additional reasons as to why the conclusion is warranted or clarify certain legal points concerning the issue. A dissenting opinion is a written opinion in which a judge or justice, who does not agree with the conclusion reached by the major­ity of the court, ex­pounds his or her views on the case.

**3.** Obviously, a concurring or dissenting opinion will not affect the case involved—because it has already been decided by majority vote. Nevertheless, such opinions often are used by another court later to support its position on a similar issue.

Answer to Critical Thinking Question

**in Appendix Exhibit 1A.3**

**Exhibit 1A.3—Critical Thinking—Political Consideration**

***Why is the incidental use a person’s likeness without his or her consent permitted?***The incidental use of a person’s likeness without his or her consent is permitted as part of the balance between the right of free speech and the right of publicity. The law permits this use so as not to “chill” speech.

A complaint against speech, if successful, requires the court’s enforcement of a judgment restricting speech. This is a type of government interference that the First Amendment to the U.S. Constitution is designed to protect against. Thus, the restriction must be reasonable. To determine what is reasonable, the court balances the right of free speech and the right that the complaint seeks to vindicate.

In the *Davis* case, the plaintiffs complained about the defendant’s use of the plaintiffs’ likenesses in a video game without the plaintiffs’ consent. This use was alleged to violate the plaintiffs’ right of publicity—the right to control the use of their own likenesses. The defendant argued that its use was an incidental (minor or trivial) use, which would be permitted under the First Amendment. The court disagreed, holding that the defendant’s use of the likenesses was not incidental “because it is central to [the defendant’s] main commercial purpose.”