**Answer Key-BLUCCA/13e**

**Part 1 Ethics, Law, and the Judicial system**

**ANSWER KEY**

**\*\*\*Chapter 1 Ethics, Social Responsibility, and the Law**

**Opening Case Questions**

1. Whether Wikileaks was ethically justified in releasing classified documents depends upon the ethical theory that the learner has adopted after reading the chapter. If the learner has adopted social contract ethics then releasing classified documents violates the social contract under the rules of international cooperation, since, as the opening case notes, the whole diplomatic system works because of the privacy that is guaranteed by those rules. These rules ensure candor in all dispatches that are sent home which, in turn, theoretically at least, ensures that the leaders back home will make informed decisions based on those dispatches. If the learner adopts utilitarianism, then the principle of the greatest good for the greatest number will agree that the secrecy and candor guaranteed by the rules of diplomacy are essential, and releasing the documents is unethical. If the learner applies rational ethics then the secrecy involved in international relationships, which often results in lies and cover-ups, is unethical. If the learner uses the ethic of responsibility then he or she will argue that the rules of diplomacy are necessary and the release of the documents is unethical. If a learner adopts ethical relativism, the learner can justify just about anything including the crimes committed by the Wikileak “leakers.”

2. Whether the Georgian first strike was ethical again depends on the ethical theory adopted by the learner. A learner adopting the social contract theory would see the first strike as violating that contract, while the utilitarian would probaly decide that the greatest good for the greatest number is served by launching that strike to obtain American assistance (the end does in fact justify the means under utilitarianism). The moral absolutist using rational ethics would oppose the strike as unethical since it threatens lives and could, therefore, not be defended under the Golden Rule. Under the ethic of responsibility, which requires leaders to protect their people, the strike would be ethical. Finally, if a learner adopts ethical relativism, that learner can justify just about anything including the Georgian first strike.

3. Whether the Georgian “misdirection” was ethical also depends on the ethical theory adopted by the learner. A learner adopting the social contract theory would see this deliberate misdirection as violating that contract, while the utilitarian would probably decide that the greatest good for the greatest number is served by deceiving the Americans to gain their assistance (remember the end does in fact justify the means under utilitarianism). The moral absolutist using rational ethics would oppose the “misdirection” as a lie, pure and simple and, therefore, could not defend it under the Golden Rule. Under the ethic of responsibility, which requires leaders to protect their people, the “misdirection” would be ethical. Finally, if a learner adopts ethical relativism, that learner can justify just about anything including the Georgian “misdirection.”

4. Whether the duty to protect a democracy “trumps” the telling of the truth again depends on the ethical theory adopted by the learner. A learner adopting the social contract theory would see the first the duty to protect democracy as violating that contract, while the utilitarian would probaly decide that the greatest good for the greatest number is served by protecing democracy (one more time, recall that the end justifies the means under utilitarianism). The moral absolutist using rational ethics would also support democracy. Under the ethic of responsibility, which requires leaders to protect their people, democracy should be defended. Finally, if a learner adopts ethical relativism, that learner can justify just about anything including a lie to defend democracy.

5. Yes. There is a difference between the morality of the individual and the morality if the nation-state. The twentieth century philosopher, Max Weber explains the problem in his essay, "Politics as a Vocation." In that essay, Weber argues that, often people make the error of assuming that political morality and personal morality are identical. Instead, Weber proposes a dual system of morality represented by the "ethic of ultimate ends" and the "ethic of responsibility." The "ethic of ultimate ends" must be practiced by individuals while the "ethic of responsibility" must be practiced by national leaders. The ethic of ultimate ends must be practiced by individuals because individuals can never completely foresee "the ultimate ends" of their actions. Therefore, individuals must obey absolute moral precepts, such as "turn the other cheek" and "love thy neighbor as thyself" despite the fact that the ultimate consequences of those actions are unclear or uncomfortable.

**Self-Evident Questions**

1. Learners should be able to point to a number of sociological, political, and economic events that worked together to destroy a belief in an external morality. Certainly, one example of this would be the over-emphasis on multiculturalism and political correctness which has clearly contributed to this trend. It is one thing to preserve cultural differences, but it quite another to become terrified to say anything even mildly critical of another culture for fear of offending others. Another trend that has eroded moral absolutism is the trend in philosophy that denies all absolute truth. This trend, represented by deconstruction and postmodernism, denies the possibility of objective reality and along with it moral absolutism. The instructor should accept other ideas in line with this reasoning pattern.
2. The learner will probably agree that all three religious sects mentioned here did indeed, share a common morality. In fact, a quick search on the Internet should led a savvy learner to the conclusion that all three of these religions have their own version of the Golden Rule imbedded in their religious code of conduct.
3. Even if many, even most, people saw fit to completely ignore this common code of conduct, the code would still be needed to point out to people the way that they should act. Thus, the ideal of good conduct still exists even if everyone ignores it and they still know or at least can know when they do wrong.
4. The learner will probably refer to the “clear American norms” that are outlined in the Declaration of Independence (“life, liberty, and the pursuit of happiness”) or in the American Bill of Rights (freedom of religion, freedom of speech, freedom of the press, freedom of assembly) or in the Gettysburg Address (“government of the people, by the people, and for the people”) or in John F. Kennedy’s inaugural address (“ask not what your country can do for you, ask what you can do for your country”) or in the words of FDR, (“we have nothing to fear but fear itself”) and perhaps even the very clear American norms that describe Superman’s “never ending battle for truth, justice, and the American way.”
5. Given the cosmopolitan world in which we live today, a universal moral code makes even more sense than it did in the past. The more globalized we become, the more we interact with one another, the more necessary it is to establish a clear and definite set of moral standards, which is what the United Nations attempted to do in is Universal Declaration of Human Rights.

**Questions for Review and Discussion**

1. The law is a set of rules made by the government to promote stability, harmony, and justice. Morality involves the values that are the foundation for moral decision making. Ethics is a way to figure out what those values might be.
2. Positive law theory states that the law comes from social institutions. Natural law theory says that the law comes from God. Negative rights theory says that human rights are created by human beings to allow them to engage in despicable behavior with immunity.
3. Ethical relativism says that there is no objective standard for determining right from wrong.
4. Social contract theory holds that right and wrong are imposed by principles created by the social agreement.
5. The steps in applying utilitarianism are: (1) state the action to be evaluated in non-emotional and general terms; (2) determine the people affected by the action; (3) determine the good and bad consequences; (4) consider all alternatives and (5) come to a conclusion about the ethical nature of the action.
6. Rational ethics is an objective theory that says that ethical values can be determined by applying reason.
7. Many of the misunderstandings about moral decisions within the world today exist because people do not understand the dual nature of international morality. The twentieth century philosopher, Max Weber explains the problem in his essay, "Politics as a Vocation." In that essay, Weber argues that, often people make the error of assuming that political morality and personal morality are identical. Instead, Weber proposes a dual system of morality represented by the "ethic of ultimate ends" and the "ethic of responsibility." The "ethic of ultimate ends" must be practiced by individuals while the "ethic of responsibility" must be practiced by national leaders.
8. Corporations owe society a level of responsibility because the government has granted them certain legal advantages.
9. Our society needs law and the legal system to give it structure, harmony, predictability, and justice.
10. Harmony is established between law and ethics when laws are based on ethical principles.

**Cases for Analysis**

**Special Directions to the Instructor**: It is virtually impossible to predict the wide variety of answers that students will provide for the ethical cases outlined at the end of Chapter 1. Therefore, the instructor should not be looking for “right” and “wrong” answers in the conventional sense. Instead the instructor should look to see that the ethical theories are applied correctly and consistently.

**ANSWER KEY**

**\*\*\*Chapter 2 Sources of the Law**

**Opening Case Questions**

1. According to Article I, Section 8, Clause 4, Congress has the power to make regulations governing the naturalization of citizens.

2. Under the U.S. Constitution, the U.S. Comgress under Article I, Section 8, Clause 4, has exclusive jurisdiction to regulate the naturalization process. The states, therefore, have no power in this regard. This is in contrast to the Articles of Confederation, under which the states retained the power to make the rules regarding citizenship.

3. The Supremacy Clause is located in Article 6, Clause 2 which states, “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.” The Framers included the Supremacy Clause to make it clear that the Constitution (and all properly made federal laws and treaties) will trump all other laws.

4. Article II, Section 3 declares that the President of the United States has the responsibility to “take Care that the Laws be faithfully executed.”

5. If Arizona wanted to transfer the power to regulate citizenship to the states, it would have to mount a campaign to amend the Constitution under Article V.

**Questions for Review and Discussion**

**1.** The law consists of rules of conduct established by the government to maintain harmony, stability, and justice within a society. Ideally, the two primary objectives of the law are to promote justice and harmony.

**2.** In his study *Law and History*, Anthony Chase explains that the legal system is shaped by several dualities, each of which is essential to the law’s success. These dualities include the balance between the spirit and the letter of the law, between legal words and their interpretation, and between abstract principles and concrete situations. This balancing act also comes into play in the application of the Uncertainty Principle to the law.

**3**. The articles establish the organization of the national government. The first three of the seven articles distribute the power of the government among the legislative, executive, and judicial branches. Article I establishes Congress as the legislative (statute-making) branch of the government. Article II gives the executive power to the President, and Article III gives judicial power to the Supreme Court and other courts established by Congress. Article IV explains the relationships among the states, while Article V outlines the methods for amending the Constitution. Article VI establishes the U.S. Constitution, federal laws, and treaties as the supreme law of the land. Finally, Article VII outlines how the original thirteen states would go about ratifying the new Constitution. The amendments change provisions in the original articles and add ideas that the founding fathers did not include in those articles. The amendments to the Constitution establish the rights that belong to the people, change some of the provisions in the original articles, and add ideas that the Founding Fathers did not include in those articles. Thus, the amendments are attempts to “fine-tune” the Constitution and to update its provisions to meet the demands of a changing socioeconomic structure. The U.S. Constitution has twenty-six amendments. The first ten make up the Bill of Rights and were added soon after the ratification ofthe Constitution by the original thirteen states. Other amendments that secure the rights of the people include the Thirteenth, which abolished slavery; the Fourteenth which guaranteed equal protection of the law and due process; the Fifteenth, which guaranteed voting rights; the Nineteenth, which extended voting rights to women; the Twenty-fourth, which outlawed poll taxes, and the Twenty-sixth, which extended the right to vote to eighteen-year-old citizens.

**4.** Preemption is the process by which the courts decide that a federal statute takes precedence over a state statute. The doctrine of devolution is the process by which the courts redefine a right and transfer the power to enforce that right from a higher to a lower legal authority.

**5**. The laws passed by a legislature are known as statutes. At the federal level these are the laws made by Congress and signed by the President. At the state level, statutes are enacted by state legislatures such as the Ohio General Assembly or the Oregon Legislative Assembly. Many statutes prohibit certain activities. Most criminal statutes are prohibitive statutes. Other statutes demand the performance of some action. Some statutes, such as those which create governmental holidays or which name the state flower, simply declare something.

**6.** Because many different statutes are passed each year by the fifty state legislatures, there are important differences in state statutory law throughout the nation. This lack of similarity can cause problems when people from different states must deal with one another. One solution to the problem is the creation of uniform state laws. The National Conference of Commissioners on Uniform State Laws (NCCUSL) was founded to write these uniform laws.

**7.** The term “common law” comes from the attempts of the early English kings to establish a body of law that all the courts in the kingdom would hold in common. At that time judges were sent out to the towns and villages of the kingdom with instructions to settle all disputes in as consistent a manner as possible. The judges maintained this consistency by relying on previous legal decisions whenever they faced a similar set of circumstances. In this way they began to establish this body of common law. As the process continued, judges began to write down their decisions and to share their decisions with other judges. This body of recorded decisions became known as the common law.

**8**. The process of relying on these previous decisions is known as *stare decisis* (“let the decision stand”). The past decisions themselves are called precedents. Although today’s judges do not ride around on horseback, they do make decisions in the same way as their counterparts from the Middle Ages. They rely on precedent according to the principle of *stare decisis.* A precedent is a model case that a court can follow when facing a similar situation. There are two types of precedent, binding and persuasive. Binding precedent is a previous case that a certain court must follow. Persuasive precedent is precedent that a court is free to follow or to ignore. Generally, whether a precedent is binding or persuasive is determined by the court’s location. For instance, decisions made by the Ohio Supreme Court would be binding on all Ohio state courts but persuasive for courts in all other states’ courts.

**9.** A second way that court decisions operate to make law is in the interpretation of statutes. When legislators enact a new statute, they cannot predict how people will react to the new law. Nor can they foresee all the ramifications and implications of that new statute. Thus, when two or more parties have a dispute that impacts a statute, they may differ as to what the legislature had in mind when it wrote the statute. Also, legislators may leave gaps in the language of a statute. Those gaps must be filled by someone. The job of reacting to unforeseen circumstances and filling in the gaps falls to the courts. As a result a judge may be called upon to determine how a certain statute should be interpreted. A third way that courts make law is through judicial review. Judicial review is the process of determining the constitutionality of various legislative statutes, administrative regulations, or executive actions. In exercising the power of judicial review, a court will look at the statute, regulation, or action and will compare it with the Constitution. If the two are compatible, no problem exists. However, if they are not compatible, one of the two must be declared void. Since the Constitution is the supreme law of the land, the Constitution always rules, and the statute, regulation, or action must be ruled unconstitutional.

**10.** Neither legislators nor judges can deal with all aspects of today’s society. Moreover, legislators are generalists. They know a little about a lot, but are rarely experts in all areas over which they have power. Since legislators are generalists, and because today’s problems are so complex, statutory law created by the legislators is very limited in what it can do. To broaden the power of statutory law, legislators delegate their power to others. They do this when they create administrative agencies.

**Cases for Analysis**

1. The argument made by the Virginia attorney general in this lawsuit is convincing. He has argued that the new statute is unconstitutional because it requires people to buy health insurance, which amounts to an unconstitutional extension of the Commerce Clause of the U.S. Constitution. On the other hand, the government has argued that it is constitutinally permissible for the federal government to create laws that regulate a commercial activity that takes place within a single state, just as long as the activity impacts interstate commerce which in this case involves the purhcase of health insurance. Still, it is true, as the Virginia attorney general points out, that the courts have upheld this principle only when the commercial activities involved had already taken place. In contrast, the courts have never upheld a law that forces citizens to begin an activity (like purchasing health insurance) that they would not have done if the federal government had not forced them to. Since this is the first time the courts have faced this issue, there are bound to be legitimate disagreements among the learners. The instructior should, therefore, take either answer as long as the answer is supported by the type of reasoning seen above.

2. Yes. The plaintiff was correct. The fact that the record indicated that Congress simply assumed that tort law would be available as a remedy to plaintiffs was enough to convince the Court that there was no intent to outlaw state law in this area.

3. Yes. The power to limit a public employee’s right to free speech has devolved to the state government, giving it the power and the ability to legitimately limit such speech. In this case, the public employee was acting within the scope of his job and was in the process of exercising his official duties when he wrote the memo. In such a case, the state can regulate his behavior. The power to do this has devolved from the federal government to the states.

4. In interpreting a statute, courts look to a variety of sources. These sources include the legislative history of the statute and the old statute that the new statute replaced, if any. The court must also review any binding precedent that interprets that statute, because the court must rely upon previous cases when engaged in statutory interpretation, just as it does when deciding questions of common law.

5. The lower federal courts do have the authority to determine the constitutionality of federal statutes. This authority would extend to an interpretation of the Civil Rights Act. The United States Supreme Court has ultimate authority in determining the constitutionality of any state or federal statute, including the Civil Rights Act. The United States Supreme Court upheld the constitutionality of the statute. Since so many of the hotel’s guests came from out of state, the hotel was engaged in interstate commerce and, thus, was under the regulatory power of Congress, as granted in Article I, Section 8, Clause 3 of the Constitution.