

Chapter 1

Introduction to Law and Legal Systems

1. What Is Law?

- Distinguish different philosophies of law—schools of legal thought—and explain their relevance.
- Identify the various aims that a functioning legal system can serve.
- Explain how politics and law are related.
- Identify the sources of law and which laws have priority over other laws.
- Understand some basic differences between the US legal system and other legal systems.

Section Outline

- According to Black's Law Dictionary:
 - Law is a body of rules of action or conduct that are prescribed by a controlling authority, and have binding legal force.
 - Law has to be obeyed and followed by citizens subject to sanctions or legal consequence.
- In a nation law serves to:
 - Keep the peace
 - Maintain the status quo
 - Preserve individual rights
 - Protect minorities against majorities
 - Promote social justice
 - Provide for orderly social change

- In the United States, legislators, judges, administrative agencies, governors, and presidents make law, with substantial input from corporations, lobbyists, and a diverse group of nongovernment organizations (NGOs).
 - In the 50 states, judges are often appointed by governors or elected by people.
 - In the federal system, judges are appointed by the president and confirmed by the Senate.
 - In most nation-states, knowing who has the power to make and enforce the laws is a matter of knowing who has political power.
 - In many places, the people or groups that have military power can also command political power to make and enforce the laws.

Key Takeaway

Law is the result of political action, and the political landscape is vastly different from nation to nation. Unstable or authoritarian governments often fail to serve the principle functions of law.

Exercises

Section 1 – What Is Law?

1. Consider Burma (named Myanmar by its military rulers). What political rights do you have that the average Burmese citizen does not?

Answer: Student answers may differ. Answers should contain a general comparison between the political situations in Burma(Military rule) and the U.S. (Republic/Democracy) and how these situations affect the political rights of the citizens of both the countries.

2. What is a nongovernment organization, and what does it have to do with government? Do you contribute to (or are you active in) a nongovernment organization? What kind of rights do they espouse, what kind of laws do they support, and what kind of laws do they oppose?

Answer: Non-governmental organization, or NGO, is a legally constituted organization created by natural or legal persons that operates independently from any government. The term originated from the United Nations (UN), and is normally used to refer to organisations that do not form part of the government and are not conventional for-profit business. In the cases in which NGOs are funded totally or partially by governments, the NGO maintains its non-governmental status by excluding government representatives from membership in the organization. The term is usually applied only to organizations that pursue some wider social aim that has political aspects, but that are not overtly political organizations such as political parties.

The rest of the answer will vary for each student.

Teaching Suggestions

1. The instructor may start the session by asking the students what they understand by the term 'law' and what they think the functions of law are.
2. The instructor may ask the students to explain who makes the laws in the United States.

Suggested Activities

1. The instructor may ask the students to discuss the consequences that will arise if the legal system of a country fails to perform its functions efficiently.
2. Schools of Legal Thought
 - Distinguish different philosophies of law—schools of legal thought—and explain their relevance.
 - Explain why natural law relates to the rights that the founders of the US political legal system found important.
 - Describe legal positivism and explain how it differs from natural law.
 - Differentiate critical legal studies and ecofeminist legal perspectives from both natural law and legal positivist perspectives

Section Outline

- Philosophy of law is called **jurisprudence**.
 - The two main schools of jurisprudence are **legal positivism** and **natural law**.
- The school of **legal positivism** considers law as the command of a sovereign—such as a king, a president, or a dictator—who has power within a defined area or territory.
 - John Austin was a supporter of legal positivism.
 - Positivism is a philosophical movement that claims that science provides the only knowledge precise enough to be worthwhile.
 - Examining in a precise way what the rule itself says is sometimes known as the “**positivist**” school of legal thought.
 - The “**legal realist**” school of thought relies on social context and the actual behavior of the principal actors who enforce the law.
 - The disadvantage of the **positive-law school** of legal thought is that because it recognizes the lawmaker’s command as legitimate, questions about the law’s morality or immorality loses their importance.
 - The **natural-law school** of legal thought refuses to recognize the legitimacy of laws that do not conform to natural, universal, or divine law.
 - According to the **natural-law school**, if a lawmaker issues a command that is in violation of natural law, a citizen is morally justified in demonstrating civil disobedience.
- The **natural-law school** of thought emphasizes that law should be based on a universal moral order.
 - **Natural law** was “discovered” by humans through the use of reason and by choosing between that which is good and that which is evil.
 - The **Cambridge Dictionary of Philosophy** defines **natural law** as an objective norm or set of objective norms governing human behavior,

- similar to the positive laws of a human ruler, but binding on all people alike and usually understood as involving a superhuman legislator.
 - Both the US Constitution and the United Nations (UN) Charter have an affinity for the natural-law outlook, as it emphasizes certain objective norms and rights of individuals and nations.
 - The US Declaration of Independence embodies a natural-law philosophy.
- The **historical school** of law believes that societies should base their legal decisions today on the examples of the past. Precedent would be more important than moral arguments.
- The **legal realist** school that flourished in the 1920s and 1930s believed that because life and society are constantly changing, certain laws and doctrines have to be altered or modernized in order to remain current.
- The **critical legal school** of thought believed that the social order and the law was dominated by those with power, wealth, and influence.
- The **ecofeminist school** of legal thought emphasizes—and would modify—the long standing domination of men over both women and the rest of the natural world.

Key Takeaway

Each of the various schools of legal thought has a particular view of what a legal system is or what it should be. The natural-law theorists emphasize the rights and duties of both government and the governed. Positive law takes as a given that law is simply the command of a sovereign, the political power that those governed will obey. Recent writings in the various legal schools of thought emphasize long-standing patterns of domination of the wealthy over others (the CLS school) and of men over women (ecofeminist legal theory).

Exercises

Section 2 – Schools of Legal Thought

1. Vandana Shiva draws a picture of a stream in a forest. She says that in our society the stream is seen as unproductive if it is simply there, fulfilling the need for water of

women's families and communities, until engineers come along and tinker with it, perhaps damming it and using it for generating hydropower. The same is true of a forest, unless it is replaced with a monoculture plantation of a commercial species. A forest may very well be productive—protecting groundwater; creating oxygen; providing fruit, fuel, and craft materials for nearby inhabitants; and creating a habitat for animals that are also a valuable resource. She criticizes the view that if there is no monetary amount that can contribute to gross domestic product (GDP), neither the forest nor the river can be seen as a productive resource. Which school of legal thought does her criticism reflect?

Answer: Natural law

2. Anatole France said, “The law, in its majesty, forbids rich and poor alike from sleeping under bridges.” Which school of legal thought is represented by this quote?

Answer: Legal positivism

3. Adolf Eichmann was a loyal member of the National Socialist Party in the Third Reich and worked hard under Hitler's government during World War II to round up Jewish people for incarceration—and eventual extermination—at labor camps like Auschwitz and Buchenwald. After an Israeli “extraction team” took him from Argentina to Israel, he was put on trial for “crimes against humanity.” His defense was that he was “just following orders.” Explain why Eichmann was not an adherent of the natural-law school of legal thought.

Answer: The natural-law school of thought emphasizes that law should be based on a universal moral order. But, Adolf Eichmann's defense that he was “just following orders” shows that he was a follower of legal positivism. Legal positivism is a jurisprudence that focuses on the law as it is—the command of the sovereign.

Teaching Suggestions

1. The instructor could ask students to define the term sovereign.

Suggested Activities

1. The instructor could ask the students to read the extract of “The Unanimous Declaration of the Thirteen United States of America” contained in the chapter and discuss how it reflects the beliefs of the natural-law philosophy.
2. The instructor could ask students to read Martin Luther King Jr.’s “Letter from Birmingham Jail” and then discuss civil disobedience in context with natural law.
3. Basic Concepts and Categories of US Positive Law
 - In a general way, differentiate contract law from tort law.
 - Consider the role of law in supporting ethical norms in our society.
 - Understand the differing roles of state law and federal law in the US legal system.
 - Know the difference between criminal cases and civil cases.

Section Outline

- Law does not correct every wrong that occurs in society but aims to curb the worst kinds of wrongs that violate the “moral minimums” that a community demands of its members.
- The “moral minimums” include not only violations of criminal law but also torts and broken promises.
- The use of **precedent** in common-law cases came into being, and the doctrine of **stare decisis** became accepted in English courts.
- **Precedent** is a rule of law established for the first time by a court for a particular type of case and thereafter referred to deciding similar cases.
- **Stare decisis** means in, Latin, “let the decision stand.”
- Most judicial decisions that don’t apply legislative acts will involve one of three areas of law—**property, contract, or tort**.
- **Property law** deals with the rights and duties of those who can legally own land, how that ownership can be legally confirmed and protected, how property can be bought and sold, what the rights of tenants are, and what the various kinds of “estates” in land are.

- **Contract law** deals with what kinds of promises courts should enforce.
- **Tort law** deals with the types of cases that involve some kind of harm and or injury between the plaintiff and the defendant when no contract exists.
- Typically, if the supreme court in a particular state has already ruled on a certain kind of case, lower courts in that state will always follow the rule set forth by their highest court.
- The power of state law has historically included governing the following kinds of issues and claims:
 - contracts, including sales, commercial paper, letters of credit, and secured transactions
 - torts
 - property, including real property, bailments of personal property, trademarks, copyrights, and the estates of decedents
 - corporations
 - partnerships
 - domestic matters, including marriage, divorce, custody, adoption, and visitation
 - securities law
 - environmental law
 - agency
 - banking
 - insurance
- Over the past eighty years, however federal law has become increasingly important in many of these areas, including banking, securities, and environmental law.
- A **criminal case** involves a governmental decision—whether state or federal—to prosecute someone (named as a defendant) for violating society’s laws.
- The law establishes a moral minimum and does so especially in the area of criminal laws; if you break a criminal law, you can lose your freedom or your life.

- In a **civil action**, you would not be sent to prison; in the worst case, you can lose property
- The main differences between civil cases and criminal cases can be summed up in the following table:

	Civil Cases	Criminal Cases
Parties	Plaintiff brings the case; Defendant must answer or lose by default	Prosecutor brings the case; Defendant may remain silent
Proof	Preponderance of evidence	Beyond a reasonable doubt
Reason	To settle disputes peacefully, usually between private parties	To maintain order in society
Remedies	Money damages (legal remedy) Injunctions (equitable remedy) Specific performance (equity)	Fines, jails, forfeitures

- Rules and regulations in law are **substantive** or **procedural**.
- **Substantive laws** refer to rules of conduct or behavior that is called for or some action that is prohibited. They tell us how to act with one another and with the government.
- **Procedural laws** are the rules of courts and administrative agencies. They tell us how to proceed if there is a substantive-law problem.
- In the United States, all state procedural laws must be fair according to the due process clause of the Fifth and Fourteenth Amendment.

Key Takeaway

In most legal systems, like that in the United States, there is a fairly firm distinction between criminal law (for actions that are offenses against the entire society) and civil law (usually for disputes between individuals and corporations). Basic ethical norms for promise-keeping and not harming others are reflected in the civil law of contracts and torts. In the United States, both the states and the federal government have roles to play, and sometimes these roles will overlap, as in environmental standards set by both states and the federal government.

Exercises

Section 3 – Basic Concepts and Categories of US Positive Law

1. Jenna gets a ticket for careless driving after the police come to investigate a car accident she had with you on Hanover Boulevard. Your car is badly damaged through no fault of your own. Is Jenna likely to face criminal charges, civil charges, or both?

Answer: Jenna is likely to face civil charges.

2. Jenna's ticket says that she has thirty days in which to respond to the charges against her. The thirty days conforms to a state law that sets this time limit. Is the thirty-day limit procedural law or substantive law?

Answer: The thirty-day limit is procedural law.

Teaching Suggestions

1. The instructor could try and find out if the students know the basic difference between criminal cases and torts by asking them relevant questions.
2. The instructor could explain the concept of precedent and **stare decisis** in detail.

Suggested Activities

1. The instructor can ask the students to identify which of the following is a substantive law and which is a procedural law:
 - a. laws which define the various degrees of murder
 - b. laws which protect the right to a speedy trial for people accused of murder

4. Sources of Law and Their Priority

- Describe the different sources of law in the US legal system and the principal institutions that create those laws.
- Explain in what way a statute is like a treaty, and vice versa.
- Explain why the Constitution is “prior” and has priority over the legislative acts of a majority, whether in the US Congress or in a state legislature.

- Describe the origins of the common-law system and what common law means.
-

Section Outline

- In the United States, the main sources of law are:
 - constitutions—both state and federal
 - statutes and agency regulations
 - judicial decisions
- Chief executives (the president and various governors) can issue executive orders that have the effect of law.
- In international legal systems, sources of law include treaties, agreements between states or countries, and judicial decisions from national court systems where parties from two or more nations are in a dispute.
- Constitutions are the foundation for a state or nation's other laws, providing the country's legislative, executive, and judicial framework. They are the founding documents of any nation-state's legal system.
 - In case of amendments, two-thirds of the House and Senate must pass amendments, and three-fourths of the states must approve them.
 - The nation's states also have constitutions that along with providing for legislative, executive, and judicial functions, also prescribe various rights of citizens.
- In Washington, DC, the federal legislature is known as **Congress** and has both a **House of Representatives** and a **Senate**.
 - The House is composed of representatives elected every two years from various districts in each state.
 - These districts are established by Congress according to population as determined every ten years by the census, a process required by the Constitution.
 - Each state has at least one district.
 - In the Senate, there are two senators from each state, regardless of the

state's population.

- The House of Representatives, on the other hand, is directly proportioned by population, though no state can have less than one representative.
- Each Congressional legislative body has committees for various purposes.
- In these committees, proposed bills are discussed, hearings are sometimes held, and bills are either reported out (brought to the floor for a vote) or killed in committee.
- If a bill is reported out, it may be passed by majority vote.
- A conference committee will then be held to try to match the two versions.
- If the two versions differ widely enough, reconciliation of the two differing versions into one acceptable to both chambers (House and Senate) is more difficult.
- If the House and Senate can agree on identical language, the reconciled bill will be sent to the president for signature or veto.
- The Constitution prescribes that the president will have veto power over any legislation. But the two bodies can override a presidential veto with a two-thirds vote in each chamber.
- In the case of treaties, the Constitution specifies that only the Senate must ratify them. When the Senate ratifies a treaty, it becomes part of federal law, with the same weight and effect as a statute passed by the entire Congress.
- Although the Constitution does not expressly provide for administrative agencies, the US Supreme Court has upheld delegation of power to create federal agencies.
 - The Congress must delegate its authority with some guidelines for the agency and cannot altogether avoid its constitutional responsibilities.
 - Agencies propose rules in the Federal Register, published each working day of the year.
 - Rules that are formally adopted are published in the Code of Federal Regulations.
- Statutes are passed by legislatures and provide general rules for society.

- States have legislatures (sometimes called assemblies), which are usually made up of both a senate and a house of representatives.
- State legislatures agree on the provisions of a bill, which is then sent to the governor for signature.
- Governors often have a veto power.
- The process of creating and amending, or changing, laws is filled with political negotiation and compromise.
- Common law consists of decisions by courts that do not involve interpretation of statutes, regulations, treaties, or the Constitution.
- United States law comes primarily from the tradition of English common law.
- The US Constitution takes precedence over all statutes and judicial decisions that are inconsistent.
- Statutes generally have priority, or take precedence, over case law.
- A treaty or convention is considered of equal standing to a statute.
- No matter how wrong someone's actions may seem to you, the only wrongs you can right in a court are those that can be tied to one or more causes of action.
- Not every wrong you may suffer in life will be a cause to bring a court action.
- Your cause of action is based on existing laws, including decided cases.

Key Takeaway

There are different sources of law in the US legal system. The US Constitution is foundational; US statutory and common law cannot be inconsistent with its provisions. Congress creates statutory law (with the signature of the president), and courts will interpret constitutional law and statutory law. Where there is neither constitutional law nor statutory law, the courts function in the realm of common law. The same is true of law within the fifty states, each of which also has a constitution, or foundational law. Both the federal government and the states have created administrative agencies. An agency only has the power that the legislature gives it. Within the scope of that power, an agency will often create regulations (see Chapter 5), which have the same force and effect as statutes. Treaties are never negotiated and concluded by states, as the federal government has exclusive authority over relations with other nation-states. A treaty, once

ratified by the Senate, has the same force and effect as a statute passed by Congress and signed into law by the president.

Constitutions, statutes, regulations, treaties, and court decisions can provide a legal basis in the positive law. You may believe you have been wronged, but for you to have a right that is enforceable in court, you must have something in the positive law that you can point to that will support a cause of action against your chosen defendant.

Exercises

Section 4 – Sources of Law and Their Priority

1. Give one example of where common law was overridden by the passage of a federal statute.

Answer: Under common law, employers could hire young children for difficult work, offer any wage they wanted, and not pay overtime work at a higher rate. But the federal Fair Labor Standards Act (1938) forbid the use of oppressive child labor and established a minimum pay wage and overtime pay rules.

2. How does common law change or evolve without any action on the part of a legislature?

Answer: It has a legislative ability to modify or change into judicial law. This ability points to the priority of statutory law over common law.

3. Lindsey Paradise is not selected for her sorority of choice at the University of Kansas. She has spent all her time rushing that particular sorority, which chooses some of her friends but not her. She is disappointed and angry and wants to sue the sorority. What are her prospects of recovery in the legal system? Explain.

Answer: Lindsey Paradise cannot recover. No matter how wrong someone's actions may seem to an individual, the only wrongs the individual can right in a court are those that can be tied to one or more causes of action.

Teaching Suggestions

1. Before starting this section, the instructor may ask a few students to explain what they

know about the US Constitution.

2. The instructor can ask the students to share what they know about the composition of the House of Representatives and the Senate.

Suggested Activities

1. The instructor can ask the students to visit the site <http://uscode.house.gov>

He can then ask them to discuss what they got to know about the Office of the Law Revision Counsel and the United States Code and the codification legislation.

2. The instructor could ask the students to visit the site

<http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>

He can then ask them to write an assignment on the definitions that they come across in the Administrative Committee of the Federal Register mentioned under the title, General Provisions 2011.

5. Legal and Political Systems of the World Learning Objective

- Describe how the common-law system differs from the civil-law system.

Section Outline

- The common-law tradition is unique to England, the United States, and former colonies of the British Empire.
 - Although there are differences among common-law systems, all of them recognize the use of precedent in judicial cases, and none of them rely on comprehensive, legislative codes that are prevalent in civil-law systems.
- The main alternative to the common-law legal system was developed in Europe and is based in Roman and Napoleonic law.
 - A civil-law or code-law system is one where all the legal rules are in one or more comprehensive legislative enactments.

- Civil-law systems are used throughout Europe as well as in Central and South America.
- Some nations in Asia and Africa have also adopted codes based on European civil law.
- The European civil law covers both civil and criminal law.
- There are also legal systems like the communist legal systems, socialist legal systems, Islamic system of law, and other religion-based systems of law that differ significantly from the common-law and civil-law systems.

Key Takeaway

Legal systems vary widely in their aims and in the way they process civil and criminal cases. Common-law systems use juries, have one judge, and adhere to precedent. Civil-law systems decide cases without a jury, often use three judges, and often render shorter opinions without reference to previously decided cases. “The law is in the code, not the cases.”

Exercises

Section 5 – Legal and Political Systems of the World

1. Use the Internet to identify some of the better-known nations with civil-law systems. Which Asian nations came to adopt all or part of civil-law traditions, and why?

Answer: http://en.wikipedia.org/wiki/List_of_country_legal_systems will help answer the first part of the question.

China, Japan and India The principle of civil law is to provide all citizens with an accessible and written collection of the laws which apply to them and which judges must follow. Student answers may vary.

Teaching Suggestions

1. The instructor could give the students a bit of insight into common-law tradition, Roman law, Napoleonic law, and Islamic system of law.

Suggested Activities

1. The instructor could ask the students to visit the site

<http://www.soas.ac.uk/library/subjects/law/region/islamic>

He can then ask them to go through Hammurabi's code of Law translated by L.W.King which they will find under the Ancient Middle East Law, and then conduct a discussion on it. Students could also discuss how Islamic and Middle Eastern law differ from English common-law.

6. A Sample Case

Harris v. Forklift Systems

510 U.S. 17

Supreme Court, 1992

Teresa Harris worked as a manager at Forklift Systems, Inc., an equipment rental company, from April 1985 until October 1987. Charles Hardy was Forklift's president. The Magistrate found that, throughout Harris' time at Forklift, Hardy often insulted her because of her gender and often made her the target of unwanted sexual innuendoes. Hardy told Harris on several occasions, in the presence of other employees, "You're a woman, what do you know" and "We need a man as the rental manager"; at least once, he told her she was "a dumbass woman." Again in front of others, he suggested that the two of them "go to the Holiday Inn to negotiate [Harris's] raise." Hardy occasionally asked Harris and other female employees to get coins from his front pants pocket. He threw objects on the ground in front of Harris and other women, and asked them to pick the objects up. He made sexual innuendoes about Harris' and other women's clothing. In mid-August 1987, Harris complained to Hardy about his conduct. Hardy said he was surprised that Harris was offended, claimed he was only joking, and apologized. He also promised he would stop, and based on this assurance Harris stayed on the job. But in early September, Hardy began anew: While Harris was arranging a deal with one of Forklift's customers, he asked her, again in front of other employees, "What did you do, promise the guy...some [sex] Saturday night?" On October 1, Harris collected her paycheck and quit.

Harris then sued Forklift, claiming that Hardy's conduct had created an abusive work

environment for her because of her gender.

The United States District Court for the Middle District of Tennessee ruled that Hardy's conduct did not create an abusive environment and it was not severe enough to seriously affect Harris's psychological well-being.

This decision was also supported by the Sixth Circuit Court of Appeals.

But, the Supreme Court reversed the judgment of the Court of Appeals, and remanded the case for further proceedings.

Case Questions

1. Is this a criminal case or a civil-law case? How can you tell?
2. Is the court concerned with making a procedural rule here, or is the court making a statement about the substantive law?
3. Is this a case where the court is interpreting the Constitution, a federal statute, a state statute, or the common law?
4. In **Harris v. Forklift**, what if the trial judge does not personally agree that women should have any rights to equal treatment in the workplace? Why shouldn't that judge dismiss the case even before trial? Or should the judge dismiss the case after giving the female plaintiff her day in court?
5. What was the employer's argument in this case? Do you agree or disagree with it? What if those who legislated Title VII gave no thought to the question of seriousness of injury at all?

Teaching Suggestions

1. Before starting the discussion on this section, the instructor could define the terms sexual harassment, **quid pro quo**, and hostile work environment.

Suggested Activities

1. The instructor could explain the facts of **Rabidue v. Osceola Refining Co.** to the students. He could then ask them to argue the case. Once they have done that, he can read out the actual judgement.

Chapter 2

Corporate Social Responsibility and Business Ethics

1. What Is Ethics?

- Explain how both individuals and institutions can be viewed as ethical or unethical.
- Explain how law and ethics are different, and why a good reputation can be more important than legal compliance.

Section Outline

- People generally have similar reactions about what actions or conduct can rightly be called ethical or moral.
- As humans, we need and value ethical people and want to be around them.
- Saying that someone or some organization is law-abiding does not mean the same as saying a person or company is ethical.
- For individuals, it is far from easy to recognize an ethical problem, have a clear and usable decision-making process to deal it, and then have the moral courage to do what's right.
 - All of that is even more difficult within a business organization, where corporate employees vary in their motivations, loyalties, commitments, and character.
- What is legal is not necessarily ethical. Conversely, what is ethical is not necessarily legal.
- Good ethics is good business. In the long run, businesses that pay attention to ethics as well as law do better; they are viewed more favorably by customers.

Key Takeaway

Legal compliance is not the same as acting ethically. Your reputation, individually or corporately, depends on how others regard your actions. Goodwill is hard to measure or quantify, but it is real nonetheless and can best be protected by acting ethically.

Exercises

Section 1 – What Is Ethics?

1. Think of a person who did something morally wrong, at least to your way of thinking. What was it? Explain to a friend of yours—or a classmate—why you think it was wrong. Does your friend agree? Why or why not? What is the basic principle that forms the basis for your judgment that it was wrong?

Answer: Student answers will vary.

2. Think of a person who did something morally right, at least to your way of thinking. (This is not a matter of finding something they did well, like efficiently changing a tire, but something good.) What was it? Explain to a friend of yours—or a classmate—why you think it was right. Does your friend agree? Why or why not? What is the basic principle that forms the basis for your judgment that it was right?

Answer: Students answers will vary.

3. Think of an action by a business organization (sole proprietor, partnership, or corporation) that was legal but still strikes you as wrong. What was it? Why do you think it was wrong?

Answer: Student answers will vary.

4. Think of an act by an individual or a corporation that is ethical but not legal. Compare your answer with those of your classmates: were you more likely to find an example from individual action or corporate action? Do you have any thoughts as to why?

Answer: Student answers will vary.

Teaching Suggestions

1. Before starting this section, the instructor may give the following examples to the students and ask them to judge whether the situations are ethical, unethical, legal, or illegal:
 - a. Stopping at a red light at a deserted intersection, out in the country, where you can see that there are no cars for miles, and then proceeding through the red light.
 - b. An auto mechanic not telling you that he can save you some money by installing a rebuilt alternator or distributor, or some other expensive part, instead of a new one.
 - c. Sending people spam all the time.
 - d. Smoking marijuana at home.

Suggested Activities

1. The instructor can ask the students to illustrate with examples; situations which they think are ethical but illegal, and legal but unethical.

2. Major Ethical Perspectives

- Describe the various major theories about ethics in human decision making.
- Begin considering how the major theories about ethics apply to difficult choices in life and business.

Section Outline

- **Jeremy Bentham** is often considered the founder of utilitarianism, though **John Stuart Mill** (who wrote **On Liberty** and **Utilitarianism**) and others promoted it as a guide to what is good.
 - **Utilitarianism** emphasizes not rules but results.
 - An action (or set of actions) is generally deemed good or right if it maximizes happiness or pleasure throughout society.

- The utilitarian principle holds that an action is right if and only if the sum of utilities produced by that action is greater than the sum of utilities from any other possible act. This statement describes “**act utilitarianism**”—which action among various options will deliver the greatest good to society?
- “**Rule utilitarianism**” is a slightly different version; it asks, what rule or principle, if followed regularly, will create the greatest good?
- In management, people often employ a form of utility reasoning by projecting costs and benefits for plan X versus plan Y.
- The following are some frequent mistakes that people make in applying what they think are utilitarian principles in justifying their chosen course of action:
 - Failing to come up with lots of options that seem reasonable and then choosing the one that has the greatest benefit for the greatest number.
 - Assuming that the greatest good for you or your company is in fact the greatest good for all—that is, looking at situations subjectively or with your own interests primarily in mind.
 - Underestimating the costs of a certain decision to you or your company.
 - Underestimating the cost or harm of a certain decision to someone else or some other group of people.
 - Favoring short-term benefits, even though the long-term costs are greater.
 - Assuming that all values can be reduced to money.
- The **Deontological** view presented in the writings of **Immanuel Kant** purports that having a moral intent and following the right rules is a better path to ethical conduct than achieving the right results.
 - “**Universalizing**” is a form of rational thought in ethics that assumes the inherent equality of all human beings.

- It considers all humans as equal, not in the physical, social, or economic sense, but equal before God, whether they are male, female, Pygmy, Eskimoan, Islamic, Christian, gay, straight, healthy, sick, young, or old.
- For **Kant**, the basic principle of equality means that we should be able to universalize any particular law or action to determine whether it is ethical.
- There are **two tests for a rule of action to be universal: consistency and reversibility**.
 - **Reversibility:** If you make a decision as though you didn't know what role or position you would have after the decision, you would more likely make an impartial one—you would more likely choose a course of action that would be most fair to all concerned, not just you.
 - **Consistency:** A **deontologist** would say that since you know you are telling a lie, you must be willing to say that lying, as a general rule, universal phenomenon, is acceptable.
 - **Deontology** requires that we put duty first, act rationally, and give moral weight to the inherent equality of all human beings.
 - The **Golden Rule**, “Do unto others as you would have them do unto you,” emphasizes **reversibility**.
- **Social justice theorists** worry about “**distributive justice**”—that is, what is the fair way to distribute goods among a group of people.
 - **Marxist** thought emphasizes that members of society should be given goods according to their needs. But this redistribution would require a governing power to decide who gets what and when.
 - **Capitalist** thought takes a different approach, rejecting any giving that is not voluntary.
 - Certain economists, such as the late **Milton Friedman** also reject the notion that a corporation has a duty to give to unmet needs in society, believing that the government should play that role.
 - Even the most dedicated **free-market capitalist** admit the need for some government and some forms of welfare.

- People who do not see the need for public goods (including laws, court systems, and the government goods and services just cited) often question why there needs to be a government at all.
- **Thomas Hobbes** believed that people in a “state of nature” would rationally choose to have some form of government.
 - He called this the **social contract**, where people give up certain rights to government in exchange for security and common benefits.
- **Modern social contract theorists**, such as **Thomas Donaldson** and **Thomas Dunfee** (*Ties that Bind*, 1999), observe that various communities, not just nations, make rules for the common good.
 - **Donaldson** and **Dunfee’s** integrative social contracts theory stresses the importance of studying the rules of smaller communities along with the larger social contracts made in states (such as Michigan or California) and nation-states (such as the United States or Germany).
- A **social contract** can be changed by the participants in a community, just as the US Constitution can be amended.
- **Social contract theory** is thus **dynamic**—it allows for structural and organic changes.
- The rights that people have—in positive law—come from whatever social contract exists in the society.
- This view differs from that of the deontologists and that of the natural-law thinkers such as Gandhi, Jesus, or Martin Luther King Jr., who believed that rights come from God or, in less religious terms, from some transcendent moral order.
- **Communitarians** emphasize that rights carry with them corresponding duties; that is, there cannot be a right without a duty.
- The relationship between rights and duties—in both law and ethics—calls for some explanations:

- If you have a right of free expression, the government has a duty to respect that right but can put reasonable limits on it.
- Rights and duties exist not only between people and their governments but also between individuals.
- Your right in legal terms is only as good as your community's willingness to provide relief within the legal system.
- **Basic rights** include fundamental elements as food, water, shelter, and physical safety.
- **Positive rights** include the right to bear arms, the right to vote, the right of privacy, etc.
- The right to be free from unreasonable searches and seizures, and the right to be free of cruel or unusual punishments are examples of **negative rights**.
- **Economic or social rights** include adequate food, work, and environment.
- **Political or civic rights** include the right to vote, the right to equal protection of the laws, the right to due process, etc.
- **Virtue theory**, or virtue ethics, emphasizes the value of virtuous qualities rather than formal rules or useful results.
 - **Aristotle** is often recognized as the first philosopher to advocate the ethical value of certain qualities, or virtues, in a person's character.
 - He named fourteen virtues: (1) courage, particularly in battle; (2) temperance, or moderation in eating and drinking; (3) liberality, or spending money well; (4) magnificence, or living well; (5) pride, or taking pleasure in accomplishments and stature; (6) high-mindedness, or concern with the noble rather than the petty; (7) unnamed virtue, which is halfway between ambition and total lack of effort; (8) gentleness, or concern for others; (9) truthfulness; (10) wit, or pleasure in group discussions; (11) friendliness, or pleasure in personal conduct; (12) modesty, or pleasure in personal conduct; (13) righteous indignation, or getting angry at the right things and in the right amounts; and (14) justice.

- **Josephson**, a noted American ethicist, believes that a current set of core values has been identified and that the values can be meaningfully applied to a variety of personal and corporate decisions.
- **Studies** from the **Josephson Institute of Ethics** in Marina del Rey, California have identified six core values in our society, values that almost everyone agrees are important to them: (1) trustworthiness, (2) respect, (3) responsibility, (4) fairness, (5) caring, and (6) citizenship.

Key Takeaway

Throughout history, people have pondered what it means “to do what is right.” Some of the main answers have come from the differing perspectives of utilitarian thought; duty-based, or deontological, thought; social contract theory; and virtue ethics.

Exercises

Section 2 – Major Ethical Perspectives

XYZ Motor Corporation begins to get customer complaints about two models of its automobiles. Customers have had near-death experiences from sudden acceleration; they would be driving along a highway at normal speed when suddenly the car would begin to accelerate, and efforts to stop the acceleration by braking fail to work. Drivers could turn off the ignition and come to a safe stop, but XYZ does not instruct buyers of its cars to do so, nor is this a common reaction among drivers who experience sudden acceleration. Internal investigations of half a dozen accidents in US locations come to the conclusion that the accidents are not being caused by drivers who mistake the gas pedal for the brake pedal. In fact, there appears to be a possible flaw in both models, perhaps in a semiconductor chip, that makes sudden acceleration happen. Interference by floor mats and poorly designed gas pedals do not seem to be the problem.

It is voluntary to report these incidents to the National Highway Traffic and Safety Administration (NHTSA), but the company decides that it will wait awhile and see if there are more complaints. Recalling the two models so that local dealers and their mechanics could examine them is also an option, but it would be extremely costly. Company executives are aware that quarterly and annual profit-and-loss statements, on

which their bonuses depend, could be decisively worse with a recall. They decide that on a cost-benefit basis, it makes more sense to wait until there are more accidents and more data. After a hundred or more accidents and nearly fifteen fatalities, the company institutes a selective recall, still not notifying NHTSA, which has its own experts and the authority to order XYZ to do a full recall of all affected models.

Experts have advised XYZ that standard failure-analysis methodology requires that the company obtain absolutely every XYZ vehicle that has experienced sudden acceleration, using microscopic analysis of all critical components of the electronic system. The company does not wish to take that advice, as it would be—as one top executive put it —“too time-consuming and expensive.”

1. Can XYZ’s approach to this problem be justified under utilitarian theory? If so, how? If not, why not?

Answer: XYZ’s approach to this problem cannot be justified under the utilitarian theory. Utilitarianism is the theory that says that the “right” moral act is the one that produces the greatest good for society.

2. What would Kant advise XYZ to do? Explain.

Answer: Kant would have asked XYZ to put duty first, act rationally, and give moral weight to the inherent equality of all human beings. He would have wanted XYZ to judge if whatever it did was universally acceptable. He would have prompted XYZ to apply the Golden Rule (Do unto others as you would have them do unto you).

3. What would the “virtuous” approach be for XYZ in this situation?

Answer: The virtuous approach for XYZ in this situation would be to report the incidents to NHTSA, issue a public apology, recall all its affected models, rework them, and reimburse customers who faced a loss because of the affected models.

Teaching Suggestions

The instructor could start with a brief introduction of Jeremy Bentham, Immanuel Kant, and Aristotle.

3. An Ethical Decision Model

- Understand one model for ethical decision making: a process to arrive at the most ethical option for an individual or a business organization, using a virtue ethics approach combined with some elements of stakeholder analysis and utilitarianism.

Section Outline

- **Josephson** would first have you ask as many questions as are necessary to get a full background on relevant facts in a case. Assuming you have all the needed information, the decision process is as follows:
 - Identify the stakeholders.
 - Identify several likely or reasonable decisions that could be made.
 - Consider which stakeholders gain or lose with each decision.
 - Determine which decision satisfies the greatest number of core values.
 - If there is no decision that satisfies the greatest number of core values, try to determine which decision delivers the greatest good to the various stakeholders.
- When individuals and organizations confront ethical problems, the core values decision model offered by Josephson generally works well (1) to clarify the gains and losses of the various stakeholders, which then raises ethical awareness on the part of the decision maker and (2) to provide a fairly reliable guide as to what the most ethical decision would be.

Key Takeaway

Having a step-by-step process to analyze difficult moral dilemmas is useful. One such process is offered here, based on the core values of trustworthiness, caring, respect, fairness, responsibility, and citizenship.

Exercises

Section 3 – An Ethical Decision Model

1. Consider XYZ in the exercises for Section 2.2 and use the core values decision-making model. What are XYZ's options when they first notice that two of their models are causing sudden acceleration incidents that put their customers at risk? Who are the stakeholders? What options most clearly meet the criteria for each of the core values?

Answer: According to the core values decision-making model, XYZ should recall all the models that are putting its customers at risk. XYZ's stakeholders are not only its existing customers but also its potential customers, share holders, employees, the government, and society as a whole. Keeping all the core values in mind XYZ should accept that there is a fault in its models, report it to the NHTSA, and apologize to its customers. XYZ should take responsibility and be accountable for the consequences. XYZ should care for its customers and do what is right for them. XYZ should follow all the rules and laws.

Teaching Suggestions

1. The instructor could coordinate a student discussion on each of the six elements of Josephson's model.

Suggested Activities

1. The instructor could ask students to draw comparisons between Aristotle's virtue theory and Josephson's core value model.

4. Corporations and Corporate Governance

- Explain the basic structure of the typical corporation and how the shareholders own the company and elect directors to run it.
- Understand how the shareholder profit-maximization model is different from the stakeholder theory.
- Discern and describe the ethical challenges for corporate cultures.
- Explain what conscious capitalism is and how it differs from stakeholder theory.

Section Outline
