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Solution and Answer Guide

CROSS, THE LEGAL ENVIRONMENT OF BUSINESS, 2025, 9780357985700; CHAPTER 1: LAW AND LEGAL REASONING

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ANSWER TO CRITICAL THINKING QUESTION IN THE FEATURE

ETHICS TODAY—CRITICAL THINKING

1. Should convicted criminals in Louisiana and Oregon be able to obtain retrials if they have been convicted in a 10-2 vote of a jury? Why or why not?

   Answer: Those who support the Supreme Court decision in Ramos would argue that yes, any person convicted in Louisiana or Oregon by a 10-5 jury vote should have the ability to appeal. Afterall, if the non-unanimous jury system in those two states was deemed unconstitutional in 2020, it was clearly unconstitutional in all prior years.

ANSWERS TO QUESTIONS IN THE PRACTICE AND REVIEW FEATURE AT THE END OF THE CHAPTER

Suppose that the California legislature passes a law that severely restricts carbon dioxide emissions from automobiles in that state. A group of automobile manufacturers files suit against the state of California to prevent the enforcement of the law. The automakers claim that a federal law already sets fuel economy standards nationwide and that fuel economy standards are essentially the same as carbon dioxide emission standards. According to the automobile manufacturers, it is unfair to allow California to impose more stringent regulations than those set by the federal law. Using the information presented in the chapter, answer the following questions.

1. Who are the parties (the plaintiffs and the defendant) in this lawsuit?

   Answer: The automobile manufacturers are the plaintiffs, and the state of California is the defendant.

2. Are the plaintiffs seeking a legal remedy or an equitable remedy?

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

3. What is the primary source of the law that is at issue here?

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

4. Where would you look to find the relevant California and federal laws?

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

Answer to Debate This Question in the Practice and Review Feature of the End of the Chapter

1. 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?

   Answer: 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

1. Under what circumstances might a judge rely on case law to determine the intent and purpose of a statute?

Answer: Case law includes courts' interpretations of statutes, as well as constitutional provisions and administrative rules. Statutes often codify common law rules. For these reasons, a judge might rely on the common law as a guide to the intent and purpose of a statute.

2. After World War II, several Nazis were convicted of "crimes against humanity" by an international court. Assuming that these convicted war criminals had not disobeyed any law of their country and had merely been following their government's orders, what law had they violated? Explain.

Answer: At the time of the Nuremberg trials, "crimes against humanity" were new international crimes. The laws criminalized such acts as murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population. These international laws derived their legitimacy from "natural law."

Natural law, which is the oldest and one of the most significant schools of jurisprudence, holds that governments and legal systems should reflect the moral and ethical ideals that are inherent in human nature. Because natural law is universal and discoverable by reason, its adherents believe that all other law is derived from natural law. Natural law therefore supersedes laws created by humans (national, or "positive," law), and in a conflict between the two, national or positive law loses its legitimacy.

The Nuremberg defendants asserted that they had been acting in accordance with German law. The judges dismissed these claims, reasoning that the defendants' acts were commonly regarded as crimes and that the accused must have known that the acts would be considered criminal. The judges clearly believed the tenets of natural law and expected that the defendants, too, should have been able to realize that their acts ran afoul of it. The fact that the "positivist law" of Germany at the time required them to commit these acts is irrelevant. Under natural law theory, the international court was justified in finding the defendants guilty of crimes against humanity.

ANSWERS TO BUSINESS SCENARIOS AND CASE PROBLEMS AT THE END OF THE CHAPTER

1-1. **Binding Versus Persuasive Authority**. A county court in Illinois is deciding a case involving an issue that has never been addressed before in that state's courts. The Iowa Supreme Court, however, recently decided a case involving a very similar fact pattern. Is the Illinois court obligated to follow the Iowa Supreme Court's decision on the issue? If the United States Supreme Court had decided a similar case, would that decision be binding on the Illinois court? Explain.

Answer: 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.

1-2. **Sources of Law**. This chapter discussed a number of sources of American law. Which source of law takes priority in the following situations, and why?

a. A federal statute conflicts with the U.S. Constitution.

Answer: The U.S. Constitution—The U.S. Constitution is the supreme law of the land. A law in violation of the Constitution, no matter what its source, will be declared unconstitutional and will not be enforced.

b. A federal statute conflicts with a state constitutional provision.

Answer: The federal statute—Under the U.S. Constitution, when there is a conflict between a federal law and a state law, the state law is rendered invalid.

c. A state statute conflicts with the common law of that state.

Answer: The state statute—State statutes are enacted by state legislatures. Areas not covered by state statutory law are governed by state case law.

d. A state constitutional amendment conflicts with the U.S. Constitution.

Answer: The U.S. Constitution—State constitutions are supreme within their respective borders unless they conflict with the U.S. Constitution, which is the supreme law of the land.

1-3. ***Stare Decisis***. In this chapter, we stated that the doc trine of *stare decisis* "became a cornerstone of the English and American judicial systems." What does *stare decisis* mean, and why has this doctrine been so fundamental to the development of our legal tradition?

Answer: *Stare decisis* is a Latin phrase meaning "to stand on decided cases." In the King's Courts of medieval England, it became customary for judges to refer to past decisions (precedents) in deciding cases involving similar issues. Over time, because of application of the doctrine of *stare decisis* to issues that came before the courts, a body of jurisprudence was formed that came to be known as the "common law"—because it was common to the English realm. Common law was applied in the American colonies prior to the War of Independence and was adopted by the American states following the Revolution. Common law continues to be applied today in all cases except those falling under specific state or federal statutory law. The doctrine of *stare decisis* is fundamental to the development of our legal tradition because without the acceptance and application of this doctrine, the evolution of any objective legal concepts—and thus a legal "tradition"—would have been impossible.

1-4. **Spotlight on AOL—Common Law.** AOL, LLC, mistakenly made public the personal information of 650,000 of its members. The members filed a suit, alleging violations of California law. AOL asked the court to dismiss the suit on the basis of a "forum-selection clause" in its member agreement that designates Virginia courts as the place where member disputes will be tried. Under a decision of the United States Supreme Court, a forum-selection clause is unenforceable "if enforcement would contravene a strong public policy of the forum in which suit is brought." California courts have declared in other cases that the AOL clause contravenes a strong public policy. If the court applies the doctrine of *stare decisis*, will it dismiss the suit? Explain. [*Doe 1 v. AOL LLC*, 552 F.3d 1077 (9th Cir. 2009)]

Answer: 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.

1-5. **Business Case Problem with Sample Answer—Reading Citations.** Assume that you want to read the entire court opinion in the case of *Dolly Investments, LLC v. MMG Sioux City, LLC*, 984 N.W.2d 168, 2023 WL 115159 (2023).

Answer: The court's opinion in this case—*Dolly Investments, LLC v. MMG Sioux City, LLC*, 984 N.W.2d 168, 2023 WL 115159 can be found in Volume 984 of the North Western Reporter, page 168. Alternatively, you can go to the 2023 WESTLAW database and find case 115159. This opinion was issued by the Supreme Court of Iowa in 2023.

1-6. **A Question of Ethics—The Doctrine of Precedent.** Sandra White operated a travel agency. To obtain lower airline fares for her nonmilitary clients, she booked military-rate travel by forwarding fake military identification cards to the airlines. The government charged White with identity theft, which requires the "use" of another's identification. The trial court had two cases that represented precedents.

In the first case, David Miller obtained a loan to buy land by representing that certain investors had approved the loan when, in fact, they had not. Miller's conviction for identity theft was overturned because he had merely said that the investors had done something when they had not. According to the court, this was not the "use" of another's identification.

In the second case, Kathy Medlock, an ambulance service operator, had transported patients when there was no medical necessity to do so. To obtain payment, Medlock had forged a physician's signature. The court concluded that this was "use" of another person's identity. [*United States v. White*, 846 F.3d 170 (6th Cir. 2017)]

a. Which precedent—the Miller case or the Medlock case—is similar to White's situation, and why?

Answer: In this problem, White operated a travel agency. To obtain low fares for her clients, she submitted fake military identification cards to the airlines. She was charged with the crime of identity theft, which requires the "use" of another's identification. In a previous case, David Miller, to obtain a loan, represented that certain investors approved of the loan when they did not. Miller's conviction for identity theft was overturned on the ground that he had not "used" the investors' identities—he had only said that they had done something when they had not. In a second case, Kathy Medlock, the operator of an ambulance service, obtained payment for transporting patients for whom there was no medical necessity to do so by forging a physician's signature. White's actions most closely resemble Medlock's forgery. White not only told the airlines that her clients were members of the military—she created false identification cards and sent them to the airlines.

In all of these cases, the defendants lied about their actions. Whether or not their conduct fell within the meaning of a word within a statute, or matched the actions of a perpetrator in another case, none of these parties can claim to have acted ethically. Honesty is a part of ethical behavior in any set of circumstances, and none these defendants were truthful about their actions.

In the actual case on which this problem is based, the court concluded that White's actions were most similar to Medlock's. White was convicted of identity theft. On appeal, the U.S. Court of Appeals for the Sixth Circuit affirmed the conviction.

b. In the two cases cited by the court, were there any ethical differences in the actions of the parties? Explain your answer.

Answer: No, in the two cases cited by the White court—and in the White case—there were no ethical differences in the actions of the parties.

Almost any definition of ethics, and any set of ethical standards, includes honesty as a component. In the White case, Sandra White lied to the airlines that her clients were members of the military, and created false identification cards to obtain cheaper fares. In the first case cited by the White court, David Miller, to obtain a loan, represented that certain investors approved of the loan when they did not. In the second case cited by the White court, Kathy Medlock, the operator of an ambulance service, obtained payment for transporting patients for whom there was no medical necessity to do so by forging a physician's signature.

In all of these cases, the defendants lied. Whether or not their conduct fell within the meaning of a word within a statute, or matched the unlawful actions of each other, none of these parties can claim to have acted ethically. Honesty is a part of ethical behavior in any set of circumstances, and none these defendants were truthful.

Answers to Time-Limited Group Assignment Questions at the End of the Chapter

1-7. **Court Opinions.** Read through the subsection in this chapter entitled "Decisions and Opinions."

a. One group will explain the difference between a concurring opinion and a majority opinion.

Answer: 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.

b. Another group will outline the difference between a concurring opinion and a dissenting opinion.

Answer: 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.

c. A third group will explain why judges and justices might write concurring and dissenting opinions, given that these opinions will not affect the outcome of the case at hand, which has already been decided by majority vote.

Answer: Obviously, a concurring or dissenting opinion will not affect the case involved—because it has already been decided by majority vote—but such opinions may be used by another court later to support its position on a similar issue.

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ANSWERS TO QUESTIONS IN THE TASK-BASED SIMULATION FEATURE

Gabrielle owns and operates an antique furniture store in Eugene, Oregon. Initially, Gabrielle's customers were from Eugene and nearby towns in Oregon. Today, through her website, she also sells furniture to buyers around the country.

1. **Jurisdiction.** Gabrielle contracts with a furniture manufacturer in Maine to purchase five replicas of an early American dresser from the "federal period" for a price of $1,000 each. The manufacturer promises her that they will be delivered to her store in Oregon by March 1. Gabrielle has already contracted with three customers to sell them dressers, promising delivery close to March 1. The dressers are never delivered, despite the manufacturer's continuing promises that they will be shipped "soon." Where can Gabrielle file a lawsuit against the manufacturer?

   Answer: Gabrielle has two choices: she could file her suit in either a Maine court or an Oregon court. If the amount in controversy had been sufficient for federal jurisdiction ($75,000 or more), then Gabrielle would have had the option of suing in three different courts. Her attorney will help her decide on the court most appropriate for her lawsuit, given the facts of the case, the distance between the parties, the location of witnesses, the expenses involved with each option, court backlogs, and other factors.

2. **Service of Process.** One of Gabrielle's customers, Pierre, in Kansas, ordered an antique hutch via Gabrielle's website. After Pierre receives the hutch, he calls Gabrielle to complain that she misrepresented the hutch's quality on her website. Gabrielle contends that she did not make any misrepresentations and that Pierre has no claim. Pierre sues Gabrielle in a Kansas state court, alleging that Gabrielle is a liar and that she caused him emotional suffering during their conversations about the hutch. How can Pierre serve the summons and complaint on Gabrielle to notify her of the lawsuit?

   Answer: Pierre can hire a process server in the state of Oregon to deliver the summons and complaint to Gabrielle personally. If Gabrielle consents, he could send the summons and complaint through the U.S. mail, or even via e-mail.

3. **Arbitration.** Rather than litigate, Pierre and Gabrielle decide to arbitrate their dispute. The arbitrator subsequently determines that Gabrielle misrepresented the quality of

the hutch on her website and enters an award of damages in favor of Pierre. If Gabrielle doesn't agree with the arbitrator's award, can she subsequently challenge it in court?

Answer: Probably not. An arbitrator's decision normally is final and binding on the parties. Although Gabrielle can attempt to challenge the arbitrator's award, there are a limited number of grounds on which such decisions may be challenged. These include corruption, fraud, or other "undue means," as well as procedural irregularities (such as the refusal to grant a continuance despite the presence of good cause) or situations in which an arbitrator exceeds his or her powers. Assuming there were no such grounds in the arbitration between Pierre and Gabrielle, any challenge she makes will likely be unsuccessful.

Instructor Manual

Cross/Miller, The Legal Environment of Business: Text and Cases, 12e, ©2025, 9780357985700; Chapter 1: Law and Legal Reasoning

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Purpose and Perspective of the Chapter

The purpose of this chapter is to establish a foundation by introducing key terminology and concepts that students will use throughout the course.

Chapter Objectives

The following objectives are addressed in this chapter:

1-1 Identify the areas of law that affect business decision making.

1-2 Identify the sources of American law.

1-3 Describe the common law tradition of the American legal system.

1-4 Compare various schools of legal thought.

1-5 Explain how laws can be classified.

1-6 Identify primary sources of law.

1-7 Describe methods for researching the law.

What's New in This Chapter

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

- New introductory example in the opening section
- New Example 1.1 about YouTube and copyright infringement
- New Ethics Today feature: Falling Back on Precedent
- New Sample Court Case: *Doe v. Knox County Board of Education* (2023)
- New brief version of a sample court case (from Appendix A)

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Chapter Outline

The following outline organizes activities (including any existing discussion questions in PowerPoints or other supplements) and assessments by chapter (and therefore by topic), so that you can see how all the content relates to the topics covered in the text.

I. Business Activities and the Legal Environment (LO 1-1, PPT Slides 4–6)

a. **Law**—Enforceable rules governing relationships among individuals and between individuals and their society.
   - Law and government regulations affect almost all business activities.
   - To make good business decisions, a basic knowledge of the laws and regulations governing these activities is beneficial—if not essential.

b. In today's business world, knowing what conduct can lead to legal liability is not enough.
   - **Liability**—The state of being legally responsible (liable) for something, such as a debt or obligation.
   - Businesspersons must develop critical thinking and legal reasoning skills so they can evaluate how laws might apply to a given situation and determine the best course of action.

c. Exhibit 1–1 (PPT Slide 5) illustrates the various areas of the law that may influence business decision making.

d. Today, business decision makers need to consider not just whether a decision is legal, but also whether it is ethical.
   - Ethics generally is defined as the principles governing what constitutes right or wrong behavior.
   - The underlying reason for bringing some lawsuits is a breach of ethical duties.
   - Many legal conflicts involve ethical issues that often cannot be ignored.

II. Sources of American Law (LO 1-2, PPT Slides 7–13)

a. Sources of American law are classified as either primary or secondary.
   - Primary sources of law, or sources that establish the law, include the following:
     - The U.S. Constitution and the constitutions of various states
     - Statutory law—including laws passed by Congress, state legislatures, or local governing bodies
     - Regulations created by administrative agencies, such as the Federal Trade Commission
     - Case law and common law doctrines
   - Secondary sources of law are books and articles that summarize and clarify the primary sources of law.

b. **Constitutional law**—Law that is based on the U.S. Constitution and the constitutions of the various states.
   - The Constitution is the supreme law of the land and is the basis of all law in the United States.

        - A law in violation of the Constitution, if challenged, will be declared unconstitutional and will not be enforced, no matter what its source.
    - The Tenth Amendment to the U.S. Constitution reserves to the states all powers not granted to the federal government.
        - Each state in the union has its own constitution.
        - Unless it conflicts with the U.S. Constitution or a federal law, a state constitution is supreme within the state's borders.

c. **Statutory law**—The body of law enacted by legislative bodies (as opposed to constitutional law, administrative law, or case law).
    - Federal and state statutes
        - A federal statute is passed by Congress and applies to all states.
        - No federal statute may violate the U.S. Constitution, and no state statute or local ordinance may violate the U.S. Constitution or the relevant state constitution.
        - A state statute is passed by a state legislature and applies only within the state's borders.
    - **Ordinances**—Regulations passed by a local governing unit, such as a city or a county.
        - Ordinances commonly have to do with city or county land use (zoning ordinances), building and safety codes, and other matters affecting the local community.
    - Tension may sometimes arise between federal, state, and local laws.
    - **Uniform law**—A model law created by the National Conference of Commissioners on Uniform State Laws and/or the American Law Institute for the states to consider adopting.
        - Each state has the option of adopting or rejecting all or part of a uniform law.
            - If the state adopts the law, it becomes statutory law in that state.
    - The Uniform Commercial Code (UCC) facilitates commerce among the states by providing a uniform, yet flexible, set of rules governing commercial transactions.

d. **Administrative law**—The body of law created by administrative agencies in order to carry out their duties and responsibilities.
    - **Administrative agency**—A federal or state government agency created by the legislature to perform a specific function, such as to make and enforce rules pertaining to the environment.

- Administrative law and procedures constitute a dominant element in the regulatory environment of business.
- Regulations govern:
  - A business's capital structure and financing
  - A business's hiring and firing procedures
  - A business's relations with employees and unions
  - The way a business manufactures and markets its products
- **Executive agency**—An administrative agency within the executive branch of government.
- **Independent regulatory agency**—An administrative agency that is not considered part of the government's executive branch and is not subject to the authority of the president.
- Commonly, a state agency is created as a parallel to a federal agency.

e. **Case law**—The rules of law announced in court decisions.
- Case law interprets:
  - Statutes
  - Regulations
  - Constitutional provisions
  - Other case law
- Case law governs all areas not covered by statutory law or administrative law and is part of our common law tradition.

III. The Common Law Tradition (LO 1-3, PPT Slides 14–30)

a. Because of our colonial heritage, much of American law is based on the English legal system.
- Judges in the United States still apply common law principles when deciding cases.

b. After the Norman Conquest of 1066, the king's courts sought to establish a uniform set of customs for England as a whole.
- **Common law**—The body of law developed from custom or judicial decisions in English and U.S. courts, not attributable to a legislature.
- **Remedy**—The relief given to an innocent party to enforce a right or compensate for the violation of a right.
- **Court of law**—A court in which the only remedies that can be granted are things of value, such as money damages.
  - **Remedies at law**—A remedy available in a court of law.
    - **Damages**—A monetary award sought as a remedy for a breach of contract or a tortious act.

- When individuals could not obtain an adequate remedy in a court of law, they petitioned the king for relief.
    - **Court of equity**—A court that decides controversies and administers justice according to the rules, principles, and precedents of equity.
- **Remedies in equity**—A remedy allowed by courts in situations where remedies at law are not appropriate.
    - Examples: Injunction, specific performance, rescission and restitution, or reformation
- **Breach**—To violate a law, by an act or an omission, or to break a legal obligation that one owes to another person or to society.
- **Equitable maxims**—General propositions or principles of law that have to do with fairness (equity).
    - The equitable doctrine of laches can be used as a defense.
        - **Laches**—The equitable doctrine that bars a party's right to legal action if the party has neglected for an unreasonable length of time to act on his or her rights.
        - **Defense**—Reasons that a defendant offers in an action or suit as to why the plaintiff should not obtain what he or she is seeking.
            i. **Defendant**—One against whom a lawsuit is brought, or the accused person in a criminal proceeding.
            ii. **Plaintiff**—A party that initiates a lawsuit.
- In equity proceedings, the plaintiff is called the petitioner, and the defendant is called the respondent.
    - **Petitioner**—A party that initiates a lawsuit.
    - **Respondent**—The party who answers a complaint or other proceeding.
- The doctrine of laches arose to encourage people to bring lawsuits while the evidence was fresh.
    - Time periods for different types of cases are now usually fixed by statutes of limitations.
        - **Statute of limitations**—A federal or state statute setting the maximum time period during which a certain action can be brought, or certain rights enforced.
    - After the time allowed under a statute of limitations has expired, no lawsuit can be brought, no matter how strong the case was originally.

  - Exhibit 1–2 (PPT Slide 19) lists some important equitable maxims.

c. The establishment of courts of equity in medieval England resulted in two distinct court systems: Courts of law and courts of equity.
  - The courts had different sets of judges and granted different types of remedies.
  - During the nineteenth century, most states in the United States adopted rules of procedure that resulted in the combining of courts of law and equity.
    - A party now may request both legal and equitable remedies in the same action, and the trial court judge may grant either or both forms of relief.
    - Certain vestiges of the procedures used when there were separate courts of law and equity still exist.
  - Exhibit 1–3 (PPT Slide 21) summarizes the procedural differences (applicable in most states) between an action at law and an action in equity.

d. Judges attempted to be consistent and to base decisions on the principles suggested by earlier cases, and they considered new cases with care because they knew their decision would make new laws.
  - Each interpretation became part of the law on the subject and thus served as a legal precedent.
    - **Precedent**—A court decision that furnishes an example or authority for deciding subsequent cases involving identical or similar facts.
  - In the early years of common law, there was no single place or publication where court opinions, or written decisions, could be found.
    - Today, cases are published in volumes called reporters and are also posted online.
      - **Reporter**—A publication in which court cases are published (reported).
  - The practice of deciding new cases with reference to former decisions, or precedents, became a cornerstone of the English and American judicial systems and formed a doctrine known as *stare decisis*.
    - ***Stare decisis***—A common law doctrine under which judges are obligated to follow the precedents established in prior decisions.
    - Under the doctrine of *stare decisis*, judges are obligated to follow the precedents established within their jurisdictions.

        - Jurisdiction refers to a geographic area in which a court or courts have the power to apply the law.
    - *Stare decisis* has two aspects:
        - A court should not overturn its own precedents unless there is a compelling reason to do so.
        - Decisions made by a higher court are binding on lower courts.
- Precedents that must be followed within a jurisdiction are called controlling precedents.
    - Controlling precedents are a type of binding authority.
        - **Binding authority**—Any source of law that a court must follow when deciding a case.
- Occasionally, courts must decide cases for which no precedents exist, called cases of first impression.
    - In deciding cases of first impression, courts often look at persuasive authorities.
        - **Persuasive authority**—Any legal authority or source of law that a court may look to for guidance but need not follow when making its decision.
    - Sources of persuasive authority include:
        - Precedents from other jurisdictions
        - Legal principles and policies underlying previous court decisions or existing statutes
        - Issues of fairness, social values and customs, and public policy (governmental policy based on widely held societal values)
        - Unpublished opinions (those not intended for publication in a printed legal reporter)

e. In deciding what law applies to a given dispute and then applying that law to the facts or circumstances of the case, judges rely on the process of legal reasoning.

- **Legal reasoning**—The process of reasoning by which a judge harmonizes their opinion with the judicial decisions in previous cases.
- The basic steps of the legal reasoning process are commonly referred to as the IRAC (Issue, Rule, Application, and Conclusion) method.
    - Issue—What are the key facts and issues?
    - Rule—What rule of law applies to the case?
    - Application—How does the rule of law apply to the particular facts and circumstances of this case?

        - **Case on point**—A previous case involving factual circumstances and issues that are similar to those in the case before the court.
    - Conclusion—What conclusion should be drawn?
  - Many people believe that there is no one "right" answer to every legal question.
    - Thus, the outcome of a particular lawsuit before a court cannot be predicted with certainty.
        - Good arguments can usually be made to support either side of a legal controversy.
        - Each judge has her or his own personal beliefs and philosophy which, at least to some extent, shape the legal reasoning process.

f. Common law doctrines and principles govern only areas not covered by statutory or administrative law.
  - A judge's function is not to make the laws but to interpret and apply them.
    - Because judges have some flexibility in interpreting and applying the law, different courts often arrive at different conclusions in cases that involve nearly identical issues, facts, and applicable laws.
  - The American Law Institute (ALI) has published compilations of the common law called Restatements of the Law, which generally summarize the common law rules followed by most states.
    - The Restatements are an important source of legal analysis and opinion, and judges often rely on them in making decisions.

g. **Knowledge Check 1: 5 minutes total. PPT Slide 30.** *If a judge is hearing a case with a fact pattern similar, but slightly different than a case they have ruled on before, what should the judge do?*
  - Answer: d. Rule in a similar fashion as the previous case (unless the fact pattern is so distinguishable that a different ruling would be appropriate).

IV. Schools of Legal Thought (LO 1-4, PPT Slides 31–36)

a. **Jurisprudence**—The science or philosophy of law.
  - There are four schools of jurisprudential thought:
    - Natural law school
    - Positivist school
    - Historical school
    - Legal realism

- How judges apply the law to specific cases depends in part on their philosophical approaches to law.
  - Thus, jurisprudence involves learning about different schools of legal thought and how the approaches to law characteristic of each school can affect judicial decision making.

b. **Natural law**—The oldest school of legal thought, based on the belief that the legal system should reflect universal (“higher”) moral and ethical principles that are inherent in human nature.
- According to the natural law theory:
  - A higher law applies to all human beings.
  - If each written law does not reflect the principles inherent in natural law, then it loses its legitimacy and need not be obeyed.
- The notion that people have “natural rights” stems from the natural law tradition.

b. Positive law, or national law, is the written law of a given society at a particular time.
- In contrast to natural law, it applies only to the citizens of that nation or society.
- **Legal positivism**—A school of legal thought centered on the assumption that there is no law higher than the laws created by a national government.
  - Laws must be obeyed, even if they are unjust, to prevent anarchy.
  - A judge who takes this view will probably be more inclined to defer to an existing law than would a judge who adheres to the natural law tradition.

c. **Historical school**—A school of legal thought that looks to the past to determine what the principles of contemporary law should be.
- The historical school emphasizes the evolutionary process of law by concentrating on the origin and history of the legal system.
- The legal doctrines that have withstood the passage of time—those that have worked in the past—are deemed best suited for shaping present laws.
  - Hence, law derives its legitimacy and authority from adhering to the standards that historical development has shown to be workable.
- Followers of the historical school are more likely than those of other schools to strictly follow decisions made in past cases.

d. **Legal realism**—A school of legal thought that holds that the law is only one factor to be considered when deciding cases and that social and economic circumstances should also be taken into account.
   - Legal realists believe that the law can never be applied with total uniformity.
     - Because judges have different personalities, value systems, and intellects, different judges will bring different reasoning processes to the same case.
   - Legal realism strongly influenced the growth of what is sometimes called the sociological school.
     - **Sociological school**—A school of legal thought that views the law as a tool for promoting justice in society.

e. **Discussion Activity: 10 minutes total. PPT Slide 36.** Conduct an instructor-led class discussion.
   - How might judges falling into different schools of thought rule differently on a case?
     - Because judges have some flexibility in interpreting and applying the law, different courts often arrive at differing conclusions in cases that involve nearly identical issues, facts, and applicable laws. Different schools of judicial thought or legal philosophies can lead judges to interpret the law in distinct ways, which can result in varying rulings on cases.
     - For instance, followers of the historical school are more likely than those of other schools to strictly follow decisions made in past cases. A judge who takes a legal positivism view will probably also be more inclined to defer to an existing law than would a judge who adheres to the natural law tradition.
   - Can you think of specific examples?
     - A possible example could be proposed oil pipelines and the legal actions taken by Native American tribes concerned with water rights.
       - *Natural Law*: A judge adhering to natural law might focus on principles of justice and morality. In this case, they might rule that the land should be protected as it's essential for the well-being of present and future generations, aligning with the inherent rights of individuals and nature.
       - *Legal Positivism*: A legal positivist judge would emphasize the law as written and established by the

governing authority. They might rule based on existing statutes or regulations concerning the land's usage, regardless of personal beliefs about the land's intrinsic value.
- *Historical School*: A judge following the historical school might examine precedents and historical practices related to land usage. They could base their ruling on how the land has historically been regulated or utilized, emphasizing continuity with past legal practices.
- *Legal Realism*: A legal realist judge would consider broader societal implications and practical consequences. They might look beyond legal principles and evaluate the impact of different rulings on the environment, economy, and communities. Their ruling might prioritize the practical effects of strict or lenient regulations on the land's usage.

- Is this good or bad for the stability of the legal system?
  - While diverse judicial philosophies contribute to a rich legal discourse and promote checks and balances, they also introduce challenges related to consistency and predictability within the legal system. Striking a balance between diverse perspectives and ensuring stability and predictability is an ongoing challenge for maintaining a robust and fair legal system.

V. Classifications of Law (LO 1-5, PPT Slides 37–39)

a. The law may be broken down according to several classification systems.
- Substantive law and procedural law
  - **Substantive law**—Law that defines, describes, regulates, and creates legal rights and obligations.
  - **Procedural law**—Law that establishes the methods of enforcing the rights established by substantive law.
- Federal law and state law
- Private law and public law
  - Private law deals with relationships between private entities.
  - Public law addresses the relationship between persons and their governments.
- National law and international law

- Criminal law and civil law

b. **Civil law**—The branch of law dealing with the definition and enforcement of all private or public rights, as opposed to criminal matters.
   - Civil law spells out the rights and duties that exist between persons and between persons and their governments, as well as the relief available when a person's rights are violated.
     - Typically, in a civil case, a private party sues another private party who has failed to comply with a duty.

c. **Criminal law**—The branch of law that defines and punishes wrongful actions committed against the public.
   - Criminal acts are defined and prohibited by local, state, or federal government statutes.
     - Thus, criminal defendants are prosecuted by public officials, such as a district attorney (D.A.), on behalf of the state, not by their victims or other private parties.

d. **Cyberlaw**—An informal term used to refer to all laws governing electronic communications and transactions, particularly those conducted via the internet.
   - Courts have had to adapt traditional laws to unique situations.
   - Legislatures at both the federal and the state levels have created laws to deal specifically with such issues.

VI. How to Find Primary Sources of Law (LO 1-6, PPT Slides 40–48)

a. **Citation**—A reference to a publication in which a legal authority—such as a statute or a court decision—or other source can be found.
   - In addition to being published in sets of books, most federal and state laws and case decisions are available online.

b. Laws are often referred to in their codified form—that is, the form in which they appear in the federal and state codes where they are compiled by subject.
   - All federal laws passed by Congress are arranged by broad subject in the *United States Code* (U.S.C.).
   - State codes passed by state legislatures are collected in state publications and follow the U.S.C. pattern of arranging law by subject.
   - Rules and regulations adopted by federal administrative agencies are initially published in the *Federal Register*, a daily publication of the U.S. government, and later incorporated into the *Code of Federal Regulations* (C.F.R.)

c. There are two types of courts in the United States: Federal courts and state courts.

- Both systems consist of several levels, or tiers, of courts.
  - Trial courts, in which evidence is presented and testimony given, are on the bottom tier.
  - Decisions from a trial court can be appealed to a higher court, which commonly is an intermediate court of appeals, or appellate court.
  - Decisions from these intermediate courts of appeals may be appealed to an even higher court, such as a state supreme court or the United States Supreme Court.

d. Decisions from state trial courts are typically filed in the office of the clerk of the court, where the decisions are available for public inspection.
- Written decisions of the appellate, or reviewing, courts are published and distributed in print and online.
  - The reported appellate decisions are published in volumes called reports or reporters, which are numbered consecutively and published by each state.
    - State court opinions appear in regional units of the West's National Reporter System, which divides the states into different geographic areas.
    - Most lawyers and libraries have these reporters because they report cases more quickly and are distributed more widely than the state-published reporters.
  - After appellate decisions have been published, they are normally cited by the name of the case and the volume, name, and page number of the reporter(s) in which the opinion can be found; the year that the decision was issued is often included at the end in parentheses.

b. Federal district court decisions are published unofficially in the *Federal Supplement*.
- Opinions from the circuit courts of appeals are reported unofficially in the *Federal Reporter*.
- Cases concerning federal bankruptcy are published unofficially in the *Bankruptcy Reporter*.
- The official edition of the United States Supreme Court decisions is the *United States Reports*.
- Unofficial editions of Supreme Court cases include the *Supreme Court Reporter* and the *Lawyers' Edition of the Supreme Court Reports*.

c. Many court opinions that are not yet published or that are not intended for publication can be accessed through Thomson Reuters Westlaw®, an online legal database.

d. Sample citations to state court decisions are explained in Exhibit 1–5 (PPT Slides 46–47).

e. **Knowledge Check 2: 5 minutes total. PPT Slide 48.** *"Ohio Revised Code 2911.01" is what type of primary source?*
   - Answer: b. State statute

VII. How to Read and Understand Case Law (LO 1-7, PPT Slides 49–56)

a. The decisions made by the courts establish the boundaries of the law as it applies to almost all business relationships.
   - Thus, it is essential that businesspersons know how to read and understand case law.

b. The title of a case, such as *Adams v. Jones*, indicates the names of the parties to the lawsuit.
   - The *v.* in the case title stands for versus, which means "against."
   - In trial courts, the name listed first in the title is the plaintiff, and the name listed second in the title is the defendant.
     - However, appellate courts sometimes place the name of the party appealing the decision first.
     - Because some appellate courts retain the trial court order of names, it is often impossible to distinguish the plaintiff from the defendant in the title of a reported appellate court decision.
     - Thus, one must carefully read the facts of each case to identify the parties.

e. The party initiating a lawsuit is referred to as the plaintiff or petitioner, depending on the nature of the action.

f. The party against whom a lawsuit is brought is the defendant or respondent.

g. **Appellant**—The party who takes an appeal from one court to another.

h. **Appellee**—The party against whom an appeal is taken—that is, the party who opposes setting aside or reversing the judgment.

i. The terms "judge" and "justice" are usually synonymous and represent two designations given to judges in various courts.

j. Most decisions reached by reviewing, or appellate, courts are explained in written opinions.
   - **Opinion**—A statement by a court expressing the reasons for its decision in a case.

k. To illustrate the various elements contained in a court opinion, we present an annotated court opinion in Exhibit 1–6 (PPT Slides 53–55).

c. **Group Activity: 20–30 minutes total. PPT Slide 56.** Break the class into small groups of two to three students and have them complete the activity followed by an instructor-led debrief with the class.
   - Find the following case and brief it using the IRAC method:
     Kimble v. Marvel Entertainment, LLC
     135 S. Ct. 2401

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Additional Discussion Questions

The following are discussion questions that do not appear in the text, PPTs, or courseware (if courseware exists)—they are for you to use as you wish. You can assign these questions several ways: in a discussion forum in your LMS; as whole-class discussions in person; or as a partner or group activity in class.

I. Discussion: The Function of Law. Duration 5 minutes.
   - What is the primary function of law?
     - Answer: The primary function of law is to simultaneously maintain stability and permit change. The law does this by providing for dispute resolution, the preservation of political, economic, and social institutions, and the protection of property.

II. Discussion: The U.S.'s School of Thought. Duration 5 minutes.
   - Which of the schools of legal thought matches the U.S. system?
     - Answer: None of the approaches mentioned in these sections is an exact model of the American legal system. They represent frameworks that can be used in evaluating the moral and ethical considerations that are an integral part of the law.

III. Discussion: Schools of Legal Thought. Duration 5 minutes.
   - Which school of thought do you fall into? (Natural Law, Positivist, Legal Realism, Historical, Undecided)
     - Answer: Students' responses will vary, but they should be able to support their perspective with an understanding of the underlying concepts and differentiation between the schools.

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