Chapter 1

**Legal and Constitutional**

**Foundations of Business**

Answers to Learning Objectives/

Learning Objectives Check Questions

at the Beginning and the End of the Chapter

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

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

**2A.** ***What are some important differences between civil law and criminal law?*** Civil law spells out the rights and duties that exist between persons and be­tween persons and their governments, and the relief available when a person’s rights are violated. In a civil case, a private party may sue another private party (the government can also sue a party for a civil law violation) to make that other party comply with a duty or pay for damage caused by a failure to comply with a duty.

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

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

**3A.** ***What constitutional clause gives the federal government the power to regulate commercial activities among the various states?*** To prevent states from establishing laws and regulations that would interfere with trade and commerce among the states, the Constitution expressly dele­gated to the national government the power to regulate interstate commerce. The commerce clause—Article I, Section 8, of the U.S. Constitution—expressly permits Congress “[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”

**4A.** ***What is the Bill of Rights? What freedoms does the First Amendment guarantee?*** The Bill of Rights consists of the first ten amendments to the U.S. Constitution. Adopted in 1791, the Bill of Rights embodies protections for individuals against interference by the federal government. Some of the protections also apply to business entities. The First Amendment guarantees the freedoms of religion, speech, and the press, and the rights to assemble peaceably and to petition the government.

**5A.** ***Where in the Constitution can the*** ***due process clause be found?*** Both the Fifth and the Fourteenth Amendments to the U.S. Constitution pro­vide that no person shall be deprived “of life, liberty, or property, without due process of law.” The due process clause of each of these constitutional amend­ments has two aspects—procedural and substantive.

Answers to Critical Thinking Questions

in the Features

**Beyond Our Borders—Critical Thinking**

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

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

***If Elonis’s conviction stands, will the government’s approach expose rap singers to prosecution for writing songs containing violent threats? Why or why not? When should a statement made on social media be considered a true threat?*** The United States Supreme Court found that negligence was not enough to be convicted under a federal criminal law for making true threats. Rather, the person posting the statements must have either intended to threaten or know that his or her statements would be viewed as a threat. The Court did not, however, clearly establish what constitutes a threat under federal law, but merely sent the case back to a lower court to determine whether Elonis met a higher standard. Therefore, the law is somewhat ambiguous.

If a person posts threats on social media with the *intent* to threaten someone, he or she can and should be convicted under the federal statute. But intent is often difficult to prove. If a person posts threats on social media but claims he or she did not intend to threaten, or says the words were just song lyrics (as Elonis claimed), the result is unclear. The prosecution will have to prove that the person “knew his or her statements would be viewed as threats.” Although posting statements about killing someone on a social media seems like it would be a true threat, it might not always be considered to be one. Perhaps the person was joking or just blowing off steam, and the other party knew that the threat was not serious.

Answers to Critical Thinking Questions

in the Cases

**Case 1.2—What If the Facts Were Different?**

***If Bad Frog had sought to use the offensive label to market toys instead of beer, would the court’s ruling likely have been the same? Explain your answer.***  Probably not. The rea­soning underlying the court’s decision in the case was, in part, that “the State’s prohibi­tion of the labels .  .  . does not materially advance its asserted interests in insulating children from vulgarity .  .  . and is not nar­rowly tailored to the interest concerning chil­dren.” The court’s reason­ing was supported in part by the fact that children cannot buy beer. If the labels adver­tised toys, however, the court’s reasoning might have been different.

**Case 1.3—Critical Thinking—Legal Consideration**

***Most states and the federal government permit inmates to grow 1/2-inch beards. Would the policies followed at these institutions be relevant in determining the need for a beard restriction in this case? Discuss.*** Yes, the policies followed at other institutions are relevant to a determination of the need for a beard restriction in this case. That so many other prisons allow inmates to grow beards while ensuring prison safety and security suggests that the department in this case could satisfy its security concerns through a means less restrictive than denying Holt an exemption.

Answers to Questions in the Reviewing Feature

at the End of the Chapter

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

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

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

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

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

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

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

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

Answer to Debate This Question in the Reviewing Feature

at the End of the Chapter

***Legislation aimed at protecting people from themselves concerns the individual as well as the public in general.  Protective helmet laws are just one example of such legislation.  Should individuals be allowed to engage in unsafe activities if they choose to do so?*** Certainly many will argue in favor of individual rights.  If certain people wish to engage in risky activities such as riding motorcycles without a helmet, so be it.  That should be their choice.  No one is going to argue that motorcycle riders believe that there is zero danger when riding a motorcycle without a helmet.  In other words, individuals should be free to make their own decisions and consequently, their own mistakes.

In contrast, there is a public policy issue involved.  If a motorcyclist injures him- or herself in an accident because he or she was not wearing a protective helmet, society ends up paying in the form of increased medical care expenses, lost productivity, and even welfare for other family members.  Thus, the state has an interest in protecting the public in general by limiting some individual rights.

Answers to Issue Spotters

at the End of the Chapter

**1A.** ***Apples & Oranges Corporation learns that a federal administra­tive agency is considering a rule that will have a negative impact on the firm’s ability to do business. Does the firm have any opportunity to express its opin­ion about the pending rule? Explain.*** Yes. Administrative rulemaking starts with the publication of a notice of the rulemaking in the *Federal Register.* Among other details, this notice states where and when the proceedings, such as a public hearing, will be held. Proponents and opponents can of­fer their comments and concerns regarding the pending rule. After reviewing all the comments from the proceedings, the agency’s decision makers consider what was presented and draft the final rule.

**2A. *Suppose that a state imposes a higher tax on out-of-state companies doing business in the state than it imposes on in-state companies. Is this a violation of equal protection if the only reason for the tax is to protect the local firms from out-of-state competition? Explain.*** Yes. The tax would limit the lib­erty of some persons (out of state busi­nesses), so it is subject to a review under the equal protection clause. Protecting local businesses from out-of-state com­peti­tion is not a legitimate government objective. Thus, such a tax would vio­late the equal protection clause.

Answers to Questions and Case Problems

**at the End of the Chapter**

**Business Scenarios and Case Problems**

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

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

**1–2A. *The free exercise clause***

Thomas has a constitutionally protected right to the free exercise of his re­ligion. In denying his claim for unemployment benefits, the state violated this right. Employers are obligated to make reasonable accommodations for their employees’ beliefs that are openly and sincerely held, as were Thomas’s beliefs. By moving him to a department that made military goods, his employer effectively forced him to choose between his job and his religious princi­ples. This unilateral decision on the part of the employer was the reason Thomas left his job and why the company was required to compensate Thomas for his resulting unemployment.

**1–3A. Spotlight on AOL*—Common law***

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

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

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

**1–4A. Business Case Problem with Sample Answer—*Establishment clause***

The establishment clause prohibits the government from passing laws or taking actions that promote religion or show a preference for one religion over another. In assessing a government action, the courts look at the predominant purpose for the action and ask whether the action has the effect of endorsing religion.

Although here DeWeese claimed to have a nonreligious purpose for displaying the poster of the Ten Commandments in a courtroom, his own statements showed a religious purpose. These statements reflected his views about “warring” legal philosophies and his belief that “our legal system is based on moral absolutes from divine law handed down by God through the Ten Commandments.” This plainly constitutes a religious purpose that violates the establishment clause because it has the effect of endorsing Judaism or Christianity over other religions. In the case on which this problem is based, the court ruled in favor of the American Civil Liberties Union.

**1–5A. *Equal protection***

Yes, the equal protection clause can be applied to prohibit discrimination based on sexual orientation in jury selection. The appropriate level of scrutiny would be intermediate scrutiny. Under the equal protection clause of the Fourteenth Amendment, the government cannot enact a law or take another action that treats similarly situated individuals differently. If it does, a court examines the basis for the distinction. Intermediate scrutiny applies in cases involving discrimination based on gender. Under this test, a distinction must be substantially related to an important government objective.

Gays and lesbians were long excluded from participating in our government and the privileges of citizenship. A juror strike on the basis of sexual orientation tells the individual who has been struck, as well as the trial participants and the general public, that the judicial system still treats gays and lesbians differently. This deprives these individuals of the opportunity to participate in a democratic institution on the basis of a characteristic that has nothing to do with their fitness to serve.

In the actual case on which this problem is based, SmithKline challenged the strike. The judge denied the challenge. On SmithKline’s appeal, the U.S. Court of Appeals for the Ninth Circuit held that the equal protection clause prohibits discrimination based on sexual orientation in jury selection and requires that heightened scrutiny be applied to equal protection claims involving sexual orientation. The appellate court remanded the case for a new trial.

**1–6A. *Procedural due process***

No, the school’s actions did not deny Brown due process. Procedural due process requires that any government decision to take life, liberty, or property must be made fairly. The government must give a person proper notice and an opportunity to be heard. The government must use fair procedures—the person must have at least an opportunity to object to a proposed action before a fair, neutral decision maker.

In this problem, Robert Brown applied for admission to the University of Kansas School of Law. He answered “no” to the questions on the application about criminal history and acknowledged that a false answer constituted cause for dismissal. He was accepted for admission to the school. But Brown had previous criminal convictions for domestic battery and driving under the influence. When school officials discovered this history, Brown was notified of their intent to dismiss him and given an opportunity to respond in writing. He demanded a hearing. The officials refused, and expelled him. As for due process, Brown knew he could be dismissed for false answers on his application. The school gave Brown notice of its intent to expel him and gave him an opportunity to be heard (in writing). Due process does not require that any specific set of detailed procedures be followed as long as the procedures are fair.

In the actual case on which this problem is based, Brown filed a suit in a federal district court against the school, alleging denial of due process. From a judgment in the school’s favor, Brown appealed. The U.S. Court of Appeals for the Tenth Circuit affirmed, concluding that “the procedures afforded to Mr. Brown were fair.”

**1–7A.**  ***Reading citations***

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

**1–8A. A Question of Ethics—Stare decisis**

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

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

**Critical Thinking and Writing Assignments**

**1–9A.** **Business Law Writing**

For commercial businesses that operate only within the borders of one state, the power of the federal government to regulate every commercial enterprise in the United States means that even exclusively intrastate businesses are sub­ject to federal regulations. This can discourage intrastate commerce, or at least the commercial activities of small businesses, by adding a layer of regulation that may require expensive or time-consuming methods of compliance. This may encourage intrastate commerce, however, by disallowing restrictions, such as arbitrary discriminatory practices, that might otherwise impair the operation of a free market. This federal power also affects a state’s ability to regulate activities that extend beyond its borders, as well as the state’s power to regulate strictly in-state activities if those regulations substantially burden interstate commerce. This effect can be to encourage intrastate commerce by removing some regulations that might otherwise impede business activity in the same way that added federal regulations can have an adverse impact. A state’s inability to regulate may discourage small intrastate businesses, how­ever, by inhibiting the state’s power to protect its “home” or “native” enterprises.

**1–10A.** **Business Law Critical Thinking Group Assignment—*Court opinions***

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

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

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