

Chapter 1 (Personal Law)

Foundation of laws and Ethics

▼ GOALS

- Explain the stages in the growth of law
- Describe the differences between common law and positive law
- Identify the origin of the U.S. legal system

WHAT IS LAW?

WHAT'S YOUR VERDICT?

Lorenzo and Bixby were discussing how much civilization had advanced since the beginning of recorded history. Bixby said he thinks that the basic nature of humankind has not changed, but the number of facts we know has been multiplied many times over. Lorenzo agreed, saying "Just compare the laws they had way back then with the ones we have now. We're still making the same mistakes and still need the same protections from the conduct of others."

Do you think they are correct?

The **laws**, or enforceable rules of conduct in a society, reflect the culture and circumstances that create them. Laws may be grouped into an organized form called a **code**. When you compare one civilization's code with the codes of other civilizations, you see many similarities. For example, the law code set down about four thousand years ago by Hammurabi, King of Babylon, had sections on criminal law, property law, business law, family law, personal injury law, labor law, and others. Such coverage is similar to that found in the U.S. law codes today.

Lorenzo and Bixby in *What's Your Verdict?* were right. The need for law has not changed much over recorded history. People still make the same mistakes and still need the same protections from the conduct of others.

STAGES IN THE GROWTH OF LAW

Most societies go through four distinct stages in forming their legal systems:

1. Individuals take revenge for wrongs done to them

2. A powerful leader or other form of central authority substitutes an award of money or goods for revenge
3. The leader or authority gives power to a system of courts
4. The leader or central authority acts to prevent and punish wrongs

In the first stage, injuries inflicted on one human being by another are matters for personal revenge. Those who are wronged feel that justice can be done only through personally punishing the wrongdoers. Gang wars in the inner cities often result from this type of attitude. Whether they occur in a big city or in a developing society, such events usually disrupt the normal routine of the people and result in harm to innocent bystanders.



The law code set down by King Hammurabi of Babylon contained sections or categories similar to those found in modern U.S. law codes. How do you think the *specific content* of Hammurabi's codes compares to that of U.S. law codes today?

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The situation often leads to one individual taking power and exerting control to bring peace to the society. To achieve this peace, the powerful leader or authority, often called the *sovereign*, forces the injured parties to accept awards of money or goods as a substitute for their taking revenge. This is the second stage in the growth of law.

The sovereign is faced with a number of such cases that need to be decided. This leads to the third stage—the sovereign sets up a system of courts and gives them appropriate powers. Elders or priests generally preside over these courts. However, the sovereign still presides over the most important matters.

In the fourth and final stage, the sovereign goes from being a passive authority working only to resolve disputes to try to prevent breaches of the peace before they can occur. The sovereign does this through enforcing a set of laws and matching punishments.

COMMON LAW
VERSUS POSITIVE LAW

Laws reflect the wisdom—or lack thereof—of their creators. In any society laws should be both predictable and flexible. A system of laws that is not predictable will not produce a stable society. Chaos, unrest, and the replacement of the system by one that can exercise control and restore peace will follow.

A legal system that is too controlling and too rigid to change with the wants and needs of the people also will be overthrown. The best system of laws always evolves slowly towards a form that is most appropriate to the current standards of the people.

Law based on the current standards or customs of the people is called **common law**. Common law usually is formed from the rules used by judges to settle people's disputes. However, as noted earlier, some laws are set down by a sovereign or other central authority to prevent disputes and wrongs from occurring in the first place. Law dictated from above in this fashion is called **positive law**.

CHECKPOINT

How does common law differ from positive law?

WHAT IS THE
ORIGIN OF THE U.S.
LEGAL SYSTEM?

WHAT'S YOUR VERDICT?

LaBonne, from Louisiana, was visiting his cousin in St. Louis, Missouri. While they were talking about the differences in traffic laws in the two states, LaBonne told his cousin that Louisiana's legal system was different from that used in Missouri and all the other states.

Is LaBonne correct?

The world's two great systems of law are the English common law and the Roman civil law. Countries with systems patterned after the Roman civil law have adopted written, well organized, comprehensive sets of statutes in code form. Only one state in the United States—Louisiana—has law based on a civil law system. The legal system used in the other 49 states is based on the English common law. Therefore, in *What's Your Verdict?*, LaBonne was correct.

INTERNATIONAL
VIEWPOINT

Napoleonic Code

The territory that is now Louisiana was claimed for France by the explorer Lasalle in 1682. French settlers brought many French influences to the state of Louisiana—customs, food, language, and law. Louisiana's legal system was developed using the French Code Napoléon (or Napoleonic Code) as a foundation. Over the years Louisiana has modified its legal system to correspond with those of the other 49 states. The Napoleonic Code was derived from Germanic customs and Roman law. The Napoleonic Code also was the model for the civil law codes of Italy, the Netherlands, Spain, and the Canadian Province of Quebec.

Colonists from England brought the common law system to this continent. To understand how this system works, you must look back to England to see how it was developed.

ENGLISH COMMON LAW

Before the English common law system developed, feudal barons acted as judges within their territories. Disputes were settled on the basis of local customs and enforced by the barons' power. Because of this, the laws of England differed from region to region. Such differences were difficult for people to follow. They also made it hard for a central government to maintain control.

KING'S BENCH Around 1150 King Henry II decided to improve the situation. He appointed a number of judges from a group of trusted nobles. King Henry gave these judges the power to order that wrongdoers pay with money or goods the parties they injured.

In good-weather months the judges would "ride circuit" into the countryside, holding court in the villages. During bad-weather months, the judges stayed in London and sat together as a court to hear cases on appeal that might have been decided unwisely on circuit. This court so formed by the circuit-riding judges came to be called King's Bench—or Queen's Bench if the regent was female.

The baron's courts, which heard local cases before the King's courts were created, kept the power to decide some of the minor cases. However, the King's courts always had the power to decide a case—or **jurisdiction**—over the most important cases.

JURY King Henry recognized that it was important to decide the court cases in harmony with the customs of the people. To do otherwise would cause unrest, if not revolution. The judges were instructed to choose citizens from each region to help interpret that region's customs for the court. This panel of citizens evolved into what we know today as the *jury*. The jury is an institution unique to the English common law system.

AN EXAMPLE The early system of English common law worked something like this. Imagine that a farmer named William is on his way to market one morning in his ox cart. He is traveling through an unfamiliar region. As he approaches an intersection, he sees another person in a similar ox cart coming into the intersection from his right.



Because he could not resolve all the disputes in the nation by himself, King Henry appointed a group of judges to decide them for him. What personal qualities do you think he looked for in these judges?

In William's home region the right of way at an intersection goes to the person on the left. So he continues on, expecting the other person to rein in. The other party, a local resident named Gwen, does not yield and a collision results. Both William and Gwen are injured. Their oxen are gored. Their carts and other property are destroyed. As a consequence, the next time the King's circuit-riding judge comes into Gwen's region, both people appear in court and request damages for their losses.

The judge needs to know who is at fault in the case in order to decide who must pay. To find out, the judge chooses a jury of 12 residents. These people must decide which person, according to their customs, acted improperly. The jury determines that, because the right of way customarily goes to the person on the right in their region, William is at fault and must pay Gwen damages. The judge accepts the decision and orders William to pay.

The decision, however, upsets William. He knows that throughout most of his travels the right of way is given to the person on the left. Therefore, he decides to take his case to the higher, or appellate, court—King's Bench in London—on appeal. That court will not be in session for several months yet, so William uses the time to collect

information on the law used in other courts in England that have ruled on the issue of right of way. Finally, the time comes to appear before King's Bench. The judges listen to William's appeal and Gwen's defense of the lower court's decision.

The appellate court judges review the information presented to them by both parties, including the laws used by other courts to settle like issues. They decide that it would be wisest to reverse the holding in the lower court (that the right of way should go to the person on the right). Instead, says King's Bench, the right of way will be given to the person on the left. They send the case back down to the lower court with instructions to enter a judgment for damages in William's favor.

From that point on, anyone in the kingdom will need to give the right of way to the person on the left. If any lower court, including the one in Gwen's region, decides a case using a different rule, the result can be appealed to King's Bench and reversed.

ADVANTAGES OF ENGLISH COMMON LAW The judicial process described in the example was repeated over and over in England throughout the centuries. As a result, a uniform web of custom-based common law developed across the whole of England. The process used to achieve this end is called the English common law system. The English common law system achieves uniformity while maintaining an ability to adapt to changes in society. It has been a model for legal systems worldwide, including that in the United States.

Ah, the joys of e-mail—instant communication of thoughts. You feel it. You say it. You send it.

But, if your message is perceived as a threat, you could be prosecuted and convicted for it. In the first conviction of an online hate crime, a 21-year-old Los Angeles man was found guilty in federal court. He sent death threats by e-mail to more than 50 Asian students. The case set a precedent, as it put Internet communications on equal legal ground with telephone calls and postal mail. It also addressed civil rights violations committed online—hate crimes in this case. The defense team argued this was a "stupid prank" and that so-called

EQUITY: AN ALTERNATIVE TO COMMON LAW

The common law courts carefully followed *precedent*. This means the courts used prior cases as a guide for deciding similar new cases as was done in *William v. Gwen* above. Following precedent helped to provide stability in the law. However, it also had the disadvantage of requiring a rigid adherence to proper form. A misplaced period or misspelled word would nullify, or void, the effect of a document.

Another disadvantage of the common law as it evolved was that the courts were limited to granting the remedy of damages. The common law courts had to wait until the harm actually occurred before they could take action.

For example, if a farmer decided to dam up the stream that watered the neighbor's crops and animals, the courts of law had to wait until the harm had occurred and then award the neighbor damages for what the farmer did. The courts of law could not order the farmer to stop building the dam. This would result in a waste of resources from the perspective of the country as a whole.

However, if the neighbor were a noble, he might be able to get around the courts and directly petition the king for help. The king would refer the matter to his chancellor, who was usually a high clergyman respected for his **equity**, or fairness.

The chancellor would conduct a hearing under rules different from those of a common



flames or abusive messages are commonplace with Internet culture and discussion

groups. The jury thought otherwise and took the threats seriously. At first the Net was considered to be a fantasy land where users could be anonymous. This case shows that the legal system will not treat the Net differently from other forms of communication.

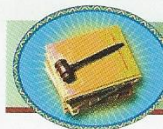
THINK ABOUT IT

Do you think people should be held accountable for threats they make online? Why or why not?

law court. There would be no jury, for example, and the remedies the chancellor could impose in the king's name were different from those available to the law courts.

The chancellor might issue an order to compel that something be done. Or, he might issue an *injunction*, which stops something from being done. For example, the chancellor could issue an injunction to stop the dam from being built. If the neighbor were not a noble, he would not have been able to petition the king. The harm would be allowed to occur.

Eventually the king sensed a need for access to equitable remedies for all citizens. He created a system of equity courts and placed them under the chancellor's control. These courts were given the power to issue injunctions or to compel specific actions. In the United States today, law courts and equity courts generally are merged.



Law Brief

Four states in the United States administer law and equity separately. In Arkansas, Delaware, and Mississippi equity is administered in chancery courts. In Tennessee equity is administered in law-equity courts.

Consequently, most American courts can award damages or issue orders or both.

CHECKPOINT

On which early legal system is the U.S. legal system based?

1-1

Assessment

THINK ABOUT LEGAL CONCEPTS

1. Substitution of damages for revenge is the first stage in the evolution of law. **True or False?**
2. The two systems of law in use today are the English common law and the (a) American Constitution (b) French legal code (c) Roman common law (d) none of the above.
3. A remedy of the English Courts of Equity was the (a) injunction (b) court order (c) disputation (d) none of the above.
4. Louisiana is the only one of the 50 states whose legal system was not originally based on the English common law system. **True or False?**
5. Most American law courts can use either damages or an injunction or both as remedies in civil cases. **True or False?**

THINK CRITICALLY ABOUT EVIDENCE

Study the situation, answer the questions, and then prepare arguments to support your answers.

6. You are on your daily jog when a car negligently pulls out in front of you. Unable to stop, you run into it and injure yourself. Should you be able to recover damages for the harm done to you?
7. The driver of the car in exercise 6 becomes abusive towards you after your recovery. The driver follows you on your jogs and yells threats at you. He has recently taken to driving very close to you as you jog. What can you do legally to make him stay away from you?
8. Cracked Mirror, a local rock group, contracts to play for your high school prom. A week before the dance, the group cancels its appearance. A teacher finds out that the band booked a concert that will pay them \$800 more. The class president's mother is an attorney and offers her services to the school. If you sue the band for damages, what would be an appropriate amount and why?
9. For the situation in exercise 8, fashion an equitable remedy that might encourage Cracked Mirror to decide to keep its commitment to play at your prom.

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▼ GOALS

- Identify the four sources of law
- Discuss how to resolve conflicts between different sources of laws
- Compare and contrast criminal and civil law, and substantive and procedural law

1-2

Types of Laws

WHAT ARE THE SOURCES OF LAW?

WHAT'S YOUR VERDICT?

The federal constitution guarantees the citizens of the United States many rights. These include freedom of speech, of press, of assembly, to petition, to bear arms, against unreasonable searches and seizures, and more.

What part of the U.S. Constitution contains these guarantees?

Laws in this country are created at all three levels of government—federal, state, and local. The forms that these laws can take include constitutions, statutes, case law, and administrative regulations.

CONSTITUTIONS

A **constitution** is a document that sets forth the framework of a government and its relationship to the people it governs. When constitutions are adopted or amended, or when courts interpret constitutions, *constitutional law* is made. You are governed by both the Constitution of the United States and the constitution of your state. The Supreme Court of the United States is the final interpreter of the federal Constitution.

Constitutions are the highest sources of law, and the federal Constitution is "the supreme law of the land" (U.S. Constitution, Article VI). This means that any federal, state, or local law is not valid if it conflicts with the federal Constitution. Similarly, within each state the state constitution is supreme to all other state laws.

Federal and state constitutions are concerned primarily with defining and allocating certain powers in our society. Constitutions allocate powers (1) between the people and their governments, (2) between state governments and the federal government, and (3) among the branches of the government.

ALLOCATION OF POWER BETWEEN PEOPLE AND THEIR GOVERNMENTS

The federal Constitution is the main instrument for allocating powers between people and their governments. It does this primarily with its first ten amendments, called the *Bill of Rights*. The Bill of Rights protects people from actions of their governments. This is the section of the federal Constitution referred to in *What's Your Verdict?* The Bill of Rights will be discussed in detail in Chapter 2.

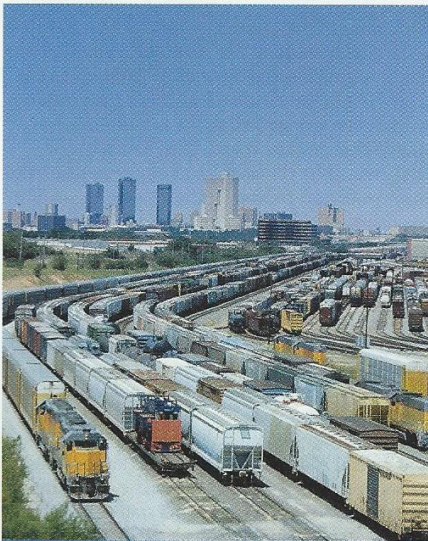
ALLOCATION OF POWER BETWEEN FEDERAL AND STATE GOVERNMENTS

The federal Constitution also allocates powers between the federal and state governments. For example, many governmental powers over business are divided between state governments and the federal government on the basis of commerce. In general, the Constitution gives the federal government the power to regulate both foreign and interstate commerce. *Interstate* commerce occurs between two or more states. The power to regulate *intrastate* commerce, which occurs within one state, is left with that state.



LEGAL RESEARCH

The Fraudulent Online Identity Sanctions Act (H.R.3754) of 2004 would increase prison sentences to up to seven years for someone who provided "material and misleading false contact information to a domain name registrar, domain name registry, or other domain name registration authority." It would also make it much easier for the recording studios and movie producers to track down copyright violators and obtain the \$150,000 per violation damages. Obtain a copy of this proposed act. What do you see as potential problems with the bill? What rights does the bill put in jeopardy, if any?



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Railroads often are used to transport goods over long distances. What type of commerce, interstate or intrastate, does this represent, and which level of government most likely regulates it?

ALLOCATION OF POWER AMONG THE BRANCHES OF GOVERNMENT

State and federal constitutions also allocate governmental powers among the three branches of government: executive, legislative, and judicial. Traditionally these powers are distributed so as to create a system of checks and balances between the branches of each government. This ensures that no branch of government becomes too powerful. For example, the federal Constitution gives the courts, not Congress, the authority to conduct trials. It gives Congress the power to ordain and establish the courts in the first place.

STATUTES

The federal Constitution created the Congress of the United States. State constitutions created the state legislatures. These state and federal legislatures are composed of elected representatives of the people. Acting for their citizens, these legislatures enact laws called **statutes**.

In addition, all states delegate some legislative authority to local governments. Thus, towns, cities, and counties can legislate on matters over which the state has given them authority. These pieces of legislation created by a town or city

council or by a county board or commission are typically referred to as **ordinances**. They are only effective within the boundary of the local governments that enacted them.

CASE LAW

The judicial branch of governments creates **case law**. Case law usually is made after a trial has ended and one of the parties has appealed the result to a higher court. This appeal will be based on legal rulings made by the lower court in deciding the case.

When the appellate court publishes its opinion on a case, that opinion may state new rules to be used in deciding the case and others like it. These rules are referred to as case law at either the federal or state level.

The effectiveness of case law arises out of the doctrine of **stare decisis**. This is Latin for “let the decision stand.” This doctrine requires that lower courts must follow established case law in deciding similar cases. Generally, case law doctrines are carefully established and seldom revoked. However, the doctrine of *stare decisis* generally does not bind supreme courts.

IN THIS CASE

Carol borrowed her stepfather’s car without his express permission. The police stopped her and discovered the car was not registered in her name. They then phoned her stepfather. When he said he did not know where his car was, Carol was arrested. At her trial, Carol and her stepfather testified that she had his permission to use the car without asking each time. The trial judge nevertheless found Carol guilty of auto theft, which, the judge stated, occurs when one person takes the car of another without expressly asking permission. Carol appealed to the state supreme court. That appellate court issued an opinion stating implied permission is enough, and, therefore, Carol was innocent. This rule then became state case law to be applied in similar cases.

ADMINISTRATIVE REGULATIONS

Federal, state, and local legislatures all create administrative agencies. **Administrative agencies** are governmental bodies formed to carry out

particular laws. The federal Social Security Administration, your state’s division of motor vehicles, and your county’s zoning commission are examples of administrative agencies.

Although created by legislatures, administrative agencies usually are controlled by the executive branch of government. Thus, the president, governor, or mayor will supervise the agency’s activities. Legislatures sometimes give administrative agencies legislative powers and limited judicial powers. Legislative power means the agency is authorized to create administrative laws, also called **rules** and **regulations**. For example, the federal Social Security Administration might establish rules for determining when a student is depending on support from a widow or widower and thereby qualified to receive social security payments.

If an agency has judicial power, it can hold hearings, make determinations of fact, and apply the law to particular cases. In the above example, the Social Security Administration might hold a hearing to judge whether a *particular* student is in fact a dependent. Once this determination is made, the Social Security Administration would use its executive powers to carry out the rules on payments to dependents of widows or widowers.

CHECKPOINT

What are the four sources of law?

WHAT HAPPENS WHEN LAWS CONFLICT?

WHAT’S YOUR VERDICT?

When adopted, the U.S. Constitution provided that there could be no income tax. So when Congress levied a 2 percent income tax in 1894, the U.S. Supreme Court declared it unconstitutional. Many people wanted the federal government to raise money by taxing incomes because the burden imposed would be based on one’s current ability to pay.

Could the people do anything to change the effect of the Supreme Court decision?

Sometimes laws created by different levels of government conflict. For example, a city ordinance setting a speed limit of 35 mph on a state highway near an elementary school may conflict with a state statute setting 45 as a minimum speed limit on state roads. Different types of laws created by the same level of government also may conflict. A federal administrative regulation requiring the phase-out of coal-fired electric-generating plants may conflict with a federal court decision holding that such regulations are unconstitutional.

In these situations, legal rules are used that determine which statement of the law is superior to the other and should therefore be enforced. Generally, these *supremacy* rules hold that federal law prevails over state law and state law prevails over local (city and county) law. Within the state and federal systems, constitutional law prevails over statutory law and statutory law over administrative law. Finally, within the state and federal court systems, a higher court’s decision prevails over a lower court’s.

CONSTITUTIONS AND VALIDITY Constitutions are the highest sources of law, and the federal Constitution is “the supreme law of the land” (U.S. Constitution, Article VI). This means that any federal, state, or local statute, case law or administrative decision is not valid if it conflicts with the federal Constitution. Within each state’s legal framework, the state constitution is supreme to all other state laws.

When any type of law is declared invalid by a state or federal court because it conflicts with a constitution, it is said to be *unconstitutional*. Such a determination may be appealed to the highest court within the state and federal systems. Within the federal system, the U.S. Supreme Court has the final say. The highest state court wins out on state issues. Of course, even when interpreting constitutions, courts are not the ultimate authority. The people have the power to amend constitutions if they disagree with the courts’ interpretations.

In answer to *What’s Your Verdict?* the Sixteenth Amendment to the U.S. Constitution, adopted in 1913, gave Congress the power to lay and collect an income tax. This in effect nullified the U.S. Supreme Court decision.

STATUTES AND VALIDITY As discussed, statutes or ordinances must be constitutional to be valid. In addition, when needed in a particular case, courts also examine the statutes and ordinances

involved to see whether or not the law's enactment exceeded the scope of the powers of the body that authored it.

ADMINISTRATIVE REGULATIONS AND VALIDITY

Administrative regulations also can be reviewed by courts to determine whether they are constitutional. The courts may also invalidate a rule or regulation if it is outside the scope of powers delegated to the agency by the legislature that created it.

CASE LAW AND VALIDITY A case law decision by a court holding a statute invalid is not always the end of the issue. A legislative body has the power to nullify a court's interpretation of a statute or ordinance by rewriting the statute. Administrative agencies also can revise their regulations when challenged.

CHECKPOINT

Which source of law in the United States is the highest authority?

WHAT ARE THE MAIN TYPES OF LAWS?

WHAT'S YOUR VERDICT?

Worthington was driving down the road well within the speed limit. At a stop sign he slowed to about 15 miles per hour, but he did not stop. As a result, he smashed into the side of Bates' Mercedes, causing \$12,000 in damage.

Did Worthington violate civil law or criminal law or both?

Laws may be classified in various ways. Common classifications include civil laws, criminal laws, procedural laws, substantive laws, and business law.

CIVIL AND CRIMINAL LAWS

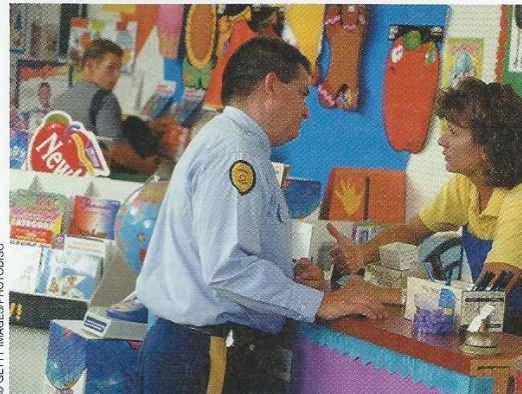
When the private legal rights of an individual are violated, the matter is governed by civil law. The use of the term **civil law** within the common law

system refers to the group of laws that make up for wrongs against individual persons. (Civil law in this sense does not refer to the comprehensive system of law mentioned in Lesson 1-1.)

For example when a tenant fails to pay the rent as promised, the landlord has the right to sue the tenant. The police do not take action in civil conflicts. If a defendant loses a civil case, that defendant is liable. This means that she or he must pay money to the plaintiff. This is the primary help that courts grant in civil matters. In addition to enforcing legal promises, civil law also applies whenever one person is injured by another. Such private wrongs (civil offenses) against people or organizations are referred to as *torts*.

A *crime* is an offense against society rather than individuals. It disrupts the stable environment that we all depend upon to make civilization work. So, when the citizens' right to live in peace is violated by such activity, the offense is governed by **criminal law**. Acting in the name of all the people, the government investigates an alleged wrongdoing. If a crime has been committed and the person responsible can be found, the government will prosecute. Conviction of a crime can result in a fine, imprisonment, and in some states, execution.

Usually when a crime occurs, private injuries may be inflicted as well. A result may be both a crime and a civil offense. Thus, the civil law may also apply, and the victim of the crime may sue the wrongdoer.



Is shoplifting a crime or a tort? Explain your answer.

In *What's Your Verdict?* Worthington committed both a crime and a civil offense. Driving through the stop sign was a crime for which Worthington could be arrested, convicted in a criminal trial, and fined. In addition, Worthington committed a civil offense when he carelessly smashed into the side of Bates' Mercedes. Bates could probably win a civil trial to recover the \$12,000.

PROCEDURAL AND SUBSTANTIVE LAWS

Procedural law deals with methods of enforcing legal rights and duties. Laws that specify how and when police can make arrests and what methods can be used in a trial are procedural laws. Procedural laws determine whether equitable remedies, such as an injunction, are available. The doctrine of *stare decisis* is a procedural law. Rules for determining the supremacy of conflicting laws are procedural laws.

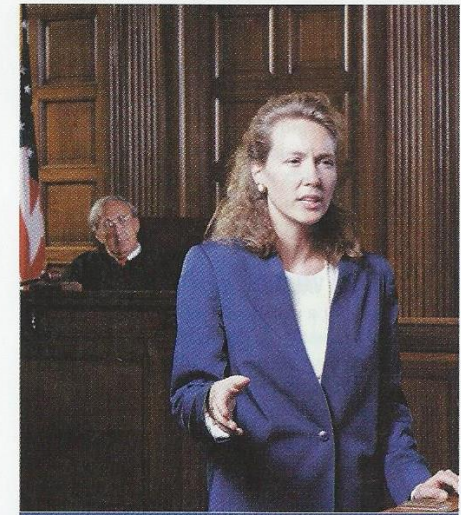
In contrast, **substantive law** defines rights and duties. It is concerned with all rules of conduct except those involved in enforcement. Substantive laws define offenses, such as murder, theft, breach of contract, and negligence.

There are two types of procedural law: civil procedure and criminal procedure. *Criminal procedure* defines the process for enforcing the law when someone is charged with a crime. *Civil procedure* is used when a civil law has been violated. Civil law is concerned only with private offenses. When a civil law is violated the injured party is entitled to protect his or her rights. Police and public prosecutors generally do not involve themselves in the dispute.

BUSINESS LAW

Business law covers rules that apply to business situations and transactions. This book's table of contents shows that the scope of business law is broad. Business law is important for all students—not just those planning careers in business or law. Most business transactions involve a merchant and a consumer. As you study business law, you will gain legal knowledge that will make you a better consumer.

Business law mainly is concerned with civil law, especially contracts. The area of the law pertaining to commercial torts is another category of business law. Such torts are distinct from breaches of contracts. For example, torts may occur when manufacturers make defective products that injure users. Business activities are at times also governed by criminal law. For example,



Assume that the woman in this photo is a public prosecutor giving her closing argument in a case to a jury. Is this most likely a civil trial or a criminal trial? Justify your answer.

criminal law would punish a firm that conspires with competitors to fix prices or an employee who steals company tools.

UNIFORM BUSINESS LAWS Laws of our various states do not have to be alike as long as they are constitutionally valid. However, with the growth of interstate commerce and large business firms, more uniformity among state laws governing business and commercial transactions is important.

Committees of legal experts have written model laws covering such areas as sales, certain credit transactions, and business forms. Sets of these model laws were then offered to the states for adoption in place of their current statutes covering the areas. The result has been more uniformity in state commercial laws. The *Uniform Commercial Code (UCC)* is a widely adopted uniform business law. It governs such areas as sales of goods, certain aspects of banking, and leases of goods. You will learn more about the UCC throughout this book.

CHECKPOINT

Compare and contrast criminal and civil law and substantive and procedural law.

1-2 Assessment

TYPES OF LAW

| | |
|---------------------------|---|
| Constitutional law | Based on constitutions |
| Statutes | Enacted by legislative bodies |
| Administrative law | Rulings by administrative agencies |
| Civil law | Addresses wrongs done to individuals |
| Criminal law | Addresses wrongs done to society |
| Procedural law | Deals with methods of enforcing legal rights and duties |
| Substantive law | Defines legal rights and duties |
| Business law | Rules that apply to business transactions |

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Study Tools

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THINK ABOUT LEGAL CONCEPTS

1. The first ten amendments to the U.S. Constitution are known as the _ _ ? _.
2. Contract law would be considered civil law. **True or False?**
3. Legislative enactments at the local level are called _ _ ? _.
4. *Stare decisis* is the doctrine that requires lower courts to adhere to existing case law in their decisions. **True or False?**
5. Torts are private wrongs committed against individuals or organizations. **True or False?**
6. Business activities are at times governed by the criminal law. **True or False?**
7. Businesses cannot commit torts. **True or False?**
8. The doctrine of *stare decisis* is a (a) substantive law (b) procedural law (c) prohibitive law (d) none of the above.

THINK CRITICALLY ABOUT EVIDENCE

Study the situation, answer the questions, and then prepare arguments to support your answers.

9. Suppose the principal of your public school required all students to recite a prayer at the start of each school day. What level of government (federal, state, or local) would most likely determine whether or not the principal's action was constitutional?
10. In exercise 9, what governmental body would make the determination?
11. Sonoma County passed a law making it legal to drive 65 mph on freeways inside the county. A state law limited all vehicles anywhere in the state to 55 mph. What is the valid speed limit on freeways inside this county?
12. In 1896, the U.S. Supreme Court held in *Plessy v. Ferguson*, 163 U.S. 537, that equal treatment of different races is provided when public and semipublic facilities, even though separate, are substantially equal in quality. For years, railroad cars, buses, schools, and other facilities had separate and supposedly equal facilities for blacks. In 1954 black plaintiffs in Delaware, Kansas, South Carolina, and Virginia sought admission for their children to public schools on an integrated basis. Does the doctrine of *stare decisis* bar the U.S. Supreme Court from changing the law declared in *Plessy v. Ferguson*? (*Brown v. Board of Education*, 347 U.S. 483)
13. On a two-week vacation in a neighboring state, you buy several large firecrackers and take them home. A police officer notices them in your car on a routine traffic stop. She cites you for possession of an illegal explosive device, which is a felony in your state. Possession of fireworks in the neighboring state is not a crime. Can this be a defense for you?

1-3 Ethical Bases for Laws

GOALS

- Define ethics
- Compare and contrast ethics based on consequences with ethics based on systems of rules
- Discuss ways in which ethics are reflected in laws

ETHICS AND THE LAW

WHAT'S YOUR VERDICT?

In the early 1960s, Dr. Martin Luther King, Jr., wanted to lead a march into Birmingham, Alabama, to protest racial segregation in that city. When he applied for a parade permit, his request was denied. Dr. King, knowing that his conduct was illegal, led the nonviolent march anyway. He was at the front of the line and allowed himself to be arrested, although he could have escaped easily. He went to jail. Community leaders were highly critical of Dr. King because he had violated the law.

Was there an ethical justification for Dr. King's violation of the law?

Ethics is a practice of deciding what is right or wrong in a reasoned, impartial manner. To involve ethics, a decision must affect you or others in a significant way. An ethical decision is one that is reasoned out typically by referring to a written authority that provides consistency. The law is such an authority. So are religious texts such as the Torah, the Bible, and the Koran. For example, a person might reason, "I believe that God is the source of the Bible and the Bible tells me not to lie. Therefore, it would be wrong, or unethical, for me to lie." To make ethical decisions, we usually must base our decisions on reason, not on emotion.

In addition to being reasonable, ethical decisions should be impartial. *Impartiality* is the idea that the same ethical standards are applied to everyone. The reason you are learning about ethics in general is to prepare you to apply ethical concepts to business decision making. *Business ethics* are the ethical principles used in making business decisions.

All too often, however, ethics are not considered when business decisions are made. The reason can be summarized in two words: profit maximization. The idea of profit maximization is supported by those who need a justification for actions that would hurt the general welfare. These actions might include moving factories offshore, having skilled jobs done overseas instead of by American workers, and buying solid, conservatively run companies only to sell the company's assets. To move toward a more ethically motivated economy, the profit maximization justification for such actions will need to be replaced by the more humane ethical standards presented in this lesson.

BASIC FORMS OF ETHICAL REASONING

Ethical reasoning about right and wrong takes two basic forms. One form is based on consequences. In this style of ethical reasoning, rightness or wrongness is based only on the results of the action. Particular acts have no ethical, or moral, character. An act that produces good consequences is good. An act that produces bad consequences is bad.

IN THIS CASE

It was a nice day so Gabe decided to walk to school instead of riding the bus. On the way, he found a wallet containing \$300 in cash and a driver's license. When he saw how much money there was, he could almost feel the fun he could have with it. Gabe also asked himself how much injury the loss of \$300 might cause the person who lost the wallet. At first he thought he would get much more pleasure from the money than anyone else could. In the end, he decided that he would want his wallet and money returned if he lost them, so he called the owner.

The other form of moral reasoning is based on ethical rules. In this style of reasoning, acts are either right or wrong. For example, telling the truth is always right, and lying is always wrong. In rule-based ethics, good consequences do not justify wrong or bad acts. For example, in rule-based ethics, you cannot justify lying by showing that it produces good consequences.

For almost all ethical decisions, these two forms of reasoning reach the same conclusion. In the decision of whether to lie or to tell the truth, for example, both forms usually conclude that one should not lie.

CONSEQUENCES-BASED ETHICAL REASONING

Consequences-based reasoning first looks for alternative ways to alter the current situation. Then it attempts to forecast the consequences that will arise from each alternative. Finally, it evaluates those possible consequences to select the alternative that will generate the greatest good. This last criterion often is very subjective as to how one defines the good—financial reward, pleasure, love, justice. Who will be receiving “the good” often is a major consideration in this reasoning process.

RULE-BASED ETHICAL REASONING With fundamental ethical rules, the acts themselves are judged as right or wrong. The standard for judging usually comes from one of two sources—a recognized authority or human reasoning.

The authority, often a religious source, often clearly prescribes what is correct by time-tested rules such as those found in the Ten Commandments. Human reasoning also can show what is basically wrong or right. A test, called *universalizing*, has been developed to help in this effort. In universalizing, you picture everyone doing the action and then ask yourself, “Would the result be irrational, illogical, or demeaning?” If so, the action is considered ethically wrong.

ETHICS REFLECTED IN LAWS

Under the U.S. system of democracy, representatives must vote for laws that are acceptable to the majority of people if the representatives expect to be reelected. Because this system is grounded on majority rule, it uses many of the features of consequences-based ethics. In this system, laws are judged to be right or good when they affect the majority of the people positively. Laws are judged to be wrong when they affect the majority negatively. Thus the government, empowered by the U.S. Constitution, seeks to ensure that

A QUESTION OF ETHICS

The term *culture* refers to a society’s shared values, beliefs, and behaviors. *Values* reflect the goals a society considers important. Values also express the culture’s ideas of how people should act, as well as ideas about what is good, right, and desirable. Culture expresses a society’s ethics. Different cultures may have very different ethical systems. What is considered ethical behavior in one culture may not be acceptable behavior in another. For example, in Islamic societies, women’s activities outside the home are greatly restricted. Compare this to the role of women in U.S. society today. Every society has a unique culture, which evolves and changes over time. Each culture develops a set of laws based on the ethical values expressed at the time. Laws evolve as the culture’s sense of ethics evolves.

the federal lawmaking system provides the greatest good for the greatest number.

On the other hand, the Constitution also seeks to protect the well-being of minorities that might be taken advantage of by the wrong actions of the majority. This is done primarily through the rights preserved in the first ten amendments to the Constitution. Such protection of basic human dignity afforded by the Bill of Rights and other civil rights laws reflect ethics based on rules.

Both ethics based on consequences and ethics based on rules conclude that we are obligated to obey the law. According to consequences-based reasoning, when the law is violated, many more people are injured than are benefited. With rule-based reasoning, if we say that we have agreed to obey the law but violate it, we are breaking our promise. If we universalize promise breaking by imagining that everyone always breaks promises, there would be no point to promising. In this universalized state, promise breaking is illogical or pointless and thus wrong.

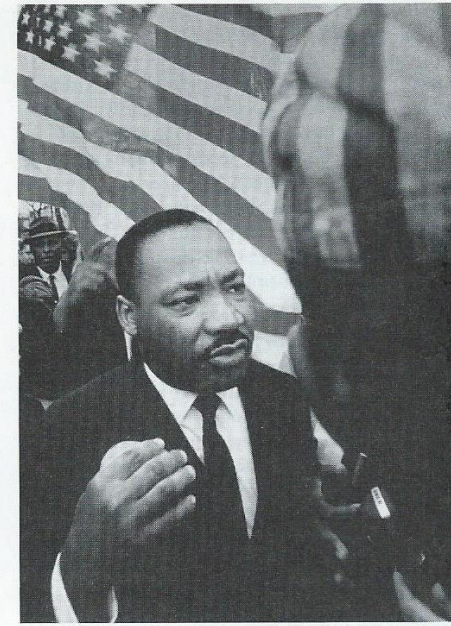
Even if unethical, the ease with which laws can be broken, especially by those with superior abilities or knowledge, such as a computer programmer, makes such behavior tempting. Aware of this, employers often purchase fidelity bonds for persons who handle large sums of money, such as

cashiers, managers of movie theaters, or supervisors of restaurants. A *fidelity bond* is an insurance policy that pays the employer money in the case of theft by employees.

Unethical, lawbreaking behavior does not always occur on a large scale, however. Often, individuals do not obey even minor laws. These individuals are termed *scofflaws*. These are persons who do not respect the law. They simply assess the risk of being caught and punished against the benefits they obtain by breaking the law. They lack personal *integrity*, or the capacity to do what is right in the face of temptation or pressure to do otherwise. They think they are smart because they frequently violate valid laws without being caught. A scofflaw is never ethically justified in violating the law.

In contrast to the self-serving behavior of scofflaws, some persons care passionately about ethical behavior, human rights, and justice. Their concern for justice sometimes compels them to violate what they consider to be an unjust law—a law they believe to be in conflict with ethical reasoning. They violate the law by engaging in acts of civil disobedience.

Civil disobedience is an open, peaceful, violation of a law to protest its alleged, or supposed, injustice. The goal of those who engage in civil disobedience is not to advance their self-interest but rather to make the legal system more just. The participants may be willing, or even eager, to be arrested in order to test the validity of the law in court.



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In *What’s Your Verdict?* Dr. Martin Luther King, Jr., engaged in civil disobedience. Dr. King believed that civil disobedience is justified only in very limited circumstances. He and others conclude that civil disobedience is ethical when

- a written law is in conflict with ethical reasoning
- no effective political methods are available to change the law
- the civil disobedience is nonviolent
- the civil disobedience does not advance a person’s immediate self-interest
- the civil disobedience is public and one willingly accepts the punishment for violating the law

As a result of Dr. King’s efforts, many human rights were extended for the first time to several minority groups in this country.

CHECKPOINT

In the U.S. system of democracy, how are ethics reflected in laws?

NETBookmark

Access lawxtra.swlearning.com and click on the link for Chapter 1. Once in the ACLU web site type “civil disobedience” into the Search box. Choose one of the articles. Read it and note the context in which the term is used. Prepare a one-minute presentation explaining the article. Break into small groups and present your article. As a group, make a list of the issues which civil disobedience was used to protest. Then, present your group findings to the class.

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