Instructor Manual

Miller, Business Law Today – Standard Edition: Text & Summarized Cases 13e 2022, 9780357634783; Chapter 1: Law and Legal Reasoning

Table of Contents

[Purpose and Perspective of the Chapter 2](#_Toc62465033)

[Cengage Supplements 2](#_Toc62465034)

[Chapter Objectives 2](#_Toc62465035)

[Key Terms 2](#_Toc62465036)

[What's New in This Chapter 6](#_Toc62465037)

[Chapter Outline 6](#_Toc62465038)

[Discussion Questions 8](#_Toc62465039)

[Additional Activities and Assignments 10](#_Toc62465040)

[Additional Resources 11](#_Toc62465041)

[Cengage Video Resource 11](#_Toc62465042)

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# Purpose and Perspective of the Chapter

 The purpose of this chapter is for students to learn how business law and the legal environment affect business decisions. The laws may change, but the ability to analyze and evaluate the legal (and ethical) ramifications of situations as they arise is an invaluable and lasting skill. Students will learn how to think about the law and the legal environment and develop critical-thinking and legal reasoning skills.

# Cengage Supplements

The following product-level supplements provide additional information that may help you in preparing your course. They are available in the Instructor Resource Center.

* Transition Guide (provides information about what’s new from edition to edition)
* Test Bank (contains assessment questions and problems)
* Solution and Answer Guide (offers textbook solutions and feedback)
* PowerPoint (provides text-based lectures and presentations)
* Guide to Teaching Online (provides technological and pedagogical considerations and resources for teaching online)
* MindTap Educator Guide (describes assets in the MindTap platform with a detailed breakdown of activities by chapter with seat time)

# Chapter Objectives

The following objectives are addressed in this chapter:

1. Explain how common law and civil law differ.
2. Explain the creation and development of the common law.
3. Explain the creation and development of statutory law.
4. Explain how common law and civil law systems differ.
5. Define *stare decisis*.

[[return to top]](#_top)

# Key Terms

**Adjudicate**: to render a judicial decision; adjudication is the trial-like proceeding in which an administrative law judge hears and resolves disputes involving an administrative agency’s regulations.

**Administrative agency**: a federal, state, or local government agency created by the legislature to perform a specific function, such as to make and enforce rules pertaining to the environment.

**Administrative law**: the body of law created by administrative agencies in order to carry out their duties and responsibilities.

**Administrative law judge (ALJ)**: one who presides over an administrative agency hearing and has the power to administer oaths, take testimony, rule on questions of evidence, and make determinations of fact.

**Administrative process**: the procedure used by administrative agencies in fulfilling their three basic functions: rulemaking, enforcement, and adjudication.

**Allege**: to state, recite, assert, or charge.

**Binding authority**: any source of law that a court *must* follow when deciding a case.

**Case law**: the rules of law announced in court decisions; case law interprets statutes, regulations, constitutional provisions, and governs all areas not covered by statutory or administrative law.

**Case on point**: a previous case involving factual circumstances and issues that are similar to those in the case before the court.

**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.

**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 system**: a system of law derived from Roman law that is based on codified laws (rather than on case precedents).

**Common law**: the body of law developed from custom or judicial decisions in English and U.S. courts, not attributable to a legislature.

**Concurring opinion**: a court opinion by one or more judges or justices who agree with the majority but want to make or emphasize a point that was not made or emphasized in the majority’s opinion.

**Constitutional law**: the body of law derived from the U.S. Constitution and the constitutions of the various states.

**Criminal law**: the branch of law that defines and punishes wrongful actions committed against the public.

**Cyberlaw**: an informal term used to refer to all laws governing electronic communications and transactions, particularly those conducted via the Internet.

**Defendant**: one against whom a lawsuit is brought (i.e., the accused person) in a criminal proceeding.

**Dissenting opinion**: a court opinion that presents the views of one or more judges or justices who disagree with the majority’s decision.

**Enabling legislation**: a statute enacted by Congress that authorizes the creation of an administrative agency and specifies the name, composition, purpose, and powers of the agency being created.

**Equitable maxims**: general propositions or principles of law that have to do with fairness (equity).

**Historical school**: a school of legal thought that looks to the past to determine what the principles of contemporary law should be.

**International law**: law that governs relations among nations.

**Interpretive rules**: nonbinding rules or policy statements issued by an administrative agency that explain how it interprets and intends to apply the statutes it enforces.

**Jurisprudence**: the science or philosophy of law.

**Law**: a body of enforceable rules governing relationships among individuals and between individuals and their 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.

**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 reasoning**: the process of reasoning by which judges harmonize their opinions with the judicial opinions in previous cases.

**Legislative rules**: administrative agency rules that carry the same weight as congressionally enacted statutes.

**Liability**: the state of being legally responsible (liable) for something, such as a debt or obligation.

**Majority opinion**: a court opinion that represents the views of the majority (more than half) of the judges or justices deciding the case.

**National law**: law that pertains to a particular nation (as opposed to international law).

**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.

**Ordinance**: a regulation enacted by a city or county legislative body that becomes part of that state’s statutory law.

***Per curiam* opinion**: a court opinion that does not indicate which judge or justice authored the opinion.

**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.

**Plaintiff**: one who initiates a lawsuit.

**Plurality opinion**: a court opinion that is joined by the largest number of the judges or justices hearing the case, but less than half of the total number.

**Precedent**: a court decision that furnishes an example, or authority for deciding subsequent cases involving identical or similar facts.

**Primary source of law**: a source that establishes the law on a particular issue, such as a constitution, a statute, an administrative rule, or a court decision.

**Procedural law**: law that establishes the methods of enforcing the rights established by substantive law.

**Remedy**: the relief given to an innocent party to enforce a right or compensate for the violation of a right.

**Rulemaking**: the process by which an administrative agency formally adopts a new regulation or amends an old one.

**Secondary source of law**: a publication that summarizes or interprets the law, such as a legal encyclopedia, a legal treatise, or an article in a law review.

***Stare decisis***: a common law doctrine under which judges are obligated to follow the precedents established in prior decisions.

**Statutory law**: the body of law enacted by legislative bodies (as opposed to constitutional law, administrative law, or case law).

**Substantive law**: law that defines, describes, regulates, and creates legal rights and obligations.

**Uniform laws**: model laws developed by the National Conference of Commissioners on Uniform State Laws for the states to consider enacting into statute.

[[return to top]](#_top)

# What's New in This Chapter

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

* New chapter-opening scenario on the law and regulations involving a new driverless car being introduced into the U.S. marketplace
* 1 New Numbered Example:
	+ on YouTube issues involving privacy, copyright issues with its video postings
* New section on Civil Law and Criminal Law
* New Sample Case in Exhibit 1A-3 from 2020 case
* New Business Law Analysis: *Case Briefing and IRAC Legal Reasoning*

[[return to top]](#_top)

# Chapter Outline

*In the outline below, each element includes references (in parentheses) to related content. “PPT Slide #” refers to the slide number in the PowerPoint deck for this chapter (provided in the PowerPoints section of the Instructor Resource Center). Introduce the chapter and review objectives for Chapter 1. (PPT Slide 3).*

**I.01-1 Business Activities and the Legal Environment (PPT Slide 5-7)**

* + 1. **Example 1.1** YouTube

**II.01-2 Sources of American Law (PPT Slide 8-13)**

1. **Constitutional Law**
	* 1. Deals with the fundamental principles by which the government exercises its authority.
2. **Statutory Law**
	* 1. The body of law enacted by legislative bodies.
			1. Local Ordinances
			2. Applicability of Statutes
				1. **Example 1.2** Sanctuary Cities
			3. Uniform Laws
			4. The Uniform Commercial Code (UCC)
	1. **Administrative Law**
		1. Federal Agencies
		2. State and Local Agencies
		3. Agency Creation
		4. Rulemaking
			1. **Example 1.4** The Occupational Safety and Health Act (OHSA)
			2. Legislative Rules
				1. Notice of proposed rulemaking
				2. A comment period
				3. The final rule
			3. Interpretive Rules
				1. **Example 1.5** The Equal Employment Opportunity Commission
		5. Enforcement and Investigation
		6. Adjudication
	2. **Case Law and Common Law Doctrines**
	3. ***Knowledge Check Activity (1) PPT Slide: 1 minute(s) total (5 minutes with discussion and review of answer****).Test students’ knowledge on the sources of law. After answer is provided, review with students: the four sources of American Law.*

**III.01-3 The Common Law (PPT Slide 14-17)**

1. **Early English Courts**
	* 1. Common law-body of general rules that applied throughout the entire English realm.
2. ***Stare Decisis***
	* 1. Latin phrase meaning “to stand on decided cases”
			1. Controlling Precedents
				1. Binding authority
			2. *Stare Decisis* and Legal Stability
			3. Departures from Precedent
				1. **Classic Case Example 1.6** Brown v. Board of Education
			4. When There Is No Precedent
				1. Persuasive authority – court may consult for guidance but is not binding on the court
			5. Stare Decisis and Legal Reasoning
				1. Basic Steps in Legal Reasoning

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?

Conclusion – What conclusion should be drawn?

* + - * 1. There Is No One “Right” Answer
1. **Equitable Remedies and Courts of Equity**
	* + 1. **Example 1.7** Elena
		1. Remedies in Equity
			1. Seeks to supply a remedy when no adequate remedy at law is available.
		2. The Merging of Law and Equity
			1. Courts of law and equity have merged, and thus, the distinction between the two courts has largely disappeared.
		3. Equitable Maxims
			1. General propositions or principles of law that have to do with fairness (equity).
	1. **Schools of Legal Thought**
		1. The Natural Law School
			1. One of the oldest and most significant schools of jurisprudence, dating back to Greek philosopher Aristotle (384-322 B.C.E.)
		2. Legal Positivism
			1. There can be no higher law than a nation’s positive law.
		3. The Historical School
			1. Emphasizes the evolutionary process of law by concentrating on the origin and history of the legal system.
		4. Legal Realism
			1. Law is just one of many institutions in society that is shaped by social forces and needs.

IV. **Classifications of Law** (PPT Slide 18-27)

1. **Civil Law and Criminal Law**
	* 1. Civil law spells out the rights and duties that exist between persons, and between persons and their governments.
		2. Criminal law has to do with wrongs committed against society for which society demands redress.
	1. **Common Law and Civil Law Systems**
		1. Common law system – body of law derives from custom and judicial decisions and depends on the importance of legal precedent.
		2. Civil law system – based on Roman law or “code law” which relies on legal principles enacted into law by a legislature or governing body.
	2. **National and International Law**
		1. Varies from country to country because each country’s law reflects the interests, customs, activities, and values that are unique to that nation’s culture.
	3. ***Knowledge Check Activity (2) PPT Slide: 1 minute(s) total (5 minutes with discussion and review of answer****).Test students’ knowledge on the definition of civil law. After answer is provided, review with students the classifications of law and their differences.*
	4. ***Knowledge Check Video Activity (3) PPT Slide: 2 ½ minute(s) total (5 minutes with discussion and review of answer.*** *Test students’ knowledge on the definition of stare decisis. After answer is provided, review with students the meaning of stare decisis and if they think it is fair.*

[[return to top]](#_top)

# Discussion Questions

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.

1. **Discussion – Sources of American Law** (PPT Slide 8-13). **Duration** 15 Minutes.
2. **What is jurisprudence?**
	1. Jurisprudence refers to the study of law and the ethical values used in defining what the law should be. **Which of the schools of jurisprudence matches the U.S. system?** 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.
3. **Define and discuss the sources of American law: What is the supreme law of the land?**
	1. The federal constitution. **What are statutes?** Laws enacted by Congress or a state legislative body. **What are ordinances?** Laws enacted by local legislative bodies. **What are administrative rules?** Laws issued by administrative agencies under the authority given to them in statutes.
4. **What is the Uniform Commercial Code?**
	1. The Uniform Commercial Code (UCC) was created through the joint efforts of the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute. The UCC was first issued in 1952. The UCC facilitates commerce among the states by providing a uniform, yet flexible, set of rules governing commercial transactions (sales of goods, commercial paper, bank deposits and collections, letters of credit, bulk transfers, warehouse receipts, bills of lading, investment securities, and secured transactions). The UCC assures businesspersons, for example, that their contracts, if validly entered into, normally will be enforced. Uniform laws are often adopted in whole or in substantial part by the states. The UCC has been adopted in its entirety by nearly all states (except Louisiana, which has not adopted Article 2).
5. **Discussion – The Common Law (PPT Slide 14-17). Duration 20 Minutes.**
6. **What is the common law?**
	1. Students may most usefully understand common law to be case law—that is, the body of law derived from judicial decisions. The body of common law originated in England. The term common law is sometimes used to refer to the entire common law system to distinguish it from the civil law system.
7. **Under what circumstance might a judge rely on case law to determine the intent and purpose of a statute?**
8. 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.
9. **Discuss the differences between remedies at law and in equity.**
10. Remedies at law were once limited to payments of money or property (including land) as damages. Remedies in equity were available only when there was no adequate remedy at law. Today, in most states, either or both may be granted in the same action. Remedies in equity are still discretionary, guided by equitable principles and maxims. Remedies at law still include payments of money or property as damages. The major practical difference between actions at law and actions in equity is the right to demand a jury trial in an action at law.
11. **Identify and describe remedies available in equity.**
12. Specific performance is available only when a dispute involves a contract. The court may order a party to perform what was promised. An injunction orders a person to do or refrain from doing a particular act. Rescission undoes an agreement, and the parties are returned to the positions they were in before the agreement
13. **Discussion – Classifications of Law (PPT Slide 18-27). Duration 5 Minutes.**
14. **Discuss the differences within the classification of law as civil law and criminal law.**
	1. Civil law concerns rights and duties of individuals between themselves; criminal law concerns offenses against society as a whole. (Civil law is a term that is also used to refer to a legal system based on a code rather than on case law.)

[[return to top]](#_top)

# Additional Activities and Assignments

1. **MindTap** – Why Do Procedural Laws Matter to Me?
	1. Online auto-graded activities connect the upcoming chapter to an authentic, real-world scenario designed to pick engagement and emphasize relevance. Consists of 1 multiple choice question in each.
2. **MindTap** – Learn It: Theories of Jurisprudence; Creation of the Common Law; Stare Decisis
	1. Online auto-graded activities that review foundational concepts presented in this chapter and assesses students’ comprehension of the topics. Consists of 2 multiple choice questions in each.
3. **MindTap** – Check Your Understanding: Laws and Business
	1. Online auto-graded activity that assesses students’ foundational knowledge of the concepts presented in this chapter. Consists of 10 multiple choice questions.
4. **MindTap** – Case Problem Analysis: Sources of Law
	1. Online auto-graded activity that first walks students through a fact pattern, and then asks them to answer similar questions with slight variations in the fact pattern. Consists of approximately 5 fill-in-the-blank questions.
5. **MindTap** – Brief Hypotheticals: Law and Legal Reasoning
	1. Online auto-graded activity that presents 5 fact patterns in which students are asked to apply the concepts of the chapter, and to come up with a legal conclusion. Consists of 5 multiple choice questions.

[[return to top]](#_top)

# Additional Resources

## Cengage Video Resource

* MindTap Quick Lesson Video:
	+ *Stare Decisis*. Duration 2:26 minutes.

[[return to top]](#_top)