*Chapter 1*

**Legal and Constitutional**

**Foundations of Business**

Answers to Learning Objectives

at the Beginning of the Chapter

**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, statutes passed by Congress and the state legislatures, regulations created by adminis­trative agencies, and court decisions, or case law.

**2A.** ***What is a precedent? When might a court depart from precedent?*** Judges attempt to be consistent, and when possible, they base their decisions on the principles suggested by earlier cases. They seek to decide similar cases in a similar way and consider new cases with care, because they know that their conflicting decisions make new law. Each interpretation becomes part of the law on the subject and serves as a legal precedent—a decision that fur­nishes an example or authority for deciding subsequent cases involving simi­lar legal principles or facts.

A court will depart from the rule of a precedent when it decides that the rule should no longer be followed. If a court decides that a precedent is simply incorrect or that technological or social changes have rendered the precedent inapplicable, the court might rule contrary to the precedent.

**3A.** ***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.

**4A.** ***What constitutional clause gives the federal government the power to regulate commercial activities among the 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 “to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”

**5A.** ***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.

**6A.** ***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**

***Should U.S. courts, and particularly the United States Supreme Court, look to the other nations’ laws for guidance when deciding important issues— including those involving rights granted by the Constitution? If so, what impact might this have on their decisions? Explain.*** U.S. courts should consider foreign law when deciding issues of national impor­tance because changes in views on those issues is not limited to domestic law. How other jurisdictions and other nations regulate those issues can be infor­mative, enlightening, and instructive, and indicate possibilities that domestic law might not suggest. U.S. courts should not consider foreign law when decid­ing issues of national importance because it can be misleading and irrelevant in our domestic and cultural context.

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

***The Court said in its opinion that “specific criminal acts are not protected speech even if speech is the means for their commission.” What use of the social media and the Internet might therefore still be unlawful (and not protected free speech) for registered sex offenders?***  If a registered sex offender used the Internet specifically to contact a minor, that type of speech would be prohibited. Additionally, a registered sex offender’s use of a website specifically to obtain information about a minor would not be protected free speech.

Answers to Critical Thinking Questions

in the Cases

**Case 1.1—Critical Thinking Question**

**What If the Facts Were Different?**

***If this case had involved a small, private retail business that did not advertise nationally, would the result have been the same? Why or why not?*** It is not likely that the result in this case would have been different even if the facts had involved a small, private retail business that did not advertise nationally. The intended impact of the decision in *Heart of Atlanta* was to uphold the constitutionality of the Civil Rights Act of 1964 and the power of Congress to regulate interstate commerce to stop local discriminatory practices. In the Supreme Court’s opinion, “The power of Congress to promote interstate commerce also includes the power to regulate the local incidents thereof, including local activities in both the States of origin and destination, which might have a substantial and harmful effect upon that commerce.”

Thus, if the case had involved a small, local retail business, the Court would have found participation in interstate commerce based on the use of a phone, or a Facebook page (or other Web presence), or sales to customers who traveled across state lines—or, as in *Wickard v. Filburn*, participation might have been based on any transaction that might otherwise have occurred in interstate commerce.

**Case 1.2—Critical Thinking Questions**

**Legal Environment**

***How does the making of “audio and video recordings of an agricultural production facility” fall under the protection of the First Amendment?*** As the court in the *Animal* case recognized, “Audiovisual recordings are protected by the First Amendment as recognized organs of public opinion and as a significant medium for the communication of ideas.” Thus, there is a constitutional right to film matters in the public interest.

The public consumes food obtained from “agricultural production facilities,” such as the dairy farm in the *Animal* case. This consumption brings those facilities within the public interest. Matters related to food safety, and by inference animal cruelty, are of significant public importance. And journalists have a constitutional right to investigate and broadcast or publish exposés on the agricultural industry, particularly with regard to food safety.

**What If the Facts Were Different?**

***Suppose that instead of banning recordings of an agricultural production facility’s operations, the state had criminalized misrepresentations by journalists to gain access to such a facility. Would the result have been different? Explain.*** No, the result would not have been different. Like the statute struck down by the court in the *Animal* case, the provision suggested in this question would target speech protected by the First Amendment.

As the court in the *Animal* case observed, “Journalists [have a] constitutional right to investigate and publish exposés on the agricultural industry. Matters related to food safety and animal cruelty are of significant public importance.” Of course, false statements are not always protected under the First Amendment. For example, false statements made for material gain or advantage or to inflict harm can be criminalized. But a false statement made to gain access to an agricultural production facility merely allows the speaker to cross the threshold of another’s property, including property that is generally open to the public. Such lies are pure speech—they do not inflict any material or legal harm on the deceived party.

**Case 1.3—Critical Thinking Questions**

**Legal Environment**

***Whose interests are advanced by the banning of certain types of advertising?*** The government’s interests are advanced when certain ads are banned. For example, in the *Bad Frog* case, the court acknowledged, by ad­vising the state to restrict the loca­tions where certain ads could be displayed, that banning of “vulgar and profane” adver­tising from children’s sight arguably advanced the state’s interest in protecting chil­dren from those ads.

**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.

Answers to Questions in the Practice and Review Feature

at the End of the Chapter

**1A.** ***Equal protection***

When a law or action limits the liberty of some persons but not others, it may violate the equal protection clause. Here, because the law applies only to mo­torcycle operators and passengers, it raises equal protection issues.

**2A.** ***Levels of scrutiny***

The three levels of scrutiny that courts apply to determine whether the law or action violates equal protection are (1) strict scrutiny (if fundamental rights are at stake), (2) intermediate scrutiny (in cases involving discrimination based on gender or legitimacy), and (3) the “rational basis” test (in matters of economic or social welfare).

**3A.** ***Standard***

The court would likely apply the rational basis test, because the statute regu­lates a matter of social welfare by requiring helmets. Similar to seat-belt laws and speed limits, a helmet statute involves the state’s attempt to protect the welfare of its citizens. Thus, the court would consider it a matter a social wel­fare and require that it be rationally related to a legitimate government objective.

**4A.** ***Application***

The statute is probably constitutional, because requiring helmets is rationally related to a legitimate government objective (public health and safety). Under the rational basis test, courts rarely strike down laws as unconstitutional, and this statute will likely further the legitimate state interest of protecting the welfare of citizens and promoting safety.

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

***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?*** 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 one hundred 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

**1A.** ***The First Amendment to the U.S. Constitution provides protection for the free exercise of religion. A state legis­lature enacts a law that outlaws all religions that do not derive from the Judeo-Christian tradition. Is this law valid within that state? Why or why not?*** No. The U.S. Constitution is the su­preme law of the land, and applies to all jurisdictions. A law in vio­lation of the Constitution (in this ques­tion, the First Amendment to the Constitution) will be declared un­constitutional.

**2A.** ***South Dakota wants its citizens to conserve energy. To help reduce consumer consumption of electricity, the state passes a law that bans all advertising by power utilities within the state. What argument could the power utilities use as a defense to the enforcement of this state law?*** Even if commercial speech is neither related to illegal activities nor misleading, it may be restricted if a state has a substantial interest that cannot be achieved by less restrictive means. In this situation, however, the interest in energy conservation is substantial, but it could be achieved by less restric­tive means. That would be the utilities’ defense against the enforcement of this state law.

Answers to Business Scenarios and Case Problems

**at the End of the Chapter**

**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.** ***Sources of law***

**1.** 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.

**2.** 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.

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

**4.** 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.

**1–3A. *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.

**1–4A. *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.”

**1–5A. *The commerce clause***

Yes. Massachusetts’s use tax is valid under the commerce clause. When a state regulation that affects interstate commerce is challenged under the commerce clause, the court weighs the state’s interest in regulating the matter against the burden that the regulation places on interstate commerce. Because a court balances the interests involved, it is difficult to predict the outcome in a particular case. State laws that alter conditions of competition to favor in-state interests over out-of-state competitors in a market are considered discriminatory and usually invalidated.

In this problem, Regency Transportation, Inc., operates a freight business throughout the eastern United States. Regency maintains a headquarters, warehouses, and other facilities in Massachusetts. All of the vehicles in Regency’s fleet were bought in other states. When Massachusetts imposed a use tax on the purchase price of each tractor and trailer in Regency’s fleet, the trucking firm challenged the assessment as discriminatory under the commerce clause. But Massachusetts imposes the tax on all taxpayers subject to its jurisdiction, not only those that, like Regency, do business in interstate commerce. Hence, the tax is not discriminatory. As for the balancing test, Massachusetts presumably imposes the tax based on the benefits derived from a company’s using and storing vehicles in the state. The burden that the regulation places on interstate commerce seems slight weighed against the state’s interest in regulating this matter.

In the actual case on which this case problem is based, Regency sought review of imposition of motor vehicle tax by the Commissioner of Revenue. The Appellate Tax Board affirmed, and Regency filed a petition for direct appellate review. The Supreme Judicial Court of Massachusetts affirmed the decision of the board.

**1–6A. Business Case Problem with Sample Answer*—Reading citations***

The court’s opinion in this case—*WorldwideTechServices, LLC v. Commissioner of Revenue,* 479 Mass. 20, 91 N.E.3d 650 (2018)—can be found in Volume 479 of the *Massachusetts Reports* on page 20, and in Volume 91 of West’s *North Eastern Reporter*, Third Series, on page 650. The Supreme Judicial Court of Massachusetts issued the opinion in 2018.

**1–7A. *Freedom of speech***

The First Amendment to the U.S. Constitution protects the freedom of speech. Government regulation of speech is presumed to be unconstitutional. To “pass muster” under the free-speech clause, a law or government action that regulates the content of speech must serve a compelling state interest and must be narrowly tailored to achieve that interest.

In this problem, the government, through OGS, disfavored WD’s speech because of its branding. The agency may have labeled the branding offensive because of its perceived effect on the members of a certain ethnic group. The interest that the government sought to serve might have been a mandate of positive expression. But denying the business application of any vendor whose branding might demean or offend could silence dissent in the “marketplace of ideas.”

In some contexts, an ethnic slur might be hostile and involve conduct. A regulation of that conduct would arguably serve the interest of preventing immediate harm. For example, the government can regulate threats of violence, harassment, and fighting words. But WD’s speech did not fall into any of these categories.

WD’s use of ethnic slurs reflected its owners’ viewpoint about when and how such language should be used. There does not seem to be a sufficiently substantial compelling state interest to justify proscribing this viewpoint. By rejecting WD’s application only on the ground of the business’s branding, OGS impermissibly discriminated against WD’s expression of the owners’ viewpoint, and thereby violated the First Amendment.

In the actual case on which this problem is based, the court rejected WD’s contention and entered a judgment in the defendants’ favor. A state intermediate appellate court reversed, holding, based in part on the points stated above, that OGS violated WD’s right to freedom of speech. The appellate court concluded that WD was entitled to an injunction denying WD’s future lunch program applications because of the use of ethnic slurs in its branding.

**1–8A. A Question of Ethics—*Free speech***

**1.** No. The First Amendment guarantees the freedom of speech for individuals against interference by the government. To protect citizens from those who would abuse the right, speech is subject to reasonable restrictions. Speech that violates criminal laws is not constitutionally protected.

In this problem, Michael Mayfield received a “notice of a legal claim” from Edward Starski. The “claim” alleged that a stack of lumber fell on a customer at Mayfield’s company as a result of “incompetence” of one of Mayfield’s employees. The “notice” included a settlement offer on the customer’s behalf in exchange for a release of liability. In a conversation with Mayfield, Starski stated that he was an attorney—when, in fact, he was not. He was arrested and charged with violating a state statute that prohibited the unlawful practice of law. He argued that “creating an illusion” he was an attorney fell within the protection of the First Amendment. He is wrong. It is within the government’s power to restrict speech to frustrate a false claim made to accomplish a fraud. And the interest of the government in regulating the practice of law is part of its interest in protecting the public.

In the actual case on which this problem is based, the court convicted Starski of the charge. On appeal, a state intermediate appellate court affirmed the conviction. Responding to his free speech defense, the court concluded, that Starski was wrong.

**2.** The question concerns the extent to which the government can regulate the practice of law without infringing on certain rights. The rights at issue include the right of a person to exercise free speech, and the rights of the public to be protected from misleading or deceptive speech, and to have access to competent legal representation.

In recognition of a person’s right to exercise free speech, the government might choose *not* to prohibit the unauthorized practice of law. This would deny the public’s right to be protected from misleading or deceptive speech. The government might choose to prohibit the practice of law entirely, but this would deprive the public of legal representation of all kinds in all circumstances. So, the government must strike a balance that protects the public and individual rights.

The government generally prohibits the *unauthorized* practice of law—the practice of law by those who have not met the state’s competency standards to be licensed as attorneys. The government also sanctions persons who have not met the standards from misrepresenting their status to practice law.

The government’s objective is to ensure that those performing legal services do so competently, without infringing on the rights to free speech, to be protected from misleading or deceptive speech, and to have access to competent legal representation. The regulation protects the public and goes no further than necessary, in recognition of the rights at issue.

**Critical Thinking and Writing Assignments**

**1–9A.** **Business Law Writing**

The court ruled that like a state, Puerto Rico generally may not enact policies that discriminate against out-of-state commerce. The law requiring companies that sell cement in Puerto Rico to place certain labels on their products is clearly an attempt to regulate the cement market. The law imposed labeling regulations that affect transactions between the citizens of Puerto Rico and private companies. State laws that on their face discriminate against foreign commerce are almost always invalid, and this Puerto Rican law is such a law. The discriminatory labeling requirement placed sellers of cement manufactured outside Puerto Rico at a competitive disadvantage. This law therefore contravenes the dormant commerce clause.

**1–10A. Time-Limited 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.

Answer to Critical Thinking Question

**in Appendix Exhibit 1A–3**

**Exhibit 1A–3—Critical Thinking**

**Legal Environment**

***Did the court hold that Yeasin had a right to post his tweets without being disciplined by the university? Explain.*** No, the court did not decide whether Yeasin had a First Amendment right to post his tweets without being disciplined by the university. The question before the court was whether KU and Dr. Durham violated clearly established law when Yeasin was expelled for his tweets and his misconduct. The court held that Yeasin, the plaintiff and appellant, failed to show such a violation.

The First Amendment states, “Congress shall make no law .  .  . abridging the freedom of speech.” The United States Supreme Court and other federal courts, however, permit schools to circumscribe students’ free speech rights in certain contexts. In the *Yeasin* case, in the court’s view, these broad statements of legal principle do not qualify as clearly established law. The court further concluded that the cases cited by Yeasin to argue the university could not discipline him for his tweets did not apply to his situation because the facts were not similar.

Considering these principles and cases, the court iterated that “at the intersection of university speech and social media, First Amendment doctrine is unsettled.” Yeasin could not establish that Dr. Durham violated clearly established law when she expelled him. And, the court concluded, in this case Dr. Durham and KU had a reasonable basis—Yeasin’s conduct and his tweets—to expel him from the university. His presence on campus would disrupt A.W.’s education and interfere with her rights.