CHAPTER 1

THE LEGAL AND CONSTITUTIONAL ENVIRONMENT OF BUSINESS

ANSWERS TO LEARNING OBJECTIVES/FOR REVIEW QUESTIONS AT THE BEGINNING AND THE END OF THE CHAPTER

Note that your students can find the answers to the even-numbered *For Review* questions in Appendix F at the end of the text. We repeat these questions and answers here as a convenience to you.

1A *What are four primary sources of law in the United States?* Primary sources of law are sources that establish the law. In the United States, these include the U.S. Constitution and the state constitutions, statues passed by Congress and the

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state legislatures, regulations created by administrative agencies, and court decisions, or case law.

2A ***What is the common law tradition?*** Because of our colonial heritage, much of American law is based on the English legal system. After the Norman conquest of England, the king's courts sought to establish a uniform set of rules for the entire country. What evolved in these courts was the common law—a body of general legal principles that applied throughout the entire English realm. Courts developed the common law rules from the principles underlying judges' decisions in actual legal controversies.

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

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

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

ANSWERS TO CRITICAL THINKING QUESTIONS AT THE ENDS OF THE CASES

CASE 1.1—FOR CRITICAL ANALYSIS—SOCIAL CONSIDERATION

Could a state effectively enforce a law that banned all communication between minors and sex offenders through social media sites? Why or why not? The requirement of narrow tailoring may be satisfied so long as the state's interest would be achieved less effectively without the statute. In other words, the Constitution tolerates some over-inclusiveness if it furthers the state's ability to administer the regulation and combat an evil. And a law that banned all communication between minors and sex offenders through social media would almost certainly enhance the safety of minors, and burden less speech than the statute at issue in the *Doe* case. But such a statute would nevertheless create problems. It would free most expression from regulation but still prohibit a substantial amount of harmless speech—for

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example, it would prohibit conversations between a parent and child if the parent is a sex offender.

CASE 1.2—WHAT IF THE FACTS WERE DIFFERENT?

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

CASE 1.3—WHAT IF THE FACTS WERE DIFFERENT?

Suppose that the state restricted packaged beer sales by bars but not brewer- ies. Would this pass the rational basis test under the equal protection clause? Why or why not? Yes, a restriction on packaged beer sales by bars but not breweries would pass the rational basis test under the equal protection clause. Under that test, in matters of economic welfare, a restriction will be considered valid if there is any conceivable rational basis on which the restriction might relate to a legitimate government interest. It is nearly impossible for a law to fail this test.

In a challenge to a restriction on packaged beer sales by bars but not breweries, a court would likely uphold the law. The court might reason that bars conceivably pose a greater risk of fights, automobile accidents, and crime. Because the state has a legitimate interest in reducing the incidence of these events, the provision would pass the rational basis test.

ANSWERS TO QUESTIONS IN THE REVIEWING FEATURE AT THE END OF THE CHAPTER

1A. ***Parties***

In this situation, the automobile manufacturers are the plaintiffs, and the state of Cali- fornia is the defendant.

2A. ***Remedy***

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

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

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

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

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

ANSWER TO DEBATE THIS QUESTION IN THE REVIEWING FEATURE AT THE END OF THE CHAPTER

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 100 years ago. Given that federal and state governments increasingly are regulating more aspects of commercial transactions between merchants and consumers, perhaps the courts should simply stick to statutory language when disputes arise.

ANSWERS TO ISSUE SPOTTERS AT THE END OF THE CHAPTER

1A. ***Under what circumstance might a judge rely on case law to determine the intent and purpose of a statute?*** Case law includes courts' interpretations of stat- utes, 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.

2A. ***The First Amendment 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.

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*

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. In this problem, the court determined that a Massachusetts state statute was in conflict with the U.S. Constitution. The Constitution takes priority, so the statute will not be enforced.

In the actual case on which this problem is based, the trial court held that the statute violated the Constitution, and the U.S. Court of Appeals for the First Circuit affirmed this holding. Under the statute's definitions of large and small wineries, most of the small wineries were in state, and all of the large wineries were out-of-state. The court found that the purpose of the statute was to "ensure that Massachusetts' wineries obtained an advantage over their out-of-state counterparts."

1–3A *Reading citations*

The court's opinion in this case—*McKee v. Laurion,* 825 N.W.2d 725 (Minn. 2014)—

can be found in Volume 825 of West's *Northwestern Reporter*, *Second Series,* on page 725. The Minnesota Supreme Court issued this opinion in 2014.

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1–4A SPOTLIGHT ON AOL—Stare Decisis

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

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

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

1–5A *Law around the world*

The common law system spread throughout medieval England after the Norman Conquest in 1066. Courts developed the common law rules from the principles behind the decisions in actual legal controversies. Judges attempted to be consistent. When possible, they based their decisions on the principles suggested by earlier cases. They sought to decide similar cases in a similar way and considered new cases with care because they knew that their decisions would make new law. Each interpretation became part of the law on the subject and served as a legal precedent. Later cases that involved similar legal principles or facts could be decided with reference to that precedent.

The practice of deciding new cases with reference to former decisions, or precedents, eventually became a cornerstone of the English and American judicial systems. It forms a doctrine called *stare decisis.* Under this doctrine, judges are obligated to follow the precedents established within their jurisdictions. Generally, those countries that were once colonies of Great Britain retained their English common law heritage after they achieved their independence. Today, common law systems exist in Australia, Canada, India, Ireland, and New Zealand, as well as the United States.

Most of the other European nations base their legal systems on Roman civil law. Civil law is codified law—an ordered grouping of legal principles enacted into law by a legislature or governing body. In a civil law system, the primary source of law is a statutory code, and case precedents are not judicially binding as they are in a common law system. Nonetheless, judges in such systems commonly refer to previous decisions as sources of legal guidance. The difference is that judges in a civil

law system are not bound by precedent; in other words, the doctrine of *stare decisis* does not apply.

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1–6A *The commerce clause*

Under the commerce clause, the national government has the power to regulate every commercial enterprise in the United States. The commerce clause may not justify national regulation of noneconomic conduct. Interstate travel involves the use of the channels of interstate commerce, however, and is properly subject to congressional regulation under the commerce clause. Thus, SORNA—which makes it a crime for a sex offender to fail to re-register as an offender when he or she travels in interstate commerce—is a legitimate exercise of congressional authority under the commerce clause.

In the actual case on which this problem is based, a federal district court dismissed Hall's indictment. On the government's appeal, the U.S Court of Appeals for the Second Circuit reversed the dismissal and remanded the case for further proceedings, based on the reasoning stated above.

1–7A CASE PROBLEM WITH SAMPLE ANSWER—*Establishment clause*

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

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

1–8A *Freedom of speech*

No. Wooden's conviction was not unconstitutional. Certain speech is not protected under the First Amendment. Speech that violates criminal laws—threatening speech, for example—is not constitutionally protected. Other unprotected speech includes fighting words, or words that are likely to incite others to respond violently. And speech that harms the good reputation of another, or defamatory speech, is not protected under the First Amendment.

In his e-mail and audio notes to the alderwoman, Wooden discussed using a sawed-off shotgun, domestic terrorism, and the assassination and murder of politicians. He compared the alderwoman to the biblical character Jezebel, referring to

her as a “bitch in the Sixth Ward.” These references caused the alderwoman to feel threatened. The First Amendment does not protect such threats, which in this case

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violated a state criminal statute. There was nothing unconstitutional about punishing Wooden for this unprotected speech.

In the actual case on which this problem is based, Wooden appealed his conviction, arguing that it violated his right to freedom of speech. Under the principles set out above, the Missouri Supreme Court affirmed the conviction.

1–9A *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.

1–10A A QUESTION OF ETHICS—*Free speech*

1. The answers to these questions begin with the protection of the freedom of speech under the First Amendment. The freedom to express an opinion is a fundamental aspect of liberty. But this right and its protection are not absolute. Some statements are not protected because, as explained in the Balboa decision, "they are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality." Defamatory statements are among those that are not protected.

Arguments in favor of protecting such statements include the perception of the right to freedom of speech as necessary to liberty and a free society. Arguments

opposed to such protection include “the social interest in order and morality.” In between these positions might fall a balancing of both their concerns. Under any

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interpretation the degree to which statements can be barred before they are made is a significant question.

In the *Balboa* case, the court issued an injunction against Lemen, ordering her to, among other things, stop making defamatory statements about the Inn. On appeal, a state intermediate appellate court invalidated this part of the injunction, ruling that it violated Lemen's right to freedom of speech under the Constitution because it was a "prior restraint"—an attempt to restrain Lemen's speech before she spoke. On further appeal, the California Supreme Court phrased "the precise question before us [to be] whether an injunction prohibiting the repetition of statements found at trial to be defamatory violates the First Amendment." The court held it could enjoin the repetition of such statements without infringing Lemen's right to free speech. Quoting from a different case, the court reasoned, "The special vice of a prior restraint is that communication will be suppressed, either directly or by inducing excessive caution in the speaker, before an adequate determination that it is unprotected by the First Amendment. An injunction that is narrowly tailored, based upon a continuing course of repetitive speech, and granted only after a final adjudication on the merits that the speech is unprotected does not constitute an unlawful prior restraint." The court added that the injunction could not prevent Lemen from complaining to the authorities, however.

2. To answer this question requires a standard to apply to the facts. A different chapter in the text sets out two fundamental approaches to ethical reasoning: one involves duty-based standards, which are often derived from religious precepts, and the other focuses on the consequences of an action and whether these are the "greatest good for the greatest number."

Under the former approach, a pre-established set of moral values founded on religious beliefs can be taken as absolute with regard to behavior. Thus, if these values proscribed Lemen's name-calling as wrong, it would be construed as wrong, regardless of the truth of what she said or any effect that it had. Similarly, if the values prescribed Lemen's conduct as correct, it might be unethical not to engage in it. A different duty-based approach grounded on philosophical, rather than religious, principles would weigh the consequences of the conduct in light of what might follow if everyone engaged in the same behavior. If we all engaged in name-calling, hostility and other undesirable consequences would likely flourish. A third duty-based approach, referred to as the principle of rights theory, posits that every ethical precept has a rights-based corollary (for example, "thou shalt not kill" recognizes everyone's right to live). These rights collectively reflect a dignity to which we are each entitled. Under this approach, Lemen's name-calling would likely be seen as unethical for failing to respect her victims' dignity.

Finally, an outcome-based approach focuses on the consequences of an act, requiring a determination as to whom it affects and assessments of its costs and benefits, as well as those of alternatives. The goal is to seek the maximum societal

utility. Here, Lemen's behavior appears to have had little positive effect on herself or the objects of her criticism (the Inn, its employees, its patrons, and its business). The Inn's business seems to have been affected in a substantial way, which in Lemen's eyes may be a "benefit," but in the lives of its owners, employees, and customers, would more likely be seen as a "cost."