

# Solution and Answer Guide

Jennings, BLEG 12e, 9780357447642; Chapter 01: Introduction to Law

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## Consider...

### Consider... 1.2

After he enrolled in the University of California at Los Angeles (UCLA), Damon Thompson experienced auditory hallucinations. He believed other students in the classroom and dormitory were criticizing him. School administrators eventually learned of Thompson's delusions and attempted to provide mental health treatment. However, one morning Thompson stabbed fellow student Katherine Rosen during a chemistry lab. Rosen sued the university and several of its employees for negligence, arguing they failed to protect her from Thompson's foreseeable violent conduct.

UCLA is a state educational institution. Based on the decision in the *Avila* case, what should the court decide? Consider whether UCLA has a duty to protect students from injury on the campus and, if so, what types of injuries. Be sure to consider what is different in this factual pattern from the facts in *Avila*. What will the impact be on students, faculty, and administrators pending on which way the court decides on the issues of liability and duty? Be sure to consider the purposes and

characteristics of law in evaluating the claim Ms. Rosen for injuries. [*Regents of the University of California v Superior Court*, 413 P.3d 656 (Cal,2018)]

### Solution

The trial court denied UCLA summary judgment. UCLA filed a petition for writ of mandate, requesting an order directing trial court to enter summary judgment in its favor. The Court of Appeal granted the petition. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court held that the university had duty of care to protect students from foreseeable violence during the chemistry lab, reversing a long line of precedent.

This case is different from the *Avila* case in that UCLA had knowledge of the potential harm that the student could do. In the *Avila* case, the conduct was such that it could not be anticipated except perhaps the possibility that players have disobeyed the rules of the game, but there was no direct knowledge about the pitcher's tendencies to bean batters. In this case, UCLA was aware of the problems the student had and was working with the student. The case was a warning to universities about the importance of curbing the behaviors of students and then, when necessary removing them from the campus as a danger to themselves and other students. The court noted that the scope of the duty is based on the extent of the relationship the student had with the university.

The immunity of government entities was curbed in *Avila* and now the courts are simply dealing with the concept of duty. What is the duty of government entities? How far does it extend? What actions must they take? [*Regents of the University of California v Superior Court*, 413 P.3d 656 (Cal. 2018)]

### Consider... 1.3

Every state, county, and city has laws that regulate the maximum speed for their roadways. Yet, surveys indicate that nearly 100% of us admit to driving above the speed limit. What philosophy of law do we follow when we decide which laws to obey, how closely we follow those laws, and when we will follow them? Is there a risk to society when we make our own decisions about following the law?

### Solution

Speeding is an example of the norm shifting. That is, there is a law, but few people follow the law and the result is that the law becomes meaningless. Some philosophers fear that disregard of the law on an individual basis could mean that we are introducing anarchy—the law has no effect. Others would follow the normative standard of doing what is acceptable to others.

## Case Problems

### Case 1.1

1. Outline the case history—what each of the courts decided in the case.

**Solution**

Lower court held that the community colleges were immune, so it never reached the duty issue. The court of appeal held that the community colleges were not immune and found that they had breached their duty to Jose.

2. Explain the standard now for the liability of government entities.

**Solution**

Although there is immunity for government entities for injuries from recreational activities (hazardous and otherwise), the court held that government entities still have duties toward those who are using their facilities.

3. What interests is the court balancing?

**Solution**

The court is balancing the longstanding protection of government entities from tort liability with the injuries that can result when there is no supervision of those involved in government-sponsored activities. There was also the longstanding precedent that is being changed. Government entities will need new insurance levels and will need to change their involvement and supervision requirements.

4. Does the court change the previous standard for liability of government entities? Why or why not? What effect will the decision have on government entities?

**Solution**

See answer to above—the holding is a fundamental change in the liability and responsibilities of government entities.

5. Why was there no breach of duty by the community colleges?

**Solution**

Because being “beamed” is a risk in the game and one that the colleges could not prevent. Also, Jose was still able to walk and got the attention that he needed.

6. Does it matter that “beaming” a batter violates the rules of the game?

**Solution**

The court takes note that professional baseball prohibits beaming, but beaming happens and that it happens is not the result of any actions by sponsors but individual choices by players. However, sanctions for beaming could deter such activities—something the court does not discuss.

## For the Manager's Desk

### The Cover-up versus the Crime, page 11

The decisions in the *Avila* and *UCLA* cases are part of a nationwide trend that has expanded liability and imposed additional duties on those who own and run facilities where the public is present. The scope of that duty requires, at least in most cases, that business owners and public entities take appropriate steps to ensure safety once they become aware of the danger. That duty is difficult for universities that are working with students such as the one in the *UCLA* case or employees who have become aggressive in the workplace.

In both situations, administrators are trying to balance the rights of the student or employees with the need to protect other students and employees in the situation. Both students and employees have rights to be at school or work. If those rights are to be taken away, the administrators must build a record to establish the need for their removal. The rights issues are covered in Chapter 5, the duty issues are covered in more detail in Chapter 9, and the employee rights issues are covered in Chapters 16, 19, and 20.

### Solution

The challenges in dealing with problem students are great because there are due process rights that the students hold. Expulsion and suspension are actions that deprive them of a property right—to be there for obtaining an education. At the same time, administrators have to worry about the safety of other students when there are behaviors that endanger them. Administrators have to carefully keep reports of incidents and be sure to coordinate all information that is coming in about problem students. Administrators should also keep careful records and conduct oversight of areas where there are any student injuries. Taking steps to prevent the injuries is also important.

## Ethical Issues

### Case 1.1, page 10

Discuss the ethics of the pitcher's deliberate "beating" of Jose. Are the standards of ethics different in sporting competitions? If an action cannot penalize what happens in the game, what are the effects on players' behaviors during the game?

### Solution

Ethics is conduct that goes beyond the rules, but it certainly includes the obligation to follow the rules. As the court notes, "beating" or other intentional injuries to other players is prohibited in baseball. However, one of the problems is that the lack of enforcement (no sanction for violating those rules) shifts the norms of behavior during the game away from the rule to an accepted or tolerated level of behavior. However, as the case illustrates, there can be serious injuries resulting from the conduct.

One of the difficulties with the rule is in establishing that the conduct was intentional. Being hit by a baseball is a risk assumed in baseball. Umpires have difficulty proving that the intentional hits were intentional.

The bottom line is that we are dependent on the honor of those playing the games to not violate the rules.

## Business Strategy

### COVID-19 Lockouts and Business Civil Disobedience

Because of the rapid spread of the coronavirus (COVID-19), the governors in a majority of the states imposed lockdowns on business operations. Those businesses that provided essential services could continue operating, but nonessential businesses could not continue operations unless employees were able to work from their homes. The economic impact, particularly on employees and small businesses, was devastating. A handful of business operators in the lockdown states felt that they could operate their businesses safely without risking infection to their customers. For example, Shelley Luther, the owner of Salon A La Mode in Houston, Texas, defied the executive order of Governor Greg Abbott that did not permit hair salons to open. She was cited for violation of the governor's order, received multiple cease-and-desist orders from a state court, and refused to shut down. She explained, "I'll go to jail to prove what they're doing is unconstitutional."<sup>5</sup>

Ms. Luther was arrested, and when she came before the judge, he told her that if she would apologize, he would not send her to jail. Ms. Luther refused to apologize and explained, with all due respect given to Judge Eric Moyé, that she and her hairdressers were just trying to work to feed their children. Judge Moyé labeled Ms. Luther "selfish" and sentenced her to one week in jail and a fine of \$7,000.

Lt. Governor Dan Patrick paid Ms. Luther's fine himself. Attorney General Ken Paxton asked the Texas Supreme Court to intervene. The court ordered Ms. Luther released from jail because of the lack of authority to enforce executive orders by criminal punishment. Governor Abbott issued a follow-up executive order that prohibited jail time for those who violate the lockdown order. Senator Ted Cruz of Texas was Ms. Luther's first customer when she returned to her salon.

The American Board of Trial Advocates issued a statement supporting Judge Moyé's actions: "As Judge Moyé rightly noted, if any citizen or business could violate those orders or, for that matter, any law as they saw fit, then no rule of law would exist and anarchy would prevail. Businesses might feel free to ignore health codes.... This must never be the case."<sup>6</sup>

Discuss the risks of using civil disobedience as a business strategy. Apply what you have learned in this chapter to all of the events in this case. Think about jurisprudence, executive orders, civil versus criminal law, and the role of the courts.

### Solution

There are many Chapter 1 issues in this illustration. For example, there is a positive law—the shutdowns. However, a business owner had made a decision that the rights of individuals should trump laws that result in taking away their livelihoods and their means for taking care of their families.

The lockdowns are an executive order from the government. Because they are an executive order, they do not carry criminal penalties, only civil types of enforcement.

The judicial branch decided to step in and find applicable crimes when the executive order was violated. And the legislature had no say in the whole series of events. There was a power struggle between the executive and judicial branch and the judicial branch was going beyond the intent of the executive

order. The attorney general had to step in to right the wrong being committed by the application of criminal law that was not tied to the order itself.

## Chapter Review

### Answers to Chapter Questions and Problems

1. Bryant Gunderson is a sole proprietor with a successful bungee-jumping business. He is considering incorporating his business. What levels and sources of law would affect and govern the process of incorporation?

#### Solution

Gunderson will be incorporated under state legislative law. He will have to make tax elections under federal law. Local zoning laws will affect issues such as where the corporation can operate, signs, etc. His employees will be affected by state compensation laws, federal labor laws, and federal pension plan regulations. In short, there really is not a set of laws that will *not* affect his business.

2. Jeffrey Stalwart has just been arrested for ticket scalping outside the Great Western Forum in Los Angeles. Jeffrey sold a ticket to a Korn concert to an intense fan for \$1,200; the face value of the ticket was \$48. Ticket scalping in Los Angeles is a misdemeanor. Will Jeffrey's court proceedings be civil or criminal?

#### Solution

Jeffrey will be going through a criminal procedure; if a fan sues him, it will be a civil process.

3. The U.S. Golf Association put a new rule in 2016 that prohibits players from anchoring their putters to their chests. Tim Clark, a golfer from South Africa, who has won 10 championships, anchors his putter to his chest and reacted, "We are not going to roll over and just accept this. We have been put in a position where we have to fight for our livelihoods."<sup>8</sup> Explain what source of law is involved. How can the rule be challenged? Where would the golfers go to court?

#### Solution

This is a private law. However, the rule affects players who have been holding their putters to their chests and have won championships using that method of play. The judicial challenge would be in the United States and would be based on whether the private law violated some right, such as a constitutional protection.

4. Define and contrast the following:
  - a. Civil law and criminal law
  - b. Substantive law and procedural law
  - c. Common law and statutory law
  - d. Private law and public law

#### Solution

- a. Civil law—rights among and between individuals; remedies of damages and injunctions  
Criminal law—establishes societal standards of conduct; jail and fines as punishment
- b. Substantive law—establishes rights and duties  
Procedural law—establishes process for enforcement of laws and rights
- c. Common law—uncodified law; in court cases

Statutory law—codified law

d. Private law—contracts, leases, rules of workplace

Public law—laws passed by some authorized governmental body

5. During the 2001 baseball season, Barry Bonds, a player with the San Francisco Giants, hit 73 home runs in one season, a new record that went beyond the 72 set by Mark McGwire in 2000. Mr. Bonds made his record-breaking home run in San Francisco. When he hit the home run, the ball went into the cheap seats. All agree that Alex Popov had his glove on the home-run ball. However, Patrick Hayashi ended up with the ball.

Mr. Popov filed suit alleging that Mr. Hayashi assaulted Mr. Popov in order to get the ball. A substantial amount of videotape shows Mr. Popov's "gloving" of the ball. Mr. Popov says the ball belongs to him because he held that ball in a "Sno-cone position" and others wrested it from his control.

Mark McGwire's ball from his record-breaking home run sold for \$3 million. The battle for the Bonds home-run ball carries high financial stakes. What areas of law will be involved in the judge's determination of who gets the baseball? (Peter Page, "Ownership of Historic Baseball Is in Extra Innings," *National Law Journal*, November 12, 2001.)

### Solution

The judge in the case ordered the two men to sell the baseball and split the proceeds. The areas of law involved are private law (stadium rules), property law (probably state court decisions), and perhaps municipal laws. Some additional background:

On October 7, 2001, Barry Bonds hit his 73<sup>rd</sup> and record-breaking home run at PacBell Park in San Francisco. The event was historical and takes its place among the following markers in baseball:

- 1927—Babe Ruth hit 60 home runs
- 1961—Roger Marris hit 61 home runs
- 1998—Mark McGwire hit 70 home runs

When the ball headed into the crowd, positioned in a standing-room-only arcade section of the stadium, Alex Popov had his glove, no, his arm up, and he was poised to catch the ball in a softball glove he had brought along to the game. Videotape shows that the ball did indeed make it to the tip of his glove's webbing. But, at that moment, the crowd around him, forming a throng, caused him to lose his balance. The ball then dropped to the ground and there was a mad scramble among the throng to retrieve the ball. No witness and no videotape are clear on whether the ball was securely in the possession of Mr. Popov. Patrick Hayashi emerged from the stampede with the ball. The federal judge in the case described the behavior of the mob as violent and illegal. Popov sued to get the ball back.

At the trial, the tape of the cameraman, Josh Keppel, was played and 17 witnesses testified. The witnesses all had different versions of what happened, different vantage points, and some had made prior inconsistent statements with their testimony at trial.

Following a trial that concluded in November 2002, Judge Kevin McCarthy ordered the parties to make arrangements to sell the baseball by December 31, 2002, and split the proceeds. The proceeds were estimated to be about \$1,000,000, but it was sold at an auction in June 2003 for \$450,000.

Judge McCarthy indicated that Popov must have had possession of the ball prior to the mob descending in order to have the title and no testimony offered at the trial was clear on whether he had firm and actual possession.

6. They call them “floating bacchanals.” Offshore from Florida and California cities, sunseekers take their rafts and boats and tie them together as they share adult beverages, music, swimming, and the sun. However, after a day of floating, many involved in the floating community are so drunk that they cannot get their rafts and boats back to shore. In addition, safety patrols have difficulties gaining access to take action when there are arguments. What level of law could be directed to control these types of activities? Where would those laws be promulgated?

### **Solution**

This would and has been a focus for city ordinances. Regulations have included requiring permits and safety regulations on tying boats and floats together. Additionally, there are more safety personnel added with the funds from issuing permits. At the state level, the penalties for drunkenness could be expanded to include operation of rafts and boats.

7. Around 5:00 a.m. on January 1, 2004, Matthew Schmucker, who was 18 at the time, was traveling alone in a horse and buggy near the intersection of Indiana State Road 37 and Notestine Road in Harlan, Indiana. He was intoxicated at the time and failed to stop at an intersection, thereby colliding with the side of a 2003 Dodge Stratus carrying David Candon and Monica Young, who is now paralyzed from the neck down as a result of the accident. Schmucker was charged with being a minor in possession of alcohol and failing to stop at a throughway. Candon, Young, and their children, who were in the car at the time of the auto/buggy collision, brought suit against Schmucker. Schmucker declared bankruptcy and asked to be discharged from his obligations to Candon and Young. Candon and Young argued that the injury was a “willful and malicious injury by a vessel” under the bankruptcy code and was thus a nondischargeable debt. Schmucker said a horse and buggy is not a vessel. Discuss the role of the court in this case. What would the court look to in making its decision? What is the impact of the court’s decision on the ability of the family to recover for injuries? [*Young v Schmucker*, 409 B.R. 477 (N.D. Ind. 2008)]

### **Solution**

Is a horse and buggy a motor vehicle? This is an illustration of statutory interpretation role of the courts. What the court determines here, in terms of the definition of a “vessel” and whether a horse and buggy qualifies, controls whether there will be any recovery for the injured family or whether the obligation will be discharged in bankruptcy.

The court’s opinion in pertinent part appears below:

The bankruptcy court did not analyze this question because it found that “Plaintiffs acknowledge that a horse and buggy is not a motor vehicle.” (Bankr.Ct. Order 4, DE 2-13.) While the appellants’ brief before the bankruptcy court did not explicitly state that they were conceding that a horse and buggy is not a “motor vehicle,” their entire argument was

directed at establishing that a horse and buggy qualifies as a “vessel.” A party may waive an argument either explicitly or implicitly if it is not raised at the proper time. See *In re Kontrick*, 295 F.3d 724, 735 (7th Cir.2002). However, where an appellant “raises a pure issue of law on which factual development in the bankruptcy court would cast no light, the waiver [can] be forgiven.” [*Matter of Reese*, 91 F.3d 37, 39 (7th Cir.1996)] The appellee does not argue that the appellant waived her argument that a horse and buggy is a motor vehicle, nor does he argue that he suffers any undue prejudice by having the Court consider the argument. The Court will therefore consider the appellants' argument that a horse and buggy is a “motor vehicle.”

The appellee provides two definitions for “motor vehicle.” Under Indiana law, a “motor vehicle” is “a vehicle that is self-propelled.” Ind.Code § 9-13-2-105. While an Indiana statute can shed some light on the ordinary meaning of a term, it does not say much about what the term means in a Congressional statute. For that, the appellee's second definition is much more helpful. Congress has conditioned federal funds to the states on the states' enactment and enforcement of repeat intoxicated driver laws. 23 U.S.C. § 164. The statute conditioning these funds defines “motor vehicle” as “a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail line or a commercial vehicle.” 23 U.S.C. § 164(a)(4). This statute is helpful in discerning the definition of “motor vehicle” in the Bankruptcy Code section excepting claims arising from the intoxicated operation of a motor vehicle because both statutes provide means of protecting people from impaired drivers.

The appellants again look to various dictionaries in support of their argument that the most accurate definition of “motor vehicle” is much broader than the appellee's. They argue that there is no question that a buggy is a vehicle, and after surveying various dictionaries, they contend that “motor” refers to “any use of energy to create motion, including through the use of muscular movement.” A horse uses energy to create motion, a buggy is a “vehicle,” so the appellants conclude that a horse and buggy is a “motor vehicle.” This analysis suffers the same defects as the appellants' attempt to characterize a horse and buggy as a “vessel.”

First, the appellants' definition is far broader than what the term “motor vehicle” is ordinarily understood to mean. Under the appellants' analysis, a person is a motor since he or she uses energy to create motion, just as a horse does, and a skateboard or bicycle would then constitute a “motor vehicle.” Yet no one would seriously argue that the everyday usage of the term “motor vehicle” includes skateboards and bicycles. The appellants' definition of “motor vehicle” also renders the terms “vessel” and “aircraft” superfluous, since without some sort of energy, those objects cannot move.

Just as with “vessel,” it is again helpful to look elsewhere in the United States Code to determine how best to define “motor vehicle” in the Bankruptcy Code section at issue. Congress's definition of “motor vehicle” as “a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways” reflects the plain meaning of the term. 23 U.S.C. § 164(a)(4). This definition is not entirely inconsistent with the definitions provided by the appellants' dictionaries, but it does not suffer the fatal flaw of being so broad as to be almost meaningless, which the appellants' definition does. A horse does not use mechanical power, and a horse and buggy is therefore not a “motor vehicle.”

### C. Legislative History and Absurdity Doctrine

The appellants argue that since various dictionaries define “vessel” and “motor vehicle” in different ways, the statute is ambiguous and the Court must therefore look to legislative history to determine whether a horse and buggy qualifies as a “vessel” or a “motor vehicle.” But the fact that a term can be used in various ways does not mean it is ambiguous when the term's context illuminates which particular usage is appropriate. Given the context of the statute at issue, the terms “vessel” and “motor vehicle” are not ambiguous, at least as applied to a horse and buggy. The Court then need not, and should not, look to the legislative history to interpret otherwise unambiguous terms. This is particularly true given the many pitfalls entailed in a review of legislative history.

[T]he authoritative statement is the statutory text, not the legislative history or any other extrinsic material. Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms. Not all extrinsic materials are reliable sources of insight into legislative understandings, however, and legislative history in particular is vulnerable to two serious criticisms. First, legislative history is itself often murky, ambiguous, and contradictory. Judicial investigation of legislative history has a tendency to become, to borrow Judge Leventhal's memorable phrase, an exercise in “looking over a crowd and picking out your friends.” Second, judicial reliance on legislative materials like committee reports, which are not themselves subject to the requirements of Article I, may give unrepresentative committee members-or, worse yet, unelected staffers and lobbyists-both the power and the incentive to attempt strategic manipulations of legislative history to secure results they were unable to achieve through the statutory text.

Finally, the appellants' rely on the absurdity doctrine to argue that interpreting “vessel” and “motor vehicle” as not meaning “horse and buggy” leads to the absurd result that the appellee can escape their negligence claims. While there is an argument that such a result is unjust, the appellants fail to demonstrate how the result is *absurd*. Congress did not enact a statute that made all negligence claims that arise from intoxicated behavior nondischargeable. They limited the nondischargeable claims to those that arise from the intoxicated operation of a motor vehicle, vessel, or aircraft. Under the Court's reading of the statute, the appellants are left in the same position as all other creditors whose claims arise from the negligent behavior of intoxicated debtors but are dischargeable in bankruptcy.

If this result can be said to be absurd, it is an absurdity that only Congress can remedy. Perhaps Congress should never allow any negligence claims to be discharged (or at least those caused by intoxication), or perhaps Congress should make even more claims dischargeable in order to allow more people the fresh start afforded by bankruptcy protection. This is a policy debate that is most appropriately resolved by an elected legislature, not the courts. This Court is only empowered to decide whether a horse and buggy is a “vessel” or a “motor vehicle.” It is neither.

Because the horse and buggy is not a vessel, the debt is dischargeable in bankruptcy. Discuss with the students whether the intent was to keep those off the road who were intoxicated, regardless of the type of vehicle they were in. The extent of the injuries indicates that a horse and buggy can cause just as much damage as an intoxicated driver of a regular vehicle. [*Young v Schmucker*, 409 B.R. 477 (N.D. Ind. 2008)]

8. Ms. Paris Hilton, a well-known celebrity with a ubiquitous presence on television and in *People* magazine, had her driver's license suspended by the state of California because of driving under the influence (DUI) or while intoxicated (DWI). She was then pulled over by officers for DUI while driving with a suspended license. Following a hearing on the second traffic stop, a judge sentenced Ms. Hilton to 45 days in jail for failure to honor the terms of her DUI probation, including driving while intoxicated.

List all the types of laws that apply to Ms. Hilton in her situation and also where the specific California laws would appear on the pyramid of the sources of law. If Ms. Hilton asked for a pardon or commutation of her sentence by the governor of California, would the law allow it?

### **Solution**

Laws involved with Paris are: DWI—state criminal laws; Driver's license—state laws, regulations of the Department of Motor Vehicles; Procedural laws for court process and commutation; U.S. Constitution for trial and process; California Constitution and statutes for whether governor can commute sentence; California laws would appear on the pyramid under state laws and state constitution and state regulations; Governor could commute sentence if authorized under California law.

These are criminal laws. They could be misdemeanor or felony charges, depending upon the nature of California laws. The laws that contain the provisions on DUI and DWI are substantive laws. The laws that determine her sentencing, hearing, and other process rights are procedural laws. Civil laws would be involved only if she had injured someone or property of another whilst driving DUI or DWI. The laws could be local traffic laws (ordinances) or state statutes. They could also be county laws. The procedural laws that apply to the court and the judge sentencing her could be local, county, or state courts. The laws would be enacted by the state legislature or the city council or county commissioners, depending on their level. These are public laws. Conceivably, a pardon is possible. Such would be an executive order at a state level.

9. Classify the following subject matters as substantive or procedural laws:
  - a. Traffic law on speeding
  - b. Small claims court rules
  - c. Evidence
  - d. Labor law
  - e. Securities

### **Solution**

- a. Traffic law on speeding—substantive laws; governs what constitute traffic violation
  - b. Small claims court rules—procedural laws; governs how the court proceeds
  - c. Evidence—procedural law for trials
  - d. Labor law—has both substance and procedure
  - e. Securities—have both substance and procedure
10. Juul has been the leader in the development of vaping products. Its flavored products have been popular with high school students. As illnesses and deaths tied to the use of vaping products grew, cities and states began passing laws that restricted sales by age, required ID, or limited sales locations. Local retailers objected to the laws because the products were legal under federal law. The Food and Drug Administration began holding discussions on bans of vaping products or bans of flavored vaping products. Juul noted the research that concluded that its products help people to

stop smoking cigarettes. Juul also pulled its ads targeting young people and stopped selling flavored products to teens. Discuss all the levels of the pyramid of laws involved in this controversial product. Be sure to consider whether a federal ban would stop all sales or if the states could still allow the sale of vaping products. Explain why Juul took voluntary actions.

#### **Solution**

Vaping illustrates how difficult the interaction of all layers of laws can be when there is a safety or health issue that has everyone concerned. State laws and local ordinances were more quickly enacted, but the health effects brought federal notice and the move for national regulation. The question of constitutional question on preemption applied. There is also the effort of self-regulation by Juul and whether that would be sufficient as the full force of the pyramid descended on the products.

## Economics, Ethics, & the Law: The Cost of Corporate Wrongdoing

Read and analyze “Paying the Piper: An Empirical Examination of Longer-Term Financial Consequences of Illegal Corporate Behavior,” 40 *Academy of Management Journal* 129 (1997), by Melissa S. Baucus and David A. Baucus. Then answer the following questions.

- a. What financial impact does illegal corporate behavior have on a company?

#### **Solution**

Violations of laws and regulations have an immediate impact on a company’s share price. In the case of product liability, the result can be bankruptcy.

- b. How long does a company feel the impact of illegal behavior?

#### **Solution**

The authors found that for five years after the legal or regulatory misstep there was a continuing downward impact on earnings, asset growth, and returns.

- c. How does the market react to illegal corporate behavior?

#### **Solution**

The market is forgiving and share price does rebound after the initial impact, but other financial factors remain depressed. Companies have difficulty recovering.

- d. What are the financial costs of violating the law?

#### **Solution**

The financial costs are that the market capitalization decreases, risk increases, and the cost of raising funds goes up—even with private lenders because the company is perceived as a higher risk. The stock price suffers because investors are wary. The company may be undervalued temporarily, but it is difficult to overcome the market perception once there is trouble at the company. Other financial costs include the penalties and the litigation.

# Instructor Manual

Jennings, BLEG 12e, 9780357447642

## Chapter 1: Introduction to Law

**For up-to-date legal and ethical news, go to [mariannejennings.com](http://mariannejennings.com).**

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## Purpose and Perspective of the Chapter

Simply stated, you cannot run a successful business without knowing the law. What is legal? Where can I find the laws I need to know? How do I make decisions about legal conduct that is ethically troublesome to me? What if I have a disagreement with a customer, employee, or shareholder? How and where can I resolve our differences?

This portion of the book explains what law is, where it can be found, how it is applied, and how legal disputes are resolved. But beyond the legal environment of a business, there are the ethical issues. Just because what you are doing is legal does not mean it is ethical. And why should a manager make ethical choices and behave honorably in business? Law and ethics are inextricably intertwined. A commitment to both is part of a sustainable business model.

## 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 solutions, answers, and feedback)
- PowerPoint (provides text-based lectures and presentations)

## Learning Objectives

The following learning objectives are addressed in this chapter (see PowerPoint Slide 1-1):

- LO 1 Define law.
- LO 2 List and describe the classifications of laws.
- LO 3 Explain the purposes of law.
- LO 4 List the characteristics of law and give an example for each.
- LO 5 Define jurisprudence and discuss the theories of law.
- LO 6 Diagram the sources of law and explain the types of laws at each level.
- LO 7 Define international law.

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## Key Terms

- **Brief (case):** a study tool used to summarize a case, focus on its facts, and on the key points of the decision by the court
- **Cite or citation:** a standardized form of legal shorthand used to reference statutes, cases, and regulation
- **Civil law:** a set of laws regulating legal disputes other than criminal, political, and military issues

- **Common law:** a set of laws developed historically and by judicial precedent
- **Constitutions:** a set of fundamental principles and laws that are used to govern a state or an organization
- **Court of chancery:** a court that applies the principles of equity to cases presented to it
- **Criminal law:** a body of laws regulating wrongful conduct and penalizing individuals who commit crimes
- **Equity:** a body of laws regulating wrongful conduct and penalizing individuals who commit crimes
- **Executive Orders:** laws of the executive branch of the federal government that deal with issues under the direct control of that branch
- **Injunctions:** judicial orders that prohibit certain conduct or order certain acts
- **Jurisprudence:** an area of legal study encompassing the different theories or values that forms the basis for creating laws
- **Ordinances:** laws passed by local governments that control local issues such as zoning, dog licensing, parking, and traffic control
- **Private law:** rules and regulations developed between two individuals (landlord and tenant rules)
- **Procedural laws:** rules and regulations that must be followed to enforce substantive laws
- **Public law:** a set of laws enacted by an authorized governmental body
- **Stare decisis:** the principle of consulting judicial decisions of the past to determine outcomes in future cases with similar facts to ensure consistency of the law
- **State codes:** a code in each state that consists of laws passed by its legislature
- **Statutory law:** a set of formally written laws, enacted by a legislative body
- **Substantive laws:** a system of laws that describes rights and responsibilities
- **U.S. Constitution:** the supreme law of America that contains the entire structure of the federal government, its powers, the powers of the states, and the rights of all citizens
- **Uniform Commercial Code (UCC):** the set of uniform laws (pertaining to states) that govern commercial transactions
- **Uniform laws:** a system of laws that simplify interstate business
- **United State Code (U.S.C.):** an official compilation of the laws of the United States of America as passed by Congress and signed into law

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## What's New in This Chapter

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

- New examples in the discussion of characteristics of law section 1-4.
- Section 1-4c, new Case 1.1, *Avila v Citrus Community College District*, involving the liability of a community college when a visiting player is deliberately “beaned” during a baseball game, which deals with the purposes and characteristics of law on community college baseball injury and liability. New related opening Consider 1.1 and updated Exhibit 1.1. Deleted case *Yates v U.S.*

- Section 1-4c, replaced Ethical Issues with one tied to the baseball player injury case (*Avila*).
- Section 1-4c, replaced Consider 1.2 with content that presents an issue different from the baseball case factually but asks students to consider what they would decide in the case and why given the precedent of the *Avila* case, *Regents of the University of California v Superior Court*, 413 P.3d 656 (Cal. 2018).
- Replaced For the Manager's Desk with new content related to the duties of government entities and businesses to protect employees and patrons while at the same time balancing the rights of students and other employees in section 1-4c.
- In section 1-5d, replaced Consider 1.3 content with new material related to personal decisions about which laws to follow or the consequences of not doing so.
- Section 1-6f, replaced the Business Strategy with a feature on Covid-19.
- The international law section 1-7 is eliminated except for a brief mention because this topic is covered in Chapter 7. There is a small overview and cross-reference to Chapter 7.
- Replaced Biography on Uber with Biography on example of antiquated statutes—swearing now permitted in public in Virginia.
- Replaced question 10 with new question on Juul and the levels of laws that have attempted to regulate vaping.

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## Chapter Outline

Use opening **CONSIDER 1.1** to pique students' interest.

1-1 Definition of Law (See PowerPoint Slides 1-2, 1-3, and 1-4)

*LO 1: Define law.*

- ✓ Aristotle—law is reason unaffected by desire
- ✓ Blackstone—that rule of action which is prescribed by some superior and which the inferior is bound to obey
- ✓ *Black's Law Dictionary*—a body of rules of action or conduct prescribed by the controlling authority and having legal binding force
- ✓ Rules enacted by a government authority that govern individuals and relationships in a society

1-2 Classifications of Law (See PowerPoint Slides 1-5)

*LO 2: List and describe the classifications of laws.*

1-2a Public versus Private Law (See PowerPoint Slide 1-6)

- Public law or statutory law (discussed later in the chapter)
- Private law—contracts, employer regulations

1-2b Criminal versus Civil Law (See PowerPoint Slide 1-7)

- Criminal law—carries fine and/or imprisonment, governmental enforcement
- Civil law—individual enforcement, liability

1-2c Substantive versus Procedural Law

- Substantive laws—give rights and responsibilities
- Procedural laws—provide the means for enforcing substantive rights

1-2d Common versus Statutory Law (See PowerPoint Slide 1-8)

- Common law
  - Began in England (1066)
  - Exists today—nonstatutory law
  - Exists also in court decisions—*stare decisis*, “let the decision stand,” or following case precedent
- Statutory law
  - Passed by some governmental body
  - Appears in written form

1-2e Law versus Equity (See PowerPoint Slide 1-9)

- In common law England, remedies were separated into legal and equitable remedies
  - Legal = money
  - Equitable = injunctions, specific performance
- Separated the remedies so that courts of chancery could give remedies when courts of law could not
- Today, all courts are authorized to award legal or equitable remedies

1-3 Purposes of Law (See PowerPoint Slides 1-10 and 1-11)

LO 3: *Explain the purposes of law.*

1-3a Keeping Order

- Examples: Traffic laws, criminal laws (kidnapping, murder), trespass laws, property laws
- Safety—USA Patriot Act
  - Reporting requirements
  - Search warrants

#### 1-3b Influencing Conduct

Examples: Disclosure statutes for securities, antitrust laws, negligence and standards of normal (acceptable) or liability-free conduct

#### 1-3c Honoring Expectations

Examples: Contracts, landlord/tenant, securities investment, property ownership

#### 1-3d Promoting Equality

Examples: Title VII (employment discrimination laws), Age Discrimination Act, Pregnancy Discrimination Act, bussing, anti-segregation statute, Social Security system, antitrust laws

#### 1-3e Law as the Great Compromiser

Examples: Union/management laws and regulations, contract interpretations, divorce property settlements, probate distributions

### 1-4 Characteristics of Law (See PowerPoint Slides 1-12, 1-13, and 1-14)

*LO 4: List the characteristics of law and give an example for each.*

#### 1-4a Flexibility

Examples: Online transactions and fax machines have made us revisit when a contract acceptance occurs

#### 1-4b Consistency

- Allows businesses to rely on law for planning

#### 1-4c Pervasiveness

Point out the case brief to students and how to use case briefs (see Exhibit 1.1 and PowerPoint Slide 1-15).

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### **CASE BRIEF 1.1**

*Avila v Citrus Community College District*

38 Cal. 4th 148 (2006)

**FACTS:** Jose Luis Avila, a student at Rio Hondo Community College, played baseball for the Rio Hondo Roadrunners. During one of the Roadrunners' games at Citrus Community College, Jose came to bat and the Citrus Community College pitcher hit Jose in the head with a pitch, cracking his batting helmet.

Jose was dizzy and eventually left the game with injuries. He was seriously injured and filed suit against the helmet manufacturer, the Citrus Community College, and the community college district.

The lower court held that the community college defendants were not liable under an immunity statute as a government entity. Jose appealed. The Court of Appeal reversed, finding that the community colleges were not immune from liability, that they owed a duty to Jose, and that the duty was breached.

**ISSUES ON APPEAL:** 1. Were the community colleges immune from liability for the injuries experienced during an intercollegiate baseball game? 2. If they are not immune, did they breach their duty to the player?

**DECISION:** The California Supreme Court held that the community colleges were not immune from liability because although the statute protected government entities from liability for recreational activity risks, the statute did not immunize them for breach of duty. The court found that although "beaning" a batter may be a violation of the rules of the game, it was nothing that the colleges knew about or could control. The court also held that it did not breach its duty to Jose because he did continue in the game and did get the attention he needed from his fellow players and coaches.

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1-5 The Theory of Law: Jurisprudence (See PowerPoint Slides 1-16 and 1-17)

*LO 5: Define jurisprudence and discuss the theories of law.*

1-5a The Theory of Law: Positive Law

1-5b The Theory of Law: Natural Law

- There is law that is controlling above statutory law. For example, slavery may have been legal, but it violated natural law because of the violation of human rights.

1-5c The Theory of Law: The Protection of Individuals and Relationships

- Justice Oliver Wendell Holmes—our relationships with others and what they can or cannot tell us to do

1-5d The Theory of Law: The Social Contract

- Law is based on the common agreements we have about how society should operate
- Law serves to enforce the social contract

1-6 Sources of Law (See Exhibit 1.2 and PowerPoint Slides 1-18 and 1-19)

*LO 6: Diagram the sources of law and explain the types of laws at each level.*

1-6a Constitutional Law (See PowerPoint Slide 1-20)

- At federal and state levels
- Establishes government structure
- Establishes individual rights

1-6b Statutory Law at the Federal Level (See PowerPoint Slide 1-21)

- Congressional law—United States Code

Cite or citation = U.S.C. (e.g., 15 U.S.C. §77)

Examples: Sherman Act, National Labor Relations Act, Occupational Health and Safety Act, the USA Patriot Act, and all treaties

- Executive orders = presidential orders
- Federal administrative regulations—Code of Federal Regulations

Cite or citation = C.F.R. (e.g., 12 C.F.R. §226)

1-6c Statutory Law at the State Level (See PowerPoint Slide 1-22)

- Legislative law and state codes

Uniform laws are part of state codes

Cite = Nevada Revised Statutes—N.R.S.

Examples: Uniform Commercial Code, Uniform Partnership Act,  
Uniform Limited Partnership Act

- State administrative law

Cite: various

1-6d Local Laws of Cities, Counties, and Townships

- Ordinances—zoning, traffic, curfew
- County or city

1-6e Private Laws (See PowerPoint Slide 1-23)

- Contracts
- Leases
- Employer regulations

1-6f Court Decisions

- Language in statute is unclear
- Court provides interpretation or clarification of the law

1-7 Introduction to International Law (See PowerPoint Slides 1-24 and 1-25)

*LO 7: Define international law.*

## ***BIOGRAPHY—THE STORY OF ANTIQUATED LAWS***

There are many laws that are lost among all of the ordinances, statutes, and regulations. They often reflect different social norms. They often get attention when they are used for enforcement that seems extreme. Until they are repealed, they can still be used.

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## Additional Activities and Assignments

1. Ask students to find a copy of a local ordinance that has affected them.
2. Have students bring in a copy of a lease, sales contract, or credit agreement and list the following: What laws are involved in the contract (list any statutes specifically mentioned)? How will disputes on the contract be resolved?
3. Ask students to analyze the following hypothetical situation in light of their studies of jurisprudence.

Emma Frank is a cashier at Grocery Bin. Emma has been given a warning because she has made too many errors at her register. The Walters' family has a large order, and Emma checks through the order. She fails to charge them for a large cut of meat. Mrs. Walters notices this and returns to Emma to make the payment. Emma explains, "Just take it. If I ring it through I'll need my supervisor's approval, and I'll be fired."

If you were Mrs. Walters, what would you do?

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## Additional Resources

### Supplemental Readings

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- Robert M. Chesney, "Beyond the Battlefield, Beyond Al Qaeda: The Destabilizing Legal Architecture of Counterterrorism." *Michigan Law Review*, vol. 112, no. 2, 2013, p. 163, repository.law.umich.edu/mlr/vol112/iss2/1.
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- Marjorie L. Girth, "Facing Ethical Issues with Law Students in an Adversary Context." *Georgia State University Law Review*, vol. 21, no. 3, 2004, pp. 593–626.
- Robert T. Garrett, and LaVendrick Smith, "Salon Owner Released on Orders of Texas Supreme Court After Gov. Greg Abbott Forbids Putting Coronavirus Scofflaws in Jail." *Dallas Morning News*, 7 May 2020, www.dallasnews.com/news/public-health/2020/05/07/texas-gov-greg-abbott-forbids-putting-hair-salon-operators-other-coronavirus-scofflaws-in-jail.
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- Michael Pantazakos, "The Form of Ambiguity: Law, Literature, and the Meaning of Meaning." *Cardozo Studies in Law and Literature*, vol. 10, no. 2, 1998, pp. 199–250.
- James M. Tilly, "Perfect 10 v. Visa: The Future of Contributory Copyright Infringement." *Oklahoma Law Review*, vol. 61, no. 4, 2008, pp. 865–90.
- Peter F. Lake, "Posner's Pragmatist Jurisprudence." *Nebraska Law Review*, vol. 73, no. 3, 1994, p. 545.

- Joseph Raz, "Postema on Law's Autonomy and Public Practical Reasons: A Critical Comment." *Legal Theory*, vol. 4, no. 1, 1998, pp. 1–20.
- Martin Rhonheimer, "The Political Ethos of Constitutional Democracy and the Place of Natural Law in Public Reason: Rawls's 'Political Liberalism' Revisited." *The American Journal of Jurisprudence*, vol. 50, no. 1, 2005, pp. 1–70.
- Alfred C. Yen, "Sony, Tort Doctrines, and the Puzzle of Peer-to-Peer." *Case Western Reserve Law Review*, vol. 55, no. 4, 2005, pp. 815–65.
- Philip Soper, "Some Natural Confusions about Natural Law." *Michigan Law Review*, vol. 90, no. 8, 1992, p. 2393.
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- Patrick Wiseman, "Ethical Jurisprudence." *Loyola Law Review*, vol. 40, no. 2, 1994, pp. 281–312.
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