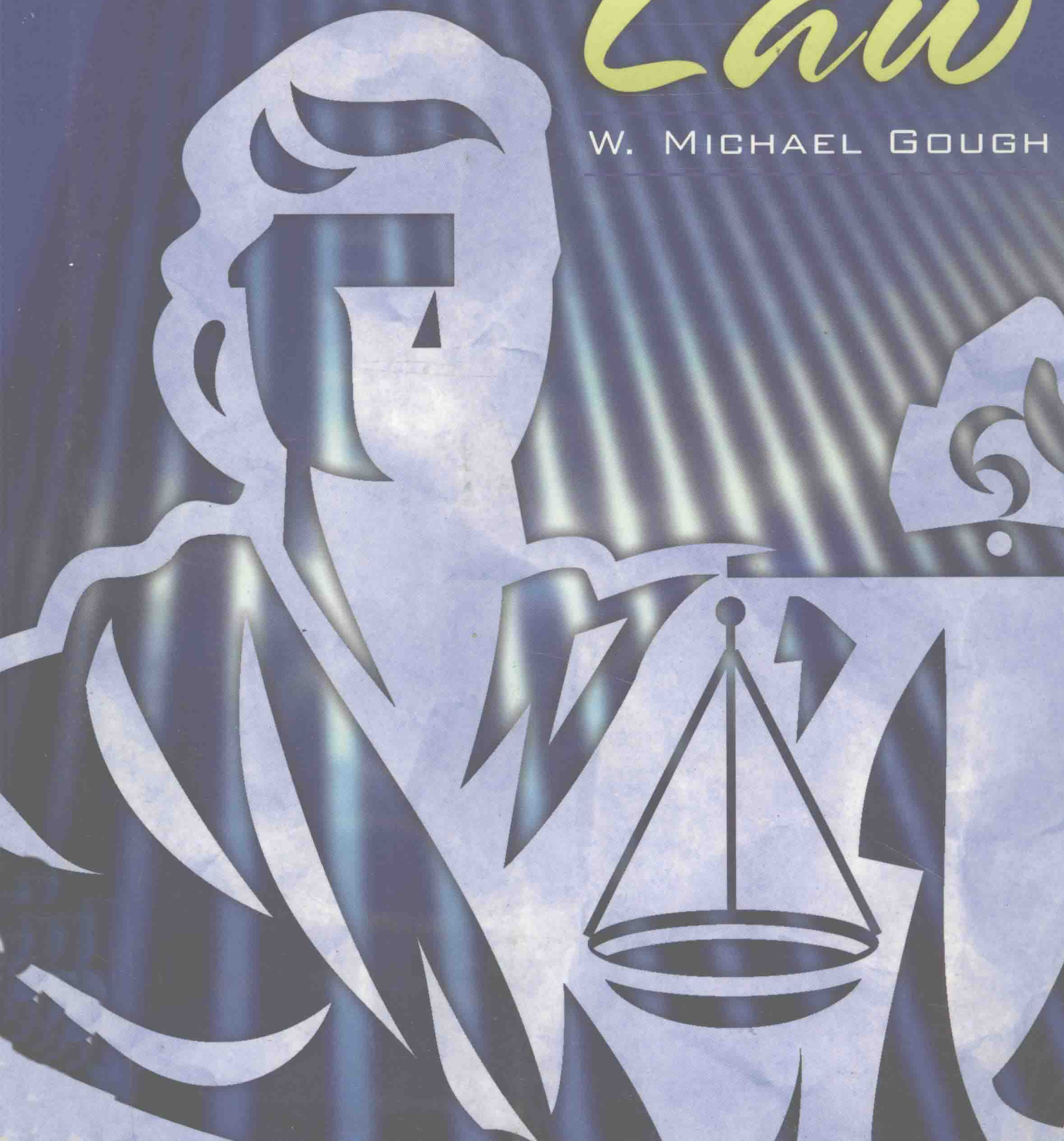
GUIDE TO Business Law

W. MICHAEL GOUGH



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Chapter One

Law Overview and Legal History

"Law is order, and good law is good order." Aristotle

Norms of Behavior

Law is defined in one dictionary as "all the rules of conduct established by the authority or custom of a nation." As a practical matter you may likely think of law as a given set of rules you have to follow in society. So in a simple sense law tells us what we can and cannot do.

Law is as old as society. Whenever people live together in a group, certain standards of behavior are adopted for the good working of the group. These standards of behavior are called norms (normal behavior) by some. Initially, when a society is getting started the norms are informal. For example, you might have a small group of individuals you camp with every year. When the group is small everyone in the group may implicitly or explicitly understand the expectations of the group. You might have one rule where everyone is expected to quiet down by 10PM, and another where everyone is expected to share in clean up after the meals. When the group is small and everyone knows one another well, these informal norms will probably be effective in keeping the camping trip manageable.

Now suppose that the trip grows in popularity and friends of friends begin joining the trip and as the group grows so do problems. Some of the new people tend to stay noisy past 10PM. Others do not share proportionately with the work. Someone from the original small group might confront the "norm breakers" and explain to the new campers that they are breaking the "rules." As you might imagine, some of the rule breakers may say "What rules? No one ever showed us rules." At this point, you would probably decide that if the trip is to continue in the future that certain basic rules should be written down and conveyed to everyone in the group. Thus, those informal norms of behavior would have to be formalized. This in effect is how law comes about in society. At some point as a group grows, norms of behavior must be formalized so everyone knows what the rules are and how they are followed. Recognize that informal norms will still remain when formal rules or law is put forth (promulgated) for the group. For instance, there may be a formal rule about being in tents by 10PM, but no formal rule about swearing in the camp. Nevertheless, swearing might not be tolerated, despite a lack of formal rules to the contrary.

How do norms of behavior get enforced in a group? The simple answer is with sanctions. Sanctions are a means enforcing a judgment. They are the things that give law its teeth. For example, when you are caught exceeding the speed limit in your car, you have to pay a traffic ticket; and you may endure other sanctions as well such as a loss of license and so forth. If a family member stays out past curfew, she may lose the right to go out the following weekend for violating the rule.

We begin by looking at a brief history of law and tracing some of the steps of earlier societies to help give us perspective of our own.

Early Societies

It is clear that the earliest societies had rules of conduct, which were passed on and modified from generation to generation. As a society advanced and developed a written language, the writing or

codifying of law was the next logical step in the society's development. The code of Hammurabi written approximately 3000 years ago in ancient Babylon and is one of the earliest examples of a society promulgating law in a written form.

The two earliest societies that had the most influence on modern day American law are the Jewish and Roman societies. It is thought that Jewish law with the Mosaic Code (from the prophet, Moses) began around 1500 BC and was expanded and refined for years thereafter. Jewish law, (like many early society's law), was tied closely to religion. The Old Testament is a mixture of religious and societal law that governed members of the Jewish State. The first five books of the Old Testament, called the *Torah,* set forth the basic law of the Jewish people. As you are probably aware, the most important part of the Old Testament is the Ten Commandments. Consider some of the Ten Commandments and you will see that many of the commandments do a good job of establishing reasonable behavior in society. "Thou shalt not kill; steal; covet another's spouse," are good recommendations for living peacefully with others in any group. The Torah was expanded upon in the *Talmud*, which codified law to a much greater degree than in the Torah and influenced Roman law as it came into existence.

Roman Law

Roman law had a profound influence on modern day law throughout the western world. The Romans produced their first known code of law around 450 BC, called the *Code of Twelve Tables.* As the empire progressed, so too did the law system. Through the years a set of legal principles developed that governed all people who fell under Roman rule. This set of principles was called the jus gentium (law of nations). The jus gentium was based on the notions of justice and fairness while taking local customs and practices into account.

The Romans also developed a comprehensive set of codes that detailed the laws set forth in the *Code of Twelve Tables* called *Corpus Juris Civillis* (Body of Civil Law). This written law that expanded on the basic law developed in the Code of Twelve Tables is similar to statutory law (written law) in present day society. The civil law was divided into civil (private) and criminal (public) matters. A civil offense was one where you might sue a neighbor or business because of a contract violation. A criminal offense was one where the society would take action against you in a murder or theft case.

The Romans were advanced enough to have negligence laws. This is an area we will study later in the course, but simply put, the Romans were able to govern actions of individuals in such a way that you could be liable for not being careful enough when going about your daily business. For instance, if you did not maintain your ox cart and a wheel came off injuring another, you could be held liable for damages. This serves as an example of the importance of vehicle maintenance even in the first century.

In the Roman system, judges were not empowered to make law where it did not exist. Their primary function was to decide which party had a majority of the evidence on his side and rule accordingly. This is in contrast to the common law system where judges can actually make law in certain cases, which is part of the system of laws we follow in the United States.

As advanced as Roman society was, it began to decline around 200 AD when Rome could not continue to hold the empire together. The Roman Empire was invaded by the Goths (Germanic Tribes) and Persians between 200 and 400 AD. The decline of Rome was complete by 470 AD but its systems of laws influenced law systems in the throughout the western world to the present day.

Middle Ages and Feudalism

The Middle Ages, also known as the Dark Ages took place after the fall of Rome. Once Rome fell there was no clear central government as had been the case during the Roman Empire. The Germanic tribes that had defeated the Western portion of the Roman Empire divided the lands into many kingdoms, which fell under separate tribal chiefs. The Germanic peoples, called barbarians by the Romans, were loyal to their tribal chiefs and their families. Barbarian custom began to replace some Roman laws at that point.

Feudalism is associated with the Middle Ages and Charlemagne is credited with being the key figure in its institution. During Charlemagne's rule all property was considered to belong to the king. He had the right to parcel out the property to noblemen who in return were expected to support him in all ways. The nobleman would then parcel out lesser parcels to lesser nobles who ultimately rented the property to serfs who paid rent by giving over a large portion of the crops they would farm on the land. Thus, the nobleman collected the fee from the estate. The concept of real property came into being here.

Disputes during this period were settled somewhat differently than in Roman times. When there was a dispute between two vassals (two noblemen), the lord or king would preside over the proceedings much like a judge does today. The other vassals, (noblemen who were social peers much like today's jury) would decide the case and present judgment on the two involved in the dispute.

A vassal had a duty to answer a summons (an order to appear) at the feudal court. If the vassal did not appear or did not obey the court's decision the lord could take back the vassal's land (or fief). A rebellious vassal was labeled a felon.

English Law - Common Law Beginnings

1066 is the date we associate with William the Conqueror and the Norman Conquest of England. The Normans had a system of travelling courts that were empowered to settle disputes between litigants. Because there was no central government as there had been in Rome centuries before, and because courts on the mainland of Europe settled disputes locally, these travelling courts settled disputes of the common man based on the judges sense of law, justice and precedent. If a case before the court was a 'new case', one that had never been seen before; the judge decided what law should apply and made his decision. This decision would set a precedent that could be utilized later by courts with similar issues that came up. Thus the term "stare decisis" meaning stand by the (earlier) decision came into being in England. This "judge made" law is referred to as common law and became one of the cornerstones of English law.

The king of England still held power and his word was law in England. He made law (written law that we call statutory law) that had to be followed by people and courts alike. But the English monarchs did not crank out law like the Romans did; rather the English empowered the courts to make common law in settling disputes.

There were some in Europe who believed in a concept called the "divine right of kings"; meaning that the king was effectively chosen by God and that only God could punish a king. In some circles it was believed that disobeying the king was the same as disobeying God. The Christian religion with its promise of an afterlife had a fast hold on most of the populace in Europe at the time.

One issue that came to fore in England was that the courts were somewhat inflexible in the remedies that could be granted to a litigant. The English kings allowed courts of law two possible remedies. Basically, a court could jail someone or force him or her to pay a fine or damages. This remedy would be of little help to you if you wished to have someone stop trespassing on your land or if you wanted to force someone to deliver goods that you had contracted and paid for. To get these types of remedies you had to present your case to the king who had the ultimate power over his subjects. The king delegated this duty to a Lord Chancellor, usually a learned high churchman who was referred to as the "conscience of the king." He was empowered to grant a remedy other than the traditional remedies that courts of law provided. This was the beginning of courts of equity in England. Equity courts were granted the power to provide remedies other than those available at law.

A third court developed in addition to the law courts and equity courts was the merchant court. This was a specialized court developed to deal with merchants who sold goods travelling around England and Europe during the Middle Ages. This court was set up deal with their commercial disputes. So even then there was recognition that a special set of laws was in order for business people plying their trade. An outgrowth of this is the Uniform Commercial Code in the United States that has been in existence since the last century.

For over a hundred years starting in 1066, able kings ruled England and followed the rules of feudal law. There was no check on the king's power, but the English kings governed justly. In 1199, King John ascended the throne in England and abused his power from the outset of his reign. He demanded more military service than required under feudalism. He forced common law courts to accede to his wishes instead of following common law, and he taxed the populace at an unfair, high rate. In 1215 AD, many of the noble class forced John to sign the Magna Carta which limited the power of the king and required the king to recognize what was a constitutional check on his power. Though the Magna Carta was written primarily for the noble class it was a document that would ultimately influence the American government over half a millenium later with the idea that a class of people should be self governed and that the ruler would have limits to his power. This was quite a departure from the idea of the divine right of kings.

From the Middle Ages through the Renaissance, the common law system of England was refined. England, like other strong European nations began exploring and colonizing countries far from Europe. As we can attest from our English language, England was successful in colonizing what is now the United States. The settlers from England brought the system of common law with them and established it as our system of courts and laws. This is in contrast to other European nations that utilized the Roman, Civil law system that we now see in France, Spain and other European countries.

We refined the system of common law to suit our nation's needs so we have some differences from the English system, but the basic approach of both systems is the same.

American Law

After the Revolutionary War, Americans faced a dilemma. Our citizenry was distrustful of a strong central government. The colonies were now a group of loosely aligned states that needed some type of central government to unite the country and provide for defense against other nations. However, the citizens had no interest in a dictator or any type central ruler who had few checks on his or her power. The U.S. Constitution resolved this issue by forming a government made up of three separate, equal branches. The three branches have to work together and are

forced to compromise on contentious issues, which keeps any one branch from assuming more power than another.

In the first century after the Revolutionary War we were an agricultural economy. Most of our citizens lived on or around farms. The average individual in the United States grew up, worked and died in a small agricultural village or town. Consequently, if you lived during that time, you knew most of the people in your small society and informal norms helped protect you from unscrupulous business people. If the general store owner took advantage of a child in the village, a parent would likely march back to the store and chastise the owner for his actions. Informal norms work well in a small society. Those of you who attended small schools when you were younger know the workings of a small society and the force of informal norms of behavior.

Toward the end of the 19th century, our society began to "spread out." The industrial revolution was taking hold and individuals were leaving the farm for opportunities in the city. The transcontinental railroad had been built and now instead of buying all of your goods from a savvy general store owner who made quarterly shopping trips to the big city, you could buy goods directly from mail order merchants (think of those two entrepreneurs - Sears and Roebuck). What could you do if you lived in Sacramento, CA and you purchased an item from a mail order house in Chicago IL, and the store sent the wrong item? What were your rights? Would a laissez faire approach by the government help you?

As you might imagine, citizens began telling our legislators that there was a need for more government protection in the business place. That idea was particularly brought to light when tainted meat was sold at the turn of the century in New York City, and people died as a result of that scandal. More became expected of the government and so federal and state governments legislated much more consumer protection and began expanding regulation by instituting administrative agencies like the Federal Trade Commission and the Food and Drug Administration. The government became less "hands off" and more "hands on."

The 20th century has seen extraordinary growth in the rise of consumer protection and administrative agencies. There is much more government regulation in the marketplace and in our lives than ever before. This is in stark contrast to our approach than two hundred years ago when the populace feared a strong central government and advocated a laissez faire philosophy.

Chapter Two - Legal Philosophy

"Circumstances alter cases" - Thomas Chandler Haliburton

Most of us have an understanding of how law is made. At the federal level the senate and House of Representatives agree on a bill, send it to the president and it is signed into law. The president issues an executive order. A judge makes a common law decision. While we understand how law is made, a more difficult question is why is law made. What underlying reason do we have for passing certain laws?

For example, prior to 1972, abortion was illegal in the United States. After that time it has been legal. Most of us know this was a common law decision made by the United States Supreme Court. We are also aware that it is a contentious issue that generates strong feelings on both sides, but why was the law made? What was the underlying philosophy in that law and other laws that are passed?

Philosophers have been attempting to answer those questions for centuries. Understanding how experts view the underlying reasons for law can be helpful in understanding the law and its sources. As is always the case, historical perspective can be helpful in explaining in a broad sense how a nation might view government and the law.

The Individual and Societal Ethic

A crucial theory that was subscribed to in the U.S. for the first 120 years or so after winning our freedom from England is that the government is best that governs least. The French term 'laissez faire' - means hands off and some described our form of government that way. There was a strong belief in what is known as the individual ethic. The government stayed out of your business and your life to a great degree and left you to your own devices. This also meant that if you had bad luck and had trouble making a living the government left you to your own devices as well. This could be very harsh if you were born poor and signed a contract to work in a dangerous coal mine that did not pay you enough to pay for your rent and food. But, by the same token, if you were industrious and able to start a successful business, the government did little, if anything, to interfere with the way you ran your business. In the 1800's the saying "a deal is a deal" originated meaning if you made a good, bad or indifferent contract, you would be held to it. It was not the government's job to protect you or to weigh you down. As a matter of fact, it was often said in the halls of congress during the 19th century that it was not the government's job to "protect a fool and his money." Thus the idea that an individual is free to make his or her own choices and live with the consequences - the individual ethic.

The individual ethic is contrasted with the societal ethic where the underlying theory is that the individual gives up rights for the common good. In the mid 19th century Karl Marx articulated the idea of a societal ethic to an extreme with his ideas in Das Kapital, which advocated communism. This ethic followed the thinking of "from each individual according to his ability, to each individual according to his need." The United States followed the individual ethic strongly through the 19th century. In the 20th century we began to move toward a societal ethic, where some individual rights are given up for the common good. An example of how our country changed its thinking in this regard is the union movement in America. Prior to the 1920's groups of workers tried unsuccessfully to bargain with business owners and require them to pay a living wage, institute safety policies in companies, and negotiate in good faith with elected workers of unions. Owners refused to do so and were backed up by the courts. In the 1920's and 1930's

laws were instituted and upheld allowing workers to unionize and forcing owners to recognize unions and negotiate with them. The owners were forced to give up an individual right in this example for the common good. Another example of how we have moved toward the societal ethic is in private property ownership. We have national and state parks owned by the government that individuals cannot own so the whole of society can enjoy these lands. In an absolute free market economy all property is owned by individuals or private parties. So we can surmise that while we are a free nation with strong individual rights, we have moved farther along toward the societal ethic and away from the individual ethic.

Legal Philosophers

While there is no shortage of philosophers or learned individuals with opinions on legal theory, there are a few that are worth becoming familiar with in a Business Law course.

Below are some philosophers and a brief explanation of their theories that may help explain how law and human behavior come together:

Aristotle - Divine or Natural Law

Aristotle believed that humans were born with an innate sense of what is right and wrong, good and evil. He believed that the only laws that should be carried out are those that are good, just laws. Those laws that are evil are not law in divine or natural law. An historical example of a law that most would consider wrong or evil was the legality of slavery in the United States. This would be considered a law that is not true law because it does not treat all individuals equally and most would contend it is fundamentally immoral. Aristotle believed that true law is tied to moral behavior.

Roscoe Pound - Social Engineering

Pound was a legal scholar who lived in the late 19th and early 20th century. Utilizing the legal system to encourage or discourage behavior is the theory underlying social engineering. A simple example of social engineering in law is the use of the tax code in the United States. If you own your own home you are allowed to deduct the interest on your home loan and the property taxes you pay in coming up with your taxable income. If you rent you are not allowed to deduct any of your rental payments in arriving at your taxable income. The government is clearly encouraging home ownership.

Frederich Karl von Savigny - Historical School of Jurisprudence

Savigny was a philosopher who believed that a nation's history and its laws go hand in hand. That is, if one looks at a nation's history and its common beliefs, the law is a reflection of that. For example, some of the Middle Eastern nations have laws that are based very closely to the dominant religion in that country. The history, culture and daily lives of many of the citizens involve their religious beliefs. That their laws would reflect their religious beliefs rings true under the historical school.

The Economic School of Jurisprudence

This philosophy has been discussed by many in the 20th century and certainly ties to the business model. In the economic theory it is believed that individuals work to maximize their own economic well being. Consequently, societies pass laws that allow/encourage its citizenry to be successful and maximize its wealth. An example of this idea applied at the individual level is where a small business owner chooses not to sue a client over a broken contract even though she is legally in the right and will win the case. Long term, the client may bring more business and enrich the owner beyond the damages she has suffered in one transaction. Here, the business owner calculates the cost of litigation, the potential for short term and long term gain and ultimately makes an economic decision regarding the law.

Business and Social Responsibility

Businesses are faced with duties to myriad of parties. A community looks to a business for profit, goods and services and employment; but at what expense? For example, employment is a good thing for a community but the actions of a business can be detrimental as well. We have all read of successful companies that have polluted the environment. At times, businesses have had to shut down or move from a locality because of environmental concerns. Owners and employees look to business for their economic well being. But even these two parties can be at odds. That which is paid to the employee is that much less that is available to the business owner. Should a business contribute to the arts or charity in its own community? Some contend that businesses should give to charity, as it is part of the responsibility a business has in its community. Others, (Milton Friedman, the noted economist, is the best known) believe that business has the duty to gain the most profit possible and enrich the shareholders without being distracted by charity and similar concerns. The argument is that the shareholders can and should choose individually what to do with those profits.

While profit maximization is an important duty any business has, it is a mistake to take the short-term view and maximize profits while disregarding the bigger picture in society. When that happens the law steps in and limits the things business can do. That is, if business does not regulate itself, the government will eventually step in. For example, early in the industrial revolution in the late 19th century some of the successful industrialists used their profits to buy up the competition, or price cut their products to put their competitors out of business and create a monopoly for themselves. In 1890 the federal government passed the Sherman Antitrust Act which limited businesses ability to reduce competition and monopolize an industry. The government went farther in 1914 in passing the Clayton Act, which strengthened the Sherman Act. The Clayton Act restricted unfair practices such as tying contracts and interlocking boards of directors, which substantially lessened competition in certain industries.

In the chapters covering the law of agency later in the course we will look at statutes that protect employees from certain behaviors by businesses. Again and again we see the government will step in when businesses do not regulate themselves.

Guidance in Business Ethics

As individuals there are many guides that can help us with ethical decisions. Some choose to use their religion as a basis for deciding what is right and wrong. Others find that a set of rules or a specific rule like the golden rule ("do unto others as you would have them do unto you") can be the basis for ethical decision making. Lawrence Kohlberg, a noted psychologist believed that individuals progress through moral stages in life. In the first level one is motivated by the fear of

punishment and the expectation of reward, much the way a young child sees the world. Kohlberg called this level the preconventional level. In the second level one is motivated to meet the expectations of groups such as family, friends etc. seeking love, trust and acceptance. Kohlberg called the second level the conventional stage of moral development. The third stage, called the post conventional stage of moral development is that where one is motivated to do what is right for the correct underlying moral principles. Here one is not concerned with how others may think of him, rather, he wants to do what is morally and ethically right. Kohlberg believed that most adults operate at the preconventional and conventional stage.

In any event, we as individuals can decide upon our ethics in any of several ways. Our upbringing, environment, life experiences and perhaps our stage of moral development come to play in ethical decisions. Ethical behavior and ethical decisions can be more difficult for businesses in that a business is made up of several individuals whose morals may be quite different. Should a business engage in advertising that is effective but some see as deceptive in a highly competitive marketplace? Does being competitive include spreading information to potential customers that a competitor's product is under investigation for safety violations and the like?

One philosopher's approach that comes up time and again in the business arena is Immanuel Kant (1724-1804). His categorical imperative theorizes that individuals (and therefore individual businesses) must evaluate the consequences of their decisions as though everyone in society acted the same way. For example, imagine that as an employee you have the opportunity to embezzle $10 per week from your employer without being caught. That amounts to a $520 'raise' over the year. What are the logical consequences if all 1000 employees in the firm did the same over a year? A $520 loss to the business becomes over a half a million-dollar loss.

Some pundits contend that the term 'business ethics' is an oxymoron like 'military intelligence' or 'peacekeeping missile'. Do you agree with the pundits?

Chapter 3 Classifications of Law

Ignorantia juris non excusat. (Ignorance of the law is no excuse) - Legal Maxim

One of the first things that makes understanding the law somewhat manageable is learning how the law is classified or broken down. Like many large, complex subjects, if the law is broken down into its simpler parts, comprehension is easier.

Earlier we defined law simply as the set of rules that tells us what we can and cannot do. In fact there is more to the law than that. For example there are things we must do - like pay taxes, things we can do - like drive a car, and things we cannot do - like steal a car. So in law we have duties - things we must do, and we have rights - things we can do. Generally, if one has a right to something, someone has a duty to deliver it. If I have paid you $200,000 for your house, I have a right to receive it and you have a duty to deliver it. A right is the legal capacity to require another to deliver something, perform or refrain from performing an act. A duty is a legal obligation that requiring an individual to perform or refrain from performing an act.

American law is broken down first into substantive and procedural law. Substantive law is the law that creates or sets the rights and duties of individuals or groups. Procedural law establishes the rules by which we enforce substantive law. For example, traffic laws are substantive laws. Say you get a traffic ticket. You allegedly were caught going 40 miles per hour in a 25 miles per hour zone. You are certain that the police officer made a mistake. You take the ticket, drive to the nearest court house and find a court that is open wait for a break and say, "Yoo-hoo, Your Honor, I need you to hear my case right now!" It turns out that you have wandered into family court where the judge is hearing a child custody case. Would the judge, could the judge hear your case? Of course not. You have proceeded incorrectly. There is a procedure you must follow to fight the ticket. This falls under procedural law. You have probably heard of due process under the law as a constitutional right. This is the part of law that ensures that both sides follow the same set of rules in dealing with substantive law.

Another classification of law is that of public law and private law. Public law is the law that deals with our relationship with the government. Criminal law and constitutional law fall here. Private law deals with our relationship with one another. Civil law falls here.

Criminal law, part of public law, is the law that determines duties that we owe the entire community. Civil law, part of private law, deals with the duties we owe one another. For example, let's say tomorrow morning you get up in the morning, go outside to pick up your newspaper and your neighbor is outside and tells you that someone broke into her home and ransacked her house. One of your first thoughts is that you hope they catch the criminal because this individual is clearly a threat to the community as a whole. This act falls under criminal law. When the thief is caught, the government, representing the public will try him or her.

You go back into your house after talking to your neighbor, open the newspaper and find that IBM is suing Intel over some trade secrets that employees have allegedly stole. You don't own stock in either company so you are probably not particularly interested in the lawsuit. After all, the civil lawsuit is a private matter between the two companies.

The following is a brief summary of law classification and some key terms that are important to know:

Substantive Law

Creates and defines legal rights and responsibilities. Business law such as contract and agency law fall here.

Procedural Law

Rules by which substantive law is enforced. In a criminal lawsuit the government must follow criminal procedure in trying an individual. In a civil lawsuit each party must follow civil procedure throughout the suit ensuring both parties follow the same set of rules.

Public Law

Powers of the government and how it is applied to individuals. Criminal, constitutional and administrative law are part of public law.

Private Law

Law that governs relationships between individuals and individual entities. Contract law, the law of sales, agency law, corporations, partnerships and property law fall under private law.
Plaintiff

Individual or individual entity who files a lawsuit. If you decide to sue a vendor for not delivering goods that were promised to you, you are the plaintiff.

Defendant

Individual or individual entity that is sued. The defendant defends against the legal action. In the above action, if you are the individual being sued for non-delivery of those goods, you are the defendant.

Civil Action

A lawsuit initiated against a private party or parties. If you sue a customer for non-payment of a bill, you will institute a civil action.

Criminal Action

A lawsuit initiated by the government against and individual or individual entity for the breaking of a criminal law. If you rob a convenience store and are caught, the government will institute a criminal action against you.

Criminal and Civil Suits

You can be liable both criminally and civilly in a worst case scenario. For example, if you drive drunk and get in an accident, the government will initiate a criminal suit or action against you for driving under the influence; and the party who you injured in the accident may sue you in civil court for damages she incurred as a result of your behavior.

Differences between Civil and Criminal Law

There are some dramatic differences between civil and criminal law that should be noted. In civil law an individual initiates the lawsuit. In criminal law the government (the federal, state or local government) initiates the suit. To prevail in a civil lawsuit you must prove your case by a preponderance (a majority) of the evidence. In a criminal suit you must prove your case beyond a reasonable doubt - a much higher burden of proof than in a civil suit. The remedies available in a civil lawsuit are monetary damages or equitable remedies. Remedies at equity include specific performance - requiring someone to do something (like deliver goods that are under contract), injunction - requiring someone to stop doing something (like picketing in front of your building), reformation - having the court rewrite an agreement due to some mutual mistake by parties in a contract, or recission - where the court invalidates a contract. In a criminal lawsuit the remedies include the death penalty, prison and jail time, fines and probation.

The Order of Precedence in Law

One question that comes up regularly is which law takes precedence over another? There is a relatively clear hierarchy of law with the United States Constitution at the highest level. All laws must conform to the basis of law in the U.S. Constitution. From there the order of precedence is as follows:

Treaties and Federal Statutes

Treaties are agreements between nations and federal statutes are legislative laws made by congress and the president. Federal statutes also include executive orders issued by the president. Statutes enacted by the legislative branch of the government are often referred to as codified law because they written into law or code books organized by topic.

Federal Administrative Law

Rules and regulations made by administrative agencies like the Environmental Protection Agency (EPA). Administrative Agencies are agencies created by the government to regulate certain areas of our society. These include taxation (the IRS and the Treasury Department), transportation, public health and so forth.

Federal Common Law

Decisions made by federal court that do not conflict with federal statutes.

State Constitutions

Ultimate law at the state level that establishes the power and limitations of the state government.

State Statutes

Legislative laws and executive orders at the state level.

State Administrative Law

Rules and regulations made at the state level by state agencies like the Department of Consumer Affairs.