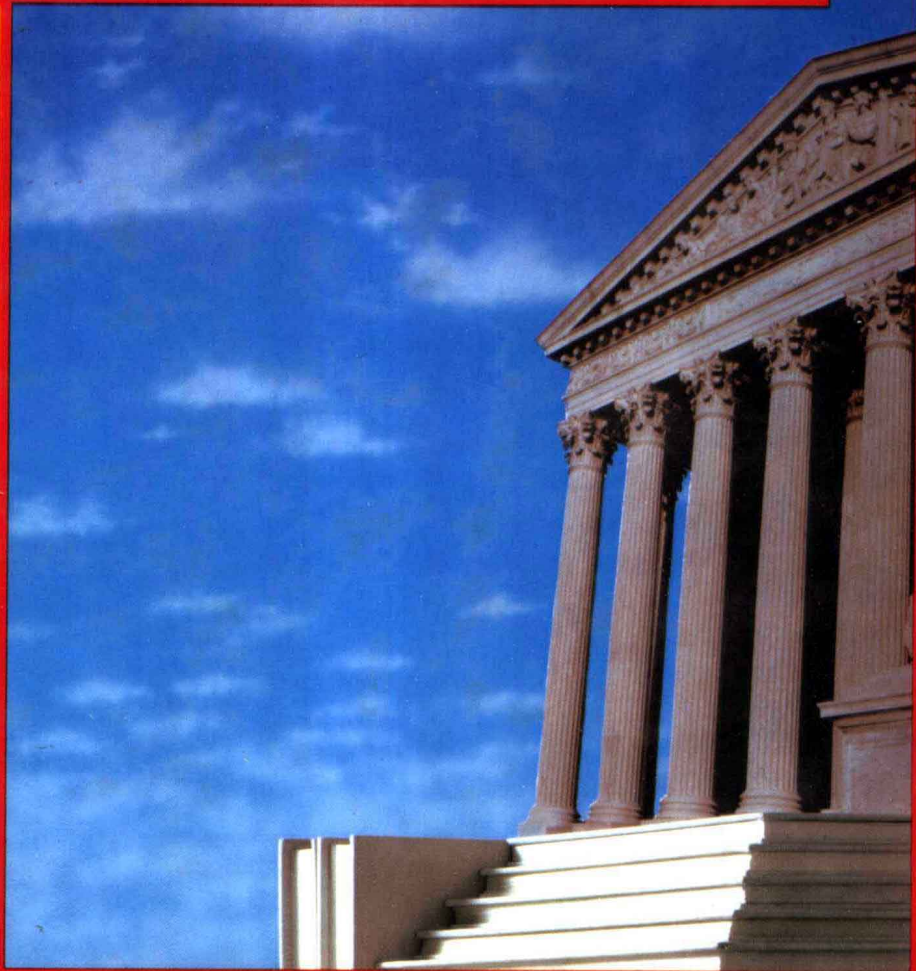


SEVENTH EDITION

UNDERSTANDING BUSINESS AND PERSONAL LAW

BROWN/ROSENBERG



UNDERSTANDING BUSINESS AND PERSONAL LAW

Seventh Edition

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PREFACE

Law constantly touches the lives of people in their daily activities. Personal law arises from life experiences—from buying a hamburger in a fast-food restaurant to getting married; from driving a car to getting a job; from cashing a check to renting an apartment. Laypeople (nonlawyers) should be introduced to personal law (sometimes called *practical law*, *street law*, or *living law*) because it is law that will be of use to them personally. It is law that plays a vital, active part in their daily lives. The seventh edition of *Understanding Business and Personal Law* places special emphasis on treating this kind of law, while at the same time retaining its focus on the basic fundamentals of the law of the business world.

The “life-cycle” approach is used in this edition to emphasize personal as well as business law. With the exception of the first two parts, the seventh edition presents subject matter in the order in which it might occur in real life. For example, one of the first things that people generally do after leaving high school or college is obtain a job (Part 3). Later they may get married, rent an apartment, buy a house, and (in some cases) become divorced (Part 4). As their family grows and their earning power increases, they tend to become more active consumers, acquiring additional furniture, appliances, automobiles, and many other goods and services (Part 5). They also borrow money, purchase on credit, and use negotiable instruments more frequently (Part 6). As they continue through life, acquiring special skills and knowledge, they may go into business for themselves or buy stocks in other businesses (Part 7). Finally, they look toward later life—the years of retirement (Part 8). The seventh edition reflects the impact of law on individuals during this life cycle—roughly from a person’s teenage years to his or her retirement.

The advantage of this approach is that it is a very natural and logical way to present subject matter of this nature to students. They will find it easy to follow, and it will help them to conceptualize the continuing influence of law throughout a person’s life.

EXPANDED COVERAGE

Several important topics have been added or updated in this new edition. These include coverage of the tort of emotional suffering; joint custody of children; distribution of marital property upon divorce; electronic fund transfers (EFT’s); patents, copyrights, and trademarks; trade fixtures; nonconforming uses in relation to zoning laws; and the tax advantages of individual retirement accounts (IRAs). Updated treatment of the Social Security law includes a discussion of Aid to Families with Dependent Children (AFDC), the Child Support Enforcement (CSE) program, and an illustration of the revised form for obtaining a Social Security number. Recently enacted federal legislation covered in this edition are the Bankruptcy Act of 1978, the Foreign Corrupt Practices Act of 1977, the Fair Debt Collection Practices Act of 1977, and the Computer Software Copyright Act of 1980.

Business Law
Fundamentals

The core of business law fundamentals—the law of contracts, sales, agency, bailments, commercial paper, insurance, business organization, real and personal property, and wills—is given ample coverage. Presented within the framework of the life-cycle format, however, the fundamentals take on added meaning and interest for students. No longer are they vague, abstract concepts. Rather, business law fundamentals become concrete and real as students discover that they are applicable to their own experiences and expectations.

Personal Law

This edition is filled with legal topics that are useful to readers in their daily lives. For example, the topics of buying and insuring a car, renting an apartment, buying a house, purchasing on credit, marriage, and divorce are given thorough coverage. In addition, some common crimes and torts are discussed. Included in the discussion (together with recent statistics) are drug abuse, traffic violations, the right of police to search vehicles, vandalism, and shoplifting. The court system and spending a day in court (including the juvenile court) are also treated.

The
Social/Political
Environment
of Law

The law is deeply influenced by social and political events and by the changing times. Developments such as consumerism, the power of regulatory agencies, environmental impact studies, equal employment opportunity, and pension reform have had a profound effect on business people and the customers they serve. Unit 17 (“Laws Affecting Employment”), Unit 40 (“Government Regulation of Business”), and other units throughout the book focus on the laws that give substance to these social and political developments.

**MAJOR
FEATURES**

Introductory
Plays

A variety of features has been built into *Understanding Business and Personal Law*. Each makes the law more interesting and understandable for students.

Each unit begins with a short play. The principal characters, with whom students will soon become familiar, are featured throughout the book in a continuing story consisting of many realistic or amusing “soap opera” situations. Students will soon find themselves looking forward to the next episode in the lives of Jenny, Tony, Lisa, and Bill. Will Lance Linsky’s fraudulent practices ever catch up with him? Will the guy down the street someday drive too hard a bargain? Will Tony ever overcome his many legal and mechanical difficulties with cars? What kind of trouble will Ernest get into next? Will Lisa and Bill get married, or will Bill marry Stella? And who will inherit Aunt Gladys’s wealth? The human-interest factor will motivate students to find the answers.

The plays have more than a motivational value, however. Each play is designed to give students practice in identifying legal issues. Students will find that the legal issues reflected in the situations developed in each play will become increasingly obvious to them as their analytic skills are sharpened through their study of business and consumer law. As a by-product of this practice, students will develop an ability to recognize circumstances in their own lives that may require them to seek the aid of professional legal counsel. It will also deepen their under-

standing of the principles of law presented in *Understanding Business and Personal Law*.

Law Cartoons and Tables More than fifty law cartoons are used in this edition of *Understanding Business and Personal Law*. Each cartoon is designed to reinforce an important legal concept or principle that is presented in the text material. Thus the law cartoons help students retain new information and recall it in the future. New tables and charts have been added to the text. In addition, the tables from prior editions have been updated to reflect changes in the law. These provide a convenient means of summarizing the law applicable in each of the states.

Readability Much attention has been given in the writing of the seventh edition to further clarify legal concepts and principles. Short, active sentences are used frequently to enhance readability for students. The use of unnecessary legal jargon—a roadblock to understanding—is avoided. The format and illustrations for the text have been redesigned in order to make it easier for students to assimilate key concepts. The result is a highly readable and interesting study of law with a greater likelihood of student success.

LEARNING AND STUDY FEATURES

Throughout the text a rich assortment of learning and study features have been provided to strengthen student understanding and retention of important legal concepts and principles.

Case Examples Each unit of the text contains numerous updated examples in a case format illustrating important legal concepts and principles. Each of these examples presents a legal problem and its solution. Many are based on actual court cases.

Suggestions for Reducing Legal Risks This popular feature consists of lists of precautions that will enable students to avoid costly, time-consuming legal mistakes in their personal business affairs.

Language of the Law Experience has shown that students who understand legal terminology generally excel in their study of law. Over 750 legal terms are present to help students increase their legal vocabulary. Whenever a term is presented in italics, its definition is included in the immediately surrounding text. Key terms that the students should master are listed in the "Language of the Law" exercise at the end of each chapter. Students should be encouraged to define, explain, and use all these key vocabulary terms.

As a further aid to students in mastering essential legal terminology, an expanded Law Dictionary, containing over 600 terms, is presented at the back of the book.

Questions and Problems The carefully selected items included in the "Questions and Problems" exercise at the end of each unit provide topics for discussion and review. They also provide an informal measure of student understanding.

What Is
Your Opinion?

In this edition of *Understanding Business and Personal Law*, the cases at the end of each unit have been updated and improved. These cases illustrate the legal principles and concepts developed in the unit. They also provide a measure of the students' understanding of the law as it applies to actual situations.

The Law
in Action

Twenty-eight new law-in-action cases have been added to this edition of the text. These are interesting, recent, real-life cases presented at the end of each unit. The cases involve situations that may be familiar to students. The *Teacher's Manual and Key* gives information on how to locate these cases in a law library.

Case for Class
Discussion

Each of the eight parts of *Understanding Business and Personal Law* concludes with a special culminating feature—a "Case for Class Discussion." In discussing the cases with their classmates, the students will find that the cases raise interesting questions which do not have easy or ready-made answers. The purpose of these expanded case studies is to help students realize that the law is not cast in stone but rather is flexible and subject to varying interpretations. Newly added to this edition is the court's decision in each of these cases.

ANCILLARY MATERIALS

The *Understanding Business and Personal Law* program includes the following correlated supporting materials.

Performance
Guide

The *Performance Guide for Understanding Business and Personal Law* is a study and learning resource for students. It provides performance objectives that highlight the law concepts and principles which the students are expected to understand and apply upon completing each unit. Included in the *Performance Guide* are comprehension self-check exercises, short case problems that correlate with the performance objectives, and projects utilizing professional legal forms.

Achievement
Tests

A set of tests is available for *Understanding Business and Personal Law*. The set contains ten tests—eight tests cover the eight parts of the textbook, and two tests serve as midterm and final examinations.

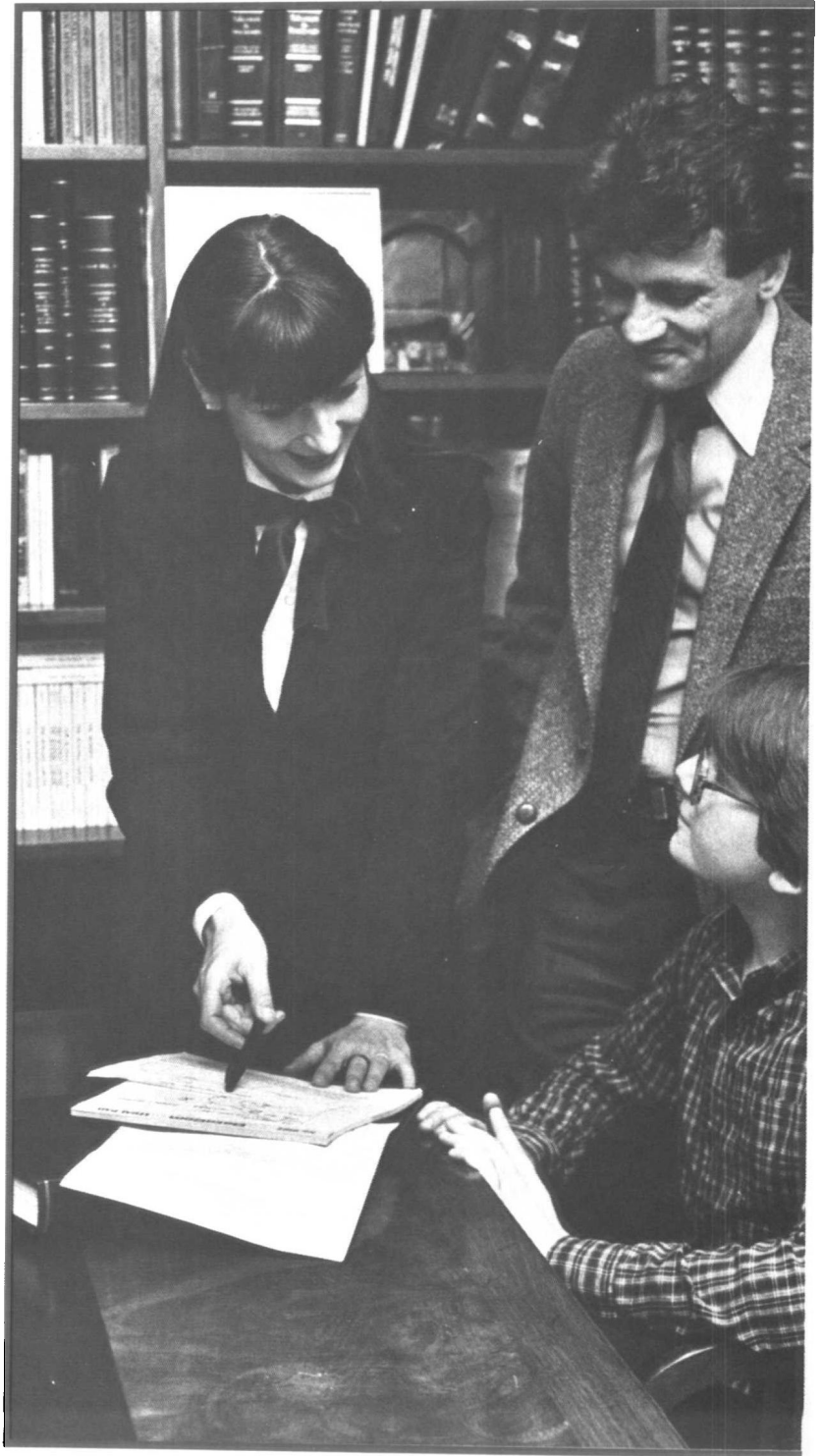
Teacher's
Manual and Key

The *Teacher's Manual and Key for Understanding Business and Personal Law* contains suggestions for teaching business and personal law as well as enrichment activities. Guidance on how to obtain valuable reference materials is also included. Too, this teacher resource key provides answers to all end-of-unit activities, as well as answers to the questions and problems presented in the *Performance Guide* and in the achievement tests.

Gordon W. Brown

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Knowing More About the Law



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UNIT 1

SOURCES OF TODAY'S LAW

The skits in this section introduce Bill, a teenager. Misled by his cousin Frank and pressured by his friends, who are members of a criminal gang, Bill unintentionally is drawn deeper and deeper into a web of wrongdoing. Only when he has been arrested and is facing trial does he realize the high cost of violating the law. He begins to associate with new friends who lead him in a more positive direction.

Following the skits in each unit there is a series of questions that draw your attention to some important legal issues raised in the skits. These questions should serve as guidelines to direct your reading of the text. Try to answer the questions after you have completed your reading assignment.

Scene: The entrance of a deserted park. Nearby, two boys are beating an old man. A motorcycle approaches.

Bill (a passenger on the motorcycle): Frank! Frank! Hold it a minute! I think that man needs help!
Frank: Forget it. We've got our own problems.

The motorcycle speeds off with a loud roar.

Bill (yelling): We should have helped him!

Frank: I said to forget it! (Now driving more slowly.) Look at this classy neighborhood. Keep your eyes open. (He passes a house that appears deserted.) Look! There's a window open. (He stops in front of the house.)

Bill: What are you stopping for?

Frank: There's no car around. We just might be lucky. (He approaches the house and rings the doorbell. No one answers.) Follow me, and be quiet.

Bill: Are you crazy, man? I don't want trouble.

Frank (climbing through the open window): Are you chicken or something?

Bill reluctantly follows Frank into the house.

Frank: Get a load of this tape recorder. They'll never miss it. Grab something and let's go.

Bill: No way! If you've got any brains left, you'll leave that there.

Frank: You do what you want, but don't tell me what to do. I'll show you who's got brains. Let's go.

Frank stuffs the tape recorder into his motorcycle bag. The bag is not large enough, and the tape recorder sticks out of the top. The two speed off. Two hours later,

after crossing the state line, Frank and Bill are stopped by a police officer.

Bill: Now you've done it!

Frank: Shut up, and let me do the talking!

Officer: I see you boys are from out of state. You've got to wear helmets here.

Frank: If I want to get myself hurt, that's my business. I've got a constitutional right to wear what I want.

Officer: Sorry, but the judge in District Court might disagree. (Looking over the motorcycle.) You know, these aren't regulation han-

dlebars. You can't use them in this state; they're too dangerous!

Frank: They came with the bike. There's no law against them.

Officer (interrupting): The Registry of Motor Vehicles won't allow them.

At that moment, the police officer's radio announces, "Be on the lookout for two boys on a motorcycle who were seen fleeing from the scene of a burglary." The description given seems to fit that of Bill and Frank.

Officer (turning to Bill and Frank): You boys had better come with me.

LEGAL ISSUES

1. Does the law require people to help others who are in trouble?
2. What is burglary? Where did our burglary law come from? In what way has the original burglary law changed? Who changed it?
3. Do some administrative agencies, such as the Registry of Motor

Vehicles in each state, have power to make laws? If so, how do they obtain such power?

4. What is the source of the law that requires motorcyclists to wear helmets? Who decides whether or not such a law is constitutional?

What Is the Law?

The phrase *the law* may have different meanings for different people. What does it mean to you? Do you think of a police officer? Do you think of *the law* as a set of rules designed to prevent you from doing the things you want to do? While it may seem that way sometimes, the real purpose of laws is to help you get along smoothly with other people in business and social relationships.

If you lived alone on an island and no other person ever came to your island, you might be free from human-made laws. You might stretch your imagination a little more and give yourself a smart sports car to drive on your island. Imagine also that you have a long, straight concrete highway running the length of your island. You could drive just as fast as you

wished. You could drive on the right side of the road, on the left side, or down the middle. It would not make any difference. Let one other person come to your island paradise, however, with another automobile, and some rules are going to be necessary—or else someone is going to get hurt. This is but one example of why some rules of conduct are necessary if you are going to live in harmony and safety with other people.

Law, then, can be said to consist of the rules of conduct that govern people in their dealings with one another. The function of law is to maintain peace, order, and harmony between people in society. It does this by spelling out what is considered right and what is considered wrong and by defining the legal rights and duties of people. It also provides a means of enforcing legal rights and duties through law enforcement agencies, the courts, and special regulatory agencies.

How the Law Affects You

The day you were born, the law stepped into your life. As long as you live, the law will be important to you. Does this thought startle you? Stop and think for a moment. The activities you have engaged in today, those of your parents, the local fire department, the police department, the public health department, your school officials—all are affected by law.

You aren't sure? Think about it. Did you buy a candy bar today? Did you ride on a bus? Did you drive a car? Did you ride a bicycle? Did you do part-time work for someone? In each of these situations, the law plays an important role. Thus, when you buy candy or pay to ride on a bus, you are governed by the law of contracts. When you drive a car, you are governed by motor vehicle laws. When you ride a bicycle, you are governed by local city ordinances and, in some cases, by state traffic regulations. When you work for someone, you are governed, in most cases, by the laws of contracts and agency, and by state labor laws.

It is clear, then, that you cannot escape legal dealings with others and that you need to know something about law. The ordinary business person and the average citizen can hope to learn only the basic rules. A knowledge of these basic rules, however, will help you over many rough spots when you are on your own.

General Classes of Law

"It's the law" is a statement that many of us have heard from time to time. But what, in fact, is *the law*? Is there only one type of law, or are there many different types of laws?

Actually, laws can be classified into three broad groups: natural laws, moral laws, and government-enacted laws.

Natural Laws

You may have already studied natural law in your social studies courses. *Natural law* refers to the rules of conduct that it is believed people would follow if there were no formal laws. The doctrine of natural law begins with the assumption that people are fundamentally good in nature. If

there were no formal laws, people would want to do good and prevent evil and would act accordingly. Of course there is no way to be certain that people would act in this way. The doctrine of natural law is a theory—an idea that has not been proven or disproven.

The doctrine of natural law also assumes that people are entitled to certain basic rights, such as life, liberty, property, and the pursuit of happiness. Many of the founders of our country, such as Thomas Jefferson, believed in natural rights and said so in the Declaration of Independence, one of the most important legal documents in our country's history.

Moral Laws *Moral laws* are laws that may be based on natural law, religious belief, or one's own personal sense of values and conscience as to what is right or wrong. Like natural law, these are rules of conduct that may not be actual laws. Sometimes they are only rules of good behavior, such as being truthful, being honest in your dealings with others, and being considerate of others.

Moral laws are enforced by social pressure. They differ from formal laws in that they generally are not enforced by the government.

Example 1 A woman who was being attacked by several men yelled for help. No one who witnessed the assault came to her aid. We have a moral duty to help people who are in trouble, and others will disapprove if we do not. However, the laws of our government do not require people to endanger their lives in order to help someone else.

Although, ordinarily, these moral laws are only rules of good conduct, they sometimes become the bases of enforceable laws passed by state legislatures or the federal government. At one time in the past, for example, there were no laws limiting the rate of interest that might be charged for lending money. The only limitation on the lender was moral law. Good moral conduct required the lender not to take unfair advantage of the borrower, but there was no legal regulation. Today, by laws that have been enacted in most states, the rate of interest that may be charged for the loan of money is strictly regulated. Thus a former moral rule has become a government-enacted law.

Government-Enacted Laws The laws that people have enacted to govern themselves have developed over a long period of time. And new laws are still being developed and put into practice.

Example 2 Before there were any automobiles, there was no need for motor vehicle laws to regulate their operation. Today, however, the use of automobiles creates serious problems that must be met by appropri-

ate legislation for their control. The invention of the automobile brought about the creation of a whole set of new laws.

We are constantly changing and improving our laws to adapt them to our changing living patterns. Laws will never cease to change. New laws will be added and old laws will be amended for as long as civilization continues.

Development of Law

According to some experts, the earliest laws governing people probably were created when cave dwellers first began to hunt together. These primitive people found that they could protect themselves better and find more game by working in groups. Some rules governing the hunt had to be worked out. As primitive people began to live in larger and still larger tribal groups, it became necessary to develop laws that would permit them to work, hunt, play, and get along together for their mutual benefit. They quickly learned that a person cannot be an "outlaw" and still be accepted in a social system. Each person must learn to conform to the rules that govern all the people.

The first laws were tribal laws. As time went on, larger units of government developed. Laws were expanded to regulate these larger units.

Roman, or Civil, Law

One of the great contributions of the Roman Empire was a system of laws known as the *Roman*, or *civil*, *law*. Rome conquered almost all the known civilized world of its day. To administer this great empire, Rome needed many laws. Through the influence of Emperor Justinian and other emperors who followed him, a complete code of laws was drawn up. An attempt was made in this code to write down all the laws and regulations of every kind that were to govern the Romans and their subjects. Almost all the laws of Europe have been built around this *Roman Code*. Colonists who settled in the New World brought the code of laws of the particular European nation from which they came. Thus all the Latin American countries follow the Roman Code. In this country the laws of the state of Louisiana are based on it because Louisiana was settled by the French, and France had developed its legal system after the pattern set by the Roman Code.

English Common Law

Laws in the United States, with the exception of the state laws of Louisiana, are almost all based on English common law. The story of the development of the common law is an interesting one.

England in medieval days was governed by the *feudal system*—a system in which the feudal lord had supreme power within his domain. The feudal lord owned all the land surrounding his castle. This land was worked by serfs, who had few, if any, rights. Because the lords settled arguments over rights with their neighboring lords by fighting and the serfs had few rights, little law was needed.

As common men began to rise from serfdom to the status of tenant farmers, however, they began to acquire some rights. (Women at this time in history still had very few rights.) The rights of one tenant might come into conflict with the rights of another. The earliest of these disputes were probably settled by the feudal lord. He would hear the arguments of each tenant and then make his decision. There was no formal body of law to guide him. He followed his own reason and best judgment. Later, civil officers having judicial powers (*magistrates*) were appointed to hear and settle disputes; but still there was no law to guide them. Quite logically, a magistrate might say to himself, "Now, I decided a case much like this one 6 months ago. How did I decide that one?" To refresh his memory, he began to write down his decisions so that he could refer to them. As communications with neighboring magistrates became better, he might exchange notes and ideas with them.

At the same time the central government of the king, which at first was very weak, was becoming stronger, and the king began to establish courts. The king's courts made decisions and kept records. But the king also had no written laws. By the time the central government of the king had become strong enough to pass a code of laws, the laws regulating the rights of the common man were already well established by the day-to-day rulings of the early courts. This body of law is called the law of precedent, or the *common law*.

Parliament, the English legislature, did not disturb these common-law precedents but merely picked up where they left off. The new laws that were passed by Parliament changed the common law as needed to meet new situations or to fill needs that were not present in earlier days.

A more detailed study of the common law would illustrate how some customs became law. Many of the early court rulings that became law were based on custom. One of the sources of these customs was the law of the church, known as *ecclesiastical law*. Another source was the customs of merchants and traders. These customs formed the basis of what is known as the *law merchant*. It was logical for a judge who had no written law to look at the customs of merchants and traders to find the answer to an argument between two business people. Once the judge gave a decision on the point in dispute, the decision became a part of the way of doing things, or the common law.

When the early settlers founded this country, they brought with them from England these common-law principles. The English common law formed the basis of the law in force in the Colonies, and it is still the basis of some of our law today.

Sources of United States Law

Today's law in the United States, in general, comes from (1) common law (except in the state of Louisiana); (2) federal, state, and local statutes; (3) administrative regulations; (4) court decisions; and (5) the U.S. Constitution and the constitutions of the individual states.