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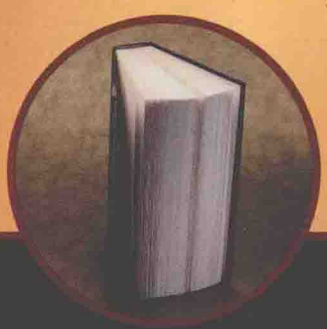

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Custom Publishing

West's Business Law
Alternate Edition

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SOUTH-WESTERN
THOMSON LEARNING

Printed in the United States of America

For more information, contact South-Western College Publishing, 5101 Madison Road, Cincinnati, OH 45227, or electronically at http://www.thomson.com

Thomson Learning Publishing Europe
Berkshire House 168-173
High Holborn
London, WC1V 7AA, England

Thomson Learning Editores
Campos Eliseos 385, Piso 7
Col. Polanco
11560 México D.F. México

Thomas Nelson Australia
102 Dodds Street
South Melbourne 3205
Victoria, Australia

Thomson Learning Publishing Asia
221 Henderson Road
#05-10 Henderson Building
Singapore 0315

Nelson Canada
1120 Birchmount Road
Scarborough, Ontario
Canada M1K 5G4

Thomson Learning Publishing Japan
Hirakawacho Kyowa Building, 3F
2-2-1 Hirakawacho
Chiyoda-ku, Tokyo 102, Japan

Thomson Learning Publishing GmbH
Königswinterer Strasse 418
53227 Bonn, Germany

Thomson Learning Publishing Southern Africa
Building 18, Constantia Park
240 Old Pretoria Road
Halfway House, 1685 South Africa

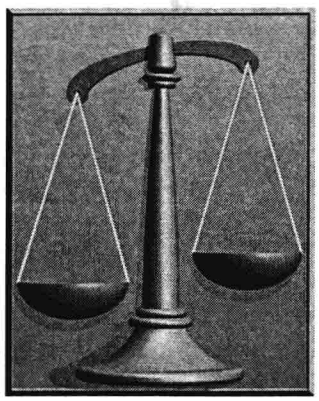
ISBN 0-324-10346-8

The Adaptable Courseware Program consists of products and additions to existing South-Western Educational Publishing Company products that are produced from camera-ready copy. Peer review, class testing, and accuracy are primarily the responsibility of the author(s).

Custom Contents

CHAPTER 1

INTRODUCTION TO LAW AND LEGAL REASONING



CIVILIZED SOCIETIES REQUIRE ORDER and some degree of certainty. The law generates both. If any society is to survive, its citizens must be able to determine what is legally right and legally wrong. When citizens believe that a legal wrong has occurred, they must have some idea of how to seek redress. The law provides such a vehicle.

In this introductory chapter, we first look at the nature of law and then examine the foundation and basic characteristics of the American legal system. We next describe the basic sources of American law and the distinction between civil law and criminal law. We conclude with sections offering practical guidance on several topics, including how to find the sources of law discussed in this chapter (and referred to throughout the text), how to read and understand court opinions, and legal reasoning.

SECTION 1

WHAT IS LAW?

There have been and will continue to be different definitions of law. Although the numerous definitions vary in their particulars, they all are based on the general observation that, at a minimum, **law** consists of *enforceable rules governing relationships among individuals and between individuals and their society.*

This broad statement may serve as a basic definition of law, but for those who embark on a study of law, it is only a starting point. It leaves unanswered some important questions concerning the nature of law. In this section, we examine some of those questions and how they have been answered in the past by legal philosophers and jurists. You may think that legal philosophy is far removed from the practical study of business law and the legal environment. In fact, it is not. As you will learn in the chapters of this text, how judges apply the law to specific disputes, including disputes relating to the business world, depends in part on their personal philosophical views.

NATURAL LAW AND POSITIVE LAW

An age-old question in regard to the nature of law has to do with the finality of **positive law** (the written law of a particular society at a particular point in time). For example, what if a positive law of a particular nation is deemed to be a "bad" law by a substantial number of that nation's citizens? Must a citizen obey the law if it goes against his or her conscience to do so? Is there a higher or universal law to which they can appeal?

THE NATURAL LAW TRADITION One who adheres to the natural law tradition would answer this question in the affirmative. **Natural law** denotes a system of moral and ethical principles that are inherent in human nature and that can be discovered by humans through the use of their natural intelligence. The natural law tradition is one of the oldest and most significant schools of jurisprudence. It dates to the Greek philosopher Aristotle (384–322 B.C.E.), who distinguished between natural law (which applies universally to all humankind) and positive law. The notion that people have "natural rights" (expressed in the Declaration of Independence as "unalienable rights" to "life, liberty, and the pursuit of happiness") stems from the natural law tradition. In essence, the natural law tradition presupposes that the legitimacy of positive, or conventional, law derives from a higher law—natural law. Whenever positive law conflicts with natural law, positive law loses its legitimacy.

Those who claim that a specific foreign government is depriving certain citizens of their human rights, notwithstanding the fact that the government's actions are legal in that country, implicitly are appealing to a higher law that has universal applicability. The question of the universality of basic human rights also comes into play in the context of international business operations. Should rights that extend to workers in this country, such as the right to be free of discrimination in the workplace, be applied to a U.S. firm doing business in another country that does not provide for such rights? Implicitly, this question is rooted in a concept of universal rights that has its origins in the natural law tradition.

LEGAL POSITIVISM At the other end of the spectrum are the legal positivists. **Legal positivists** believe that there can be no higher law than a nation's positive law. Whether a particular law is bad or good is irrelevant. The merits or demerits of a given law can be discussed, and laws can be changed—in an orderly manner through a legitimate lawmaking process—but as long as a law exists, it must be obeyed.

From the positivist perspective, then, the significance of positive law is greater than in the natural law tradition. The positivist approach is rooted in the assumption that there is no such thing as "natural rights." Rather, human rights exist solely because of laws. If the laws are not enforced, anarchy will result. A judge with positivist leanings probably would be more inclined to defer to an existing law than would a judge who adheres to the natural law tradition.

LEGAL REALISM

Another significant question about the nature of law can be phrased as follows: To what extent should changing social customs and practices affect the law? Prior to the 1920s, jurists and legal theorists commonly assumed that the law should change only slowly, if at all, and that sociological and economic data had little relevance in the making of judicial decisions. The idea was that the law should be

applied impartially, logically, and uniformly to all similar situations, regardless of the social and economic context in which a particular dispute arose.

In the 1920s and 1930s, a number of jurists and scholars, known as **legal realists,** rebelled against this conception of the law. The legal realists pointed out that law is a human enterprise and not a set of abstract rules that can be applied uniformly to all cases involving similar facts. Given that judges are human beings with unique personalities, value systems, and intellects, it would be impossible for any two judges to engage in an identical reasoning process when evaluating the same case. Additionally, each case involves a unique set of circumstances—no two cases, no matter how similar, are ever exactly the same. Therefore, judges must take into account the specific circumstances of each case when making their decisions. When making decisions, judges also should consider extra-legal sources, such as economic and sociological data, to the extent that such sources can illuminate the circumstances and issues involved in specific cases. In other words, the law should take social and economic realities into account.

United States Supreme Court Justice Oliver Wendell Holmes, Jr. (1841–1935), and Karl Llewellyn (1893–1962) were both influential proponents of legal realism. Llewellyn is best known for his dominant role in drafting the Uniform Commercial Code (UCC), a set of rules for commercial transactions that will be discussed later in this chapter. The UCC reflects the influence of legal realism in its emphasis on practicality, flexibility, reasonability, and customary trade practices.

JUDICIAL INTERPRETATION OF THE LAW

Oliver Wendell Holmes, Jr., once stated that "the prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law." The final question we explore has to do with the implications of this statement.

Clearly, judges are not free to decide cases solely on the basis of their personal philosophical views or their opinions on the issues before the court. A judge's function is not to make the laws—that is the function of the legislative branch of government—but to interpret and apply them. From a practical point of view, however, the courts play a significant role in defining what the law is. This is because the law is not an exact science, and legal rules tend to be expressed in general terms. Judges thus have some flexibility in interpreting and applying the law. It is because of this flexibility that different courts can—and often do—arrive at different conclusions in cases that involve nearly identical issues, facts, and applicable laws. This flexibility also means that each judge's unique personality, legal philosophy, set of values, and intellectual attributes necessarily frame the judicial decision-making process to some extent.

Part of the study of law is discovering how different approaches to law affect judicial decision making. As you read the cases presented and discussed in this book, keep in mind that how a particular judge or panel of judges approaches an issue in a particular case necessarily has an impact on the outcome of the case. Because of our common law tradition (discussed next), the courts—and thus the personal views and philosophies of judges—play a paramount role in the American legal system. This is particularly true of the United States Supreme Court, which has the final say on how a particular law or legal principle should be interpreted and applied.

SECTION 2

THE COMMON LAW TRADITION

Because of our colonial heritage, much of American law is based on the English legal system, which originated in medieval England and continued to evolve in the following centuries. A knowledge of this system is necessary to an understanding of the American legal system today.

EARLY ENGLISH COURTS

The origins of the English legal system—and the U.S. legal system—date to 1066, when the Normans conquered England. William the Conqueror and his successors began the process of unifying the country under their rule. One of the means they used to this end was the establishment of the king's courts, or *curiae regis.* Before the Norman Conquest, disputes had been settled according to the local legal customs and traditions in various regions of the country. The king's courts sought to establish a uniform set of customs for the country as a whole. What evolved in these courts was the beginning of the **common law**—a body of general rules that prescribed social conduct and applied throughout the entire English realm.

COURTS OF LAW AND REMEDIES AT LAW In the early English king's courts, the kinds of **remedies** (the legal means to recover a right or redress a wrong)

that could be granted were severely restricted. If one person wronged another in some way, the king's courts could award as compensation one or more of the following: (1) land, (2) items of value, or (3) money. The courts that awarded this compensation became known as **courts of law**, and the three remedies were called **remedies at law.** (Today, the remedy at law normally takes the form of **damages**—money given to a party whose legal interests have been injured.) Even though the system introduced uniformity in the settling of disputes, when a complaining party wanted a remedy other than economic compensation, the courts of law could do nothing, so "no remedy, no right."

COURTS OF EQUITY AND REMEDIES IN EQUITY Equity is a branch of law, founded on what might be described as notions of justice and fair dealing, that seeks to supply a remedy when there is no adequate remedy available at law. When individuals could not obtain an adequate remedy in a court of law because of strict technicalities, they petitioned the king for relief. Most of these petitions were decided by an adviser to the king, called a **chancellor,** who was said to be the "keeper of the king's conscience." When the chancellor thought that the claims were fair, new and unique remedies were granted. Eventually, formal chancery courts, or **courts of equity,** were established.

The remedies granted by equity courts became known as **remedies in equity,** or equitable remedies. These remedies include *specific performance* (ordering a party to perform an agreement as promised), an *injunction* (ordering a party to cease engaging in a specific activity or to undo some wrong or injury), and *rescission* (the cancellation of a contractual obligation). We discuss these and other equitable remedies in more detail at appropriate points in the chapters that follow. As a general rule, today's courts, like the early English courts, will not grant equitable remedies unless the remedy at law—money damages—is inadequate.

In fashioning appropriate remedies, judges often were (and continue to be) guided by so-called **equitable maxims**—propositions or general statements of equitable rules. Exhibit 1–1 lists some important equitable maxims. The last maxim listed in that exhibit—"Equity aids the vigilant, not those who rest on their rights"—merits special attention. It has become known as the equitable doctrine of **laches,** and it can be used as a defense. A **defense** is an argument raised by the **defendant** (the party being sued) indicating why the **plaintiff** (the suing party) should not obtain the remedy sought. The doctrine of laches arose to encourage people to bring lawsuits while the evidence was fresh. What constitutes a reasonable time, of course, varies according to the circumstances of the case. Time periods for different types of cases are now usually fixed by **statutes of limitations.** After the time allowed under a statute of limitations has expired, no action can be brought, no matter how strong the case was originally.

LEGAL AND EQUITABLE REMEDIES TODAY

The establishment of courts of equity in medieval England resulted in two distinct court systems: courts of law and courts of equity. The systems had different sets of judges and granted different types of remedies. Parties who sought legal remedies, or remedies at law, would bring their claims before courts of law. Parties seeking equitable relief, or remedies in equity, would bring their claims before courts of equity. During the nineteenth century, however, in the United States, most states adopted rules of procedure that resulted in combined courts of law and equity—although some states, such as Arkansas, still retain the distinction. A party now may request both legal and equitable remedies in the same action, and the trial court judge may grant either form or both forms of relief.

The distinction between legal and equitable remedies remains relevant to students of business

EXHIBIT 1–1 ■ EQUITABLE MAXIMS

- *Whoever seeks equity must do equity.* (Anyone who wishes to be treated fairly must treat others fairly.)
- *When there is equal equity, the law must prevail.* (The law will determine the outcome of a controversy in which the merits of both sides are equal.)
- *One seeking the aid of an equity court must come to the court with clean hands.* (Plaintiffs must have acted fairly and honestly.)
- *Equity will not suffer a right to exist without a remedy.* (Equitable relief will be awarded when there is a right to relief and there is no adequate remedy at law.)
- *Equity regards substance rather than form.* (Equity is more concerned with fairness and justice than with legal technicalities.)
- *Equity aids the vigilant, not those who rest on their rights.* (Equity will not help those who neglect their rights for an unreasonable period of time.)

law, however, because these remedies differ. To seek the proper remedy for a wrong, one must know what remedies are available. Additionally, certain vestiges of the procedures used when there were separate courts of law and equity still exist. For example, a party has the right to demand a jury trial in an action at law, but not in an action in equity. In the old courts of equity, the chancellor heard both sides of an issue and decided what should be done. Juries were considered inappropriate. In actions at law, however, juries participated in determining the outcome of cases, including the amount of damages to be awarded. Exhibit 1–2 summarizes the procedural differences (applicable in most states) between an action at law and an action in equity.

THE DOCTRINE OF *STARE DECISIS*

A unique feature of the common law is that it is *judge-made* law. The body of principles and doctrines that form the common law emerged over time as judges decided actual legal controversies.

CASE PRECEDENTS AND CASE REPORTERS When possible, judges attempted to be consistent and to base their decisions on the principles suggested by earlier cases. They sought to decide similar cases in a similar way and considered new cases with care, because they knew that their decisions would make new law. Each interpretation became part of the law on the subject and served as a legal **precedent**—that is, a decision that furnished an example or authority for deciding subsequent cases involving similar legal principles or facts.

By the early fourteenth century, portions of the more important decisions of each year were being gathered together and recorded in *Year Books*, which became useful references for lawyers and judges. In the sixteenth century, the *Year Books* were discontinued, and other types of publications of cases became available. Today, cases are published, or "reported," in volumes called **reporters**, or *reports*. We describe today's case reporting system in detail later in this chapter.

STARE DECISIS* AND THE COMMON LAW TRADITION** The practice of deciding new cases with reference to former decisions, or precedents, became a cornerstone of the English and American judicial systems. The practice forms a doctrine called ***stare decisis[1] (a Latin phrase meaning "to stand on decided cases"). Under this doctrine, judges are obligated to follow the precedents established within their jurisdictions.

For example, if the Supreme Court of California (that state's highest court) has ruled in a certain way on an issue, that decision will control the outcome of future cases on that issue brought before the California courts. Similarly, a decision on a given issue by the United States Supreme Court (the nation's highest court) is binding on all inferior courts. Case precedents, as well as statutes and other laws that must be followed, are referred to as **binding authorities.** (Nonbinding legal authorities on which judges may rely for guidance, such as precedents established in other jurisdictions, are referred to as *persuasive authorities.*)

The doctrine of *stare decisis* helps the courts to be more efficient, because if other courts have carefully reasoned through a similar case, their legal reasoning and opinions can serve as guides. *Stare decisis* also makes the law more stable and predictable. If the law on a given subject is well settled, someone bringing a case to court can usually rely on the court to make a decision based on what the law has been.

DEPARTURES FROM PRECEDENT Although courts are obligated to follow precedents, sometimes

1. Prononunced *ster*-ay dih-*si*-ses.

EXHIBIT 1–2 ■ PROCEDURAL DIFFERENCES BETWEEN AN ACTION AT LAW AND AN ACTION IN EQUITY

PROCEDURE	ACTION AT LAW	ACTION IN EQUITY
Initiation of lawsuit	By filing a complaint	By filing a petition
Decision	By jury or judge	By judge (no jury)
Result	Judgment	Decree
Remedy	Monetary damages	Injunction, specific performance, or rescission

a court will depart from the rule of precedent if it decides that the precedent should no longer be followed. If a court decides that a ruling precedent is simply incorrect or that technological or social changes have rendered the precedent inapplicable, the court might rule contrary to the precedent. Cases that overturn precedent often receive a great deal of publicity.[2]

WHEN THERE IS NO PRECEDENT Occasionally, cases come before the courts for which no precedents exist. Such cases, called "cases of first impression," often result when new practices or technological developments in society create new types of legal disputes. In the last several years, for example, the courts have had to deal with disputes involving transactions conducted via the Internet. When existing laws governing free speech, pornography, fraud, jurisdiction, and other areas were drafted, cyberspace did not exist. Although new laws are being created to govern such disputes, in the meantime the courts have to decide, on a case-by-case basis, what rules should be applied.

Generally, in deciding cases of first impression, courts may consider a number of factors, including legal principles and policies underlying previous court decisions or existing statutes, fairness, social values and customs, **public policy** (governmental policy based on widely held societal values), and data and concepts drawn from the social sciences. Which of these sources is chosen or receives the greatest emphasis depends on the nature of the case being considered and the particular judge or judges hearing the case. As mentioned previously, judges are not free to decide cases on the basis of their own personal views. In cases of first impression, as in all cases, judges must have legal reasons for deciding as they do on particular issues. When a court issues a written opinion on a case (we discuss court opinions later in this chapter), the opinion normally contains a carefully reasoned argument justifying the decision.

2. For example, when the United States Supreme Court held in the 1950s that racial segregation in the public schools was unconstitutional, it expressly overturned a Supreme Court precedent upholding the constitutionality of "separate-but-equal" segregation. The Supreme Court's departure from precedent received a tremendous amount of publicity as people began to realize the ramifications of this change in the law. See *Brown v. Board of Education of Topeka*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954). (Legal citations are explained later in this chapter.)

STARE DECISIS AND LEGAL REASONING

Legal reasoning is the reasoning process used by judges in deciding what law applies to a given dispute and then applying that law to the specific facts or circumstances of the case. Through the use of legal reasoning, judges harmonize their decisions with decisions that have been made before—which the doctrine of *stare decisis* requires.

Students of business law also engage in legal reasoning. For example, you may be asked to provide answers for some of the case problems that appear at the end of every chapter in this text. Each problem describes the facts of a particular dispute and the legal question at issue. If you are assigned a case problem, you will be asked to determine how a court would answer that question and why. In other words, you will need to give legal reasons for whatever conclusion you reach. We look here at the basic steps involved in legal reasoning and then describe some forms of reasoning commonly used by the courts in making their decisions.

BASIC STEPS IN LEGAL REASONING At times, the legal arguments set forth in court opinions are relatively simple and brief. At other times, the arguments are complex and lengthy. Regardless of the brevity or length of a legal argument, however, the basic steps of the legal reasoning process remain the same in all cases. These steps, which you also can follow when analyzing cases and case problems, can best be described as a series of questions.

1. *What are the key facts and issues?* For example, suppose that a plaintiff comes before the court claiming *assault* (a wrongful and intentional action, or *tort*, in which one person makes another fearful of immediate physical harm). The plaintiff claims that the defendant threatened her while she was sleeping. Although the plaintiff was unaware that she was being threatened, her roommate heard the defendant make the threat. The legal issue, or question, raised by these facts is whether the defendant's actions in fact constitute the tort of assault, given that the plaintiff was not aware of those actions at the time they occurred.
2. *What are the relevant rules of law?* Because the plaintiff **alleges** (claims) that the defendant committed a tort, the applicable law is the common law of torts—specifically, tort law governing assault (see Chapter 6 for more detail on torts). Case precedents

involving similar facts and issues thus would be relevant.

3. *How do the relevant rules of law apply to the particular facts and circumstances of this case?* This step is often the most difficult one, because each case presents a unique set of facts, circumstances, and parties. Although there may be similar cases, no two cases are ever identical in all respects. Normally, judges (and lawyers and law students) try to find **cases on point**—previously decided cases that are as similar as possible to the one under consideration. (Because of the difficulty—and importance—of this step in the legal reasoning process, we discuss it in more detail in the next subsection.)

4. *What conclusion should be drawn?* This step normally presents few problems. Usually, the conclusion is evident if the previous three steps have been followed carefully.

FORMS OF LEGAL REASONING Judges use many types of reasoning when following the third step of the legal reasoning process—applying the law to the facts of a particular case. Three common forms of reasoning are deductive reasoning, linear reasoning, and reasoning by analogy.

Deductive Reasoning. Deductive reasoning is sometimes called *syllogistic* reasoning because it employs a **syllogism**—a logical relationship involving a major premise, a minor premise, and a conclusion. For example, consider the example given earlier, in which the plaintiff alleged that the defendant committed assault by threatening her while she was sleeping. The judge might point out that "under the common law of torts, an individual must be *aware* of a threat of danger for the threat to constitute civil assault" (major premise); "the plaintiff in this case was unaware of the threat at the time it occurred" (minor premise); and "therefore, the circumstances do not amount to a civil assault" (conclusion).

Linear Reasoning. A second important form of commonly employed legal reasoning might be thought of as "linear" reasoning, because it proceeds from one point to another, with the final point being the conclusion. An analogy will help make this form of reasoning clear. Imagine a knotted rope, with each knot tying together separate pieces of rope to form a tight length. As a whole, the rope represents a linear progression of thought logically connecting various points, with the last point, or knot, representing the conclusion. For example, suppose that a tenant in an apartment building sues the landlord for damages for an injury resulting from an allegedly dimly lit stairway. The court may engage in a reasoning process involving the following "pieces of rope":

1. The landlord, who was on the premises the evening the injury occurred, testifies that none of the other nine tenants who used the stairway that night complained about the lights.
2. The fact that none of the tenants complained is the same as if they had said the lighting was sufficient.
3. That there were no complaints does not prove that the lighting was sufficient but proves that the landlord had no reason to believe that it was not.
4. The landlord's belief was reasonable, because no one complained.
5. Therefore, the landlord acted reasonably and was not negligent in respect to the lighting in the stairway.

On the basis of this reasoning, the court concludes that the tenant is not entitled to compensation on the basis of the stairway's lighting.

Reasoning by Analogy. Another important form of reasoning that judges use in deciding cases is reasoning by *analogy*. To reason by **analogy** is to compare the facts in the case at hand to the facts in other cases and, to the extent that the patterns are similar, to apply the same rule to the case at hand. To the extent that the facts are unique, or "distinguishable," different rules may apply. For example, in case A, it is held that a driver who crosses a highway's center line is negligent. In case B, a driver crosses the line to avoid hitting a child. In determining whether case A's rule applies in case B, a judge would consider what the reasons were for the decision in A and whether B is sufficiently similar for those reasons to apply. If the judge holds that B's driver is not liable, that judge must indicate why case A's rule does not apply to the facts presented in case B.

THERE IS NO ONE "RIGHT" ANSWER

Many persons believe that there is one "right" answer to every legal question. In most situations involving a legal controversy, however, there is no single correct result. Good arguments can often be made to support either side of a legal controversy. Quite often, a case does not present the situation of a "good" person suing a "bad" person. In many cases, both parties

CONCEPT SUMMARY 1.1 The Common Law Tradition

ELEMENT	DESCRIPTION
Origins of the Common Law	The American legal system is based on the common law tradition, which originated in medieval England. Following the conquest of England in 1066 by William the Conquerer, king's courts were established throughout England, and the common law was developed in these courts.
Legal and Equitable Remedies	The distinction between remedies at law (money or items of value, such as land) and remedies in equity (including specific performance, injunction, and rescission of a contractual obligation) originated in the early English courts of law and courts of equity, respectively.
Case Precedents and the Doctrine of *Stare Decisis*	In the king's courts, judges attempted to make their decisions consistent with previous decisions, called precedents. This practice gave rise to the doctrine of *stare decisis*. This doctrine, which became a cornerstone of the common law tradition, obligates judges to abide by precedents established in their jurisdictions.
***Stare Decisis* and Legal Reasoning**	Legal reasoning refers to the reasoning process used by judges in applying the law to the facts and issues of specific cases. Legal reasoning involves becoming familiar with the key facts of a case, identifying the relevant legal rules, linking those rules to the facts, and forming a conclusion. In linking the legal rules to the facts of a case, judges may use deductive reasoning, linear reasoning, or reasoning by analogy.

have acted in good faith in some measure or have acted in bad faith to some degree.

Additionally, as already mentioned, each judge has his or her own personal beliefs and philosophy, which shape, at least to some extent, the process of legal reasoning. What this means is that the outcome of a particular lawsuit before a court can never be predicted with absolute certainty. In fact, in some cases, even though the weight of the law would seem to favor one party's position, judges, through creative legal reasoning, have found ways to rule in favor of the other party in the interests of preventing injustice.

SECTION 3
SOURCES OF AMERICAN LAW

There are numerous sources of American law. *Primary sources of law*, or sources that *establish* the law, include the following:

1. The U.S. Constitution and the constitutions of the various states.
2. Statutes, or laws, passed by state legislatures.
3. Regulations created by administrative agencies, such as the Food and Drug Administration.
4. Case law and common law doctrines.

We describe each of these important sources of law in the following pages.

Secondary sources of law are books and articles that summarize and clarify the primary sources of law. Examples are legal encyclopedias, treatises, and articles in law reviews. Courts often refer to secondary sources of law for guidance in interpreting and applying the primary sources of law discussed here.

CONSTITUTIONAL LAW

The federal government and the states have separate written constitutions that set forth the general organization, powers, and limits of their respective governments. **Constitutional law** is the law as expressed in these constitutions.

The U.S. Constitution is the supreme law of the land. As such, it is the basis of all law in the United States. A law in violation of the Constitution, no matter what its source, will be declared unconstitutional and will not be enforced. Because of its importance in the American legal system, we present the complete text of the U.S. Constitution in Appendix B.