Chapter 1

The Constitutional Foundations

Answers to Learning Objectives/ For Review Questions at the Beginning and

the End of the Chapter

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

1A Sources of law

Primary sources of law are sources that establish the law. In the United States, these include the U.S. Constitution and the state constitutions, statues passed by Congress and the state legislatures, regulations created by adminis­trative agen­cies, and court decisions, or case law.

2A Precedent

Judges attempt to be consistent, and when possible, they base their decisions on the principles suggested by earlier cases. They seek to decide similar cases in a similar way and consider new cases with care, because they know that their con­flicting decisions make new law. Each interpretation becomes part of the law on the subject and serves as a legal precedent—a decision that fur­nishes an example or authority for deciding subsequent cases involving simi­lar legal principles or facts. A court will depart from the rule of a precedent when it decides that the rule should no longer be followed. If a court decides that a precedent is simply incor­rect or that technological or social changes have rendered the precedent inappli­cable, the court might rule contrary to the precedent.

3A Remedies

An award of compensation in either money or property, including land, is a rem­edy at law. Remedies in equity include the following:

1. A decree for specific performance (an order to perform what was promised).

2. An injunction (an order directing a party to do or refrain from doing a particular act).

3. A rescission (cancellation) of a con­tract (and a return of the parties to the positions that they held before the contract’s formation).

As a rule, courts will grant an equitable remedy only when the remedy at law (monetary damages) is inade­quate. Remedies in equity on the whole are more flexible than remedies at law.

4A Commercial activities

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

5A Bill of Rights

The Bill of Rights consists of the first ten amendments to the U.S. Constitution. Adopted in 1791, the Bill of Rights embodies protections for individuals against interference by the federal government. Some of the protections also apply to business entities. The First Amendment guarantees the freedoms of religion, speech, and the press, and the rights to assemble peaceably and to petition the government.

Answers to Critical Thinking

Questions in the Features

Beyond Our Borders— Critical Thinking (Page 10)

Does the civil law system offer any advantages over the common law sys­tem, or vice versa? The positive and negative aspects of the characteris­tics of each legal system make up its advantages and disadvantages. For ex­ample, on the one hand, a civil law system relies on a code of laws without re­gard to precedent. When a statute is clear, this can make the application of law more standard. When a statute is ambiguously phrased, it can be subject to dif­ferent interpreta­tions, however, which can lead to unpredictable applications. On the other hand, in a common law system, reliance on precedent is required, which can render the application of an unclear statute more predictable, at least in a give jurisdiction. But a statute that is not clearly phrased may not be uniformly interpreted and applied across jurisdictions.

Adapting the Law to the Online Environment—Critical Thinking (Page 18)

How might the outcome of this case have been different if the girls had posted the photos on the high school’s public Web site for all to see? Pre­sumably, such speech could reasonably be restricted by high school administra­tors. There would be no question that suggestive photos viewed on the high school’s public Web site could and would certainly be seen by most students, teachers, and parents.

Linking Business Law to Management— Critical Thinking (Page 29)

Why are owner/operators of small businesses at a comparative disad­vantage relative to large corporations when they attempt to decipher complex regulations that apply to their businesses? The larger the corpo­ra­tion, the larger the staff of attorneys either within the company or available out­side the company (so-called outside counsel). Consequently, when a new complex regulation is put into place by an administrative agency, the staff of the large cor­poration can focus on that new regulation. Whatever the cost of deciphering such a new regulation, that cost will be spread out over a much larger volume of goods or services that the large corporation sells. In contrast, a small business owner/operator rarely can pay significant fees to a specialized attorney who might help in deciphering the new regulation. Not only does the small business owner/operator have fewer financial resources, she or he can­not spread the cost of the specialized attorney over a large volume of goods or services sold.

Answers to Critical Thinking

Questions in the Cases

Case 1.2—What If the Facts Were Different? (Page 19)

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

Case 1.3—What If the Facts Were Different? (Page 22)

Suppose that Mitchell County had passed an ordinance that allowed the Mennonites to continue to use steel cleats on the newly resurfaced roads provided that the drivers paid a $5 fee each time they were on the road. Would the court have ruled differently? Why or why not? The Mennonites would still have been singled out for differential treatment under the law because of their use of steel cleats. Therefore, the court probably would have ruled simi­larly. Only if those who used snow chains and metal-studded snow tires were similarly asked to pay a fee would the court possibly have ruled otherwise.

Answers to Questions in the Reviewing Feature

at the End of the Chapter

1A. Equal protection

When a law or action limits the liberty of some persons but not others, it may vi­olate the equal protection clause. Here, because the law applies only to mo­torcy­cle operators and passengers, it raises equal protection issues.

2A. Levels of scrutiny

The three levels of scrutiny that courts apply to determine whether the law or ac­tion violates equal protection are strict scrutiny (if fundamental rights are at stake), intermediate scrutiny (in cases involving discrimination based on gender or legitimacy), and the “rational basis” test (in matters of economic or social welfare).

3A. Standard

The court would likely apply the rational basis test, because the statute regu­lates a matter of social welfare by requiring helmets. Similar to seat-belt laws and speed limits, a helmet statute involves the state’s attempt to protect the welfare of its citizens. Thus, the court would consider it a matter a social wel­fare and re­quire that it be rationally related to a legitimate government objective.

4A. Application

The statute is probably constitutional, because requiring helmets is rationally re­lated to a legitimate government objective (public health and safety). Under the rational basis test, courts rarely strike down laws as unconstitutional, and this statute will likely further the legitimate state interest of protecting the welfare of citizens and promoting safety.

Answer to Debate This Question in the Reviewing Feature at the End of the Chapter

 Legislation aimed at protecting people from themselves concerns the individual as well as the public in general.  Protective helmet laws are just one example of such legislation.  Should individuals be allowed to engage in unsafe activities if they choose to do so? Certainly many will argue in favor of individual rights.  If certain people wish to engage in risky activities such as riding motorcycles without a helmet, so be it.  That should be their choice.  No one is going to argue that motorcycle riders believe that there is zero danger when riding a motorcycle without a helmet.  In other words, individuals should be free to make their own decisions and consequently, their own mistakes.

 In contrast, there is a public policy issue involved.  If a motorcyclist injures him- or herself in an accident because he or she was not wearing a protective hel­met, society ends up paying in the form of increased medical care expenses, lost productivity, and even welfare for other family members.  Thus, the state has an interest in protecting the public in general by limiting some individual rights.

Answers to Issue Spotters in the ExamPrep Feature at the End of the Chapter

1A Apples & Oranges Corporation learns that a federal administra­tive agency is considering a rule that will have a negative impact on the firm’s ability to do business. Does the firm have any opportunity to express its opin­ion about the pending rule? Explain. Yes. Administrative rulemaking starts with the publication of a notice of the rulemaking in the Federal Register. Among other details, this notice states where and when the proceedings, such as a public hearing, will be held. Proponents and opponents can of­fer their comments and concerns regarding the pending rule. After reviewing all the comments from the proceedings, the agency’s decision makers consider what was presented and draft the final rule.

2A Can a state, in the interest of energy conservation, ban all adver­tis­ing by power utilities if conservation could be accomplished by less re­strictive means? Why or why not? No. Even if commercial speech is not re­lated to illegal activities nor mis­leading, it may be re­stricted if a state has a substantial interest that cannot be achieved by less restrictive means. In this case, the inter­est in energy con­servation is substantial, but it could be achieved by less restric­tive means. That would be the utilities’ defense against the enforcement of this state law.

Answers to Questions and Case Problems

at the End of the Chapter

Business Scenarios and Case Problems

1–1A Binding v. persuasive authority

 (BLTE page 6)

A decision of a court is binding on all inferior courts. Because no state’s court is inferior to any other state’s court, no state’s court is obligated to follow the deci­sion of another state’s court on an issue. The decision may be persuasive, how­ever, depending on the nature of the case and the particular judge hearing it. A decision of the United States Supreme Court on an issue is binding, like the deci­sion of any court, on all inferior courts. The United States Supreme Court is the nation’s highest court, however, and thus, its decisions are bind­ing on all courts, including state courts.

1–2A Question with Sample Answer—Sources of law

The U.S. Constitution is the supreme law of the land. A law in violation of the Constitution, no matter what its source, will be declared uncon­sti­tutional and will not be enforced. In this problem, the court determined that a Massachusetts state statute was in conflict with the U.S. Constitution. The Constitution takes priority, so the statute will not be enforced.

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

1–3A Due process

 (BLTE page 23)

To adequately claim a due process violation, a plaintiff must allege that he was deprived of “life, liberty, or property” without due process of law. A faculty mem­ber’s academic reputation is a protected interest. The question is what process is due to deprive a faculty member of this interest and in this case whether Gun­asekera was provided it. When an employer inflicts a public stigma on an em­ployee, the only way that an employee can clear his or her name is through pub­licity. Gunasekera’s alleged injury was his public association with the plagiarism scandal. Here, the court reasoned that “a name-clearing hearing with no public component would not address this harm because it would not alert members of the public who read the first report that Gunasekera challenged the allegations. Sim­ilarly, if Gunasekera’s name was cleared at an unpublicized hearing, members of the public who had seen only the stories accusing him would not know that this stigma was undeserved.” Thus the court held that Gunasekera was entitled to a public name-clearing hearing.

1–4A The commerce clause

(BLTE pages 11–13)

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

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

1–5A Case Problem with Sample Answer—Establishment clause

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

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

1–6A Spotlight on AOL—Common law

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

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

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

1–7A The dormant commerce clause

 (BLTE page 14)

The court ruled that like a state, Puerto Rico generally may not enact policies that discriminate against out-of-state commerce. The law requiring companies that sell cement in Puerto Rico to place certain labels on their products is clearly an at­tempt to regulate the cement market. The law imposed labeling regulations that affect transactions between the citizens of Puerto Rico and private companies. State laws that on their face discriminate against foreign commerce are almost always invalid, and this Puerto Rican law is such a law. The discriminatory la­beling requirement placed sellers of cement manufactured outside Puerto Rico at a competitive disadvantage. This law therefore contravenes the dormant com­merce clause.]

1–8A A Question of Ethics—Free speech

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

 Arguments in favor of protecting such statements include the perception of the right to freedom of speech as necessary to liberty and a free society. Argu­ments opposed to such protection include “the social interest in order and moral­ity.” In between these positions might fall a balancing of both their con­cerns. Un­der any interpretation the de­gree to which statements can be barred before they are made is a significant question.

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

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

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

 Finally, an outcome-based approach focuses on the consequences of an act, requir­ing a determination as to whom it affects and assessments of its costs and benefits, as well as those of alternatives. The goal is to seek the maximum societal utility. Here, Lemen’s behavior appears to have had little positive effect on herself or the objects of her criticism (the Inn, its employees, its patrons, and its busi­ness). The Inn’s business seems to have been affected in a substantial way, which in Lemen’s eyes may be a “benefit,” but in the lives of its owners, employees, and customers, would more likely be seen as a “cost.”

Critical Thinking and Writing Assignments

1–9A Business Law Writing

John’s argument is valid. Under the doctrine of stare decisis, judges are gener­ally bound to follow the precedents set in their jurisdictions by the judges who have decided similar cases. A judge does not always have to rule as other judges have, however, A judge can depart from precedent. One argument that a party might offer to counter an assertion of precedent is that the times have changed—the so­cial, economic, political, or other cir­cumstances have changed—and thus it is time to change the law.

1–10A Business Law Critical Thinking Group Assignments—Court opinions

 1. The rules in this problem regulate the content of expression. Such rules must serve a compelling governmental interest and must be narrowly writ­ten to achieve that interest. In other words, for the rules to be valid, a compelling governmental interest must be furthered only by those rules. To make this deter­mination, the government’s interest is balanced against the individual’s constitu­tional right to be free of the rules. For example, a city has a legitimate interest in banning the littering of its public areas with paper, but that does not justify a prohibition against the public distribution of handbills, even if the recipients often just toss them into the street. In this problem, the prohibition against young adults' possession of spray paint and markers in public places imposes a substan­tial burden on innocent expression because it applies even when the individuals have a legitimate purpose for the supplies. The contrast between the numbers of those cited for violating the rules and those arrested for actually making illegal graffiti also undercuts any claim that the interest in eliminating illegal graffiti could not be achieved as effectively by other means.

 2. The rules in this problem do not regulate the content of expression—they are not aimed at suppressing the expressive conduct of young adults but only of that conduct being fostered on unsuspecting and unwilling audiences. The re­strictions are instead aimed at combating the societal problem of criminal graffiti. In other words, the rules are content neutral. Even if they were not entirely con­tent neutral, expression is always subject to reasonable restrictions. Of course, a balance must be struck between the government’s obligation to protect its citizens and those citizens’ exercise of their right. But the rules at the center of this prob­lem meet that standard. Young adults have other creative outlets and other means of artistic expression available.

 3. Under the equal protection clause of the Fourteenth Amendment, a state may not “deny to any person within its jurisdiction the equal protection of the laws.” This clause requires a review of the substance of the rules. If they limit the liberty of some person but not others, they may violate the equal protection clause. Here, the rules apply only to persons under the age of twenty-one. To suc­ceed on an equal protection claim, opponents should argue that the rules should be subject to strict scrutiny—that the age restriction is similar to restrictions based on race, national origin, or citizenship. Under this standard, the rules must be necessary to promote a compelling governmental interest. The argument would be that they are not necessary—there are other means that could accomplish this objective more effectively. Alternatively, opponents could argue that the rules should be subject to intermediate scrutiny—that the age restriction is similar to restrictions based on gender or legitimacy. Under this level of scrutiny, the re­strictions must be substantially related to an important government objective. In this problem, the contrast between the numbers of those cited for violating the rules and those arrested for actually making illegal graffiti undermines any claim that the restrictions are substantially related to the interest in eliminating illegal graffiti. If neither of these arguments is successful, opponents could cite these same numbers to argue that the rules are not valid because there is no rational basis on which their restrictions on certain persons relate to a legitimate govern­ment interest.

Answer to Critical Analysis Question

in Appendix Exhibit 1A.3

Exhibit 1A.3—Critical Thinking (Page 42)

Ethical Consideration Was the government’s conduct ethical? Why or why not? Law enforcement officers know the law that applies to searches. Because they acted contrary to that law in this case, it could be argued that they acted not only illegally but also unethically.