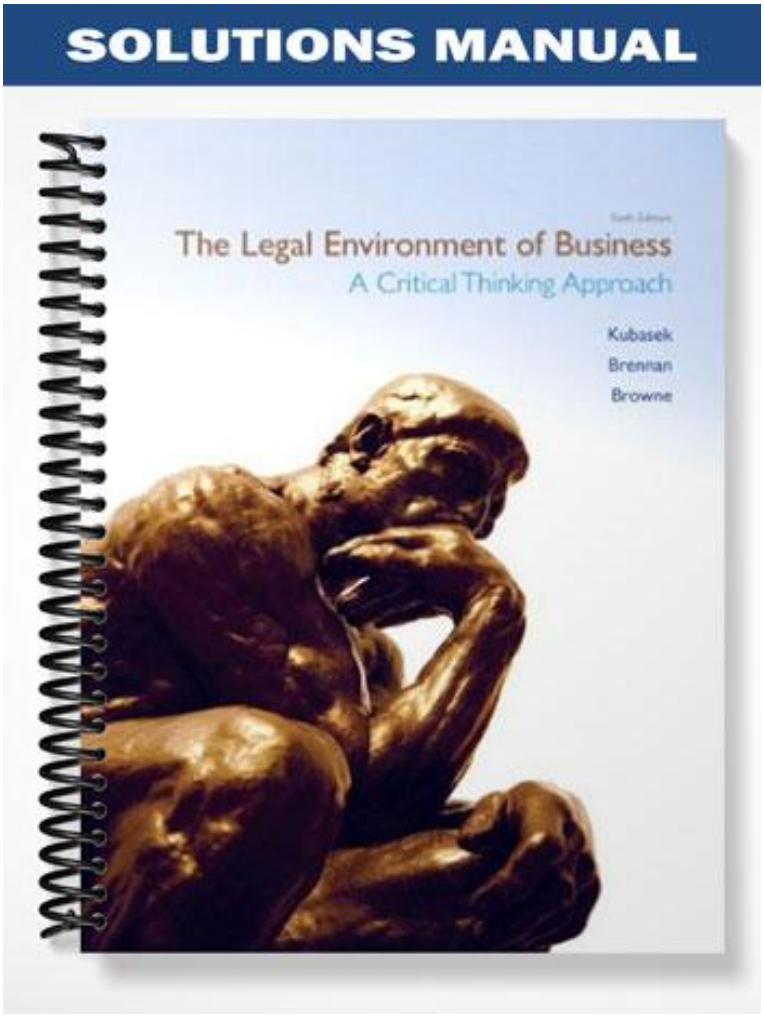
SOLUTIONS MANUAL



Chapter Two: Introduction to Law and the Legal Environment of Business

INTRODUCTION

To promote an environment in which you and the students have a question-asking attitude, present each chapter as one that address several questions.

Chapter Two addresses these questions:

- How can we define the legal environment of business?
- How can we define law and jurisprudence? Do alternative definitions of law exist?
- Where does law come from?
- How can we classify law?
- What are global dimensions of the legal environment of business?

Chapter Two is significant because it provides background information that influences the way students think about cases and legal ideas. When I teach this chapter, I emphasize the significance of considering alternative perspectives.

ACHIEVING TEACHING EXCELLENCE

Creating a Student-Centered Classroom That Promotes Students' Intellectual Development

You probably chose this textbook over others in part because you wanted to encourage your students to engage in critical thinking about the law. This goal is important. To achieve this goal, you will want your students and their intellectual development to be the focus of what happens in class.

First, this section explains alternative perspectives on how to conduct class. Second, this section will explain why a specific type of student-centered classroom is likely to help you achieve your goal of encouraging your students to engage in critical thinking.

In *The University Teacher as Artist*, Joseph Axelrod describes different teaching styles. Axelrod classifies these teaching styles. One major category includes didactic styles. Didactic teaching styles do not encourage inquiry by the student. The other category includes evocative styles. These styles require student inquiry when completing the tasks the instructor has assigned.

Axelrod explains that didactic teaching styles stress either knowledge acquired by memorization, or skill mastery through repetition and practice. Evocative modes stress

student inquiry and discovery. A teaching style that encourages critical thinking is an evocative style.

Within the category of evocative styles, different teaching styles emphasize different components. Some styles focus on the teacher, some on the learner, and some on the subject matter. A teaching style that stresses critical thinking is an evocative style that focuses on the learner and his or her understanding of course material. Axelrod would call this style a student-centered style rather than an instructor-centered style. A critical thinking approach assumes the teacher will create a classroom environment in which the students' intellectual development is the focus of classroom attention. A teacher who uses this approach would be likely to say what a professor in Axelrod's book says, "I train minds." Promoting critical thinking is one way to train students' minds.

Note that the emphasis on students' intellectual development is most consistent with the higher-order thinking skills explained in Chapter One of this *Instructor's Manual*.

How will you know whether you have created a student-centered classroom that emphasizes intellectual development? First, you will be talking less and listening to your students more. Second, you will be emphasizing higher-order thinking skills rather than asking your students to recite principles and facts. Third, you will be observing how your students are doing at grasping the critical thinking model. They should not be watching you to see what a good critical thinker you are. Fourth, class time will be spent working with the material, rather than making sure you've "covered" everything.

If you would like to read more of Axelrod's book, here is the cite:
Joseph Axelrod, *The University Teacher as Artist* (Jossey-Bass, Inc., Publishers 1973).

CHAPTER OVERVIEW, TOPIC OUTLINE, AND DISCUSSION QUESTIONS

Chapter Overview

Instructors who want to encourage students to work with the material in class sometimes realize they cannot always "cover" all the material in the book. After several years of not covering everything, I am comfortable knowing that the material I encourage students to work on in class is understood by most of the students in the class. I choose parts of each chapter that are especially challenging or confusing. This is the material that deserves the most attention in class. So, for each chapter, I focus on specific ideas to work on in class. Some chapter material is easy, and students pick it up well on their own.

In Chapter Two, the material that is the most challenging or confusing falls into these subsections:

- Definition of Law and Jurisprudence
- Classifications of Law

After presenting a topic outline for Chapter Two, this section provides discussion questions that help students increase their understanding of the material presented in the two sections listed above.

Topic Outline

I. Definition of the Legal Environment of Business

II. Definition of Law and Jurisprudence

- A. Natural Law School
- B. Positivist School
- C. Sociological School
- D. American Realist School
- E. Critical Legal Studies
- F. Feminist Jurisprudence
- G. Law and Economics School

III. Sources of Law

- A. The Legislature as a Source of Statutory Law
- B. Steps in the Legislative Process
- C. The Judicial Branch as a Source of Case Law
  - 1. Case Law Precedents and the Internet
- D. The Executive Branch as a Source of Law
  - 1. Treaty Making
  - 2. Executive Orders
- E. Administrative Agencies as a Source of Law

IV. Classifications of Law

- A. Criminal Law and Civil Law

B. Public and Private Law

C. Substantive and Procedural Law

V. Global Dimensions of the Legal Environment of Business

VI. Summary

Discussion Questions for Chapter Two

1. In answering the question "What is Law?", why is it appropriate to answer, "It depends?"

   The question "What is Law?" is not as straightforward as it appears. Most people would give an answer that shows their understanding and acceptance of the positivist school of jurisprudence. However, a person's answer to the question "What is Law?" depends on which school of jurisprudence the person prefers. For instance, a positivist thinker might say that law is a set of rules created by the legislature that people must follow or they will be punished or fined. A critical legal studies scholar might say law is an institution that protects those in power. Notice the difference in those two answers! Given the wide range of beliefs about the definition of law, it is wise to say the answer to the question depends on the school of jurisprudence a person prefers.

2. How would you decide which school of jurisprudence a particular judge prefers?

   This question triggers many reminders. First, a judge, legal scholar, or thinker might agree with more than one school of jurisprudence, or with some elements of more than one school of jurisprudence. For instance, feminist legal scholars and critical legal scholars share some beliefs. It could be possible to agree with both of those theories to some extent. Second, judges, legal scholars, and thinkers rarely announce their preferred school of jurisprudence. (Some might even be confused about the schools of jurisprudence!) To figure out the view a judge prefers, we would need to read their legal decisions and scholarly writings carefully. We infer their views from what their writings or what they say in public about a particular decision.

3. Which schools of jurisprudence probably have the fewest followers within the legal community?

   Probably, critical legal studies and feminist views of jurisprudence have the fewest followers. Both evaluate the legal system in a structural way; they question the very structure of law as a societal institution. Most followers of these schools are legal scholars rather then judges or practicing attorneys. People engaged in the daily

practice of law might want some kind of incremental legal reform, but they are unlikely to question law in a structural way or advocate major changes.

4. Create a fact situation that could end as both a civil and a criminal lawsuit.

   Encourage your students to be creative with this one. What if a bank robber were injured while committing a bank robbery? After collecting the money, it exploded in his pockets because a device attached to the money was poorly designed. The robber would be prosecuted for the crime of bank robbery, and could sue the manufacturer of the exploding device under civil law. (This was a real case. The robber sued the manufacturer from jail, and lost.) A more realistic and common example would be one in which someone engaged in driving while under the influence of alcohol, caused a car accident, and injured someone. The driver would be prosecuted under criminal law, and the injured parties could sue the driver civilly.

5. Explain how a court's decision (case law) might lead to changes in legislation (statutory law). Do you know of any situations in which that happened?

   A legislature (either state or federal) might be so concerned about a judge's decision that it will pass a law that in effect reverses the judge's decision. One example is the Civil Rights Act of 1991, which changed several decisions the U.S. Supreme Court had rendered. Congress was changing the Supreme Court's decisions by changing statutory law.

ANSWERS TO CRITICAL THINKING ABOUT THE LAW QUESTIONS, CASE SUMMARIES, AND ANSWERS TO CASE QUESTIONS

Critical Thinking about the Law—Suggested Answers

1. Learning about relevant laws regarding business helps us understand what the law is, but does not help us evaluate legal arguments. The critical thinking questions that help us evaluate legal arguments are:

   - Does the legal argument contain significant ambiguity?
   - What ethical norms are fundamental to the Court's reasoning?
   - How appropriate are the legal analogies?
   - Is there relevant missing information?

   The question about ethical norms most clearly addresses the ethical component of the legal environment of business. Knowing the ethical norms that are fundamental to a court's reasoning helps us decide whether to accept or reject the court's conclusion.

2. Knowing the school of thought the judge prefers helps us critically evaluate a judge's reasoning because we can determine the assumptions the judge makes.

For instance, if we know the judge prefers the critical legal studies view of jurisprudence, we know the judge would favor structural change in the legal system—he or she does not have to tell us. We would also know the judge is likely to prefer a definition of justice defined as to treat all humans identically, regardless of class, race, gender, age, and so on. The critical legal studies movement strives to point out how the legal system perpetuates inequality.

3. You might want to ask the lawyer whether your mutual respect for a particular school of jurisprudence will bring about the action you want. For instance, mutual respect for natural law might yield interesting discussions between you and your attorney, but it will do little to help you pursue the landlord. You would also want to ask the lawyer basic questions about competence. What is the lawyer's area of expertise? Does the lawyer have time to take on a case like yours? What is the lawyer's fee?

EXTENDING CRITICAL THINKING

This section presents a *Wall Street Journal* editorial, and asks critical thinking questions about the editorial. Additionally, it asks questions that relate to the material Chapter Two presented.

California Dreamin'
The Wall Street Journal, August 10, 2001

You know you're in trouble when the folks out in California start making sense. Especially on an issue that mixes assault weapons and trial lawyers. But sanity prevailed this week, and that's news in itself.

We refer to Monday's decision by the California Supreme Court that a Miami-based gun manufacturer could not be sued because a murderer used two of its semiautomatic pistols. Brought by the families of the victims of a deranged businessman who in 1993 went on a shooting spree in a San Francisco skyscraper, the suit was originally thrown out by a superior court judge. Two years later, however, a state appellate court reinstated the suit, becoming the first in the nation to rule that gunmakers could be held civilly responsible for the criminal use of their weapons. Once again, California appeared on the cutting edge of jurisprudence fashion.

That's why the Court's actual ruling is so devastating for those playing the tort racket. Politically speaking, it was the ideal script. In 1993 Gian Luigi Ferri walked into law offices at 101 California Street in San Francisco and opened fire with two weapons made by Florida-based Navegar; before he took his own life, Ferri—who blamed the law firm for financial misfortunes—managed to kill eight people and injure six others in what proved the worst mass shooting in California history. As a personal injury lawyer told the San Francisco Chronicle earlier this year, "It's hard to imagine a more attractive set of facts in a case against a gun manufacturer."

Though the suit was backed by a number of anti-gun lobbies, what was really at stake here was not imposing more restrictions on guns but opening a new vein of litigation for the trial lawyers. The claim was, as the lawyer for the families put it, that Navegar was guilty of "selling to the general public a weapon designed precisely for the use it was put to at 101 California Street." In other words, far from asserting Navegar had promoted a *defective* product, the implicit contention was that the "defect" was selling a legal product to the general public.

In throwing out this claim, California's high court did something all too rare in American courtrooms these days: It actually went back to the law. For the case against Navegar was complicated by a state law that specifically exempted gunmakers from such suits, a law that in fact reflected the legislature's reaction to a spate of lawsuits from victims of other handgun violence. In its 5-to-1 majority decision, the court quoted from the original Senate analysis of the bill, where among the purposes listed was "to 'stop at birth' the notion that manufacturers and dealers are liable in products liability to victims of handgun usage."

That's all the more reason to celebrate the court's refusal to twist tort law to settle highly politicized scores that ought to be dealt with either in the legislature or the criminal courts. In the same year that Ferri went on his rampage in San Francisco, a fertilizer bomb planted by terrorists went off in the World Trade Center; and two years later, Timothy McVeigh would also use fertilizer to set off an even more powerful bomb in the Oklahoma City federal building. Result: two separate lawsuits against fertilizer manufacturers. This logic, which is waved into courts constantly, is destructive of respect for the core purposes of a legal system.

The good news is that the plaintiffs' bar has been delivered a major rebuff, at least for the moment. In addition to Monday's ruling from California, New York's highest court in April shot down a similar attempt against gun manufacturers. Alas, mischief is a great deal easier for tort lawyers to initiate than it is for judges, juries and legislatures to sort out. But given the emphasis California's high court's insistence on upholding state law rather than rewriting it, this is one West Coast trend we'd like to see catch on.

Chapter Two

Critical Thinking Questions

1. What is the conclusion of the editorial?

   The editorial concludes that California's Supreme Court ruled correctly that a gun maker cannot be held civilly responsible for the criminal use of weapons.

2. Identify an ambiguous word or phrase that affects your ability to accept the author's conclusion.

   One ambiguous phrase is "core purposes of a legal system," which is at the end of the second-to-last paragraph. The editor suggests that the plaintiffs' bar destroys respect for the "core purpose of the legal system" when it brings certain kinds of lawsuits. If security for victims of gun violence (and other crime and accident victims) is a core purpose of the legal system, then it is difficult for me to accept the editor's conclusion.

3. Is there relevant missing information?

   I would like to know why the state appellate court reinstated the initial lawsuit. What was its rationale? The reader needs to know some of the strong arguments on this other side of this issue before reaching a decision.

Relating the Editorial to Course Material

4. Which school of jurisprudence does the editor of *The Wall Street Journal* prefer?

   The editor prefers the positivist school. The editor shows a preference for respecting rules established by the legislature. The editor praises California's Supreme Court because it "actually went back to the law."

5. Which school of jurisprudence might provide a basis for changing the law with regard to the liability of gun makers?

   It is possible that the sociological school provides support for changing the law. If members of the relevant community decide that holding gun makers civilly responsible is a good way to reduce violent crime, a judge who is responsive to community beliefs will hold companies such as Navegar responsible. In fact, the legislature could respond to the community and repeal the law that protects gun makers from civil liability.

ANSWERS TO REVIEW QUESTIONS

2-1. The source of law is different in the natural law and positivist schools of jurisprudence. The source of law in the natural law school is an absolute source

(Nature, God, or Reason), whereas the source of law in the positivist school is the sovereign.

2-2. The Critical Legal Theorist School and the Feminist School of jurisprudence are similar because both evaluate the legal system. Both find major inadequacies in the legal system. Critical Legal Theorists think the legal system protects economically privileged individuals; feminist scholars think the legal system protects the rights of men.

2-3. The executive branch is a source of law in two ways. The President has the power to make treaties. The President also makes laws by issuing executive orders.

2-4. Statutory law is made by legislatures. Case law is made by judges.

2-5. If the President vetoes a bill passed by the House and the Senate, the bill can become a law if two-thirds of the Senate and House membership vote to override the veto.

2-6. a. Public law is a classification of law that deals with the relationship of government to individual citizens. Private law is generally concerned with the enforcement of private duties.

b. In criminal law, a prosecutor aims to prove beyond a reasonable doubt that the defendant committed a crime and should be punished. In civil law, a private individual or business tries to show by the preponderance of the evidence that another private individual or business is liable and should have to compensate the plaintiff.

c. Felonies are punishable by incarceration in a state penitentiary. Misdemeanors are usually punishable by shorter periods of imprisonment in a county or city jail.

ANSWERS TO REVIEW PROBLEMS

2-7. Justice A belongs to the positivist school of jurisprudence. We know that because this justice is unwilling to look beyond statutes and case precedents in interpreting the law.

2-8. Justice B is a natural law thinker. We know because this justice is willing to ignore man-made law and rule based upon something higher—the laws of nature.

2-9. Justice C is a sociological thinker. This justice bases her decision on contemporary community customs or thought.

2-10. I would rule that the survivors are not guilty. I agree with Judge B that the laws of nature take priority over man-made laws. I prefer the natural law school of jurisprudence in this situation. See what your class thinks. Take a poll to see which school of jurisprudence has the most followers.

2-11. *Precedent* refers to case law courts follow. Judges interpret legislation on a case-by-case basis. These cases establish a line of authoritative cases on a particular subject that must be followed by lower courts. Here, the precedent tells Marshall his legal rights. The attorney can predict Marshall will win a lawsuit to collect the reasonable value of his work.

2-12. No, the California court does not have to follow decisions from North Dakota and Ohio. The California appellate court must listen to higher courts in California, but not higher courts in other states. The California court might consider the North Dakota and Ohio case law, but it is not required to do so.

ANSWERS TO CASE PROBLEMS

2-13. Notice that ethical issues such as the one raised in this case do not get resolved necessarily by exploring the legal issue that brought the case before the court in the first place. Rather than focusing on whether the practices of Myspace qualify as copyright infringement, the court concentrated on whether Myspace's counsel should be disqualified because of its past association with Universal Music Group. The court ruled that Myspace's counsel should not be disqualified as long as it met several conditions. In this case, the court focused on which should hold more weight, the current client of the law firm, Myspace's, right to counsel of its choice or the former client, Universal Music Group's, right to maintain its confidentiality. Using a sociological approach, the court used California Rules of Professional Conduct Rule 3-310 and decided it was most important to preserve the public's trust in the integrity of California attorneys and the bar. The goal of this court was to uphold community customs and assume that the law firm would act ethically. If another school of thought had been used, such as the natural or positivist approach, the verdict may have been different. A judge using natural philosophy might focus on how it is unreasonable or unnatural for a law firm to represent opposing clients, whereas a judge using positivist philosophy might concentrate solely on the words within the law and not on its affects on the public.

2-14. Yes. Vermont's marriage license law violates same-sex couples' rights under the Vermont Constitution. The court ruled that the State had failed to provide a reasonable and just basis for excluding same-sex couples from benefits incident to Vermont's civil marriage license. The court indicated that a parallel "domestic partnership" system would meet Vermont's constitutional guarantee of "the common benefit, protection, and security of the law."

2-15. No. The court ruled that Margaret was allowed to sue her husband for damages in the case. In making this ruling, the court overruled the judicially created doctrine that prevented one spouse from suing another. The court did so as an act of fairness. They did not want the family to suffer the financial consequences of the accident simply because of the husband's negligence.

2-16. Yes. The Supreme Court ruled in favor of the individual workers. Now, employees have the burden of proof and can therefore argue that there is no "reasonable" factor than age involved in their termination.

2-17. A & M Records won. The works at issue in the case were copyrighted, the plaintiffs would be likely to prove vicarious infringement, and the "safe harbor" provision of the Digital Millennium Copyright Act protects A & M.

2-18. The court ruled that Roommates.com was immune from the Fair Housing Act charges, because of Section 230 of the Communications Decency Act. Section 230 states that "interactive computer services" acting as "service providers" are not responsible for information that has been provided by another "information content provider." In this case, Roommates.com was seen as both a service provider and an information content provider, but the court emphasized that in close cases, the ruling should be in favor of Section 230 immunity. The court could have focused on Roommates.com being a service provider or an information content provider and based on its interpretation, the verdict would differ. In this case, the court focused on Roommates.com as a service provider and used a broad interpretation of Section 230 immunity. Not all judges would view such a ruling as prudent.

THINKING CRITICALLY ABOUT RELEVANT LEGAL ISSUES

1. The issue here is framed in a very optimistic, naturalistic way. In an essay, one would focus on the benefits of this type of thinking and the best way to ensure complete objectivity. The conclusion would contain an account of how many problems and squabbles over objectivity would cease if the naturalistic approach was taken.

2. The author here seems to value justice, defined as moral absolutes that make clear what is good. The author may also value tradition, as what the author assumes that what is "good" is what is conventionally right.

3. Good here obviously means what is conventionally right. Evil means what is wrong. Both of these terms are ambiguous and take away from the argument. Again, the author assumes that all people are thinking the same way and live in the same environment.

4. Students would probably make a more realistic argument, citing differences in areas across the country in culture, religion, and so on. Sometimes absolute, conventional good *is not* synonymous with right.