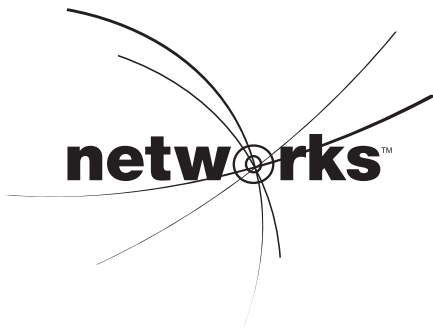


UNIT 1

Introduction to Law and the Legal System



Unit 1 provides students with a foundation and frame of reference for their study of law. Within the context of American government, students will gain a new perspective on laws and explore the crucial roles and duties of citizens, legislators, attorneys, and judges who work to preserve and strengthen our system of justice.

CHAPTERS IN BRIEF

CHAPTER 1

What Is Law?

Chapter 1 provides the definition of *law* and discusses the kinds of laws that exist. The chapter also examines how law is related to values, human rights, and responsibilities within the framework of the U.S. Constitution.

CHAPTER 2

Lawmaking

Chapter 2 illustrates how laws are made by U.S. legislatures and regulatory agencies and by appellate courts that establish precedents.

CHAPTER 3

Advocacy

Chapter 3 explores the roles of citizens in influencing the formation of laws. It also discusses advocacy and will teach students how to develop and implement plans for taking action to solve problems in their community, state, and country.

CHAPTER 4

Settling Disputes

Chapter 4 focuses on settling disputes outside of court through negotiation, mediation, and arbitration. Students will learn how to make smart decisions when they encounter conflict.

CHAPTER 5

The Court System

Chapter 5 introduces international courts and the parallel systems of federal and state courts in the United States. Students will learn about trial courts, appeals courts, military courts, and tribal courts, as well as the power of the Supreme Court within the U.S. system of justice.

CHAPTER 6

Lawyers

Chapter 6 helps students determine when a lawyer is needed and how to find and work with lawyers. The chapter also discusses the career path to becoming a lawyer.

SERVICE LEARNING AND SPECIAL PROJECTS

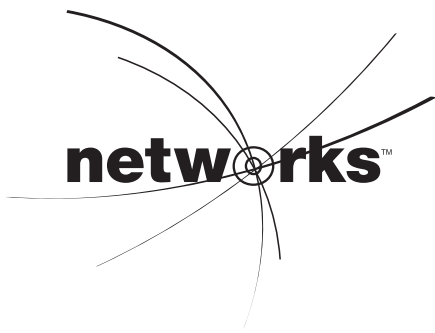
- 1. Court Visitation:** As students are studying Chapters 5 and 6, they might visit a court, ideally observing both trial and appellate proceedings. Have students observe differences in procedures, the voir dire process, roles of jurors and attorneys, consequences of illegal behavior, etc. Students might be assigned to play the roles of journalists covering a trial. After visiting the court, students can assess whether the adversarial judicial process results in justice.
- 2. Student Advocacy:** Using the guidelines provided in Chapter 3, students might select a controversial bill being introduced to the student government, city or town council, or state legislature. After they have formulated their opinion on the proposed law, have students determine when hearings are scheduled and seek permission to speak during the hearings. Students should plan and rehearse testimony and develop additional aspects of their advocacy plan.
- 3. Service Learning:** While community service is educational and meaningful on many levels, service learning takes it to “the next level” by connecting service with classroom learning and reflection. The following activities are suggested to help students enhance what they learn in Unit 1 by serving their communities.
 - Students can teach younger students about why we have laws.
 - Students can write a play about how the three branches of government are involved in lawmaking and perform it for younger students.
 - Students can work on a voter registration drive or drive elderly people or others who need a ride to the polls on Election Day.
 - Students can participate in (or help create) a school-based mediation program or organize a conflict resolution program for their classmates.
 - Students can develop and then distribute a pamphlet or poster that lists the programs that provide free legal services to low-income people in their community.

UNIT RESOURCES

Using Legal Resource Persons

One of the “best practices” in law-related education is to invite outside resource people to co-teach lessons in your classroom. These guests should not be asked or expected to lecture on a topic, but to engage students in interactive activities that showcase student work with the guidance of an expert. It is ideal to ask a particular resource person to work with the same group of students repeatedly. This significantly amplifies students’ retention of the content and has also been shown to increase the likelihood that those students will pursue careers in the legal field.

1. Judges might be invited to address topics from Unit 1 such as the merits of adjudication versus mediation; the relationship between human rights and the U.S. system of justice; the roles of judges, attorneys, prosecutors, and jurors; and legal ethics.
2. Jurors might be willing to describe their experiences in court. Topics of discussion could include: how they came to the conclusions they did in rendering a judgment, whether they view the court system differently than they did before the experience, and how they feel about the responsibility of citizens to serve on juries.
3. Attorneys could share insights about topics including professional ethics, when the advice of counsel is necessary, how to evaluate a prospective attorney, why they chose a career in law, and the satisfying and dissatisfying aspects of their work.



Law and legal philosophy are viewed through the lenses of history, morality, and culture, resulting in many definitions of *law*. For the purposes of the *Street Law* text, *law* is defined as the rules made and enforced by government that regulate the conduct of people within a society.

CHAPTER 1 What Is Law?

INTRODUCTION (PP. 2–3)

Learning Outcomes

After completing this section, students should be able to:

1. define the term *law*;
2. explain several reasons for having laws;
3. explain why the rule of law is important in a democratic society; and
4. list a number of laws that affect daily life in our society.

DISCUSSION—WHY STUDY LAW?

Ask students: How do laws differ from rules? Do parents make the “law” at home? Who makes the law at school?

ACTIVITY—WHY LAW?

Step A: The Ring Game This introductory game will help students develop a definition for *law*, an appreciation for the necessity and purpose of rules, and some basic ideas about fairness. The game can be easily adapted to meet the needs of your classroom and is recommended for the first day of the course.⁽¹⁾

1. Announce that the class will begin its study of *Street Law* by playing a game.
2. Give several rings (or paper clips, or pencils, etc.) to the first student in each row. Once each row has an equal supply of objects, tell students to begin playing.
3. Students will be confused by the lack of direction and may become frustrated, perplexed, or even angry. Jot down some of their comments. After a minute or so, “explain” the game, telling students to pass the rings to the back of the row and then back to the front, one at a time. The first team to finish wins.
4. Get the game started, using the rules you just explained. Then quickly stop students. Tell them they forgot to pass the objects over their left shoulders only. Students will immediately complain of not having been told about this rule. Do not respond to their complaints, but note some if possible.
5. Now change the rule to “passing over their right shoulders only,” and disqualify a row for violating it.

6. Allow the objects to come back to the front and then start again, this time stopping the game because one of the rows has more (or fewer) boys (or girls). Explain that because of this “rule,” that row will have to pass two extra rings back and forth in order to win.
7. Restart the game and allow it to conclude.
8. When the “winners” are announced, most of the remaining students will probably express frustration and anger about the way you conducted the game.

Step B: Discussion Students’ frustrations with the Ring Game can become the basis for the following discussion:

1. What made you frustrated or angry about the way the game was played?
2. Why was it unfair? If you wrote down relevant comments during the game playing, you may want to share them with students.

In discussing responses, emphasize three key elements:

- a. A game cannot be enjoyed without a clear and consistent set of rules announced to all participants in advance. Vague or unclear rules can ruin a game.
- b. The rules cannot be changed in the middle of the game without resulting in confusion, hurt feelings, or frustration.
- c. Rules must be applied equally and consistently to all; certain groups of individuals cannot be discriminated against arbitrarily.

Step C: Discussion Use the following questions as you ask students to relate the rules of the Ring Game to a society’s laws:

1. What was needed for the game to run effectively from the start? *Answers may include references to fairness, lack of discrimination, knowledge and understanding of the rules.*
2. What is needed to make laws effective? *Answers should be similar to those in question 1.*
3. Why would a course about law start off with a game like the one we just played?

Finally, ask students to develop a definition for law based on the class experience with the game. *Law is the set of clear and consistently enforced rules a group or community uses to regulate the conduct of the people within it.*

Ask students why they might want to study law. Have students brainstorm law-related topics they would like to study. Individually or in small groups, have students compare these topics to those listed in the Student Edition Table of Contents.

PROBLEM 1.1 (p.3)

This activity has several purposes:

- a. to illustrate the pervasiveness of law in our daily lives;
- b. to show that law is both civil and criminal;
- c. to illustrate the positive nature of law in our lives, i.e., most laws are protective rather than punitive.

Students may complete this activity, which might be viewed as a kind of “mind walk,” either individually or in small groups. Students should brainstorm a list of daily activities and identify those that are affected by law. The chart in **1.1 TM Figure** below can be used to approach the question in more depth and in a more structured way.

FIGURE

1.1 TM Figure

Activity	Affected by law?	Federal, state, or local law	Reasons for the law?	Should the law be changed? Why?
1.				
2.				
3.				

LAW AND VALUES (PP. 3–6)

Learning Outcomes

After completing this section, students should be able to:

1. give examples of how laws reflect economic, moral, political, and social values; and
2. analyze a case in order to explore the relationship between law and morality.

DISCUSSION—PURPOSES OF LAWS

Complete the following exercise with students before reading pages 3–6. Then compare students' answers with the views presented in this section of the text.

1. Have students brainstorm purposes of laws. Ask students: Why do societies create laws, and what do they hope their laws will accomplish?
2. Consider the goals students identify and speculate about situations in which these goals may conflict with each other.
3. Identify societal problems that laws cannot solve.
4. Suggest that a society's values will be reflected in its laws. For example, how might laws in a society that values order and safety compare to laws in a society that values individual freedom and creativity?

CAPTION ANSWER (P. 3) Economic values are often placed in conflict by environmental protection laws.

THE CASE OF...

The Shipwrecked Sailors

PROBLEM 1.2 (p.4)

For information on the various ways to use cases mentioned in *Street Law*, refer to the front of this Teacher Manual for a discussion of Teaching with Case Studies.

This case presents a moral dilemma: Should Dudley and Stephens be punished for what they did?

Issues that can be discussed in answering such questions include:

- the historical, moral, and religious roots of prohibitions against killing;
- the relationship of law to society;
- the effect of the agreement;
- the impropriety of cannibalism under any circumstances;
- the verdict actually rendered in this case;
- the issue of whether or not law should be flexible in how it is enforced or more uniformly applied to all who break it.

This problem is based on the actual 1884 case of *Regina v. Dudley and Stephens*.⁽²⁾ An English court found both men guilty of murder and sentenced them to death. The court said, "We are often forced to set up standards we cannot reach ourselves, and to lay down rules which we could not ourselves satisfy. But a man has no right to declare temptation as an excuse nor allow compassion for the criminal to change or weaken the legal definition of the crime." Ask students: What did the court mean by this? Soon after the verdict, Queen Victoria commuted the sentence to six months imprisonment. Why do you think she might have done this?

The questions following the case emphasize reasoning skills; there are no correct answers.

- a. Students may argue that Dudley and Stephens should be tried for murder since they willfully took the life of another human being. Those who disagree may argue that given the circumstances, the actions of the two men did not constitute murder. Rather, they should be charged with a less serious offense such as manslaughter, or not charged at all.
- b. Dudley and Stephens could argue that mitigating circumstances must be considered, and that even though they did kill another human being, the situation was such that they should not be punished further. Their attorney could argue that going 25 days without food changed the defendants' perceptions of right and wrong (i.e., a possible insanity defense). They might also argue that Brooks had made a contract that should be honored. They could also argue that the killing was necessary for survival. Although necessity is never a good defense in a homicide case, it is sometimes recognized in other cases of criminal law. The state could argue that human life is sacred and that a person who takes another's life must be tried for breaking the law in order to deter others. To do otherwise is to condone what happened. The prosecutor could also note that Brooks had withdrawn his consent before the killing or that consent to an illegal activity is never valid.

- c. Ask students how the different rationales for punishment (retribution, deterrence, rehabilitation, and accountability) would be served by convicting Dudley and Stephens. It could be argued that punishing them would not really serve as a deterrent because the situation was unique, and that there is not a strong argument for rehabilitation since it is unlikely that Dudley and Stephens would ever commit such a crime again. The strongest rationale for punishment is retribution and accountability for what many consider a heinous act even under the given circumstances.
- d. Seek reasons for the different positions taken on the issue of punishment. After discussing the point, the students may be interested to learn the actual verdict and sentence, noted above.
- e. Traditional ideas of morality prohibit taking the life of another person under almost any circumstance. However, there are also moral precepts in support of what the sailors did (taking action to protect and preserve their own lives). There are legal arguments on both sides of this case. However, these arguments tend to be technical (Were Dudley and Stephens insane? What law applied on the raft?) rather than broadly moral conceptions of right and wrong. The relationship between law and morality can be seen in laws prohibiting murder. Intentionally killing another person may be legally permissible based on moral principles such as self-defense and justified war.
- f. Students should try to articulate acts that may be legal but immoral, or moral but illegal. For example, a person who observes a crime but does not report it may be acting legally but immorally. People who are engaged in civil disobedience may be acting illegally even though their actions may be considered morally justified.

CAPTION ANSWER (P. 5) Allowing women in traditionally male-only positions reflects society's changing ideas about gender equality.

PROBLEM 1.3 (p.6)

Students' answers will vary for both questions but should include a rationale. If students need prompting, remind them of the previous section of the chapter in which they considered the moral, economic, political, and social values reflected in laws. Are there any problems in any of those areas that could be solved by law? Are there any laws pertaining to those values that should not exist?

ACTIVITY—TRACING THE EVOLUTION OF LAW AND JUSTICE

If your students are interested in the evolution of law and justice in our society, you may consider using the friezes that adorn the courtroom of the U.S. Supreme Court introduce students to influential lawgivers from history. Explain to students that sculptor Adolph A. Weinman designed the friezes on the north and south walls of the courtroom so when the justices looked up, they would be reminded of the "great lawgivers of history" who contributed to the U.S. system of laws.

Have students visit the Supreme Court website to read about the 18 lawgivers on the friezes at <https://www.supremecourt.gov/about/northandsouthwalls.pdf>. Ask students to determine who made the most important contribution to our current judicial system. Students should be able to support their decision with evidence. You may restrict students to only the information on the website or invite them to research lawmakers further. You may also ask students to rank the importance of the allegorical figures (fame, authority, light of wisdom, history, liberty and peace, right of man, equity, and philosophy) in order of their importance to the pursuit of justice.

HUMAN RIGHTS (PP. 6–7)

Learning Outcomes

After completing this section, students should be able to:

1. define the terms *human rights*, *covenant*, and *reservations*;
2. identify at least five rights included in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights;
3. describe the extent to which the U.S. government recognizes and enforces international human rights agreements and treaties; and
4. analyze and critique situations which may or may not reflect human rights violations in the United States.

CAPTION ANSWER (P. 6) Human rights can be used as standards when writing laws. Even though they may not refer to them as human rights, many laws contain provisions for protecting human rights.

PROBLEM 1.4 (p.7)

This problem is best answered in small groups. Have each student create an individual list and then compare and contrast it with the lists of other group members. Each group should then compile a master list of ten human rights and reasons for those rights. Bringing the whole class together, a spokesperson from each group should present that group's master list. To generate a class list, have students go through questions a.–d. as a class. Question e. will illustrate to students that most of the rights they came up with are also in the Universal Declaration of Human Rights (UDHR) and are accepted by most people. Question f. provides an opportunity to introduce students to the U.S. Constitution, found on pages 578–597 of the Student Edition.

ACTIVITY—COMPARING HISTORICAL DOCUMENTS

In these four activities, students systematically compare amendments to the U.S. Constitution with the Universal Declaration of Human Rights (UDHR). Both documents are located in the back of the Student Edition.

1. You can expect that students may not have heard of the UDHR. Give them additional background to help them understand the philosophical basis and historical context of both documents. You may want to discuss the role that political economies play in shaping public opinion. For example, people living in countries with a socialist orientation and people living in countries with a history of capitalism are likely to have different viewpoints about human rights. People in socialist countries tend to emphasize economic rights associated with subsistence (the rights to adequate food, clothing, shelter; universal medical care; employment), while people in capitalist countries tend to emphasize political rights associated with freedom (the rights to free speech, assembly, and the press). Ask students to identify the core values inherent in each of these ideologies. After this background discussion, ask students to compare and contrast rights guaranteed by the two documents. Have students list the rights guaranteed by the UDHR that are not guaranteed by the Constitution (e.g., Article 24,

the right to rest and leisure; Article 25, the right to an adequate living standard). Ask students to compare the general position of the United States on the death penalty with the stance of other countries. After they compare the documents, ask students to discuss why they think the Constitution failed to provide many of the rights guaranteed by the UDHR and to provide evidence to support their conclusions.

During this activity, you should explain to students that the rights guaranteed under the U.S. Constitution go beyond those explicitly stated in the text and include constitutional rights recognized by U.S. Supreme Court precedent. For example, the right to privacy does not appear anywhere in the Constitution but has been recognized as a part of the right to liberty guaranteed by the Fourth Amendment and other amendments.

Since the right to life is stated as an absolute in the UDHR, you might also refer students to the Cornell University Law School website at www.law.cornell.edu/states/listing.html for state death penalty information. To illustrate a particular difference between the documents, ask students to examine the human right to life.

2. Divide the class into two groups to prepare for an informal debate to decide which document is superior. Students should first identify specific criteria for superiority and then devise arguments to support their document's superiority. Many issues can be raised in support of each side. One issue is the enforceability of each document. Some people believe it is impractical to enforce the guarantees and rights enumerated in the UDHR (the right to adequate shelter, food and clothing; the right to own property; the right to adequate rest and leisure). Furthermore, there is no enforcement mechanism for the UDHR. Constitutional amendments are enforceable by the U.S. government. Another issue to consider is whether the rights in each document are guaranteed absolutely or with reservations.

Some people believe that the UDHR guarantees some rights (Article 3, liberty; Article 13, freedom of movement) without reservation, but for society to function these rights may have to be abridged. Amendments to the Constitution fail to qualify some of their clauses, providing for an absolute right to free speech, when this right is limited in a number of ways by common law, statute, and ordinance. A third issue to consider is the extent of the rights in each. Amendments to the Constitution fail to provide for essentials of human existence, such as food, shelter, and

health care. A fourth issue to consider is how flexible and modern each document is. Constitutional amendments might also be criticized for failing to take into consideration legitimate concerns that have come to the attention of lawmakers in the modern era with the development of a broader-based social conscience (e.g., the need to protect the interests of the poor).

3. After the debate, ask students to assess the value of the Universal Declaration of Human Rights. Why bother producing a document fraught with unenforceable provisions and lacking an effective enforcement mechanism? Ask students to speculate about the possible influence of the Holocaust on those who framed this document just a few years after World War II ended. How did this disaster illustrate the need to articulate the rights that all human beings should possess—irrespective of culture, country, religion, or political or economic system? Why did humans at that time deem it essential to state these rights, even when no government had yet found an effective way of guaranteeing them? Discuss how this document expressed the felt need to set goals and expectations for future human conduct. You might offer the notion of a “continuum of human progress”—the idea that humanity inexorably grows more enlightened and advanced as the years pass. Expect student reaction to this assertion to be vocal and contentious.
4. Ask students to assume that the year is 1948. Each should produce an editorial, letter to the editor, or speech arguing for or against U.S. Senate ratification of the Universal Declaration of Human Rights.

ACTIVITY—DEBATING THE APPLICATION OF HUMAN RIGHTS IN THE UNITED STATES

After students read about the Universal Declaration of Human Rights, pose the following questions for debate:

- Should the U.S. Constitution, laws, and court decisions be the only standards Americans look to, or should globally accepted human rights also be considered and/or enforced by U.S. courts?
- Who is responsible for protecting and guaranteeing basic human rights? Who bears the cost? For example, who would pay for the translation of all texts into the languages of a diverse student body? Who would pay for adequate housing and food for all? Who should pay for the

medical care of people who cannot afford it? Is cost a legitimate factor in decisions about the protection of human rights?

- Consider that the quality of schools varies dramatically from one community to another. Often the better-equipped schools are located in wealthier suburban communities that can raise more money in property taxes than urban and rural schools. Is this a human rights violation? If so, what can/should be done about it?
- Should the government guarantee a job for everyone? Is this desirable or even possible?

RULE OF LAW (P. 8)

Learning Outcomes

After completing this section, students should be able to:

1. Define the *term rule of law*.
2. Explain why the rule of law is important in a democratic society; and
3. Explain how each of the following factors relates to the rule of law: constraints on government, absence of corruption, open government fundamental rights, order and security, regulatory enforcement and civil justice

DISCUSSION – HOW IMPORTANT IS THE RULE OF LAW TO DEMOCRACY?

Ask students what life in the United States without each of the following factors might be: constraints on government, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, and civil justice. Discuss whether democracy can thrive without any or all of these factors. Ask which factors work to ensure fair elections? Which factors allow people to communicate with and influence their elected officials? Which factors affect how much trust citizens have in their government and why is this important in a democracy? Conclude by asking students to rank the factors in order of their importance to democracy.

ACTIVITY – RAISING THE UNITED STATES’ RULE OF LAW INDEX SCORE

Instruct students to explore the United States’ current Rule of Law Index Score at <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2019>. Have them select “View Full

Profile” to see the detailed report. Divide the class into 7 groups. Assign one of the following factors to each group: constraints on government, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement and civil justice. After looking at the breakdown of their assigned factor’s score, have students brainstorm what reforms might raise the United States’ score for that factor. Have each group compose a plan to increase the United States’ score on that factor and present their recommendations to the class. In a whole class discussion, seek consensus on 5 recommendations that would increase the overall rule of law score and strengthen democracy in the United States.

PROBLEM 1.5 (p.10)

- a. The rule of law index scores can be found at <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2019>. As of October 2019, the 3 highest index scores belonged to: Denmark (1), Norway (2), and Finland (3) which all achieved higher scores than the United States.
- b. The rule of law index scores can be found at <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2019>. As of October 2019, the 3 lowest index scores belonged to: the Democratic Republic of the Congo (124), Cambodia (125), and Venezuela (126) which all received lower scores than the United States.
- c. To strengthen its rule of law index score, the United States could address the areas that received the lowest scores for instance discrimination and corruption in criminal and civil justice systems. You may choose to complete “Activity – Raising the United States Rule of Law Index Score” as a class.

BALANCING RIGHTS WITH RESPONSIBILITIES (PP. 9–10)

Learning Outcomes

After completing this section, students should be able to:

1. describe the relationship between rights and responsibilities; and
2. identify reasons critics object to the emphasis the United States puts on individual rights.

CAPTION ANSWER (P. 9) Many laws, such as voting laws and employment laws, have been extended to include women, minorities, and the disabled.

THE CASE OF...

The Apathetic Bystanders

PROBLEM 1.6 (p.10)

- a. There are many possible reasons the bystanders did not intervene. It is possible that some of them simply did not care. Others may have been selfish or were afraid to get involved. Some may have been jaded by the ubiquitous crime in the city. Perhaps societal factors such as the violent images that people are exposed to in the media have led Americans to become callous about such things. Perhaps the bystanders did not call the police due to a mistrust of, or animosity toward, the police.

Although many valid opinions can be offered to explain the situation, social scientists tend to explain such behavior in terms of the “bystander effect.” That is, the more bystanders there are in a situation, the less likely any individual bystander will help. In such a situation there is a diffusion of responsibility as people assure themselves that one of the other bystanders will act.

In one experiment done at New York University, for example, students were told that they would be asked to discuss personal issues in telephone conference groups of two, three, or six people. During each conference an experimenter, pretending to be one of the students in the conference call, faked an epileptic seizure. In the groups of two, in which the students thought they were the only people to hear the seizure, the students promptly sought aid for the victim 81 percent of the time. However, in the groups of six, in which each student thought that four other students also had heard the seizure, students acted only 31 percent of the time.

Though many people could hear Kitty Genovese’s screams, each bystander may simply have assumed that someone else would call the police.

- b. In general, failure to assist a person in need is not a crime or a tort unless the relationship between the bystander and the victim gives rise to a legal duty to act. For example, parents have a legal duty to help their children, and spouses have a legal duty to help one another because of their relationship. An affirmative duty to act may also arise because one party has assumed respon-

sibility, either by contract or otherwise. For example, a day-care center would have a legal duty to call an ambulance if a child under its care was seriously injured. However, a day-care worker walking home from work would have no duty to help a child who was seriously injured on the side of the road. A lifeguard would have a legal duty to assist a drowning swimmer in the area he or she was guarding. However, a nearby swimmer who was a certified lifeguard could generally not be held criminally responsible for failing to help.

A duty to help also exists where one person has caused the situation. For example, a negligent driver who hits another car, injuring the other driver, has a legal duty to call an ambulance for that other driver, whereas a passerby does not.

- c. The problem is an excellent illustration of how it is possible to be morally wrong while still acting within the confines of the law. Regardless of students' individual backgrounds or values, many will accept that it is immoral to simply allow someone to die when it would take very little effort or risk to save the person. However, this point could be reasonably argued. Students should consider morality a strong motivating factor in the creation of laws in a pluralistic society in which people have differing values.
- d. Some states have considered "Duty to Rescue" laws, which would require citizens to help others in need of assistance. Students should discuss the pros and cons of such proposals. They should consider how much aid the law might require witnesses to give (e.g., up to the point where there is a risk of further harm in attempting to help). Would the type of victim (a child, for example) make a difference? Should the law impose civil or criminal liability on a bystander who fails to help? The main pros are that such laws promote citizen responsibility and morality, aid police by ensuring that police will be notified of crimes in progress, and may help save lives. Possible cons are that such laws are difficult to enforce and to prosecute since there are many legitimate reasons for failing to act. In addition, such laws are inconsistent with the right of citizens to be left alone while minding their own business and not actively doing anything wrong.
- e. Students' answers will vary. Responses should include a header such as, "All bystanders are responsible for..." and may include responses such as "coming to the aid of others who are in distress."

KINDS OF LAWS (PP. 10–11)

Learning Outcomes

After completing this section, students should be able to:

1. distinguish between the two major groups of laws: criminal and civil;
2. define the terms *criminal law*, *felony*, *misdemeanor*, *civil law*, *civil action*, *defendant*, *plaintiff*, *prosecutor*, *beyond a reasonable doubt*, and *preponderance of the evidence*; and
3. describe the difference between misdemeanors and felonies.

PROBLEM 17 (p.11)

- a. Possible answers include: taking the car, ignoring the handicapped parking sign, leaving trash on the park bench, and possessing illegal drugs.
- b.–c. The following types of laws are involved in this story:
- unauthorized use of a motor vehicle—criminal
 - parking violation—criminal
 - licensing (street vendor)—criminal
 - warranty law (tablet)—civil
 - littering—criminal
 - tort of negligence—civil
 - breaking and entering—criminal; trespassing—civil or criminal
 - larceny—criminal; conversion of property—civil
 - search and seizure—criminal
 - possession of illegal substances—criminal
 - leaving the scene of an accident—criminal
 - arrest—criminal

OUR CONSTITUTIONAL FRAMEWORK (PP. 12–15)

Learning Outcomes

After completing this section, students should be able to:

1. define the terms *limited government*, *separation of powers*, *statute*, *checks and balances*, *veto*, *judicial review*, *unconstitutional*, *federalism*, and *Bill of Rights*;
2. identify how powers of the executive, legislative, and judicial branches are separated by the Constitution;
3. give examples of how each of the three branches of government check and balance the other two;

4. describe how judicial review can be used to interpret the Constitution and protect individual rights;
5. explain how the principle of limited government is reflected in the Bill of Rights and in our system of federalism; and
6. describe how and why constitutions may be amended.

DISCUSSION—GOVERNMENT AND THE CONSTITUTION

Use the following discussion questions to reinforce basic principles about the Constitution.

1. Why do you think the Framers of the Constitution felt citizens needed protection from government? *Students' answers will likely suggest that the Framers wanted to avoid creating the kind of tyrannical government they had suffered under when they were controlled by the British government. A list of grievances against the British government can be found in the Declaration of Independence on page _____.*
2. How does the Constitution protect American citizens from the government? *Students should answer that the Bill of Rights contains a list of rights people have that limit what the government can do. Ask students to give an example of how the Constitution protects citizens from the government. Students may say for example, that the First Amendment begins with the phrase: "Congress shall make no law respecting..." establishing a religion or prohibiting free exercise of religion, restricting the rights to free speech, press, petition, assembly, etc.*
3. Suppose there was just one branch of government rather than three.
 - a. Would there be any advantages to such an arrangement? *Some students may suggest that the government would be more efficient.*
 - b. What kinds of problems would develop? *Students may suggest that an unchecked branch might increase or abuse its power, threatening individual rights and the Constitution's goals.*
4. Suppose there was no system of checks and balances among the three branches of government. What kinds of problems would citizens face? *Answers may include that citizens might find their rights against the intrusion of government power limited.*

5. Should constitutions be easier to amend than they are now? Explain. *Students' answers will vary. A constitution that is too easy to amend threatens a government's stability. A constitution that is too difficult to amend can become outdated.*

CAPTION ANSWER (P. 12) The Constitution sets forth the basic framework of government. It lists the powers of the government, as well as the limits of these powers.

ACTIVITY—DETERMINING THE CONSTITUTIONALITY OF LAWS

Use the following activity to acquaint students with the U.S. Constitution and the issue of constitutionality. Students should use the U.S. Constitution and the Bill of Rights to decide if the following laws would be constitutional or unconstitutional and name the amendment in question.

- One cannot vote without a college degree. (*unconstitutional—Fifteenth Amendment*)
- Newspapers are prohibited from publishing negative statements about a town's mayor. (*unconstitutional—First Amendment*)
- Handguns are denied to those who are convicted felons. (*constitutional—Second Amendment*)
- Someone is arrested and convicted without the benefit of legal counsel or a trial. (*unconstitutional—Fifth and Sixth Amendments*)
- Someone who is arrested for a crime refuses to take the witness stand at his or her trial. (*constitutional—Fifth Amendment*)

CAPTION ANSWER (P. 14) The federal government intervenes to protect the constitutional rights that are infringed by government action. Most provisions of constitutional amendments limit the power of the local, state, and federal government.

PROBLEM 1.8 (p.15)

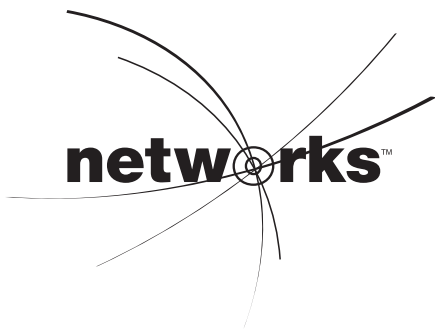
- a. A federal court strikes down a state law that violates the Constitution (checks and balances), federalism, and (judicial review).
- b. When the legislative branch puts requirements on the day-to-day operations of the judiciary, it raises a genuine question about the separation of powers. An argument for allowing this law is that Congress funds the Court and might be able to condition the Court's funding on its televising public sessions (separation of powers, checks and balances).
- c. The state court prevents the legislature from subjecting the prisoners to unconstitutional

deprivation of rights (checks and balances). However, the court does not have the power to spend the money directly and funding must come from the legislative branch (separation of powers).

- d. The existence of federal and state laws both regulating marijuana and the prosecution in federal court are evidence of federalism. The federal government seizure of the drug is also an exercise of national supremacy. The task of enforcement falling to the DEA and lawmaking falling to the legislative branches is an example of separation of powers (federalism and separation of powers).
- e. The Supreme Court is exercising its power of judicial review and checks and balances by declaring flag burning laws unconstitutional. Congress then uses its power to propose amendments to the Constitution to check (if the amendment is ratified) the ruling of the Court (judicial review, separation of powers, and checks and balances).
- f. This scenario, based on *U.S. v. Nixon* (1974), demonstrates checks and balances when the Supreme Court limits the president's executive privilege and supports the subpoena of evidence from the courts thus checking the president's power. In the Supreme Court case, *U.S. v. Nixon*, Nixon's attorneys argued that allowing the court to enforce the subpoena would be a violation of separation of powers, but the Supreme Court did not find in his favor. Judicial review is seen in this case when the Supreme Court rules that the invocation of executive privilege exceeded the power the Constitution granted to the president.

NOTES

- (1) The "Ring Game" is an adaptation of a lesson written by Linda Riekes and Sally Ackerly that originally appeared in the *Law in Action* series (West, 1975).
- (2) L.R. 14 Q.B.D. 273 (1884). Both the Case of the Shipwrecked Sailors (Chapter 1) and the Case of the Unclear Law (Chapter 2) are based on ideas originally presented in Harvard law professor Lon Fuller's famous book, *The Problems of Jurisprudence* (1949).



CHAPTER 2 Lawmaking

LEGISLATURES (PP. 16–21)

Laws come from many sources. The U.S. Constitution sets forth certain laws that people must obey. It also gives state and federal legislatures the power to make laws. City and county governments are involved in making laws at the local level. Administrative agencies make laws to protect workers, businesses, the environment, and many other groups. In addition, the courts make laws when they decide appeals.

Learning Outcomes

After completing this section, students should be able to:

1. describe the role of the legislative branch of government;
2. distinguish among the types of laws typically made at local, state, and federal levels of government;
3. define the terms *ordinance*, *supremacy clause*, *statute*, *bill*, and *legislative intent*;
4. identify and explain the supremacy clause of the Constitution;
5. identify two rules that judges follow when determining legislative intent (what a statute means);
6. interpret a law using the concept of legislative intent; and
7. draft an ordinance by applying the suggested guidelines for drafting laws.

CAPTION ANSWER (P. 17) Although there was not unanimity of national opinion, there was a national consensus emerging that opposed racial segregation. Some states stubbornly and even violently resisted this change and continued to deny African Americans civil rights guaranteed by the federal Constitution.

ACTIVITY—TAKING A FIELD TRIP

Plan a field trip for students to visit a local city or county council, school board, or other lawmaking body. Students should examine some laws enacted by these bodies and learn the procedure for passing the laws. If possible, prior to the legislative session, make an appointment with an elected legislator or someone from his or her staff to discuss what students are likely to observe and what bills will be under consideration during the upcoming session. Have students read this section of the student text and write questions to ask a legislator or staff member if they have an opportunity to interview them.

ACTIVITY—DEBATE OR LEGISLATIVE HEARING

Have students debate the following proposal for a state law: “All persons riding skateboards, scooters, in-line skates, and shoes with embedded wheels are required to wear a helmet.” Encourage students to prepare by considering the power of the state legislature to exercise control over the safety of its citizens and the importance of considering the needs of all constituents in formulating laws.

Alternatively, students might prepare testimony for a legislative hearing on this issue from the perspectives of different groups of citizens. Roles could include young people, parents, owners of sporting goods stores, emergency room physicians, and local legislators.

At the conclusion of the debate or hearing, ask students to evaluate the effectiveness of the testimony or debate and to suggest how the arguments could have been made more convincing. Discuss how the arguments and responses in this role-play are similar to and different from “the real thing.”

LEGAL RESOURCE PERSONS

To clarify the roles of the legislative, executive, and judicial branches of government, invite a representative from each local branch to discuss laws of interest to students. For example, a member of the city council could discuss how the laws were conceived and passed, a police officer could discuss how the laws are enforced, and a judge could discuss how the courts resolve any disputes that arise in interpreting the laws.

PROBLEM 2.1 (p.18)

- a. The parking regulation is a local ordinance.
- b. Required school attendance is a state law.
- c. Both state and federal laws prohibit bank robbery.
- d. The vendor’s licensing requirement is a local ordinance.
- e. Employment discrimination is prohibited by federal law (*Title VII of the Civil Rights Act of 1964*), some state laws, and some local ordinances.
- f. Airline searches involve federal statutes and federal constitutional law.

Additional examples include a federal law against treason, a state law that prohibits murder, and a local ordinance that sets a curfew for teenagers.

Investigating the Law Where You Live

(p. 18) Many Internet sites provide the public access to state laws or statutes. The Cornell University Law School site is one of the easier ones to use. Encourage students to visit <https://www.law.cornell.edu/states/listing>. This website should prove useful throughout your course, as students compare what they learn from the *Street Law* text about laws on a national level to laws in their own states.

THE CASE OF...

The Unclear Law

PROBLEM 2.2 (p.19)

This case illustrates how laws, once written, may be susceptible to different interpretations.

Step 1: Before directing students to analyze parts **a.–h.** of this problem, be sure that they read and understand the law and background

Then organize the class into small groups. Ask each group to decide whether or not the vehicle described in **a.–h.** should be allowed in the park. Instruct students to try to persuade the members of their group to agree with their point of view. Each group should reach a consensus on their answers and be prepared to provide reasons for their decisions.

Step 2: After each group has analyzed the cases, group members should rewrite the law to make it clearer.

Step 3: Groups may appoint one spokesperson for the entire exercise or have a different spokesperson provide the answer and accompanying rationale for each case study and read their revised law.

Groups will need about 10 to 15 minutes to arrive at decisions for the cases and another 5 minutes to rewrite the law. Write the ending time on the board. Draw a grid on the board to record responses. The grid should list the case letters along one axis and the group numbers along the other. Below the grid, write “Law Revisions,” where you will record the changes each group makes in the law.

Emphasize that reasoning is the most important part of this activity, not arriving at the correct answer. Once groups announce and explain their answers, debrief the activity. Record group responses for each case on the grid, and ask for the rationale of the decision makers where appropriate.

In the debriefing, ask students:

1. How should emergency situations be provided for in the law? Who should determine what constitutes an emergency?
2. What is an appropriate penalty for violating this law? Should the penalty be explained in this law?

3. Who should enforce the law? Is there any remedy available to citizens if those who are supposed to enforce the law break it themselves?
4. How can this law be redrafted to avoid the inconsistencies that now plague it?
5. Should laws be written in such a way that they can be adapted to meet changing situations? Can they be both detailed and flexible?
6. Why do you think the Framers of the Constitution separated the power to interpret laws from the power to make laws?
7. This activity asks us to consider the intent of the legislators who wrote the law. Should laws always be interpreted in a manner consistent with legislative intent?

Point out how the decisions of the student groups reflected reasons based on:

- their understanding of the “letter of the law”;
- what they thought the lawmakers actually intended;
- their own sense of values; and
- their perception of what the law’s impact on society would be.

TAKING ACTION: LAW AND DEMOCRACY

Drafting a Law Simulation

PROBLEM 2.3 (p.20)

This simulation may begin with students answering questions a.–c. individually, in pairs, or in groups of three to five students.

- a. Answers will vary according to each student’s (or group’s) view of what should be done, or not done, about smoking in public places. Prompt students to explain their details and the reasons they included those details in their new ordinance.
- b. You may want to refer students to page 20 in the Student Edition, which gives suggestions for drafting a bill.
- c. Answers will vary according to the details of the ordinance students are suggesting. Remind students to explain their predictions about which group(s) would support and which might oppose their ordinances.

Each group should present its results to the class. You may consider inviting fellow students to comment

on their classmates’ proposed laws and to suggest improvements in and solutions to any problems with the proposals.

ACTIVITY—LEGISLATIVE ANALYSIS

Obtain a draft of a bill from your local, state, or federal legislature to analyze.

1. What information is readily apparent on first reading the bill?
2. What groups of people would you expect to support this bill? Oppose it?
3. Is the bill amending, enacting, or repealing parts of the federal, state, or local law?
4. What is required or prohibited by this bill?
5. How clear is the language in this bill?
6. What is the enforcement mechanism for the legislation? What responsibilities, if any, are given to administrative agencies?
7. Is the legislative intent of this bill clear? (Have students interpret this bill, using the same rules that judges use, found on page 20 of the Student Edition.)
8. Does this legislation require the government to spend money? If so, where will the money come from?

If students determine that the legislative intent of the bill is unclear, challenge them to redraft vague sections and send it to their representative(s) for consideration.

AGENCIES (PP. 21–23)

Learning Outcomes

After completing this section, students should be able to:

1. describe how agencies are involved in the lawmaking process;
2. name several federal administrative agencies and describe their work;
3. define the terms *regulation* and *public hearing*;
4. give examples that illustrate how regulations have the force of law; and
5. explain why administrative agencies may be viewed as “hidden lawmakers.”

CAPTION ANSWER (P. 21) The Department of Homeland Security is needed to prevent, protect against, and respond to acts of terrorism on U.S. soil.

Investigating the Law Where You Live

(p. 22) Students will be able to find this answer in a variety of ways. They can start with a search engine by typing in the name of their state and then “government.” Another way to find it is to visit Cornell University Law School at <https://www.law.cornell.edu/states/listing> and follow the link to their state. Once students reach the home page for their government, they may find a search feature called “Agencies Index” or something similar.

CAPTION ANSWER (P. 22) Legislative bodies authorize administrative agencies to develop rules and regulations to make laws more specific. Such rules and regulations influence almost all aspects of our daily life, including working conditions, the environment, and local zoning issues. Regulations issued by administrative agencies become law without being voted upon, but agencies usually hold public hearings to give individuals and businesses a chance to express their views.

PROBLEM 2.4 (p.23)

- a. Students’ answers will vary. Ask each student to present a brief report on what he or she discovered in researching the agency. Then ask:
- Which agencies seem essential? Why? Who might disagree with you? Why?
 - Are there any agencies that do not seem necessary? Explain. Who might disagree with you? Why?
- b. Students’ answers will vary. Have each student briefly report on the agency and action they researched. Students could make oral presentations, write a report, or create a display. After students have shared their reports, ask:
- Was the action taken by the agency essential? Why? Who might disagree with you?
 - How might a member of the public impact the work of this agency? Is there evidence that the public has or is currently impacting the work?

ACTIVITY—BUSINESS REGULATION INTERVIEW

Ask students to interview local business people to obtain specific examples of regulations imposed on various businesses and the names of agencies—local, state, or federal—that enforce these regulations.

Students might also ask:

- Which regulations seem reasonable? Which do not? Why?
- Which agencies oversee your business? How consistently, effectively, and ethically do they enforce regulations?
- Should there be any new regulations? If so, which ones? Why?
- What would you say about the regulations if you had the opportunity to testify in an agency hearing?
- Have you joined any organizations that seek to influence regulatory agencies and lawmakers?

After students have completed their research and reported their findings, follow up with a discussion of reasons why members of the business community often seek regulatory reform and reasons why workers and consumers may resist such reforms.

COURTS (P. 23)

Note: This section merely introduces courts in terms of their lawmaking power. Chapter 5 provides a more comprehensive introduction to the U.S. court system.

Learning Outcomes

After completing this section, students should be able to:

1. define the terms *trial*, *appeal*, *appellate court*, and *precedent*; and
2. explain how the decisions of appellate courts can have the force of laws.

ACTIVITY—ASSESSING LANDMARK DECISIONS

Ask students to think about decisions made by the Supreme Court that have become law. You may want to remind them of some important cases that they have studied in their United States history classes. Once they have identified a few cases, ask students to assess the impact of these rulings. For example, *Plessy v. Ferguson*⁽¹⁾ established that “separate but equal” facilities for African Americans did not violate the U.S. Constitution. This ruling essentially made segregation legal, establishing patterns of segregation that persist today in some areas. Ask students how the precedents established in *Dred Scott*⁽²⁾ and *Brown v. Board of Education of Topeka*⁽³⁾ functioned as de facto laws and how they affected individuals and the nation. Visit <https://www.landmarkcases.org/> for additional information about these and other Supreme Court landmark cases.

INTERNATIONAL LAWMAKING (PP. 23–25)

Learning Outcomes

After completing this section, students should be able to:

1. define the terms *treaty* and *extradition*;
2. list examples of the types of activities typically regulated by treaties;
3. describe who in the United States must sign and ratify a treaty before it becomes law; and
4. explain the role of the international courts of the United Nations.

CAPTION ANSWER (P. 24) Members of the EU have the opportunity to be involved in the European Parliament, and therefore may influence lawmaking in the region.

PROBLEM 2.5 (p.25)

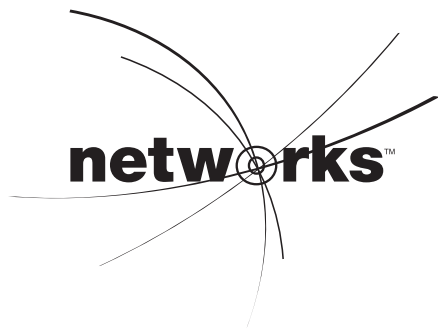
a. Students' answers will vary. One of the key questions for people in the United States to consider is under what circumstances it should commit its troops to protect the lives of people in other countries. Some people feel that we should not risk American lives for others under any circumstance. Other people believe we have a duty to protect human rights and to save lives anywhere in the world. Students should consider hypothetical questions such as how many troops and weapons might be needed, how long the troops might need to stay, whether the troops should be involved in keeping the peace after the war ends, and whether U.S. troops would fight under military leadership from other countries or whether our troops would only fight under U.S. direction. Students may recognize that this scenario is similar to the current situation in the Darfur region of

western Sudan, or the situation in Syria, where many people died before the United Nations, the United States, or any other country intervened.

- b. Answers will vary. Students should consider how other countries will treat the United States if we do not support them, and whether the United States would support other nonmilitary actions the international community could take to pressure the leaders of that African nation. What does it mean to be a member of the United Nations (UN)? Must all countries abide by the decisions of two-thirds of the countries? Or can member countries disregard UN decisions? What is likely to happen if countries do not abide by UN decisions?
- c. Answers will vary. Students should explain the benefits and risks of "going it alone," particularly the strength of their commitment to do what they think is right, how the international community might react to the United States in the long term and short term, and the chances of military success as one nation versus many nations using force collectively. This situation is similar to the situation in 2003 before the beginning of the Iraqi war, when the United States, Britain, and a few other countries invaded Iraq without the support of the governments in the majority of countries. Ask students what they think is the result of such an action.

NOTES

- (1) *Plessy v. Ferguson*, 163 U.S. 537 (1896).
- (2) *Dred Scott, Plaintiff in Error, v. John F. A. Sandford*, 60 U.S. 393 (1856).
- (3) *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954).



Encouraging and teaching about positive involvement in public affairs is one of the most important goals of *Street Law*. Citizen involvement can influence the lawmaking process in several ways. In a democracy, usually through their elected representatives, the people are responsible for making laws. Voting is one way citizens can voice their concerns in support of or in opposition to the government. Citizens can also work to change laws and policies that are not helping to solve problems in their communities, cities, or states. They can do this through such advocacy activities as lobbying and forming special-interest groups.

CHAPTER 3 Advocacy

THE ART OF ADVOCACY (PP. 26–27)

Learning Outcomes

After completing this section, students should be able to:

1. describe the role of citizens in making laws;
2. define the term *advocacy*; and
3. given specific public policy issues, identify groups of people who advocate for or against those policy proposals.

TAKING ACTION: LAW AND DEMOCRACY

Changing the Law: Research and Role-Play

PROBLEM 3.1 (p.27)

Organize the class into five groups. Have groups analyze one of the proposed laws listed by answering questions **a.** through **d.** If you wish to extend the activity, students might research which lobbyists or advocacy groups are concerned with their assigned issues.

Ask students to take on the roles of legislators, citizens and lobbyists. After the lobbyists try to persuade the legislators, ask both groups to evaluate the effectiveness of student lobbyists. To extend question **c.** ask students to create mock-ups of the social media posts that reflect their views on the proposed law they researched.

LOBBYING (PP. 28–30)

Learning Outcomes

After completing this section, students should be able to:

1. define the terms *lobbying* and *grassroots lobbyist*;
2. describe the various methods that lobbyists use as they attempt to influence legislation;
3. write or e-mail an effective letter to a public official; and
4. evaluate the impact of lobbying and campaign contributions on lawmaking.

BACKGROUND—WHAT IS LOBBYING?

Federal law defines *lobbying* as any oral or written communication (including an electronic communication) to an official in the executive or legislative branch that is made on behalf of a client with regard to:

- the formulation, modification, or adoption of federal legislation (including legislative proposals);
- the formulation, modification, or adoption of a federal rule, regulation, executive order, or any other program, policy, or position of the United States government;
- the administration or execution of a federal program or policy (including the negotiation, award, or administration of a federal contract, grant, loan, permit, or license); or
- the nomination or confirmation of a person for a position subject to confirmation by the Senate.⁽¹⁾

In 2016, the Center for Public Integrity compared the number of lobbyists registered in each of the 50 states to the number of state legislators and found that there was an average of six lobbyists for every state lawmaker. For more or updated information, visit <https://publicintegrity.org/state-politics/amid-federal-gridlock-lobbying-rises-in-the-states/>.

Despite the unseemly reputation of some lobbyists, lobbying is an important component of democracy. Most lobbyists contend that their efforts focus on the information they provide to lawmakers and their staffs—not on making back-room deals. In addition to grassroots lobbying, constituents make their wishes known to their representatives through boycotts, petitions, strikes, protests, demonstrations, and acts of civil disobedience. (The First Amendment implications of these forms of political expression are dealt with in Unit 6 of the Student Edition.)

BACKGROUND—LOBBYING REFORM

Discuss the following criticisms and reforms with students. Be sure to invite their input about how lobbying influences democracy.

- Many people criticize the lobbying system for giving moneyed interests too much power in Congress and in state and local legislatures. The high cost of political campaigns may make campaign contributions from these wealthy donors seem essential to candidates.
- Some people criticize former government officials who go through the so-called revolving door and then lobby the people with whom they had previously worked. According to the national nonprofit organization Public Citizen,

as of 2019 nearly two-thirds (59%) of the former legislators who return to the private sector became lobbyists. Critics of this practice say “Ordinary citizens cannot afford to buy this sort of access. Regular people do not have former officials and Capitol Hill aides representing their health care interest before Congress and the Administration. Groups like the Health Insurance Association of America do.”

- In September 2007, after much debate, Congress passed and the president signed the *Honest Leadership and Open Government Act of 2007*. According to Public Citizen, the main reforms provided in this legislation are:
 - lobbyists will be required to post on the Internet their fundraising events and contributions to lawmakers;
 - senators will have to wait two years to become registered lobbyists;
 - lobbyists must report their lobbying activities every three months on the Internet;
 - lobbyists may no longer give any gifts (of any amount) to lawmakers and their staffs; and
 - organizations that employ lobbyists must significantly cut back on the number and type of trips they pay for legislators and their staff to take, and those “junkets” must be preapproved and reported publicly.

PROBLEM 3.2 (p.29)

- a. The purpose of this question is to encourage students to consider how organizations use different persuasive techniques to further their interests. The issues students select may be social or political, local or national, or may be related to themselves as students or as teenagers. By visiting the website of advocacy groups, students will see that organizations use various techniques of persuasion, including using facts to appeal to logic, arguing against an opposing viewpoint, or playing on people’s emotions, fears, or desires. Students should also consider how to discern the truthfulness of the information provided. For example, does the website rely on scientific studies? Does the organization use statistics? Are references to reliable sources provided on the website?
- b. Suggest that students review *Steps to Take* “Writing a Public Official” on page 28 in the Student Edition before drafting their letters. A model letter or email to senators is shown in **3.1 TM Figure**. Remind students that there are additional methods of influencing public officials, including phone calls, e-mail, petitions, and demonstrations.
- c. Students’ responses will vary. You may choose to debate this question at this point or at the end of

the chapter. To help students learn more about campaign finance reform, suggest that they research the *McCain-Feingold Act*, which enacted several sweeping changes and has been challenged in the U.S. Supreme Court several times. Additional information about two of these cases (known as *McConnell v. Federal Election Commission* and *Citizens United v. Federal Elections Commission*) is available at <http://www.oyez.org/>.

LEGAL RESOURCE PERSONS

A number of legal resource people might be helpful with this topic. Lobbyists might discuss the process and reasons for registration, as well as the strategies they use in their work.

In addition, the Center for Responsive Politics provides extensive information in their Lobbyists Database, available online at <http://www.opensecrets.org/lobby/>. The site provides information on individual lobbyists, clients, and lobbying firms in any given economic sector.

STEPS TO TAKE

Guidelines for Advocates (p. 30)

Review the “Guidelines for Advocates” and “Three Golden Rules for Advocacy” found on page 30 of the Student Edition. It is important to emphasize to students that few advocates pass from step one to step eight directly. For example, after people become experts on an issue, they often need to go back to revise or refine their goals.

Then ask students to select an issue they care about and follow the guidelines for changing a rule or public policy to improve their school or community.

After students select an issue or problem to focus on, invite two or more community advocates or other experts to discuss the issue and answer students’ questions. Ideally, these resource people will represent opposing points of view. Have students prepare questions for this discussion in advance. Students should also ask about strategies that might be most effective to accomplish their goal.

Step 1: Identify the issue. Most effective advocacy projects begin with a careful analysis of the underlying cause of the problem. And then, action projects address those underlying causes.

Step 2: Set a goal. Remind students that setting a specific goal supports the first golden rule of advocacy: clarity. A goal that students might create is that curbside recycling should be provided by local government by a

FIGURE

3.1 TM Figure

Date

The Honorable (Senator’s Name)
Senate Office Building
Washington, D.C. 20510

Dear Senator _____,

I am writing regarding the proposed Strip-Mining Bill, S._____. As one of your constituents, I urge you to vote for it when it comes before the full Senate later this month.

My friends, family, and I love the outdoors and make considerable use of parks and other open spaces. This bill allows the private sector to develop much needed energy at a profit while preserving the environment by restoring lands that have been strip-mined. Many other members of our community also support this bill, and I would like to share your position with them.

Please let me know your position on the bill. I look forward to hearing from you.

Respectfully,

Name
Address

specific date. Step 2 asks students to state how the community would be improved if their policy were implemented. They might visualize the impact of this public policy as less litter; less consumption of resources; reduced waste; and increased civic pride.

Step 3: Become an expert on the issue. After conducting research, students should identify facts and arguments that all sides would use to support their points of view. Students should interview community leaders, neighbors, friends, and business leaders for a well-rounded perspective.

For example, students should identify sources of reliable information on recycling. Resources for student research include local, state, and national recycling and environmental advocacy groups and government agencies, as well as journalists who have covered the issue.

Step 4: Recruit allies. Identify Roadblocks. Explain to students that the more people they have supporting their cause, the more likely they are to be successful. This follows the second golden rule of advocacy: quantity. Have students brainstorm a list of stakeholders, or potential allies and opponents concerned with their issue.

For example, people in the community who are likely to share their recycling concerns may include local recycling coalitions, environmentally friendly businesses, waste management companies, other students, and parents. Remind students that they should also consider the viewpoints of people who may try to block their efforts. Opponents may include industry leaders, businesses, and taxpayer unions. Students should identify what these individuals and organizations have to gain or lose if recycling is mandated in the community.

Step 5: Identify your strategies. This work should be done in several stages. Students should first brainstorm potential action strategies and then

compare their lists to the one that appears on page 30 of the Student Edition. They should then systematically weigh the merits of each strategy in relation to their specific goal.

For example, students may decide that conducting a survey on community support for recycling will provide the numbers they need to be successful in their cause. Or they may decide that a petition to mandate recycling would have maximum impact during an election year. Others may decide to write emails to legislators or county officials. They may also attend community meetings held on the issue. To complete this step, students should also evaluate their strategies based on their resources, available time, and the potential effort the strategy may require.

Step 6: Plan for success. Once the group has worked through Steps 1–5, they should put their plan on paper. Students should use **3.2 TM Figure** as a model for identifying specific steps to be taken.

Step 7: Work with the media. Explain to the students that it is important to get their message out repeatedly to as many people as possible (golden rule number three: frequency).

Have students examine Step 7 on page 30 of the Student Edition. Considering the audience they are trying to persuade, students should select one or two media strategies to implement. Facts, statistics, and personal anecdotes derived from the research they conducted in Step 3 can be used to persuade the public. For example, students might write letters to the editor of a local newspaper or share their podcast with local radio or cable television stations. Many of the media advocacy strategies can be completed in the classroom, such as starting a blog. Others, such as holding a press conference, may need to take place after school.

Step 8: Create a resource pool. Students should discuss their own talents and how they would be useful in the effort to improve their community.

FIGURE

3.2 TM Figure

Activities/ Action	Person Responsible	Deadline(s)	Resources/Help Needed	Publicity Plan
1.				
2.				
3.				
4.				
5.				
6.				

Perhaps there is an exceptional writer in the group who could draft press releases and letters to the editor. Another student might be a talented artist who can create flyers, brochures, or posters. Someone else may be well organized and can help keep the team on track, while another student may be an excellent public speaker who should testify at a public hearing, and another could be good at recruiting other students to join in the advocacy project.

Students should identify additional resources, including local organizations and individuals who might donate materials or collaborate with students in arousing public sentiment for their issue.

Step 9: Follow Up and Reflection. After students implement their advocacy plan, have them evaluate its success. Students should be reminded that few advocacy efforts are an instant success. Some advocacy efforts can take many years, such as the campaign to eliminate smoking from restaurants. Students should state what they might do differently to advocate more effectively if they had a second chance to pursue this project.

ACTIVITY—HOW INTEREST GROUPS INFLUENCE SUPREME COURT CASES

Street Law, Inc., has created a lesson plan about the influence of interest groups on the selection of cases heard by the U.S. Supreme Court. To download a free copy, visit <https://store.streetlaw.org/interest-groups/>.

VOTING (PP. 31–35)

Learning Outcomes

After completing this section, students should be able to:

1. define the terms *initiative*, *referendum*, and *recall* and explain their purpose;
2. describe the basic qualifications needed to vote;
3. identify at least three places where a person can get a voter registration form;
4. identify constitutional amendments and laws that made it possible for African Americans, women, Native Americans, and others to vote;
5. develop hypotheses to explain low voter turnout; and
6. evaluate the importance of voting and voter turnout in maintaining our system of representative democracy.

DELIBERATIONS AND OTHER ACTIVITIES—RECALLS, INITIATIVES, AND REFERENDA

Have students examine copies of ballots from current or recent elections to identify any initiative, referendum, or recall items. Contact your local registrar for assistance. Ask students to debate the items informally and then find out how voters decided these issues. For ballot issues relating to initiatives and referenda, ask students to speculate about why these efforts were dealt with through direct voter participation. For recall efforts, ask students to find out what prompted the recall movement. Do students believe, as some critics of recalls do, that recalls are based on single-issue politics and not on serious offenses?

Discuss the concept of “tyranny of the majority.” Laws passed through the initiative or referendum process may fail to protect the rights of minorities. Because the majority outnumbers minorities, majority interests tend to win out in direct votes, while comparatively few representatives consistently vote against minority interests in legislatures.

DELIBERATION

Should voting be compulsory in the United States? (pp. 34–35)

An overview of the deliberation method is discussed in the front of this Teacher’s Manual. For free deliberation materials, student handouts, and an instructional video visit <https://store.streetlaw.org/deliberations/>.

If this is your first deliberation, consider devoting significant time to establishing norms for deliberations and civil discourse. Introduce the process of deliberations, including careful reading, clarification, preparing and presenting initial positions, reversing positions, free small group discussion, search for common ground, and whole-class discussion.

Begin class by introducing the deliberation topic: compulsory voting. Ask students if voting is important to our democracy? Ask what happens when people choose not to vote? Invite students to give their ideas for how voter turnout could be increased? Explain to students that this deliberation will help students explore one possible policy to address low voter turnout and that students will strive to reach consensus on some aspect of the issue but are not required to agree on an outcome.

Take students through the deliberation steps as outlined in the front of this Teacher Manual.

Debrief by instructing students to:

- Raise your hands if you changed your position on the issue.
- Raise your hand if you considered a new opinion that you had not considered before today.
- Raise our hand if you felt listened to during the deliberation.
- Follow up by asking students, how they might translate this activity to conversations outside the classroom.

Consider having students perform a self-assessment on the process and their contribution to it.

For the most recent voter turnout statistics and analysis, visit the Pew Research Center at <https://www.pewresearch.org/topics/voter-participation/>. For current information on compulsory voting around the world, consult the International Institute for Democracy and Electoral Assistance (IDEA) at <https://www.idea.int/data-tools/data/voter-turnout/compulsory-voting>.

LEGAL RESOURCE PERSONS

Invite a representative of the League of Women Voters, a local political party activist, or someone from your local voter registration office to explain the process involved in registering to vote, voting in your community, and absentee voting.

BACKGROUND—SOME STATES REQUIRE VOTERS TO SHOW IDENTIFICATION

As of April 1, 2019, 17 states require voters to show a photo ID. These laws are surrounded by partisan controversy. Many Republican lawmakers argue that the laws are needed to prevent voter fraud and that photo ID is necessary for many parts of modern life. Many Democrats argue that voter impersonation is a miniscule problem, and the laws make it much harder for people without a photo ID—often poor, minority, and elderly people who often vote for Democrats to exercise their right to vote.

As mentioned in the Student Edition on page 33, the Supreme Court ruled in *Crawford v. Marion County* that requiring voter ID cards did not violate the Constitution.⁽²⁾ Since that 2008 decision, subsequent challenges to different voter ID laws have had mixed successes and failures.

DISCUSSION—WHO CAN VOTE IN PRESIDENTIAL ELECTIONS?

Voting-rights reforms have eliminated literacy tests and poll taxes and liberalized other voting

barriers, including residency requirements and voter registration procedures. *The National Voter Registration Act of 1993* (also known as the Motor Voter Act) made it easier for individuals to register to vote by incorporating voter registration into other transactions citizens must complete to comply with regulations at other public agencies. For example, voter registration can be accomplished while applying for a driver's license, public assistance benefits, food stamps, Medicaid, WIC, or disability services. Almost three in ten people who have registered to vote since January 1, 1995, did so when they obtained or renewed their drivers' licenses.

Some advocates have proposed that government take these steps to increase registration and voting:

- Provide citizens easier access to absentee ballots.
- Declare a national holiday for all general elections.
- Hold elections on weekends.
- Permit citizens to vote by postal mail or e-mail.

Another interesting issue is whether all U.S. citizens should have the right to vote. Citizens in the District of Columbia (D.C.), Puerto Rico, and the Trust Territories can vote in presidential elections but cannot elect senators or representatives. Should they be allowed to do so, or should their jurisdictions first be required to become states? Ask students the reasons for or against voting representatives for these entities.

BACKGROUND AND DISCUSSION—YOUTH VOTING

Youth voting—or failure to vote—has been studied by a number of researchers. The Center for Information & Research on Civic Learning and Engagement (CIRCLE) is a good source of information on youth engagement and voting. Its website provides a wide array of resources on the topic. (www.civicyouth.org). According to CIRCLE, the following are important factors in encouraging young people to vote: (1) contact with an organization or candidate, (2) ease of registration, (3) information about when and where to vote, (4) high-quality civic education, and (5) family members who are engaged and vote.

Direct students to the Census Bureau website site at <http://www.census.gov/> to conduct research to identify the reasons other groups did not vote. Students should use the search term “reasons for not voting.” If they want to compare the reasons people in other age groups did not vote in the same election, direct them to use the additional search words “Youth Vote Participation.” They can also enter the election

year they are most interested in. On the same site, students will also see a breakdown of why people in various demographic groups did not vote, including a breakdown by gender, race, educational attainment, state, marital status, and duration of residence.

After reviewing the data, students should conduct their own polls of friends and family members who were eligible to vote in a presidential election, but did not, to determine whether their answers mirror the survey results.

Finally, ask students to propose solutions and get out the vote campaigns that could maximize positive factors and minimize negative factors for young voters. Ask students: Will you vote when you are eligible? Why or why not? What will you need to know in order to vote? How can you learn that?

Beginning in 1990, three groups began efforts to increase voting among young people. Youth Vote.org is dedicated to involving young people in the political process in many ways, including voting. Rock the Vote campaign (<http://www.rockthevote.com/>) often features recording artists and other entertainers participating in public service announcements encouraging young people to vote.

Have students visit the websites for these projects. Then ask them if they find the website and programs motivating. Ask them to evaluate the effectiveness of the programs. Conclude the research activity by asking students to describe advertising techniques that would and would not succeed with their generation.

CAPTION ANSWER (P. 32) Some people believe that voting is the most important political right because it allows citizens to influence their government and its lawmaking activities.

Investigating the Law Where You Live

(p. 33) The League of Women Voters Education Fund has a website (www.vote411.org) with information about registering to vote, residency requirements, and voting places and times. Students may have to do more digging to find answers at <http://www.rockthevote.com/>, <http://congress.org/>, or the site run by the Federal Election Commission at <http://www.fec.gov/>. As students are conducting research about election procedures where they live, suggest they also find out if their state requires voters to present a photo ID.

PROBLEM 3.3 (p.33)

a. Students can make their lists of reasons individually or in groups.

b. Students' answers will vary. Some possible reasons for and against each of the proposals are noted below.

- Registering and voting on the same day would enable voters to “kill two birds with one stone.” However, it might cause long delays at some polling places, as poll workers would have to verify voter eligibility. Thus, registering on the same day would probably require more time of the voters.
- Even though lowering the voting age to 16 might result in more people voting, this proposal does not address the problem of those who already can vote but do not. Some would argue that 16-year-olds are not politically aware enough to vote in an informed fashion. Others argue that it would enable students to practice citizenship while in school instead of being limited to discussion and hypothetical choices.
- Students might believe keeping polls open for a week would allow more people to vote because it provides more flexibility to schedule a time to vote. Those opposed to the idea may argue that it would be difficult to stop candidates from continuing to campaign during that period of time and to limit undue influence by the media and other voters on those who vote late in the process. Also, many schools, libraries, and public buildings close on election days so those facilities may be used as polling places. Keeping the polls open for a week may force those places to close for a longer period time or may force election officials to find new sites.
- Automatically registering every one to vote who obtains a driver's license would increase the number of eligible voters, but since most states allow driving beginning at the age of 16, the age requirements of voters may prevent this proposal from moving forward. Those without licenses would still have to register in a separate procedure.
- Allowing citizens to vote up to a month early could increase voter participation and include voters who may otherwise not be able to vote. However, voting precincts would need additional resources to handle the early voting, which could cost taxpayers.

ACTIVITY—INCREASING VOTER PARTICIPATION

After completing Problem 3.3, organize the class into groups of three or four and have students brainstorm a list of ways to increase voter participation.

Give students time to brainstorm. Then ask each group to pick out its three best ideas. List them on the board. How practical is each idea? Could the ideas be implemented? What would be required for each idea to be implemented? Will elected officials support proposals to increase voter participation?

Students may suggest options involving punishment for failure to vote. You should emphasize, however, that in a democracy many people believe that the freedom to speak also implies the freedom not to speak. Thus, the freedom to vote may include the freedom not to vote as well.

DISCUSSION—VOTING RIGHTS IN THE CONSTITUTION AND UNIVERSAL DECLARATION OF HUMAN RIGHTS

Have student explore additional issues related to voting:

1. What does the Universal Declaration of Human Rights (UDHR), Article 21 say about voting rights? Consider the case of South Africa. Ask students if they have seen photos of seemingly endless lines of black South African citizens waiting to vote in the first election in which they were permitted to participate. Ask students to speculate about why voter turnout was so high there, why it is comparatively low in the United States, and why the low participation rate for African Americans is ironic, especially considering efforts to achieve the franchise for African Americans.
2. Go to the Department of Justice website at <http://www.justice.gov/crt/about/vot/>. Examine the documents there and explain what practices they prohibit.
3. Examine the Twenty-fourth Amendment to the U.S. Constitution. What does it prohibit?

CAMPAIGN FINANCE REFORM (PP. 36–37)

Learning Outcomes

After completing this section, students should be able to:

1. name at least two reasons why some people want to reform the campaign finance system;
2. describe the connection between campaign contributions and free speech protections guaranteed by the First Amendment;

3. explain how recent campaign finance laws have changed the campaign finance system;
4. describe the role of the Federal Election Commission; and
5. summarize the Supreme Court decision in the cases of *Buckley v. Valeo* and *Citizens United v. FEC*.

BACKGROUND, CASE STUDIES, AND MOOT COURT ACTIVITIES—CAMPAIGN FINANCE

If students want to learn more about the Supreme Court cases of *Buckley v. Valeo* or *Citizens United v. FEC*⁽³⁾, they should check out the website www.oyez.com or SCOTUS blog.

In addition, Street Law has prepared multiple lesson plans to help students understand recent Supreme Court decisions relating to campaign finance. The lessons are free and available under the “resources” tab of the organization’s website: www.streetlaw.org. There you will find resources about teaching methods such as case studies and moot courts as well as background information and case summaries.

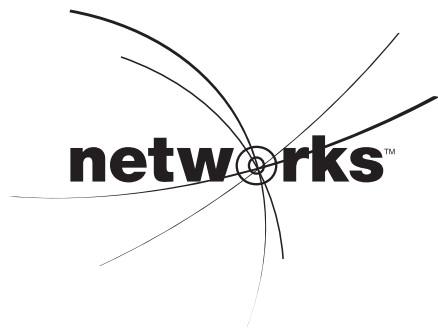
PROBLEM 3.4 (p.37)

There is no single right answer to these problems. Reasonable people disagree about the nature of both the problems and the solutions.

- a. The three statements present the three main schools of thought: full federal funding, no limits, and full disclosure. Some of the proposals that have been made are combinations of these ideas. In dealing with this problem, it might also be helpful to look at state and local campaign finance reform models. There is additional information available on this topic at the website site of the League of Women Voters, <http://lwv.org/>.
- b. Students’ answers will vary. Ask students to explain their views on each of these statements based on what they have learned and believe about judicial independence, democracy, and elections.

NOTES

- (1) 2 U.S.C. Section 1602 (1995).
- (2) *Crawford v. Marion County*, 553 U.S. 181 (2008).
- (3) *Citizens United v. Federal Election Commission*, 558 U.S. ____ (2010).



Conflict is a natural part of everyday life. Disputes can arise at the personal level among friends or between a husband and wife battling over child custody. Disputes can also occur between consumers and stores, between companies, and even between governments. It is important to know how to resolve disputes because conflict is common in many areas of life. Many conflicts are settled out of court through mediation, negotiation, and arbitration.

CHAPTER 4 Settling Disputes

INTRODUCTION (P. 38)

BACKGROUND—CONFLICT IN DAILY LIFE

Hardly a day goes by when we are not conscious of conflict and its effect on our lives. Conflict is a possibility in every encounter we have, whether it be with family members, friends, coworkers, or strangers. Sometimes it takes only a few seconds for a casual encounter to escalate to an exchange of angry words, or even to physical contact or a threat of litigation. The reality of conflict in daily life underscores the importance of studying conflict and conflict management.

Society's dissatisfaction with lawsuits as a process established to settle disputes has led to new ways of approaching conflict. Community mediation programs have cropped up around the country to help people explore new forms of dispute resolution. The success of these programs and their effect on participants has contributed to their growth.

The study of conflict can be both positive and educational. With the proper tools, people can benefit from learning how to handle conflict. Mediation and conflict-management programs are changing the way people think about conflict.

This edition of *Street Law* purposefully introduces students to alternative methods for settling disputes before it covers adversarial and court-based approaches. The assumption is that litigation often can and should be avoided and that people should understand and consider alternative methods before resorting to litigation.

Several significant concepts underlie this assumption:

1. Conflicts and disputes are a normal part of human relationships.
2. Skills that can be applied to resolving conflict should be part of curricula in many courses, including law.
3. If people view them as potential opportunities rather than as crises, conflicts can produce positive outcomes for all involved.

Students who are interested in learning about conflict resolution around the world may be interested in the work of a nonprofit group called Search for Common Ground. The group strives to help people from various cultures and histories resolve conflicts without violence and with cooperative solutions. To learn more about this group and their work internationally, have students visit www.sfcg.org.

METHODS FOR SOLVING DISPUTES (PP. 38–43)

Learning Outcomes

After completing this section, students should be able to:

1. list, describe, and distinguish among the three most common methods for settling disputes out of court;
2. define the terms *negotiation*, *settlement*, *arbitration*, *mediation*, and *ombudsperson*;
3. analyze disputes in order to determine which method the parties should use to resolve a conflict; and
4. identify different steps to take to resolve a dispute through negotiation and through mediation.

DISCUSSION—RESOLVING DISPUTES

Review Figure 4.1, Methods of Dispute Resolution, on page 39 of the Student Edition to help students understand the variety of ways to deal with disputes. In addition, two methods not noted in the Student Edition are fact-finding and administrative procedures. Fact-finding uses a third party to recommend a settlement after an investigation. Administrative procedures are similar to adjudication (decision making in the judicial process) but are less formal.

CAPTION ANSWER (P. 39) Negotiation involves only the parties involved in the conflict, while mediation involves a third party to help the disputants resolve their conflict. During arbitration, the disputing parties look to one or more outside parties to listen to their arguments and make a decision for them.

BACKGROUND—ADJUDICATION AND MEDIATION

A comparison of adjudication and mediation can help students gain a greater understanding of when each method should be used. Mediators often work for an agency affiliated with the courts or for a private agency. There are also independent mediators who are hired by the two parties and paid an hourly or set fee for the mediation. Mediators' primary methods of solving disputes involve first allowing each side to work through their emotions so the disputed issues can be identified, and then helping to generate options in order to shape an agreement between the opposing parties. It is important to note

that a mediator does not decide the case but instead helps the parties come to their own agreement.

ADJUDICATION AND MEDIATION: A COMPARISON

1. Who defines the dispute and identifies the issues?

Adjudication: In crime or a civil conflict, the state (or judge) defines the specific issue to be resolved.

Mediation: As part of the process, the disputing parties define the conflict. Both sides discuss what they feel are relevant issues.

2. What due process is provided?

Adjudication: In a criminal matter, the accused has a right to the assistance of an attorney and to a speedy trial held in public and judged by an impartial third party. The trial must comply with the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments. In a civil case, both parties also have the right to due process, including a jury trial (Seventh Amendment), but in civil cases, a person who cannot afford an attorney may not be given one by the state.

Mediation: The parties may represent themselves at the mediation meeting; sometimes they may have an attorney present, or the parties may ask their attorneys to review an agreement before it becomes final. Statements made during the mediation process are considered confidential. Mediation should be conducted impartially. There are no rules of evidence limiting what may be discussed.

3. What is the orientation of the settlement?

Adjudication: Trials focus on past actions and the intent is to determine fault, liability, or guilt. Occasionally court orders regulate the future behavior of parties.

Mediation: The focus is on the future. The past is discussed only to allow both sides to air their frustrations and to anticipate future behavior. The facts are whatever both parties accept as truth. The settlement helps to define future behavior.

4. Who decides?

Adjudication: A judge or jury decides what to accept as fact and then renders a decision.

Mediation: Mediators help resolve disputes, but the parties involved must decide for themselves what will be included in the settlement.

5. Whose interests are served?

Adjudication: By prosecuting a criminal, the state punishes the wrongdoer, protects society, establishes norms, sets precedents, and deters others from similar actions. In a civil case, the parties get a hearing in court, and one side will receive a favorable decision. The winner's interest is served much more than the loser's, although the winner has to wait for the judgment, and a significant portion of the money recovered must be paid to the lawyer.

Mediation: When mediation works, the disputing parties clarify and improve their relationship, satisfy their individual interests, set ground rules for future interactions, and maintain privacy. Their interest in being able to communicate better in the future is served. However, some people are unable to mediate their disputes.

6. Who enforces the agreements?

Adjudication: The state enforces the judgment of the courts.

Mediation: The parties involved take action to see that the settlement is honored. It sometimes is incorporated into a court decree, such as a divorce decree, and then enforced by the court.

Another way to determine which form of dispute resolution should be used is to ask:

- Should one of the parties be punished for his or her actions?
- Is one of the parties dangerous to society?
- Is it important to announce that the disputed behavior is inappropriate?
- Is it necessary to set a precedent about the behavior?

If the answer is "yes" to any of the questions above, adjudication is appropriate.

- Is there a past relationship between parties, and will they have to maintain a relationship in the future?
- Is mending and maintaining the relationship important?
- Is solving the dispute without being adversarial important to the parties?

If the answer is "yes," to any of the questions above, mediation is appropriate.

CAPTION ANSWER (P. 40) It is important to separate the demands from what each party really wants so that the terms of the negotiation are clear. If the terms are unclear, the agreement may be easily broken.

DISCUSSION—HOW CONFLICT AFFECTS US

Students invariably have extensive experience with conflicts and disputes, and their experiences can be explored in class to motivate discussion.

1. Ask students to jot down issues that have resulted in disputes with siblings, friends, bosses, co-workers, or parents. For example, disputes might involve who has access to the TV remote control or a video game, what happened to the shirt loaned to a friend, what time curfew should be, or who should be able to use the car.
2. Have students volunteer to discuss what they wrote. Explain that in law the different "sides" in a dispute may be called "parties" or "disputants." Ask them to identify:
 - disputes that could be solved by the disputants themselves, and
 - disputes that had to be solved with the help of a third party (e.g., a parent, guidance counselor, mutual friend, etc.).
3. Ask students to volunteer to describe emotions they have felt during conflicts with others. Discuss how emotions complicate the process of resolving disputes. Why is it crucial to be able to clearly identify one's feelings while struggling with conflict?
4. Ask students to identify examples of disputes or conflicts that, however painful or difficult at the time, ultimately helped them learn or grow. Families and friends find, for example, that in facing a conflict they become closer to one another and gain mutual understanding.
5. Ask students to brainstorm examples of instances when going to court could actually make a problem worse or be otherwise disadvantageous.

Discuss the concepts of "win-lose" and "win-win" in relation to settling disputes. In litigation (a lawsuit), one side wins and the other loses, with consequences that may ultimately be disadvantageous for both sides. By using alternative methods, both sides can enter into a conflict-resolution process with a win-win goal, where the solution can accommodate the interests of both sides. Litigation may be adversarial. It often escalates the problem and generally promotes hostility between the parties. The methods of negotiation, mediation, and arbitration offer both parties the potential of a win-win outcome, so hostility may be diminished.

Investigating the Law Where You Live

(p. 42) If students want to learn about noncourt conflict-resolution programs in your community, suggest that they contact a local attorney who could explain the options available and what types of disputes those community programs handle.

Another option is to direct students to the Association for Conflict Resolution at www.acrnet.org. The site includes a helpful “Frequently Asked Questions” page as well as a search function to find a mediator or arbitrator in a specific geographic area.

To find out if their campus has a conflict mediation program, students can ask at the Student Services office. If a program is available, they should learn how to become involved as a mediator or under what circumstances they can and should refer a conflict to this group for assistance in resolving it.

PROBLEM 4.1 (p.42)

Have students solve Problem 4.1 after completing the discussion about conflict described above and after instruction about the differences between negotiation, arbitration, mediation, and litigation.

In discussing each situation, remind students that there may not be one best answer. Variables that students should consider include the availability of arbitrators and mediators, the presence of complicating issues, such as whether the couple wanting a divorce has a custody dispute, and time and money factors.

- a. This situation might best be handled by an informal discussion between the sisters. If this fails, they may opt for a more formal negotiation or mediation by someone who knows and cares for both of them, such as a parent.
- b. This situation might best be handled with help from an outside agency or small claims court. Before going to an outside agency, the consumer should first speak directly to the store’s owner or to the salesperson’s supervisor. If this is unsuccessful, locate a consumer protection agency, such as the state attorney general’s office, that can help negotiate or mediate the dispute. If this assistance is not available, you may choose to go to small claims court.
- c. The landlord and tenant should try to solve this problem through informal discussion or negotia-

tion. If this is unsuccessful, the next logical approach would be to request that a housing inspector investigate. If this does not resolve the dispute, they might consider asking a housing mediator to help them, if one is available in their community. The landlord or tenant could also go to court or to a landlord/tenant commission.

- d. Disputes between workers and employers are often resolved through negotiations between the two sides. In some labor disputes, where workers are in union, the union and management will agree beforehand to submit disagreements to binding arbitration. Mediation and litigation are also sometimes used to help solve such disputes.
- e. You might settle your dispute with the IRS through informal discussion. The IRS has established dispute resolution procedures. If these do not prove satisfactory, you may wish to hire an attorney. However, unless you qualify for legal aid, the attorney’s fees might be more than the \$2000 in question. In that case, the most practical approach may be to simply pay the disputed amount.

TAKING ACTION: LAW AND DEMOCRACY

Problems at the Mall

PROBLEM 4.2 (p.43)

Before students answer questions a.–e., organize the class into two groups. One group should imagine they are store owners. The other group should imagine they are the teens in the scenario. Each group should answer the questions from their unique perspectives.

- a. Answers will vary. The teenagers are likely to be concerned about their own freedom and dignity. They do not wish to be presumed guilty when they have done nothing wrong. They may feel discriminated against since this requirement applies only to people between the ages of 16 and 18. They might also feel that their free speech rights are violated because they cannot even criticize the new policy. The students answering as teens may state the issue as, “The store policy that limits shopping by persons aged 16 to 18 to one pair at a time is discriminatory and must be eliminated.”

The store owners’ concerns are likely increased costs due to vandalism and shoplifting, which

they attribute to youths aged 16 to 18. They may also be concerned that if they raise prices to cover the increased costs, all customers may choose to shop elsewhere. Their issue is that: "Youths aged 16 to 18 are responsible for the economic losses to our businesses through shoplifting and vandalism, and the policy limiting their access to the stores is necessary."

- b.** Answers will vary. The teens' starting position is that the stores' policies must be thrown out and teens be treated exactly as other customers are treated. The teens really want to be free to shop.

The store owners' starting position is that teens must be restricted, and the policies must stay to reduce the costs of shoplifting.

- c.** The teens' best conceivable outcomes are that the policies will be lifted and they will be welcomed in the stores.

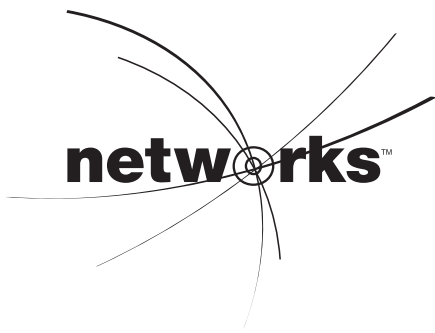
The store owners' best conceivable outcomes are that vandalism and shoplifting will be eliminated, related expenses will be minimized, other customers will feel safe, and teens can shop freely in the stores.

- d.** Teens may think the store owners' starting position is to keep the policies in place. They may think that the store owners' underlying interests are to keep teens out of their stores.

The store owners may think the teens' starting position is to let them run free throughout their stores. Store owners may think the teens' underlying interests are unlimited freedom without responsibility.

- e.** Answers will vary. Workable solutions might begin with distinguishing between vandalism and shoplifting and getting information about why the store owners believe teens are primarily responsible for the shoplifting. A new policy could be established that all shoppers must leave backpacks, large purses, and bags at the counter when they shop. Students could conduct an educational campaign on the impact of shoplifting on local stores and consumers. There may be other actions the store owners can take against shoplifting that would be more effective and apply to all customers.

After students complete Problem 4.2, review with them the FYI feature "Steps In A Typical Mediation Session" on page 41 in the Student Edition. Then organize students into groups containing at least one teenager, one store owner, and one mediator (the mall manager). Lead students through the mediation session and have each group announce the resulting solution to the rest of the class.



The U.S. judiciary consists of parallel systems of federal, tribal, and state courts. Each of the 50 states has its own system of courts whose powers are derived from its state constitution and laws. The federal court system consists of the Supreme Court and lower federal courts established by Congress. Federal courts derive their powers from the U.S. Constitution and federal laws.

CHAPTER 5 The Court System

RECOMMENDED INTERNET RESOURCES

The “Teaching Methods” section in the front of this Teacher Manual contains an annotated list of websites recommended by Street Law for teaching about the U.S. Supreme Court. These sites offer lesson plans as well as general information about the history, decisions, and activities of the Court.

TRIAL COURTS (PP. 44–49)

Learning Outcomes

After completing this section, students should be able to:

1. define the terms *trial court*, *parties*, *plaintiff*, *prosecutor*, *defendant*, *adversarial system*, *inquisitional system*, *plea bargain*, *stare decisis*, *voir dire*, *removal for cause*, and *peremptory challenge*;
2. state one argument in favor of and one argument against the adversarial system; and
3. describe the roles of judges, juries, defense attorneys, prosecutors, and plaintiffs in a trial.

BACKGROUND AND DISCUSSION—THE ADVERSARIAL SYSTEM

Understanding the adversarial system of justice in the United States will be important throughout this Street Law course. This is a concept to which you may wish to return in later chapters. For example, in Chapter 6 students will consider the ethics of attorneys who represent “guilty” clients. However, by helping students recall the adversarial system here, you can enable them to understand that the system requires that lawyers zealously represent their clients and not take on the roles of judges or juries.

Ask students to review the arguments supporting and criticizing the adversarial system discussed in the Student Edition. With which viewpoints do students agree? With which ones do they disagree?

CAPTION ANSWER (P. 45) Judges working in an inquisitional system are active in questioning witnesses and in gathering and presenting evidence.

PROBLEM 5.1 (p.46)

- a. There is no single right answer to this question. The Student Edition lists several considerations for and against the adversarial system. Additionally, students should think about the fact

that the adversarial system rests on the presumption that opposing lawyers are evenly matched. Since the outcome of the trial depends greatly on the skill and time commitment of individual lawyers, and since lawyers' fees often depend on these two factors, the party with greater financial resources often has an advantage.

On the other hand, the U.S. system is designed to provide skilled representation to all litigants, an objective third party (the judge) to resolve disputes, a well-developed set of procedural rules designed to achieve fairness, and an opportunity to appeal many decisions.

- b. The criminal justice system, with its substantial burden of proof, operates in a manner consistent with the quotation. Guilty persons, technically, do not go free, because a person is not "legally" guilty unless and until proven so. The quotation probably refers to defendants who are filtered out of the criminal justice system at some point (e.g., when police stop but do not arrest the person, an indictment is not returned, probable cause is not proven, or the defendant is not convicted because the prosecution did not prove its case). Clearly, some "morally guilty" persons do go free.
- c. The question whether the students would defend someone who they know committed a crime may generate strong opinions. Many attorneys choose not to work in criminal law because they do not wish to represent potentially guilty people. Attorneys who do represent criminal defendants believe that they are fulfilling an essential role to keep the adversarial system fair.

Attorneys understand that they operate in an adversarial system where each side presents its position in the best light possible. It is the job of criminal defense attorneys to present evidence that helps to exonerate their clients or at least raise reasonable doubt as to their guilt. Then either a jury or judge decide the case. The involvement of defense attorneys helps ensure that police and prosecutors act legally and fairly. Knowing that a client committed the crime in question is not relevant to a defense attorney's job. The defense attorney looks to see if procedures were properly followed and rights protected (arrest, search and seizure, right against self-incrimination, etc.), and makes sure the defendant's position is represented.

ACTIVITY—ANALYZING A TRIAL

Walk students through the step-by-step process of a trial. Use the *FYI* feature "Steps in a Trial" on page

47 of the Student Edition to explain what happens during a trial. You may also wish to do one or more of the following:

1. Show a recording of a trial (available at courttv.com). Stop the tape after each part of the process and point out the appropriate step number in the text. If the video does not show the complete trial, ask students which step(s) in the process is not represented.
2. Arrange to observe proceedings in your local, state, or federal courts. Try to see both a trial and an appellate hearing. If possible, arrange for a briefing on the case beforehand. If students are able to observe a variety of types of trials, ask them how the proceedings differ from each other. What evidence of the adversarial system did they observe?

BACKGROUND—JURIES

Juries are becoming more involved in the adversarial process. In some courtrooms, judges sometimes allow jurors to take notes and even to query witnesses through written questions submitted to the bench. This is part of a new movement called "jury liberation." You may wish to discuss the pros and cons of jury liberation with the class. Some arguments for liberation include the fact that it produces more reliable and accurate verdicts, it keeps jurors involved and attentive, and it helps lawyers clarify their presentations. Others contest this procedural change, noting that juries will no longer remain neutral throughout the proceeding but may become advocates for one side of the dispute. Although the jury liberation movement is still in its infancy, it is becoming more common in some courts.

Another controversy involves jury nullification, which occurs when a jury disregards the facts or a judge's instruction because it believes it must do so to dispense justice.

People have looked at ways to make juries more diverse so that defendants may be more likely to truly have a "jury of their peers." In the past, states have typically drawn the list of potential jurors from lists of registered voters. However, this group tends to be less diverse than the general public. Some states are now drawing jurors from lists of people who apply for state identification cards, such as driver's licenses. While this group is more diverse than registered voters, contact information is often out of date, particularly for people with lower incomes because they tend to move more often. For example, in one Wisconsin county, the number of jury summonses determined to be undeliverable

was 17 percent overall, but nearly 50 percent for minorities. In that same county, minorities made up 9 percent of the general population, 3 percent of jurors, and 37 percent of the jail population.⁽¹⁾

Another controversial issue is whether or not attorneys should be able to do extensive background research on individual jurors. Wealthy clients sometimes pay for investigations of jurors so that their attorneys can “pitch” their cases to the specific background, attitudes, and values of the jurors. Jury consultants are sometimes hired to write jury questionnaire, compose jury selection questions, and advise attorneys on which jurors to strike from the jury. Ask students to list the pros and cons of this practice. More information regarding jury selection can be found in Chapter 13, “Criminal Justice Process: Proceedings Before Trial.”

When lawyers use peremptory challenges, they excuse potential jurors based on intuition or probability. The U.S. Supreme Court has ruled that judges and lawyers cannot use peremptory challenges to remove potential jurors based on race⁽²⁾ or gender⁽³⁾. Still, reasons for peremptory challenges are difficult to prove. For example, some think that a white defendant will benefit from an all-white jury. Prosecutors may want more women on the jury in rape cases. Ask students if they think these assumptions are true and if peremptory challenges contribute to justice. In conjunction with this section, ask students whether or not the jury system itself is fair. Are any changes needed to ensure that defendants are tried by a jury of their peers? If so, what would they be?

CAPTION ANSWER (P. 48) Attorneys for both the defense and the prosecution may request the removal of any juror who appears to be incapable of rendering a fair and impartial verdict. In addition, peremptory challenges allow attorneys to remove jurors who they feel will not be sympathetic to their case without stating a cause, provided it is not based on the race or gender of the juror.

LEGAL RESOURCE PERSONS

1. Invite a judge to your class to discuss qualifications required of jurors. Ask how voir dire works and the judge’s role in the proceeding. Discuss merits of the jury system.
2. Invite a panel of citizens, perhaps parents, who have acted as jurors to discuss their experiences.
3. Invite attorneys with trial experience to explain how the jury system works in your area. Questions he or she may address include:
 - the voir dire process and their role in it,
 - how jurors are selected,
 - how many jurors are required for civil and criminal trials, and

- whether a unanimous verdict is required for a civil and/or for a criminal trial.

ACTIVITY—STUDENTS AS JURORS

Many schools are located in areas where law schools conduct mock trials for law students. These sometimes are part of mock trial competitions, law school clinics, or trial practice courses. Bar associations also often have trial practice programs. These programs or courses often need people to play the role of jurors. These experiences can be arranged by calling the local law school or bar association.

PROBLEM 5.2 (p.49)

- a. Some people think that police officers, firefighters, physicians, and members of the armed forces should be excused from jury duty because the nature of their work can involve emergencies that require their immediate attention. Lawyers are seldom excluded by local court rule, but as a practical matter they are often struck in the voir dire process.

Convicted felons are excluded because their conviction deprives them of certain civil rights, including jury duty. The duration of this deprivation varies from state to state, and some states permit eventual restoration of civil rights. Persons who are unable to speak or understand English or who are incapable of serving by reason of mental disability are excused. Some people think no citizens should be excluded, because the responsibilities of citizenship, including jury duty, should apply to all people. With our rights as citizens come responsibilities. It is argued that if we want a system in which cases are decided by our peers, we ourselves must be willing to serve.

- b. A defense attorney might ask some of the following questions: Do you know any of the parties in this case? Do you have any underlying prejudice against the defendant in this case? Have you been exposed to any pretrial publicity and/or formulated any opinion about the defendant’s guilt or innocence? Would you feel pressured to change your vote if everyone else on the jury voted for conviction but you were not convinced of the defendant’s guilt beyond a reasonable doubt? Do you believe in capital punishment? Could you render a guilty verdict if it might result in the death penalty?
- c. An attorney might use peremptory challenge if he or she believed that a potential juror would not be impartial, even though the attorney may

not be able to prove to the judge that the juror is unfit to serve on the jury. For example, for a defendant on trial for a rape, the defense attorney may use peremptory challenges to strike a juror who is visibly uncomfortable when the topic of rape is discussed.

APPEALS COURTS (PP. 49–50)

Learning Outcomes

After completing this section, students should be able to:

1. define the terms *appeals court*, *error of law*, *precedent*, *dissenting opinion*, and *concurring opinion*;
2. describe conditions under which a case can be appealed to higher courts; and
3. distinguish among and explain the functions of majority, concurring, and dissenting opinions.

BACKGROUND—HOW APPEALS WORK

A common misconception about courts is that anyone can appeal a case if he or she does not like the outcome. In reality, the opportunities for successful appeal are limited. The appealing party must point out an error or errors of law in the trial. In addition, the error of law must be so serious that, had it not been made, the appealing party could otherwise have prevailed. Less serious errors of law, that do not determine the outcome, are frequently considered “harmless error.”

To help students gain more than a mechanical understanding of the “error of fact” versus “error of law” rule for appeals, review “The Case of Taking the Car by Mistake” on page 50 of the Student Edition. Then, further illustrate the concepts with two examples of baseball disputes. In the first dispute, the batter hits a slow ground ball to the shortstop, who throws to first base just in time to beat the runner. The umpire declares the runner was out. The team at bat objects to the call but cannot protest the umpire’s call. The alleged error is one of fact (whether or not the ball beat the runner to first base), not one involving a rule or law. In the second dispute, the batter hits the ball down the left-field line and the ball lands on the white foul line. The umpire says the ball is foul because it hit the foul line. Here, the decision could be appealed. The issue concerns a rule (whether a ball hitting the foul line is, under the rules, fair or foul), not a fact (all agree that the ball hit the line).

Appealing alleged errors of law, but not those of fact, makes sense. From the sports analogies above, the protestors in the second situation can frame an issue (a question of law) that some third party (here, the commissioner of baseball; in the legal system, an appellate court) can decide: does a batted ball’s landing on the foul line constitute a fair or foul ball? In the first situation, only the umpire (or trial judge) is in a position to decide the facts of the play (or case).

THE CASE OF...

Taking a Car by Mistake (p. 50)

Ask students if appeals courts should take into consideration only errors of law—as in “The Case of Taking a Car by Mistake”—or if they should also consider broader issues of justice and fairness.

Ask students to think back to the beginning of Unit 1 and to consider again the purpose of law. Is the law merely punitive, or does the role of justice or fairness play a part? Ask students to articulate the purpose of the appeals process from the perspective of fairness or justice. Remind them that mitigating factors could include the insanity plea or a situation in which a judge vacates (annuls) a decision of a jury he or she feels is unfair.

STATE AND FEDERAL COURT SYSTEMS (PP. 50–54)

Learning Outcomes

After completing this section, students should be able to:

1. define the term *probate*;
2. list various types of courts and explain the types of cases they deal with; and
3. classify cases according to jurisdiction of specific courts.

BACKGROUND—STRUCTURE OF THE COURT SYSTEMS

Direct students to Figures 5.1 and 5.2 in the Student Edition. Discuss the two graphics to help students understand the two separate court systems

(state and federal) and the organization of circuit courts in the United States. Students should know the names and locations of the trial and appellate courts in their state. Most cases are heard in state courts, as opposed to the federal court system. Over the last decade many state courts have become overcrowded. Some feel this is because “state courts are increasingly becoming social service providers.”⁽⁴⁾ “The justice system—which was created as a last stop for resolving disputes that could not be settled elsewhere—is being asked to resolve complex societal problems (such as domestic relations problems) it was not designed to handle.”⁽⁵⁾ Several organizations are working to come up with solutions to this overcrowding. The National Center for State Courts and the American Bar Association are two such groups. They are studying ways in which technological advances, arbitration, mediation, etc., can improve state court efficiency and accessibility.

With respect to Figure 5.2, there are eleven regions covered by federal courts of appeal. In addition, there is a D.C. Circuit Court of Appeals and a Federal Circuit Court of Appeals, both located in Washington, D.C. The D.C. Circuit, similar to the other circuit courts, handles appeals from the federal district court. The Federal Circuit handles cases involving actions against the U.S. government, public contracts, and patents. It also hears appeals from the Court of International Trade, the Patent and Trademark Office, and other federal administrative agencies.

CAPTION ANSWER (P. 51) Both state and federal court systems have an appeals process that can lead up to the Supreme Court of the United States. However, state courts are courts of general jurisdiction (they can hear cases dealing with state or federal law), while federal courts are courts of limited jurisdiction (they are limited to deciding certain types of cases).

Investigating the Law Where You Live

(p. 51) The website for the National Center for State Courts will help students learn about courts in their community, the types of cases those courts handle, how appeals are handled in their state, and basic information about the highest court in their state. Have students visit www.ncsc.org, and choose the called “Information & Resources” and then “Browse By State.” As students investigate, suggest they look for a diagram of their state’s court system. If they cannot find one, suggest they create their own diagram and share it with the class.

Investigating the Law Where You Live

(p. 52) Have students use the map on page 53 of the Student Edition to determine which circuit they are in. They can use the same map to figure out which federal court handles appeals from federal trial courts in their community.

PROBLEM 5.3 (p.53)

- A case in which one state sues another state can be tried in a federal district court and then appealed to a U.S. Circuit Court of Appeals. Such a case can also be tried before the U.S. Supreme Court, which may have original jurisdiction in this instance.⁽⁶⁾
- Divorce cases are heard in state court (municipal or county court) and may be appealed to the state’s court of appeals or directly to the state supreme court (in those states without an intermediate court of appeals).
- An assault charge would be tried in either a state or local criminal court and could then be appealed to the state court of appeals.
- Since both drivers are from the same state, the case will be tried in local or state court. It can be appealed to the state’s court of appeals or, in smaller states, to the state’s supreme court.

CAPTION ANSWER (P. 53) Students’ answers will vary.

BACKGROUND—INDEPENDENT COURTS AND THE ELECTION OF JUDGES

Like much of the U.S. system of government, the system of judicial independence was inherited from Great Britain. In the 1600s the king or queen could assign judges to the bench and then remove them summarily if they did not represent the sovereign’s interests. In 1689, the English Bill of Rights was established, which provided judges a measure of constitutional protection, including the promise that they would not be removed if they showed “good behavior.” The U.S. Constitution provides in Article III that “Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour.” This term has been interpreted to protect judges from being removed at the political whims of executive or legislative officeholders.

Many critics say that the process of electing judges undermines the important principle of judicial independence. Such elections, they say, require campaigning and fundraising—potentially placing judicial candidates under debts and obligations to individuals, political parties, politicians, corporations, and interest groups. These critics say that when seeking financial support, the election process makes judges prey to the pressure for favors, conditions, and deals that all elected officials face. To ensure future elections, judges may feel compelled to issue rulings favorable to parties who they know support them. Even the impression of such favoritism tarnishes the principle of judicial independence.

Not everyone shares these concerns. Opinion polls show that a large proportion of the American public has confidence in the courts as they now exist. However, members of minority groups and other disadvantaged Americans tend to have less confidence in the courts. As for the legal profession’s opinion on the issue, the American Bar Association stated in a report that while some of the concerns regarding judicial elections are merited, “the current state of judicial independence is relatively sound.” In 2015, the U.S. Supreme Court heard a case involving the same issues as those presented in this problem. In the case of *Williams-Yulee v. Florida Bar*, (U.S. Supreme Court, No. 13-1499) the Court considered this question: Is it a violation of the First Amendment for a state to ban candidates for elected judicial office from soliciting donations themselves? The Supreme Court ruled that Florida’s rule banning solicitation of donations by judicial candidates did not violate the First Amendment. Because the public must have faith that the judiciary is fair and acts with integrity in order to trust the system, the government had a compelling interest in restricting the candidates’ speech. The Court said the rule specifically targeted the speech that could give the appearance of corruption, and that the rule still left open other ways for the candidates to speak. Therefore, it was constitutional.

YOU BE the JUDGE

Independent Courts (p. 54)

a. It is not uncommon for those running for the office of state judge to ask individuals and corporations for campaign contributions. However, if Mr. Sanchez makes a contribution and Marsha Monroe wins, it would not be proper for Judge Monroe to hear any cases involving Sanchez, members of his family, or his corporation. This is

because the judge’s ruling might reflect more favorably the point of view of the party who supported her election.

- b. In our system of checks and balances, the Congress controls the “purse strings” of the government, including the budget of federal courts so the Congress could reduce the overall budget. However, Congress cannot reduce the salaries of justices or federal judges. Article III of the U.S. Constitution states: “The judges, both of the supreme and inferior courts... shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.” Therefore it would be unconstitutional for their salaries to be reduced.
- c. A distant cousin, unless the judge happens to have a close relationship with this particular relative, is not likely to influence the ruling in this case. However, if the party who loses to the corporation learns of this connection, it may constitute an appearance of favoritism. Some would argue that the judge should recuse (excuse) himself from this case to avoid this appearance of injustice.
- d. Unless these sentences are illegal under the sentencing laws of the state, or it can be proven that the judge gave these sentences only because of the upcoming election, it is doubtful that the judge’s decisions will be overturned on appeal. However, this example points out the potential problems with electing judges, because some may do what they think the voters want and not what they believe the law requires.

TRIBAL COURTS (P. 55)

Learning Outcomes

After completing this section, students should be able to:

1. define the terms *inherent powers* and *delegated powers* in the context of tribal courts and give examples of each; and
2. explain which court(s) have jurisdiction over criminal and civil matters that take place on reservations.

BACKGROUND—JURISDICTIONS

Tribal courts have jurisdiction over tribal members and other Native Americans and Alaska Natives.⁽⁷⁾ Tribal courts may have jurisdiction over non-Native Americans in some circumstances,⁽⁸⁾ but it should not be assumed. Tribal courts never have criminal jurisdiction over non-Native Americans.⁽⁹⁾ State jurisdiction over Native Americans and Alaska Natives varies from reserva-

tion to reservation. State courts always have jurisdiction over Native Americans who are off the reservations. Except for the few exclusively federal jurisdictional reservations, state courts also have jurisdiction over non-Native Americans who are on the reservations.

CAPTION ANSWER (P. 55) Several hundred Native American tribal groups operate as semi-autonomous nations within the United States. These “domestic dependent nations,” as the U.S. government refers to them, retain certain legal authority over their respective reservations.

ACTIVITY—RESEARCHING

Ask students to find out whether there are any tribal courts in their state. If so, ask students to explain what types of cases the tribal courts have jurisdiction over. For help finding which types of courts exist in your state (including tribal courts) direct students to www.ncsc.org/Information-and-Resources/Browse-by-State/State-Court-Websites.aspx.

MILITARY COURTS (PP. 55–56)

Learning Outcomes

After completing this section, students should be able to:

1. name the set of laws that are unique to the military;
2. describe the purposes of military courts and tribunals; and
3. identify which branch of government has the authority to write the Uniform Code of Military Justice.

BACKGROUND

Military courts in the United States derive their power from Article I, Section 8 of the Constitution and from the Congress, which wrote its special set of laws known as the Uniform Code of Military Justice (UCMJ). All service members take an oath to uphold the UCMJ.

Students may be surprised to learn that actions that may be legal in civilian life could be crimes under the UCMJ. Ask students to speculate about why there might be differences in military and civilian laws. (For example, service members must live and work where they are told. They must be respectful, obey orders, and risk their lives when ordered to do so.)

You may want to point out to students the following differences:

- While service members are protected by the Constitution’s First Amendment, according to the UCMJ, their freedom of speech may be more limited. Commissioned officers can be court-martialed if they “use contemptuous words against the President, the Vice President, Congress, the Secretary of Defense,” and several other specifically titled people (UCMJ Article 88). Ask students why there might be more restrictions on free speech for service members.
- Service members are also protected the Fourth Amendment to the Constitution; however, the military has more latitude in searches and seizures. For example, the military can conduct inspections of living spaces, entry and exit to working area (or base), and there are more situations when a warrant is not necessary to conduct a search.

If your school is near a military base and your students are interested in military law, you may consider inviting a Navy JAG lawyer to speak with your students.

ACTIVITY—DELIBERATING MILITARY TRIBUNALS AT GUANTANAMO BAY

The Response is a short film (about 25 minutes) that depicts a hearing of an alleged enemy combatant held at Guantanamo Bay. The script is based on actual transcripts of secret hearings held there and is considered a fair and accurate depiction of the workings of the military court there. The film and lessons written by Street Law prompt students to determine how to balance the rights of detainees with national security interests. To order a copy, go to: <https://store.streetlaw.org/the-response-dvd-and-lesson-plans/>

THE SUPREME COURT OF THE UNITED STATES (PP. 56–59)

Learning Outcomes

After completing this section, students should be able to:

1. describe the benefits of having the courts follow precedent and adhere to *stare decisis*;
2. describe the process for appealing cases to the Supreme Court;
3. define the terms *due process*, *petition for certiorari*, and *stare decisis*; and
4. explain the types of cases which are likely to be granted certiorari by the Supreme Court.

THE CASE OF...

Gideon v. Wainwright

PROBLEM 5.4 (p.56)

- a. The precedent set by the Supreme Court in the *Gideon* case was that any indigent defendant (someone who cannot afford an attorney) charged with a felony (a crime punishable by imprisonment of more than one year) must be provided with a lawyer at the state's expense.⁽¹⁰⁾ All courts must follow Supreme Court decisions.
- b. If the case was decided by the state Supreme Court, the precedent would have to be followed by the lower courts in that particular state.
- c. The precedent in the *Gideon* case did not answer the question as to whether a defendant charged with a misdemeanor must be provided a free attorney. In 1972, however, the Supreme Court ruled that an attorney must be provided in all cases before a prison term can be imposed.⁽¹¹⁾ The *Gideon* opinion does not apply to criminal cases where no prison term is possible or to civil cases, and the Supreme Court has never guaranteed the right to an attorney to persons sued in a civil case.

Additional online activities and resources related to the *Gideon* case and other Supreme Court landmark cases are available through a joint project of Street Law, Inc., and the Supreme Court Historical Society at <https://www.landmarkcases.org/>.

CAPTION ANSWER (P. 57) Except for a small number of “original jurisdiction” cases which it must hear, the Supreme Court sets its own agenda, usually deciding to hear a case when there is a difference in rulings among lower courts on the issue presented. The Court also grants petitions for certiorari to cases concerning national issues where a ruling appears necessary or appropriate.

BACKGROUND AND RESOURCES— THE SUPREME COURT

Street Law, Inc and several other organizations offer excellent resources for teachers, students, and the general public to learn about and to follow the actions of the Supreme Court. These are among the best:

- www.scotusblog.com has daily features, articles about cases the Court is considering taking, live blogs by journalists who are present when the Court announces decisions,

statistics about the Court, plain English versions of Court opinions and much more

- www.oyez.org is a law school-based website designed for the public. It includes short, easy-to-read summaries of each decision, the briefs, case announcements and audio recordings of oral arguments
- www.supremecourtus.gov is the Court's official website
- www.streetlaw.org has more than 100 Supreme Court cases summarized in a case study format as well as a wide array of free lesson plans for teachers.

TAKING ACTION: LAW AND DEMOCRACY

Who Should Be on the Supreme Court?

PROBLEM 5.5 (p.59)

There is little question that U.S. Supreme Court decisions have wide-ranging impact on people throughout the country. The justices are not elected, nor are they accountable to any person, only the U.S. Constitution. Some argue that the judiciary has become the strongest of the three branches of government. For these reasons, there is much debate and popular discussion of who should be appointed to the Court.

Presidential nominations to the Court have become a significant issue in presidential campaigns. The role of the Senate in confirming nominations, which can act as a check on the appointment power of the president, has also become more visible. The Robert Bork and Clarence Thomas hearings were particularly controversial, prompting subsequent appointments of more mainstream candidates (Bork's nomination was not confirmed; Thomas's was). Ask students what issues should be explored in nomination hearings and if any should constitute “litmus tests” (as abortion has in recent years). Ask students to describe the moral values a Supreme Court justice should possess. Should justices be held to a higher moral standard than other government officials? Why or why not? What social values do Americans seem to be imposing on nominees? Are they relevant to the responsibilities of a justice?

- a. This problem presents an excellent opportunity to integrate writing into social studies. Answers will vary. Students' suggestions will include a variety of favorable characteristics to consider, including a reputation for fairness, intellectual power, an unblemished personal record, good health, substantial legal experience, political

views in sympathy with the president's, and writing and communication skills. The president may also consider whether the potential judge is of a particular racial group, ethnic group, or gender that could provide balance and a broad experience base to the Court. Age might also be a factor. Since justices serve a life term, the president might wish to nominate someone who will be able to serve on the Court for many years in the future to carry on the president's legacy.

- b. Students' opinions will vary about whether these characteristics are important. The characteristics should provide for a lively class discussion, "take a stand" activity, or small-group exercise.
- c. Answers will vary. This question poses a core dilemma for elected officials: should their votes reflect the wishes of the people they serve or should they vote according to their own best (experienced) judgment? If this particular senator is personally opposed to abortion (while his or her constituents support the right to choose an abortion), the dilemma becomes even more complicated. As students reach their own conclusions, be sure they weigh how important the judge's overall reputation is compared to the judge's potential influence over this issue of abortion rights.

INTERNATIONAL COURTS (P. 60)

Learning Outcomes

After completing this section, students should be able to:

1. describe the types of cases that might be brought to the International Court of Justice and the International Criminal Court; and
2. debate the reasons the United States should sign or refuse to sign the treaty supporting the International Criminal Court.

CAPTION ANSWER (P. 60) The International Court of Justice may settle any dispute based on international law.

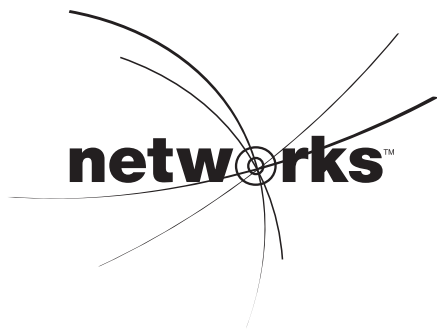
ACTIVITY—RESEARCHING INTERNATIONAL COURTS

Students may be interested in learning about international courts and the cases before those courts.

Information about the International Court of Justice including jurisdiction, pending cases, and important documents of international law can be found at <https://www.icj-cij.org/en>. Similar information about the International Criminal Court is available at <https://www.icc-cpi.int/>.

NOTES

- (1) "Dane County Court Grant to Improve Jury Diversity," *Wisconsin Lawyer*, March 2001.
- (2) *Batson v. Kentucky*, 476 U.S. 79 (1986).
- (3) *J.E.B. v. Alabama Ex Rel T.B.*, 511 U.S. 127 (1994).
- (4) Thomas Henderson, "Helping Swamped State Courts Cope With Change," *Washington Post* (January 1, 1994): A4.
- (5) R. William Ide, III. "ABA 'Public Jury' to Consider Reforms in Legal System," *Washington Post* (January 1, 1994): A4.
- (6) U.S. Constitution, Art. III, Section 2.
- (7) 25 U.S.C. 1301.
- (8) *Strate v. A-1 Contractors*, 520 U.S. 438 (1997).
- (9) *U.S. v. McBratney*, 104 U.S. 621 (1882); *Oliphant v. Suguamish Indian Tribe*, 435 U.S. 1919 (1975).
- (10) *Gideon v. Wainwright*, 372 U.S. 335 (1963).
- (11) *Argersenger v. Hamlin*, 407 U.S. 25 (1972).



One of the goals of *Street Law* is to help students learn to identify ways they can avoid legal problems and resolve some legal problems on their own. Still, in the course of a lifetime, many people will need to hire a lawyer to help them understand and navigate the legal system. This chapter provides an introduction to deciding when you need a lawyer, how to find the right one, how to work most effectively with a lawyer, the professional and ethical rules lawyers must follow, and how people become lawyers.

CHAPTER 6 Lawyers

ADDITIONAL RESOURCES

Teaching this chapter provides an excellent opportunity to bring a lawyer or judge into your classroom to co-teach lessons in law. Street Law, Inc., strongly recommends that you ask these resource persons not to prepare a lecture, but instead to engage students in interactive activities. If you or a lawyer in your community are interested in interactive lessons written specifically for lawyers, judges, and law school students, visit www.streetlaw.org.

WHEN DO YOU NEED A LAWYER? (PP. 61–63)

Learning Outcomes

After completing this section, students should be able to:

1. name at least five situations in which a person might wish to consult an attorney;
2. analyze a situation to determine whether or not a person involved should hire a lawyer; and
3. define the terms *litigator* and *bar association*.

BACKGROUND—USING LEGAL SERVICES

Students should not confuse helpful advice from trusted friends or teachers with legal advice from a trained and licensed attorney. Certain situations require the assistance of legal counsel. When it is essential to seek professional advice, it is important to do so early enough to avoid aggravating a problem.

This section introduces strategies for careful consumer shopping for legal services. Just as consumers sometimes have problems with goods they purchase, they may also experience problems with services such as legal assistance. The material in this section should make students more careful, effective, and assertive consumers of legal services.

CAPTION ANSWER (P. 62) A lawyer could help someone involved in a car accident, especially if injury and damages are significant, by explaining the person's legal rights and responsibilities. If a lawsuit results from the accident, a lawyer could represent either the defendant or the plaintiff.

PROBLEM 6.1 (p.63)

- a. As long as your insurance company agrees to handle the cost of all personal injuries and property damage, there is no need to retain counsel. However, if you are sued for more than the amount of your insurance coverage, you may wish to hire an attorney.
- b. This problem can probably be resolved informally if your friend agrees to explain the situation to the police. However, if you are arrested and booked before the situation is clarified, you may need an attorney to help you expunge (erase) your arrest record.
- c. The law implies a warranty that may still be in effect beyond the dates of the written guarantee. The buyer in this case can seek assistance from local consumer protection agencies or sue in small claims court. An attorney is probably not required to resolve this problem and hiring one may cost more than the price of the laptop.
- d. Car buyers need good advice, but not necessarily from an attorney. Your bank may be able to provide assistance in reading the contract of sale and the financing agreement. A good mechanic's advice is also invaluable.
- e. You would definitely want an attorney in this situation, since you will probably be charged with a serious crime. Even though you did not take part in the robbery, if the charges are true, you may be liable for criminal conspiracy or as an accessory to the crime.
- f. Before hiring an attorney, you could contact the Equal Employment Opportunity Commission (EEOC) or a local human rights commission. They may be able to mediate a resolution. If not, an attorney who specializes in employment or discrimination law may be able to help you determine whether and how to bring suit.
- g. You should hire a lawyer who specializes in wills. He or she can help you spell out in a legal document to whom you want the contents of your estate to go. If you do not have a valid will specifying where you want the money to go, your

estate will be distributed according to your state intestacy laws (laws that deal with how to manage a person's estate if he or she dies without a will), which may result in your family inheriting your savings.

- h. If there are contested issues that involve such matters as child support, custody, alimony, or property division, you should consult an attorney. If there are no contested issues, you may wish to handle the divorce yourself. You should ask your local family court clerk about whether you can file the divorce papers pro se (on your own behalf). Chapter 32, "Separation, Divorce, and Custody," provides a detailed discussion of divorce.
- i. You usually do not need a lawyer to file your federal income tax return. Individuals with complex tax-planning issues (often involving estates and trusts) may wish to consult a tax lawyer. However, a tax accountant or bank can also assist with this type of planning. If you have questions about preparing and filing your tax return and want free assistance, you can contact the Internal Revenue Service (IRS). In addition, many private businesses or organizations offer tax return preparation assistance for a fee. If you are audited and cannot satisfactorily resolve a tax problem on your own, you may wish to hire a tax lawyer.

HOW DO YOU FIND A LAWYER? (PP. 63–64)

Learning Outcomes

After completing this section, students should be able to:

1. assess the positive and negative effects of advertisements by lawyers;
2. evaluate whether or not advertising by lawyers is proper or improper in given case scenarios;
3. explain how to find and retain suitable legal counsel; and

Investigating the Law Where You Live

(p. 63) To find local and state bar associations, have students visit the American Bar Association at www.americanbar.org. Students who are interested in minority bar associations can click on “National Minority Bar Associations.” Another useful part of the ABA website at https://www.americanbar.org/groups/legal_services/ provides a national directory of lawyers, referrals, and information about how to get free legal help.

CAPTION ANSWER (P. 64) Many people claim that the best way to find an experienced lawyer is through the recommendation of someone who had a similar legal problem that was resolved to his or her satisfaction.

BACKGROUND—LAWYERS AND ADVERTISING

Considerable controversy surrounds the issue of lawyers and advertising. The history of legal advertising dates to 1908 when the American Bar Association banned an advertisement, ruling it was unethical and undignified. In the 1977 case of *Bates v. State Bar of Arizona*,⁽¹⁾ the U.S. Supreme Court held that while the First Amendment prohibits bar association policies from suppressing all attorney advertising, regulations could limit advertising in certain instances. The Court found that reasonable time, place, and manner restrictions may be placed on attorney advertisements. For example, ads that are false, deceptive, or misleading can be banned. Since then, an increasing number of attorneys have used advertising in newspapers, on television, on the radio, and on the Internet to attract clients. The trend toward targeted online advertising is rapidly growing. As a group, lawyers spend millions of dollars each year on advertising.

Some people feel that consumers profit from legal advertising. It not only makes them more aware of the services offered, but it enables them to price services, in turn encouraging lawyers to keep their fees competitive. Despite its advantages, most lawyers agree that the best way to find a good attorney is through referral by a trusted friend.

PROBLEM 6.2 (p.64)

Ask students to analyze the advertisements they find using the following questions.

1. What claims does the attorney make about his/her services?
2. Does the advertisement give information about the attorney’s fees?
3. Are graphics or photos used? If so, in what way? Are they effective?
4. Who is the intended audience for this advertisement?

When students have finished analyzing the advertisements, use the following questions to conduct a class discussion:

- What overall impressions do you have of the advertisements?
- Are your impressions good? Bad? Mixed?
- Do any of the advertisements motivate you to hire one particular lawyer or law firm over another? If so, what were the compelling features of the advertisement?
- If you were a lawyer, would you advertise? Why or why not?

Ask students to compile a list of advantages and disadvantage to advertising. Answers will vary, but some advantages of advertising might be that it makes consumers aware of the services offered and perhaps the fees, keeps fees competitive, allows consumers to compare law firms. Some disadvantages might be that advertising turns attorneys into sales people giving them an incentive to exaggerate their claims. Advertising also might encourage consumers to choose the attorney with the slickest advertisements instead of the best attorney for their situation.

BACKGROUND—LEGAL SERVICES FOR INDIGENT DEFENDANTS

As noted in Chapter 5, the U.S. Supreme Court has ruled that indigent criminal defendants are entitled to counsel in felony cases⁽³⁾ and in misdemeanor cases in which a prison term can be imposed.⁽⁴⁾ However, free legal counsel is not constitutionally required in civil cases or in criminal cases where no prison time is possible (fine only).⁽⁵⁾

In 1974 President Richard Nixon signed a law creating the Legal Services Corporation (LSC). Congress funded the LSC at the minimum access levels of two full-time poverty lawyers for every 10,000 poor people in need. This action recognized special needs populations with unique barriers to the justice system, including migrant workers, Native Americans, and people confined in institutions. There have been numerous attempts to eliminate all federal funding for civil legal services and to limit the types of cases handled (e.g., class action lawsuits).

ACTIVITY—FIELD TRIP OR LEGAL RESOURCE PERSON

Locate and visit the organizations in your community that offer free or reduced-cost legal services. If that is not possible, invite an attorney from a legal services organization to address your class. Students should interview the attorney to obtain answers to these questions: Who is eligible for these services? What kinds of cases do they handle? How long must one wait to get an appointment? Will they provide representation equal to that provided by privately paid attorneys? If a client feels that the attorney provided by the office is not doing a good job, what can he or she do?

Many people are concerned about the quality of representation provided for people entitled to public defenders. Because so many public defenders have such large caseloads, some people fear they do not have as much time to devote to each case as they would if they were working for a private client who could pay more. Discuss with students whether the premise is true, that is, whether we are facing a system of justice in which defendants who can pay are more likely to be found innocent or to face lesser penalties.

In 2004, the National Committee on the Right to Counsel was formed to examine whether the U.S. criminal justice system provides adequate lawyers and legal representation to defendants who cannot afford to hire and pay lawyers themselves. This bipartisan national committee also makes recommendations for system improvements. The committee includes judges, prosecutors, legal aid lawyers, law enforcers, and policy makers. To learn more about the extent of the problem and recommendations for various states and localities, visit the websites of two organizations who are helping to lead the project: The Constitution Project (www.constitutionproject.org) and The National Legal Aid and Defender Association (<http://www.nlada100years.org>).

BECOMING A LAWYER (P. 65)

Learning Outcomes

After completing this section, students should be able to:

1. Describe the path to becoming a lawyer in the United States;
2. Explain the importance of state bar exams; and
3. Use resources such as the Law School Admission Council's website to find more information on applying to law school.

DISCUSSION – DIVERSITY IN LAW SCHOOLS

Many law schools encourage diverse applicants, and make it a goal to increase diversity in classes. Ask students to explain what groups might offer diversity. Answers should include racially and ethnically diverse candidates, LGBTQ candidates, candidates from various ages, geographical areas, career backgrounds, socioeconomic statuses, and candidates with disabilities. Ask students why it might be important for law schools to have a diverse student body. Answers might include that diverse students bring diverse perspectives, life experiences, and skills.

Ask students what opposition might be raised if a law school gave preference to diverse candidates in admissions. Students might reference “reverse discrimination” and cases in which less diverse students with higher GPAs and LSAT scores were not admitted. You may wish to explain the case of *Grutter v. Bollinger* (2003) brought by a white student who was denied admission to the University of Michigan Law School alleging that the school's policy favored diverse students in violation of the Equal Protection Clause. In this case the Supreme Court ruled that the law school did not violate the Constitution in using its narrowly tailored system of giving preference to diverse applicants because it had a compelling interest in increasing diversity.

ACTIVITY – LSAT PRACTICE QUESTIONS

Students can explore the types of questions on the LSAT exam by visiting the Law School Admissions Council's website at <https://www.lsac.org/lsat>. There are short videos on each type of question (reading comprehension, analytical reasoning, logical reasoning, and the writing sample) as

well as general LSAT prep. There is also a sample test available. Consider selecting a few questions of each type and having students attempt them first individually, and then in pairs. Review the correct answers. Afterward, discuss why these types of questions might be used to assess a student's likelihood of succeeding in law school.

ACTIVITY – FINDING THE RIGHT FIELD OF LAW

Explain to students that not all careers in law require law school and that not everyone may be interested in law as a career. However, for this activity, ask students to assume that they are planning on pursuing law. There are many fields of law they may choose from. Instruct students to take the interest quiz at <https://www.lsac.org/discover-law/pathways-legal-career/quiz>. The quiz results will suggest fields of law the student might be interested in. After seeing their results, ask students to investigate their top three matches and any others on the list that interest them at <https://www.lsac.org/discover-law/pathways-legal-career/fields-law>. Discuss as a large group the accuracy of the interest quiz in identifying their true interests. Conclude by having students write a journal entry about the field/s of law they would most like to pursue and their reasons why.

PROBLEM 6.3

a. People who graduate from law school and pass the bar exam can work in many areas of law, business, government, academia and more. Some examples include: public defender, prosecutor, private practice criminal defense or civil attorney, jury/trial consultant, agent, real estate attorney, patent attorney, judge, immigration attorney, government employee (EPA, EEOC, Department of Justice, etc.), judicial clerk, human rights or civil rights advocate, arbitrator/mediator, congressional aide, lobbyist, teacher or professor. This is not an exhaustive list. A short video entitled "Discover what a law degree can do for you" is available at <https://www.lsac.org/discover-law>.

b. Some obstacles to becoming a lawyer can be getting into law school, paying for law school, and passing the bar exam. Depending on the year, somewhere between 50% and 60% of law school applicants are accepted. In general, a high undergraduate GPA and LSAT scores are necessary. According to U.S. News and World Report in 2018, three years of law school at a public-school costs \$26,264 for in-state students, a private institution costs on average of \$43,020, and just one year at a top 10 law school was \$60,293. Less than three-fourths of law school graduates pass a state bar examination on their first attempt.

NOTES

- (1) *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).
- (2) *Shapiro v. Kentucky Bar Association*, 486 U.S. 466 (1988).
- (3) *Gideon v. Wainwright*, 372 U.S. 335 (1963).
- (4) *Argersinger v. Hamlin*, 407 U.S. 25 (1972).
- (5) *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981).