

The LEGAL and REGULATORY ENVIRONMENT of BUSINESS

Eighteenth Edition



The Legal and Regulatory Environment of **BUSINESS**

Eighteenth Edition

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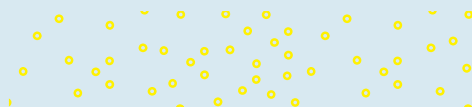
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THE LEGAL AND REGULATORY ENVIRONMENT OF BUSINESS, EIGHTEENTH EDITION

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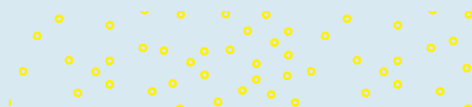
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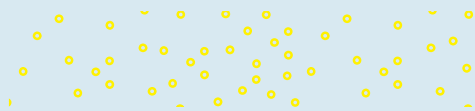
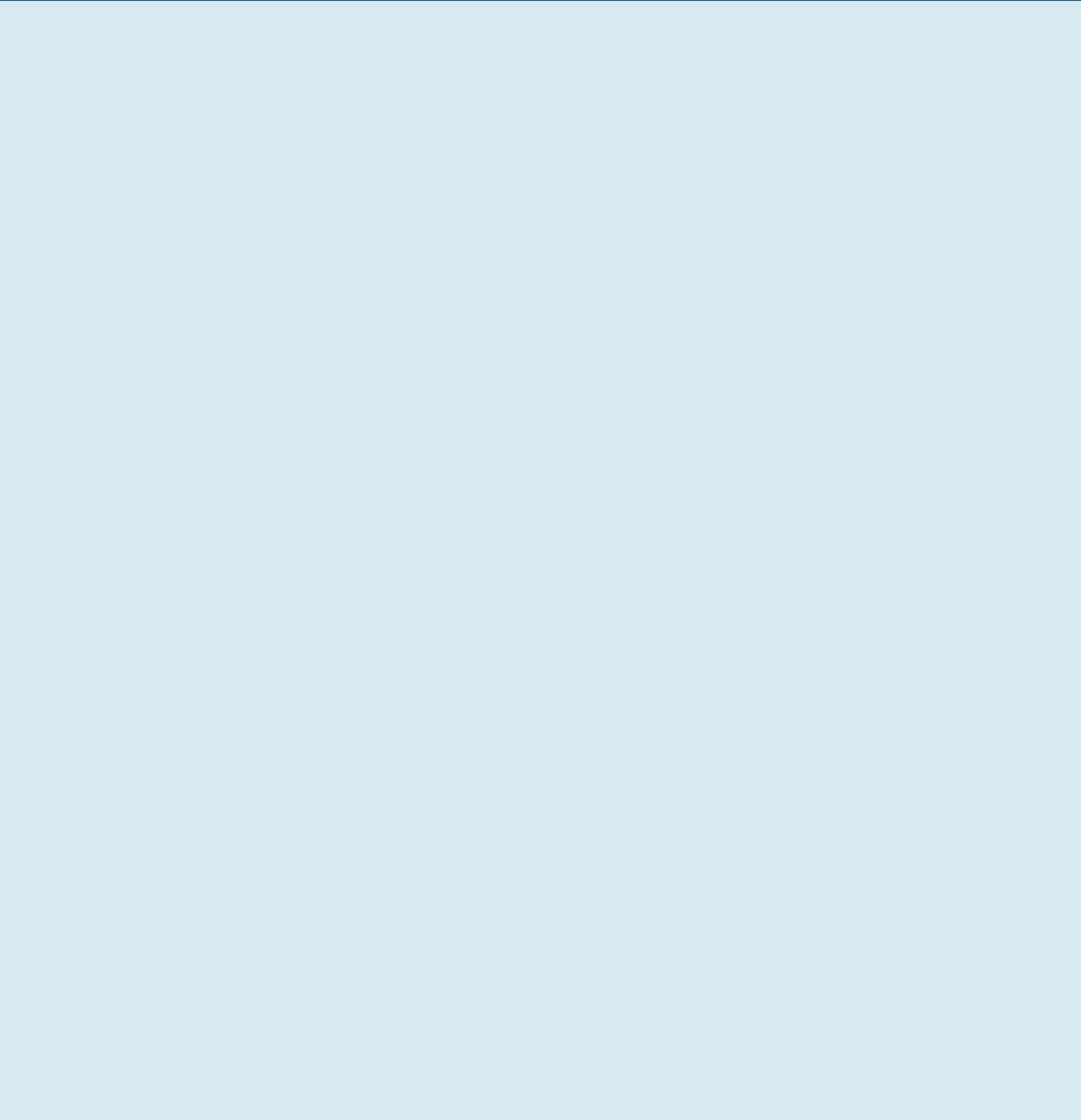
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Courtesy Marisa Anne Pagnattaro

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Marisa Anne Pagnattaro is the I.W. Cousins Professor of Business Ethics and a Josiah Meigs Distinguished Teaching Professor of Legal Studies in the Terry College of Business at the University of Georgia. She received her Ph.D. in English at the University of Georgia, her J.D. from New York Law School, and her B.A. from Colgate University. Prior to joining the Georgia faculty, Dr. Pagnattaro was a litigation attorney with Kilpatrick & Cody (now known as Kilpatrick Townsend) in Atlanta. Dr. Pagnattaro is the recipient of numerous teaching awards, and she also won the Academy of Legal Studies in Business Charles M. Hewett Master Teacher Competition in 2010. She is the author of many scholarly articles on national and international employment law issues, as well as labor issues related to international trade and the protection of trade secrets in China. She is an active member of the Academy of Legal Studies in Business and is a former Editor in Chief of the *American Business Law Journal*.



Courtesy Daniel R. Cahoy

Daniel R. **CAHOY**

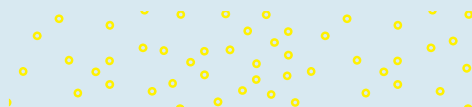
Dan Cahoy is a Professor of Business Law and Dean's Faculty Fellow in the Smeal College of Business at The Pennsylvania State University. He is a registered patent attorney, with a J.D. from the University of New Hampshire School of Law and a B.A. from the University of Iowa. Prior to joining Penn State, Professor Cahoy was a litigator at an intellectual property firm in New York City, where he specialized in pharmaceutical and biotechnology cases. He is the author of numerous scholarly articles on technology law, regulatory policy, and sustainability, and he received a Fulbright Scholarship in 2009 to serve as the Visiting Chair in International Humanitarian Law at the University of Ottawa. Professor Cahoy is a former Editor in Chief of the *American Business Law Journal* and *IDEA: The Journal of Law and Technology*. He has also held various leadership positions in academic organizations including serving as an elected member of the Executive Committee of the Academy of Legal Studies in Business.

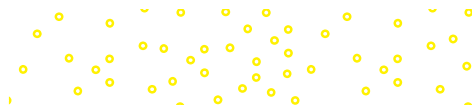


Courtesy Julie Manning Magid

Julie Manning **MAGID**

Julie Manning Magid is a Professor of Business Law and a Kelley Venture Fellow in the Kelley School of Business at Indiana University. She also is the Director of the Randall L. Tobias Center for Leadership Excellence at Indiana University. She received her J.D. from the University of Michigan Law School and her A.B. from Georgetown University. Prior to joining the Kelley School faculty, Professor Magid was a litigation attorney specializing in employment and business litigation. Professor Magid is recognized for her teaching in the undergraduate, graduate, specialized

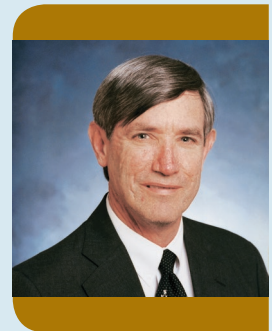




graduate, and online teaching environments, with numerous teaching awards, including the Kelley School of Business MBA Teaching Excellence Award and the Schuyler F. Otteson Undergraduate Teaching Excellence Award. Her teaching received international recognition from the Academy of Legal Studies in Business as the overall winner of the Charles M. Hewitt Master Teacher Award. Professor Magid is the author of numerous scholarly articles and book chapters focused on public policy related to health care, gender, innovation, and privacy. She is a Life Sciences Research Fellow with the Center for the Business of Life Science and a member of the Editorial Board of the *American Business Law Journal*.

O. Lee **REED**

Lee Reed retired in 2010 as the Scherer Chair in Public Affairs and Josiah Meigs Distinguished Teaching Professor in the Terry College of Business at the University of Georgia. He continues to be active at UGA as Emeritus Professor of Legal Studies in Business. He received his Doctor of Law degree at the University of Chicago and a B.A. degree at Birmingham-Southern College. Professor Reed holds a J.D. degree from the University of Chicago. A former president of the Academy in Legal Studies in Business, he has received five national research awards for his scholarly articles and is former Editor in Chief of the *American Business Law Journal*. He has also testified before the Federal Trade Commission and has twice written invited introductions for *The Advertising Law Anthology*. Professor Reed is a frequent speaker to trade and scholarly groups on the fundamental importance of the rule of law and property to the private market system.



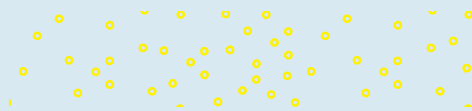
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Peter J. **SHEDD**

Peter Shedd is the University Professor Emeritus of Legal Studies in the Terry College of Business at the University of Georgia where he received his B.B.A. and J.D. degrees. He also has been a Visiting Professor in the Ross School of Business at the University of Michigan and the Warrington College of Business at the University of Florida. Professor Shedd has extensive experience as a teacher, researcher, administrator, and author of business-related texts. His teaching of undergraduate and MBA courses has earned Professor Shedd numerous teaching awards including being named a Josiah Meigs Distinguished Teaching Professor. Professor Shedd is an active member of the Academy of Legal Studies in Business and its Southeastern Regional. He served as national president during 1999–2000. Professor Shedd is a member of the State Bar of Georgia and is an experienced arbitrator and mediator.



Courtesy Peter J. SHEDD



This eighteenth edition continues the long, rich tradition of our commitment to presenting timely examples and cases that underscore the relevance of the law for business. We are passionate about helping students understand the importance of the legal and regulatory environment of business. Our goal is to make this text accessible, and we hope that they will embrace the study of the law with enthusiasm. In this preface, we strive to highlight themes, additions, and pedagogical devices—including important electronic features—that are key to this edition.

The Eighteenth Edition: Themes and New Additions

With each new edition, we endeavor to maintain the reputation of this text as being the most up-to-date on the latest important developments in the law for business. As we prepare each new edition, we consider the events that affect the business environment and discuss how to incorporate them into the text. Because of ongoing issues from the 2008 financial crisis, we continue to highlight the regulatory responses and legal fallout in this edition. Other additions to the eighteenth edition include a new focus on FinTech, cyber security, and elaboration on privacy issues. The U.S. Supreme Court case *Spokeo v. Robins*, which addresses issues related to the publication of inaccurate information on the Internet, is at the intersection of emerging issues related to technology. We also added a number of recent federal cases and Supreme Court decisions.

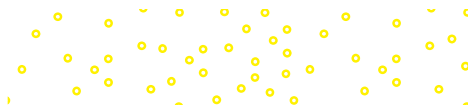
Each chapter includes a range of relevant examples and case opinions, with key points noted for each case. Sidebars within each chapter provide students and instructors with opportunities to learn about topics that illustrate the principles discussed within the text. Margin comments also reinforce key themes and points of emphasis. We hope that this layering of the law with examples reinforces each student's understanding of the law for business.

We believe that this text is well suited for both legal environment and business law classes. The fundamental message we wish our readers to grasp is that the law is at the core of private enterprise. The law determines ownership and protects business and individual ownership interests, which is why property law is at the heart of this text. Law defines property, enforces property rights, resolves disputes about where the boundaries of property lie, and recognizes that compensation is appropriate when one person infringes across the boundary of what is owned by another. Nations enforcing property rights under the rule of law establish conditions for creating prosperous, diversified economies, which are crucial for businesses to thrive.

All of the current examples and sidebars are designed to teach business students the relevance of the law for business and to prepare them to make informed decisions about how the law can be used strategically to protect their rights and business interests.

Organization of the Eighteenth Edition

This edition consists of 22 chapters, divided into four parts. Part One introduces students to the legal foundations for business. The first chapter in this section underscores the importance of the legal environment of business to appreciate the role



of law as the foundation for business in the private market system. This section also includes a chapter on ethics, as well as three chapters pertaining to dispute resolution: courts, litigation, and alternative dispute resolution. Lastly, this first part includes a chapter on the U.S. Constitution (including the Commerce Clause) and its fundamental role in the legal system for business.

Part Two consists of basic legal principles, incorporating eight chapters: property, contract formation, contractual performance, torts, intellectual property, international law, criminal law, and business organizations. These chapters are designed to help students learn basic legal principles, as well as how to identify them in business contexts.

Part Three details the regulatory landscape for business. Five chapters cover essential regulatory aspects of business: the regulatory process, antitrust, financial and securities regulation, privacy and consumer protection, and environmental regulation.

The final section, Part Four, contains three chapters pertaining to the employer–employee relationship: discrimination, employment laws (including agency), and the labor–management relationship.

Taken together, these chapters should provide students with a comprehensive, yet accessible, sense of the laws and regulations crucial for companies doing business in the United States.

WHAT'S NEW

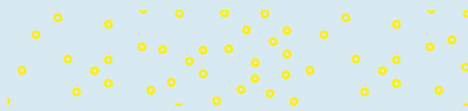
PART ONE

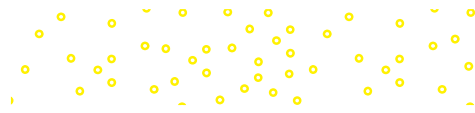
Chapter 1 Law as Foundation for Business

- Edited the Introduction to incorporate new themes: FinTech and issues related to privacy and cyber security.
- Updated Sidebar 1.1, adding information about Deutsche Bank and bank issues with cybersecurity.
- Updated the chapter with additional information about the rule of law from the World Justice Project.
- Added a new Sidebar 1.3 about China's new protections for property rights, replacing the material about Russia (replacing Russia's Property Problems).
- Updated Sidebar 1.4 about Bank of America.
- Added Sidebar 1.5 about the role women are playing in corporate governance.

Chapter 2 Ethics in Decision Making

- Added new marginalia referencing findings from the 2016 Global Business Ethics Survey.
- Added new Sidebar 2.1 about Wells Fargo's sham account revelation and organization ethical values.
- Added new Sidebar 2.3 discussing the business response to concerns that Facebook profited from misinformation.
- Added new Sidebar 2.5 with the updated Statement of Ethics from the American Marketing Association.
- Updated Sidebar 2.6 to include an additional paragraph from the Code.





- Added new Sidebar 2.10, Removing Conflict Minerals from the Supply Chain, describing Intel’s efforts to eliminate funding militant-controlled mines in the Democratic Republic of Congo.

Chapter 3 Courts

- Added new Sidebar 3.1 on the workload of federal judges (replacing previous sidebar on the costs of legal representation).
- Updated marginalia (number of lawyers in the United States).
- Updated Sidebar 3.2 with a Mark Zuckerberg example.
- Updated Sidebar 3.3 to incorporate an example about entrepreneurs.
- Sidebar 3.4 update with the 2015 term stats.
- Updated Sidebar 3.5 and added statistics about the “strength of the majority.”
- Revised Sidebar 3.6, adding more information about the history and role of the Supreme Court.
- Updated Sidebar 3.7, Choosing a Supreme Court Justice, with information about the hiatus following Justice Scalia’s death.
- Replaced Sidebar 3.8 with information about how business fares in the Roberts Court.
- Updated Sidebar 3.9.
- Updated Sidebar 3.11 with information on Neil Gorsuch, the newest justice.
- Added new Case 3.1 *Spokeo, Inc. v. Robins* and commentary in the text, replacing *National Federation of Business v. Sebelius*. The corresponding Case Briefing in Appendix I has been updated as well.

Chapter 4 Litigation

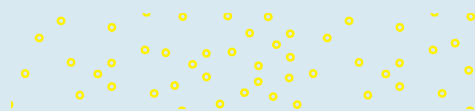
- Updated Sidebar 4.1, including adding information about Deutsche Bank.
- Added new Sidebar 4.4 about Volkswagen litigation and settlements.
- Added new Sidebar 4.5 about securities-related class-action lawsuits (replacing a general list).
- Revised Sidebar 4.8 to include the usefulness of data analytics in discovery.
- Updated Sidebar 4.9, adding new federal rules about e-discovery.
- Updated Sidebar 4.10 on Ringling Brothers.
- Updated Sidebar 4.14 about the status of the OpenCourt project.
- Updated Sidebar 4.15 with new information about a bill introduced to televise Supreme Court proceedings.

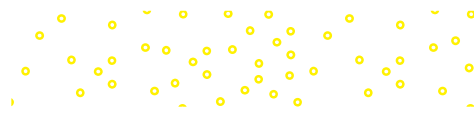
Chapter 5 Alternative Dispute Resolution

- Added new marginalia outlining arbitration pros and cons.
- Added new Sidebar 5.7 about Wells Fargo’s enforcement of arbitration clauses in cases of identity theft, referencing Sidebar 2.1.

Chapter 6 The Constitution

- Added clarification about private employers.
- Added new material on “police power” related to the Commerce Clause.





- Added new Sidebar 6.7 with the Elonis Supreme Court case involving allegedly threatening speech on Facebook (replacing sidebar on an older case about free speech versus privacy).
- Updated Sidebar 6.8 with new international regulations on cigarette packaging.

PART TWO

Chapter 7 Property

- Replaced *Semoon v. Wooster School* (Case 7.2) with *Duke Energy Carolinas v. Gray*.
- Revised Figure 7.1: Divisions of Property.
- Added Sidebar 7.5 about drones and incursions on air rights.
- Replaced sidebar on car rental bailments (follow instructions or else) with Sidebar 7.7 on FinTech and bailments.

Chapter 8 Contract Formation

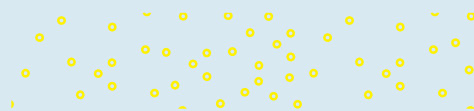
- Replaced sidebar on confidentiality agreements with Sidebar 8.8 on non-competes and Jimmy John's, and moved it to the section on illegality.
- Added Table 8.1, distinguishing certain common law contract rules from analogous UCC rules.
- Replaced *Montz v. Pilgrim* with Case 8.1, *Leyden v. American Accreditation Healthcare Commn.*, which describes implied agreements in employment contexts.
- Revised Sidebar 8.2 to expand discussion of implied agreements in idea submission.
- Added Sidebar 8.3 on serious intent to make an offer.

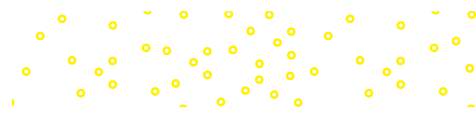
Chapter 9 Contract Performance and Breach

- Revised Figure 9.1 for clarity.
- Text on contract performance expanded with specific treatment on the consequences of material breach and substantial performance (non-material breach).
- *Rhodes v. Davis* replaced with Case 9.3, *Oliver v. Ball*, a case on specific performance of a real estate contract.
- Remedies for breach of contract expanded and level of detail increased.
- Delegation added as a specific category of third-party rights.

Chapter 10 Torts

- Revised Sidebar 10.1, separating assault and battery.
- Revised assault and battery section to clarify that criminal assault and battery differs from civil.
- Modified paragraphs prior to Case 10.1 for clarity.
- Updated Case 10.2 to include the subsequent summary judgment decision.
- Revised Trespass section to reflect two separate types of trespass: trespass to land and trespass to personal property.
- Revised Conversion section to address the difference between trespass to personal property and conversion.





- Revised Injurious Falsehood section to include the term *product disparagement*.
- The standard of proof statement related to defamation was eliminated because this common law standard is no longer the rule in most states.
- Added marginalia quoting Supreme Court decision *Spokeo, Inc. v. Robins* on difficulty of calculating tort recovery.

Chapter 11 Intellectual Property

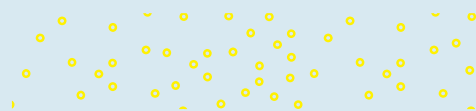
- Added Figure 11.1, a chart of major U.S. intellectual property rights.
- Updated Figure 11.2 to reflect change in term of design patents.
- Added Sidebar 11.3 on the Defend Trade Secrets Act of 2016.
- Replaced sidebar on patent validity with a more relevant Sidebar 11.6 on the rise of design patents.
- Revised and simplified Sidebar 11.8, explanation of obviousness.
- Replaced case *AMP v. Myriad* with new, very relevant Supreme Court Case 11.2, *Alice v. CLS Bank*.
- Updated Sidebar 11.7 on patentability of software.
- Updated Sidebar 11.9 to include the Slants case (*In re Tam*) and the Supreme Court's pending review.
- Added Sidebar 11.11 on trademark counterfeiting.
- Added Sidebar 11.12 on the Supreme Court's *Star Athletica* case from 2016.
- Key points added to Case 11.4 on Acuff Rose.

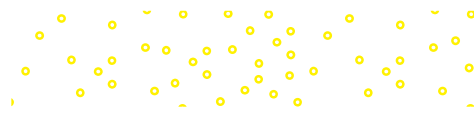
Chapter 12 International Law

- Updated Figure 12.1, Top Ten Trading Partners, with 2016 year-end data.
- Updated Sidebar 12.2 with current information from Transparency International, including new commentary about corruption and inequality.
- Updated Sidebar 12.3 with new FCPA prosecutions.
- Added a discussion about money laundering and the intersection with big data.
- Updated Sidebar 12.5 with new pirate attacks.
- Updated the text and Table 12.2 and added a note about Brexit.
- Updated Sidebar 12.8 regarding anti-smoking law.
- Updated Sidebar 12.9 about the top ten international franchises and added Airbnb.
- Updated Sidebar 12.10 regarding Chiquita's liability for alleged acts in Colombia.
- Updated Sidebar 12.12 regarding Chevron and Texaco's liability for alleged acts in Ecuador.

Chapter 13 Criminal Law

- Made general chapter updates, including the chapter introduction.
- Revised Sidebar 13.1 with all new content about the department of Justice's Financial Fraud Task Force prosecutions.
- Updated Sidebar 13.2 with additional information regarding the fraud at WorldCom.
- Added new material on the Eighth Amendment.





- Updated Sidebar 13.6 with additional information about the fallout from Bernie Madoff’s Ponzi scheme.
- Updated Sidebar 13.7 and added more examples, including “Bluff My Call,” which can customize caller ID with a misleading name.
- Updated Sidebar 13.8 with new information about preventing identity theft. Cross-referenced Sidebar 5.7 regarding arbitration in identity theft cases.
- Updated Sidebar 13.9 with new false claims act cases and information about health care fraud.
- Updated Sidebar 13.10 with more details about Enron.
- Updated Sidebar 13.12 with new information about the convictions of executives charged after the explosions.
- Replaced Sidebar 13.13 with a new example involving the prosecution of executives at the New England Compounding Center.
- Updated Sidebar 13.14 with new material on cybersecurity, including ransomware and the massive 2017 attack (replacing some examples of cybercrimes).

Chapter 14 Business Organizations

- Discussion of business tax in Sidebar 14.6 removed and re-envisioned as a trend of managing the organization.
- Discussion of Nonprofits removed from Sidebar 14.8 and inserted into text. The discussion was also expanded.
- Agency Law moved from Chapter 21 and inserted after discussion of corporate forms at LO 14-4.

PART THREE

Chapter 15 Regulatory Process

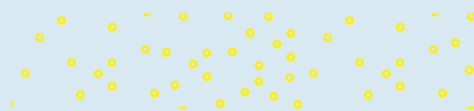
- Added Sidebar 15.2 examining the unique structure of the Consumer Financial Protection Bureau being challenged in D.C. Circuit Court.
- Added marginalia with the website for commenting on proposed regulations: <https://www.regulations.gov/>.
- Added discussion about the role of chief compliance officers in navigating complex business regulations
- Updated website for finding a list of federal agencies to <https://www.usa.gov/federal-agencies>.

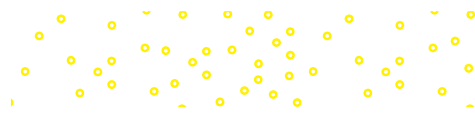
Chapter 16 Antitrust Regulation

- Updated DOJ and European Commission enforcement data.
- Updated Figure 16.3.
- Case 16.1, *U.S. v. Apple*, updated to the 2015 Second Circuit decision.
- Replaced Sidebar 16.6 with a discussion of the failed Staples-Office Depot merger.
- Added Sidebar 16.7 on FTC and DOJ guides.

Chapter 17 Financial and Securities Regulation

- Table 17.2 eliminated because Chapter 4 includes new Sidebar 4.5 about securities related class-action lawsuits.





- Updated Sidebar 17.4 to reflect recent Supreme Court decision concerning statute of limitations for government actions.
- Expanded the text discussion of international application of securities laws post-*Morrison* (Case 17.2).
- Updated recent SEC settlement numbers in the text.
- Updated Table 17.2 (previously Table 17.3) with number of federal security claims filed each year.
- Added Dodd-Frank whistleblower update in text discussion.
- Added new Sidebar 17.6, CFPB Files Brief Addressing *Spokeo v. Robins* Petition.
- Added new Sidebar 17.7, Title II of JOBS Act Funds Start-Ups.
- Added new review questions and problems for Dodd-Frank and JOBS Act.

Chapter 18 Privacy and Consumer Protection

- Updated FTC enforcement data.
- Revised Table 18.1 on selected laws enforced by the FTC.
- Clarified chapter title and rearranged content to more clearly delineate privacy protection, false advertising, and consumer protection.
- Replaced Sidebar 18.1 with Volkswagen diesel scandal example.
- Added Case 18.2, *Lexmark International Inc. v. Static Control Components Inc.*, as a false advertising case.
- Deleted Case 18.3, *Jerman v. Carlisle*.
- Added Sidebar 18.3 on FinTech regulation.

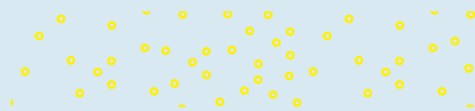
Chapter 19 Environmental Regulation and Resource Sustainability

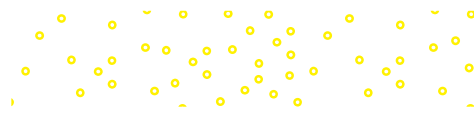
- Updated chapter title to include the sustainability issues addressed throughout the chapter.
- Updated LO 19.4 to more explicitly address sustainability.
- Added marginalia with the Volkswagen claims settlement in 2016.
- Added new Sidebar 19.3 addressing the Dakota Access Pipeline controversy.
- Added new sidebar 19.5 detailing Hershey's Environmental Sustainability efforts.
- Included discussion in the text about the Paris Agreement to combat climate change and the United States's decision to withdraw from the agreement in 2017.

PART FOUR

Chapter 20 Employment Discrimination

- Updated Figure 20.1 EEOC data.
- Updated Sidebar 20.1 with additional new material about code words and actions brought by the EEOC.
- Updated Sidebar 20.2 with new material from the Supreme Court case *EEOC v. Abercrombie* about discrimination at Abercrombie involving an applicant who was wearing a headscarf.
- Updated Sidebar 20.4 with additional information about religious accommodation claims related to Muslims.





- Updated Sidebar 20.5 with additional information about women on Wall Street and the effect of “bro talk.”
- Updated Sidebar 20.6 with new information about sexual harassment at Fox News and withdrawal of sponsors.
- Updated Sidebar 20.7 with new EEOC pregnancy discrimination data and added updated information about the *Young v. UPS* pregnancy discrimination case decided by the Supreme Court.
- Updated Sidebar 20.9 with the recent Seventh Circuit case on Title VII and sexual orientation discrimination protection.
- Updated Sidebar 20.11 with new information about lawsuits involving restaurants, including so-called “drive-by” lawsuits.
- Updated Sidebar 20.11 with additional information about the number of women CEOs in large companies.

Chapter 21 Employment Laws

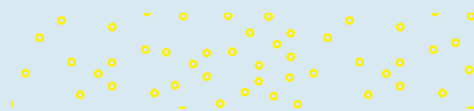
- Updated minimum wage information.
- Updated Sidebar 21.1 with information about the challenges to the 2016 FLSA regulations.
- Updated Sidebar 21.2 with information about lawsuits against companies for not paying interns.
- Updated Sidebar 21.4 with FMLA information.
- Updated Sidebar 21.5 with tips for work/life balance to the EEOC recommendations.
- Updated Sidebar 21.7 with information about veterans and resources for employers.
- Edited the section on health care and added updated information to Sidebar 21.10, replacing information about the Affordable Care Act.
- Updated Sidebar 21.13 regarding privacy in the workplace.
- Agency section was moved to Contracts.

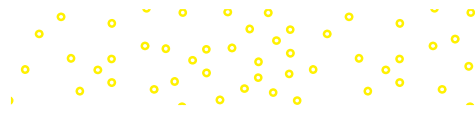
Chapter 22 Labor–Management Relationship

- Updated Table 22.1 with statistics on union membership.
- Updated Sidebar 22.1 with information on union membership.
- Updated Sidebar 22.3 with the NLRB decision on college football players.
- Updated Sidebar 22.5 with information about the outcome of the *NLRB v. Boeing* case.
- Updated Sidebar 22.6 with information about a 2017 threat of another strike.

Authorship Team

One of the strengths of this text is its continuity of authorship and the coordination among the authorship team. Marisa Pagnattaro, who joined the team on the fourteenth edition, continues to lead the authorship team. Dan Cahoy (who began on the sixteenth edition) and Julie Manning Magid (who joined on the seventeenth edition) have played a significant role in shaping this edition. Lee Reed joined the





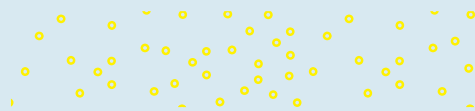
team in 1977 on the fourth edition. His legal philosophy continues to influence the text. Peter Shedd, who has long been, and continues to be, a steward of the text, joined the book as a co-author on the eighth edition in 1990.

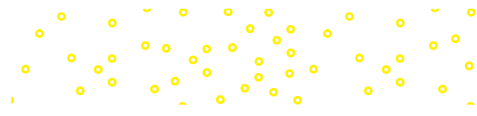
Acknowledgments

We want to thank a number of people who contributed to the eighteenth edition. We greatly appreciate the efforts of our team at McGraw-Hill: Tim Vertovec, Kathleen Klehr, Jarek Szymanski, Michelle Williams, and Heather Ervolino. We greatly appreciate their support of the authorship team and the continued development of new electronic features of the text. We are also grateful to all of the regional sales team representatives for their enthusiastic marketing support.

The following colleagues gave of their time and provided insight during the review process. For their expert comments and suggestions, we are most grateful.

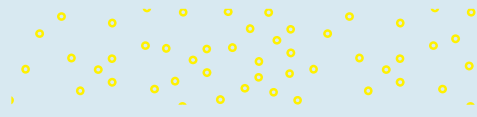
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Mary-Kathryn Zachary	University of West Georgia





Finally, we thank all of the professors and students who have used or are using our text. Your feedback continues to be important. Please feel free to share your thoughts with us. Your feedback also may be sent to The McGraw-Hill Companies.

Marisa Anne PAGNATTARO
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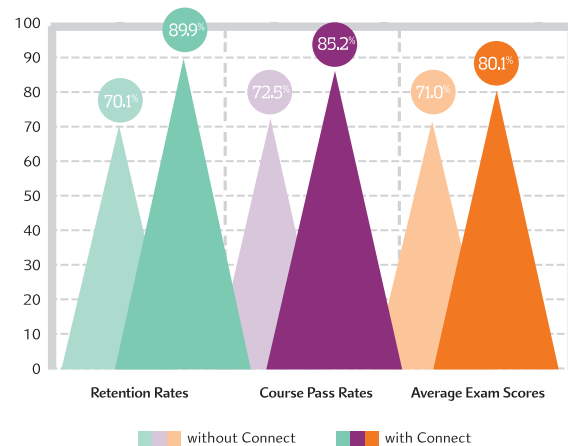
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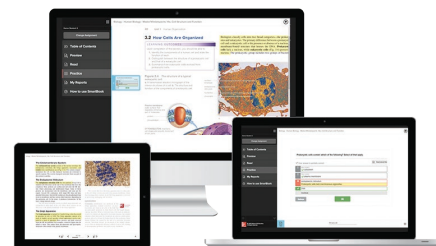
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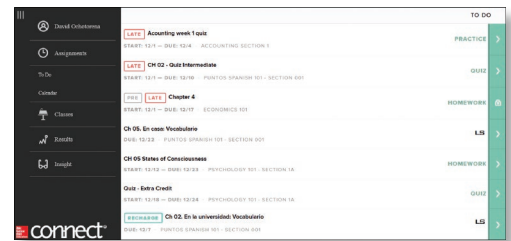
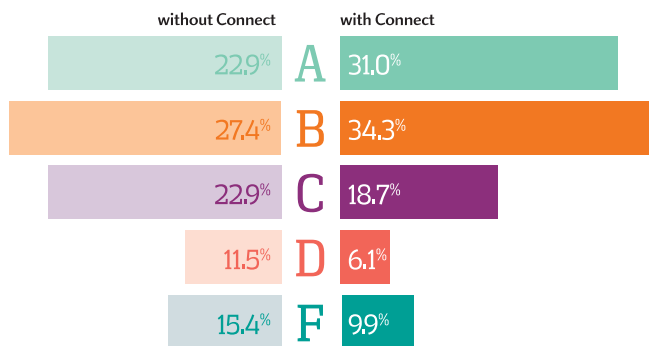
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This eighteenth edition continues the reputation of our prior editions for having many valuable teaching elements. The following list highlights the various pedagogical tools in this edition:

SmartBook®

SmartBook® makes study time as productive and efficient as possible. SmartBook identifies and closes knowledge gaps through a continually adapting reading experience that highlights portions of the content based on comprehension. Students have a visual representation of the areas in which they have demonstrated understanding, as well as areas in which they need to focus. The result? More confidence, better grades, and greater success.

The end result of ethical examination is what philosophers call **the good**. The concept of the good is central to the study of morality. *The good* may be defined as those moral goals and objectives we choose to pursue. It serves to define who we are. Thus, *leading a good life* means more than *having the good life*. It means more than material possessions and luxury. It means pursuing intangibles, being concerned, as Adam Smith put it, about the fortunes of others. That many in contemporary society do not achieve the good is evident. Too often, we confuse a good time with a good life.

In summary, morality involves what we mean by our values of right and wrong. Ethics is a formal system for deciding what is right and wrong and for justifying moral decisions. In everyday language, the terms *morality* and *ethics* are often used interchangeably. This chapter will also sometimes use the two words to mean the same thing.

ETHICS AND LAW

LO 2-1

Chief Justice Earl Warren once remarked: "In civilized life, law floats in a sea of ethics." Ethics and law have similar or complementary purposes. Both consist of rules to guide conduct and foster social cooperation. Both deal with what is right and wrong. Society's ethical values may become law through legislation or court decisions, and obedience to law is often viewed as being ethically correct. That society's ethical values often become law is the subject of Sidebar 2.2.

However, there are also differences between ethics and law. Unlike ethical systems, the legal system is an institution of the state. The state enforces legal rules through civil and criminal sanctions, like monetary damage awards, fines, and imprisonment. Many ethical values (regarding the treatment of animals, for example) are not enforced by the state, and many laws (regarding traffic violations, for example) do not address ethical concerns.

Interactives

Interactives like "drag and drop" and "comprehension case" help students apply important concepts they learned in each chapter. These engaging materials are assignable and auto-gradable, so students receive feedback on their work immediately.

Read the statements. Drag and drop each item into the most specifically correct spot on the chart. Each category should contain only two statements.

The Lost Wallet.	Purpose of the Equal Pay Act.	The Syllabus Grading Scale.	Zero Tolerance Policies.	Wrong Change.	President Truman's Decision.	The Golden Rule.	Disease X Drug.	Equal Opportunity Employment.	A Little White Lie.
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Formalism	Kan't Duty Ethics	Social Contract Theory	Utilitarianism	Consequentialism

Business Law Case Repository

The Case Repository is a collection of cases from previous editions and the current edition, accessible and assignable in Connect. Cases can be selected based on Topic, Type, or State.

filter results

results: 51

questions

14 PENN PLAZA LLC v. PYETT m

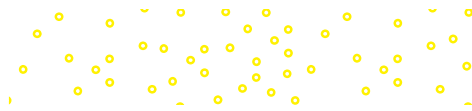
AL MINOR & ASSOCIATES, INC. V. MARTIN m

ALLI v. U.S. m

AMERICAN NEEDLE, INC. v. NATIONAL FOOTBALL LEAGUE

ASSOCIATION FOR MOLECULAR PATHOLOGY V. MYRIAD G m

- question type
- Author
- Subtopic
- Topic
 - select all
 - Administrative Law
 - Alternative Dispute Resolution
 - Antitrust Laws and Competition
 - Business Organizations



CASE BRIEF

Spokeo, Inc. v. Robins, 578 U.S. __ (2016).
How do I read this citation?

- “Spokeo, Inc.” refers to the petitioner.
- “v” means versus or against.
- “Robins” refers to the respondent.
- 578 is the volume number of the official U.S. Supreme Court Reporter, and __ refers to the page number where the case begins (once it is assigned a page number). The date, 2016, is the year the case was decided.

Case Brief

Case Briefs, found in the Instructor Resources, contain a brief of each edited case found in the text. For ease of use, the briefs are numbered by chapter in the order they appear in the text. Case Briefs offer additional information like the Facts, the Issue, the Decision, and the Reasoning, for each case.

Quizzes

Quizzes are available for each chapter and test students’ overall comprehension of the concepts presented in the chapter.

Which of the following is an ethical value sourced from law and legal regulations?

- Attention to detail
- Confidentiality
- Sense of discipline
- High-handedness
- Sense of transcendency

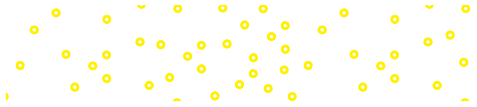
Honoring confidentiality is the fourth major ethical value emerging from the law and legal regulation. The legal requirement of honoring confidentiality appears in agency law generally and in the professional-client relationship in particular.

References eBook & Resources

Multiple Choice Difficulty: 1 Easy Learning Objective: 02-02 To analyze why ethical consequentialism and not ethical formalism has been the chief source of values for business ethics.

Test Bank

Instructors can test students’ mastery of concepts as the instructors create exams with the use of this Test Bank. Organized by chapter, the Test Bank contains multiple-choice, true/false, and essay questions. Many of the questions have been modified to correspond with the text’s revision. Answers immediately follow each question, along with corresponding Learning Objectives.



learning objectives

Learning Objectives are included at the beginning of each chapter. These objectives will act as a helpful road map of each chapter, narrowing the focus of each topic for both instructor and students. You will also find these Learning Objectives tagged for every test bank question to ensure that key points from each chapter are covered in every quiz and exam.



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2

The Role of Ethics in Decision Making

marginalia

In the margins, each chapter includes notes, points of emphasis, definitions, quotes, and recommendations about what to do and what to avoid.

Learning Objectives

In this chapter you will learn:

- 2-1 To compare the connection between law and ethical principles.
- 2-2 To analyze why ethical consequentialism and not ethical formalism have been the chief source of values for business ethics.
- 2-3 To generate an individual framework for ethical values in business.
- 2-4 To evaluate the obstacles and rewards of ethical business practices in a property-based legal system.

Swedes have a strong property-based private market emphasis in Sweden is not solely on taking. Instead, the Swedes have a strong ethic of which means "not too much, not too little, but just a result, the pay of corporate chief executive (CEOs) is only a small fraction of what it is in the States, and the average take-home pay of employ-cluding CEOs) varies from highest to lowest by of only 3 to 1. Sweden provides universal health public nursing homes, and subsidized child care and parental leave-taking during a child's first year. When Swedish companies go overseas, they treat employees there with much of the same ethic as in Sweden.

Lagom means that there are few wealthy Swedes and Sweden's social welfare system of "just enough" depends on a tax rate of approximately twice that in the United States. Note also that Sweden is a small, homogenous country whose citizens share a common ethical culture that is often not found in larger nations.

Source: Susan Wennemeyer, "Sweden: The Kindness Economy," *Business Ethics*, Fall 2003.

at individuals will do unethical things as part of a mob which they would do alone is widely recognized, and the same pattern can be observed in corporate behavior. Within corporations, it becomes easy for a researcher not to pass-ly discovered concerns about the possible (yet not certain) side effects of a in lotion that upper management is so enthusiastic about. In corporate life, it difficult to overlook the unethical behavior of a superior when many fellow ees are also overlooking it. And of course, "I did it because everyone else is a common rationalization in groups of all kinds. "Just following orders" is ar rationalization.

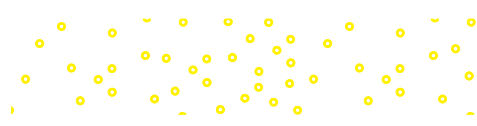
at individuals in groups may feel a diminished sense of responsibility for ns made and actions taken invites ethical compromise. Coupled with an phasis on profit, the group effect increases the difficulty of achieving an business corporation.

Control of Resources by Nonowners In the modern corpora-e owners (or *shareholders*) are often not in possession and control of cor-resources. Top management of many corporations effectively possess and vast resources that they do not own. This produces the problems of corpo-vernance mentioned in Chapter 1. Managerial agents like the president and residents of a large corporation have ethical and legal duties to manage the ate resources for the benefit of their owners. But because they control corpo-resses, it may be easy to manipulate the resources in their own interest and

"Study after study confirms it: the vast majority of people act based on the circumstances in their environment and the standards set by their leaders and peers, even if it means compromising their personal moral ideals. 'Good' people do bad things if they are put in an environment that doesn't value values, if pressured to believe that they don't have any choice but to get the job done—whatever it takes."

—Ethics Resource Center (2008)

Do understand that an amendment must be ratified by 38 states through legislative action or by a constitutional convention. The United States has never held a convention for the purposes of amending the Constitution.



sidebar 2.5

American Marketing Association Statement of Ethics

PREAMBLE

The American Marketing Association commits itself to promoting the highest standard of professional ethical norms and values for its members (practitioners, academics and students). Norms are established standards of conduct that are expected and maintained by society and/or professional organizations. Values represent the collective conception of what communities find desirable, important and morally proper. Values also serve as the criteria for evaluating our own personal actions and the actions of others. . . .

ETHICAL VALUES

Honesty—to be forthright in dealings with customers and stakeholders. To this end, we will:

- Strive to be truthful in all situations and at all times.
- Offer products of value that do what we claim in our communications.
- Stand behind our products if they fail to deliver their claimed benefits.
- Honor our explicit and implicit commitments and promises.

Responsibility—to accept the consequences of our marketing decisions and strategies. To this end, we will:

- Strive to serve the needs of customers.
- Avoid using coercion with all stakeholders.
- Acknowledge the social obligations to stakeholders that come with increased marketing and economic power.
- Recognize our special commitments to vulnerable market segments such as children, seniors, the economically impoverished, market illiterates and others who may be substantially disadvantaged.
- Consider environmental stewardship in our decision-making.

Fairness—to balance justly the needs of the buyer with the interests of the seller. To this end, we will:

- Represent products in a clear way in selling, advertising and other forms of communication; this includes the avoidance of false, misleading and deceptive promotion.
- Reject manipulations and sales tactics that harm customer trust.
- Refuse to engage in price fixing, predatory pricing, price gouging or "bait-and-switch" tactics.
- Avoid knowing participation in conflicts of interest.

- Seek to protect the private information of customers, employees and partners.

Respect—to acknowledge the basic human dignity of all stakeholders. To this end, we will:

- Value individual differences and avoid stereotyping customers or depicting demographic groups (e.g., gender, race, sexual orientation) in a negative or dehumanizing way.
- Listen to the needs of customers and make all reasonable efforts to monitor and improve their satisfaction on an ongoing basis.
- Make every effort to understand and respectfully treat buyers, suppliers, intermediaries and distributors from all cultures.
- Acknowledge the contributions of others, such as consultants, employees and coworkers, to marketing endeavors.
- Treat everyone, including our competitors, as we would wish to be treated.

Transparency—to create a spirit of openness in marketing operations. To this end, we will:

- Strive to communicate clearly with all constituencies.
- Accept constructive criticism from customers and other stakeholders.
- Explain and take appropriate action regarding significant product or service risks, component substitutions or other foreseeable eventualities that could affect customers or their perception of the purchase decision.
- Disclose list prices and terms of financing as well as available price deals and adjustments.

Citizenship—to fulfill the economic, legal, philanthropic and societal responsibilities that serve stakeholders. To this end, we will:

- Strive to protect the ecological environment in the execution of marketing campaigns.
- Give back to the community through volunteerism and charitable donations.
- Contribute to the overall well-being of society and its reputation.
- Urge supply chain members to act ethically and fairly for all participants, including suppliers and customers in all countries.

Source: AMA Statement of Ethics, published with the permission of the American Marketing Association.

sidebars

Examples or further descriptions are separated from the text into boxes labeled Sidebars. As in the courtroom setting, when a judge calls for a conversation with the lawyers away from the jury, these boxes are sidebars to the overall discussion. Through these sidebars, the text is explained in more detail or is brought to life with a business-related example.

When you are convinced that a law itself is morally wrong, you may be justified in disobeying it. Even then, to be ethical, you should be willing to make public your disobedience and to accept the consequences for it. Both Mohandas Gandhi and Martin Luther King Jr. deliberately disobeyed laws they thought were morally wrong, and they changed society by doing so. Ultimately, they changed both laws and ethics. But they made their disobedience to these laws public, and they willingly accepted punishment for violating them. Dr. King famously wrote about his decision to disobey a law that he evaluated as unjust as he accepted the consequences of that decision in "Letter from a Birmingham Jail."

Leading an ethical business life may be difficult at times. You will make mistakes. You will be tempted. It is unlikely that you will be perfect. But if you want to be ethical and will work hard toward achieving your goal, you will be rewarded. As with achieving other challenging business objectives, there will be satisfaction in ethical business decision making.

concept summary

At appropriate points in each chapter, a summary of the preceding material appears. Through these summaries, complex and lengthy presentations are easily reviewable by the reader.

concept summary

Self-Examination for Self-Regulation

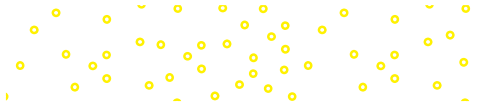
- Have I thought about whether the action I may take is right or wrong?
- Am I willing for everyone to act as I am thinking of acting?
- Will my decision cause harm to others or to the environment?
- Will I be proud to tell of my action to my family? To my employer? To the news media?
- Will my actions violate the law?

In business as well as in personal life, the key to ethical decision making is wanting to be ethical and having the will to be ethical. If you do not want to be ethical, no code of conduct can make you ethical. Potential harm you may cause to individuals and to society will best be deterred by the threat of legal punishment and the sanctions of professional and corporate codes. You may never get caught, lose your job, or go to jail. But, as Mortimer Adler observed, you will lack "much that is needed for the good life."

Achieving an Ethical Business Corporation

The dominant form of organization in modern business is the corporation. Currently, the top 100 manufacturing corporations produce more than two-thirds of the nation's entire manufacturing output. In 1840, the largest manufacturing firm in the United States, the Springfield Armory, employed only 250 workers. Today, many corporations have tens of thousands of employees. Some have hundreds of thousands. In substantial part, the development of the corporate form of business

The primary reason corporations dominate the business landscape is that their ownership is divisible into small shares that make the



CASES

Except for the first two chapters, chapters include edited portions of actual court decisions. These cases illustrate the parties' arguments and the judge's decision of the issues. We have deleted most of the procedural aspects, citations, and footnotes. An alternative to these edited cases appears in some sidebars; there a case may be explained in our own language.

case 4.1

MAYER v. BELICHICK
605 F.3d 223 (3rd Cir. 2010)

Season ticket-holder brought action against the New England Patriots and league, alleging various causes of action arising out of the team's alleged practice of surreptitiously videotaping the signals of opposing teams.

COWEN, Circuit Judge

Plaintiff Carl J. Mayer appeals from the order of the United States District Court for the District of New Jersey granting the respective motions to dismiss filed by Defendants Bill Belichick and the New England Patriots ("Patriots") as well as by Defendant National Football League ("NFL"). We will affirm.

1. This highly unusual case was filed by a disappointed football fan and season ticket-holder in response to the so-called "Spygate" scandal. This scandal arose when it was discovered that the Patriots were surreptitiously videotaping the signals of their opponents. Mayer, a New Jersey resident and New York Jets season ticket-holder, initially filed his complaint on September 7, 2007. He named as Defendants the Patriots, headquartered in Massachusetts, as well as the team's head coach, Belichick, a Massachusetts resident. Mayer eventually filed an amended complaint on August 19, 2008, which added the NFL, with its headquarters in New York, as a Defendant. . . .
2. The core of this action is that the Defendants, during a game with the New York Jets on September 9, 2007, instructed an agent of the Defendants to surreptitiously videotape the New York Jets coaches and players on the field with the purpose of illegally recording, capturing and stealing the New York Jets signals and visual coaching instructions. The Defendants were in fact subsequently found by the National Football League ("NFL") to have improperly engaged in such conduct.
3. Plaintiffs contend that in purchasing tickets to watch the New York Jets that, as a matter of contract, the NFL rules and regulations as well as all federal and state laws. . . .

On September 9, 2007, the Jets and the Patriots played the season opener in Giants Stadium, East Rutherford, New Jersey. Mayer possessed tickets and parking passes to this game, and the Patriots ultimately won, 38-14. ESPN.com then reported that the NFL was investigating accusations that an employee of the Patriots was actually videotaping the signals given by Jets coaches at this game. . . .

On September 13, 2007, "the NFL ruled the Defendants guilty of violating all applicable NFL rules by engaging in a surreptitious videotaping program." . . .

Mayer ultimately alleged nine separate counts in his amended complaint. He asserted, in order, the following causes of action against the Patriots and Belichick: (1) tortious interference with contractual relations; (2) common law fraud; (3) violations of the New Jersey Deceptive Business Practices Act; (4) violations of New Jersey's racketeering statute; (5) violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"); (6) the infringement of the rights of ticket-holders as third-party beneficiaries; (7) breach of implied contract or quasi-contract; and (8) violations of the New Jersey Consumer Fraud Act ("NJCFCA"). Finally, he advanced a breach of contract claim against the NFL on account of its destruction of the videotapes. . . . After they were served with the amended complaint, the Patriots and Belichick filed a motion to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). The NFL subsequently filed its own motion to dismiss as well. . . .

The District Court, while noting that Mayer alleged numerous theories of liability in this case, appropriately turned to the following dispositive question: namely, whether or not he stated an actionable injury (or, in other words, a legally protected right or interest) arising out of the alleged "dishonest" videotaping program undertaken by the Patriots and the NFL team's head coach. . . . We ultimately conclude that the District Court was correct to hold that Mayer failed to set forth a legally cognizable right, interest, or injury here. . . .

[continued]

Significantly, our ruling also does not leave Mayer and other ticket-holders without any recourse. Instead, fans could speak out against the Patriots, their coach, and the NFL itself. In fact, they could even go so far as to refuse to purchase tickets or NFL-related merchandise. . . .

However, the one thing they *cannot* do is bring a legal action in a court of law. For the foregoing reasons, we will affirm the District Court's order dismissing Mayer's amended complaint in its entirety.

KEY POINTS

- To maintain a lawsuit, a plaintiff must have standing or a legally cognizable claim.
 - The Third Circuit found that, because the plaintiff did not have a legally protected right arising out of the alleged "dishonest" videotaping program, he did not state an actionable injury.
 - Accordingly, defendant's motions to dismiss were granted.
- Case Icon: McGraw-Hill Education.

key points

At the end of each edited case, key points can be found. These key points help students grasp the essential elements and relevance of each case.

are careful to avoid overstepping their constitutional role and will only rule on actual cases or controversies.

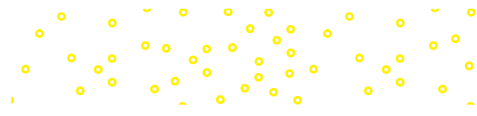
PERSONAL JURISDICTION

Power to hear a case means a court must have authority not only over the subject matter of the case but also over the parties to the case. This latter authority is called **personal jurisdiction**. Personal jurisdiction over the plaintiff is obtained when the plaintiff files the suit. Such action indicates voluntary submission to the court's power.

Personal jurisdiction over the defendant usually is obtained by the service of a **summons**, or notice to appear in court, although in some cases it is obtained by the publication of notice and mailing a summons to the last known address. This delivery of notice is referred to as *service of process*. Service of a summons on the defendant usually is valid if it is served upon any member of the household above a specified age and if another copy addressed to the defendant is mailed to the home.

For many years, a summons could not be properly served beyond the borders of the state in which it was issued. However, states now have what are called **long-arm statutes**, which provide for the service of process beyond their bound-

No case can proceed forward without the existence of both subject matter and personal



Review Questions and Problems

Personnel

1. Judges and Justices

What are the essential responsibilities of a trial judge?

2. Jurors

Why have several states eliminated the requirement of unanimity in jury trials?

3. Lawyers

Name the three critical roles a lawyer serves in society. Why have many lawyers and their business clients had such conflict in recent years?

Organization of the Court System

4. Subject Matter Jurisdiction

Mark, a citizen of Georgia, was crossing a street in Atlanta when he was struck by a car driven by David, a citizen of New York visiting Atlanta. The car was owned by David's employer, a Delaware corporation that has its principal place of business in Atlanta, Georgia. Mark sues both David and the corporation in federal district court in Atlanta alleging damages in the amount of \$500,000. Does the court have subject matter jurisdiction? Why or why not?

5. State Courts

What role do reviewing or appellate courts play in the judicial process? How do they differ from trial courts?

6. Federal Courts

XYZ makes and markets a product that it believes will help control weight by blocking the human body's digestion of starch. The Food and Drug Administration (FDA) has classified the product as a drug and orders it removed from the market until it can evaluate its use through testing. XYZ disputes the FDA's action and seeks to bring suit in the federal courts. Will the federal courts have jurisdiction to hear the case? Why or why not?

7. Decisions by the U.S. Supreme Court

Susan files a petition for certiorari in the U.S. Supreme Court following an adverse decision in the Illinois Supreme Court on a claim arising under a breach of contract. What chance does Susan have of the Supreme Court granting the petition? What special circumstances would she need to show?

The Power of Judicial Review

8. Judicial Restraint

Define the power of judicial review. How do advocates of judicial restraint exercise that power?

9. Judicial Activism

Define judicial activism. Compare and contrast judicial restraint and judicial activism.

10. A Sample U.S. Supreme Court Case

review *questions and problems*

Following the text of each chapter is a series of questions and problems. These are tied to the sections of each chapter and serve as an overview of the material covered.

expanded *business discussions*

The last item in each chapter is a scenario designed to stimulate conversation among students, allowing them to review and apply the material within the chapter.

15. Enforcement of Judgments and Decrees

How does the court enforce judgments?

16. Res Judicata

Why is the notion of *res judicata* critical in civil litigation?

business discussions

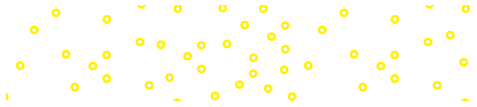
1. You are the manager of a used car firm known as Reliant Motor Company. Your lawyer has called to tell you that John Doe, a customer you have been dealing with for several months, has filed a lawsuit against the firm. The customer claims the vehicle he purchased is a lemon and no longer even operates. You knew the vehicle was not in the best of condition at the time of sale, but you believe the buyer caused most of the problems by taking the vehicle "off road" several times. You are not looking forward to discovery or trial in this case. You have several questions.

- How does discovery work?
- Can you be required to testify twice in a deposition and at trial?
- Should you shred all documents you have about this case? You know that some of the documents will not put the firm in the best light.

You wonder what will happen at trial. Will it be like what you have seen on TV or in the movies?

2. You are the owner of a small firm that manufactures lawn mowers. While using one of your products, a person suffers severe injury and now is suing, claiming that your product was negligently designed because it did not adequately protect the user. You have no experience with the legal system. You learn that lawyers charge as much as \$250 per hour and must be paid whether they win or lose their cases. You are surprised at what must happen before a trial can occur to determine who is at fault. First, your lawyer may move to dismiss the case on jurisdictional grounds. If that fails, both sides will take costly depositions of likely witnesses. You will have to turn over reams of internal documents related to the design of your mower. Each side also will have to pay several hundred dollars per hour for experts as the lawyers prepare the case. These experts will have to be paid again when they testify at trial. As the time for the trial approaches, each side will spend money trying to discern the most sympathetic type of jury. Years after the lawsuit was first filed, the parties will be sitting in the courtroom waiting for jury selection to begin. More money will have been spent defending this case than the plaintiff was seeking when the lawsuit was first filed. Many questions come to mind:

- Should you have settled the case at the beginning?
- Has your attorney been getting rich at your expense?
- Is discovery more of a burden than a help?

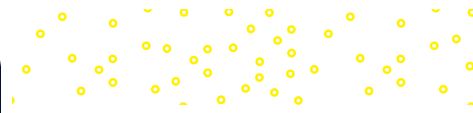


Key Terms

A list of critical words or phrases is found at the end of each chapter. These terms are boldfaced in the text, and definitions are repeated in the glossary.

Key Terms

- | | | |
|-----------------------------|-------------------------------------|--------------------------------|
| Appeal 67 | Federal Rules of Civil Procedure 69 | Small-claims court 67 |
| Appellate court 66 | Judicial activism 74 | Subject matter jurisdiction 66 |
| Courts of appeal 67 | Judicial restraint 74 | Supreme court 67 |
| Diversity of citizenship 69 | Judicial review 73 | Trial court 66 |
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Instructor's Resources Manual

This manual consists of the teaching outline. The teaching outline section makes up the bulk of this Instructor's Manual, which is organized by text chapter. This section corresponds with the headings in the text and typically includes suggestions on points of emphasis, answers to the case questions that appear within each chapter of the text, cases for discussion, and additional matters for discussion. Each chapter of this manual also includes a list of references that might be useful secondary sources of information and suggested answers to all case questions and responses to the end-of-chapter review questions.

Test Bank

Instructors can test students' mastery of concepts as the instructors create exams with the use of this Test Bank. Organized by chapter, the Test Bank contains multiple-choice, true/false, and essay questions. Many of the questions have been modified to correspond with the text's revision. Answers immediately follow each question, along with corresponding Learning Objectives.

PowerPoint Presentation

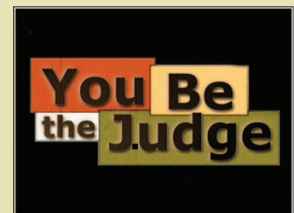
The PowerPoint Presentation provides detailed lecture outlines for discussing key points and figures from the book.

Business Law Newsletter

McGraw-Hill Education's monthly Business Law newsletter, *Proceedings*, is designed specifically with the Business Law educator in mind. *Proceedings* incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing newsletter topics with the various McGraw-Hill Education business law textbooks. *Proceedings* is delivered via e-mail to business law instructors each month.

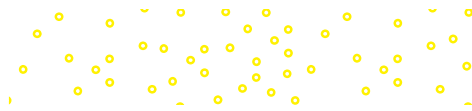
You Be the Judge Online

This interactive product features case videos that showcase courtroom arguments of business law cases. These case videos give students the opportunity to watch profile interviews of the plaintiff and defendant; read background information; hear each case; review the evidence; make their decisions; and then access an actual, unscripted judge's decision and reasoning. There are also instructor's notes available with each video to help prepare you for classroom discussion.



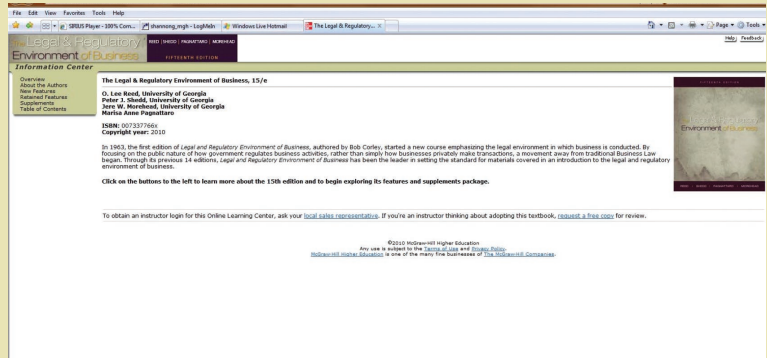
Student Resources

The Student Resources Center is a website that follows the text chapter by chapter. Content is designed to reinforce and build on the text content. As students read the book, they can go online to read chapter review materials such as the glossary, appendices, and You Be The Judge.



Connect Library

The *Connect* Library is your repository for additional resources to improve student engagement in and out of class. You can select and use any asset that enhances your lecture. The *Connect* Library includes all the Instructor Resources listed above, as well as Course-wide Content available to students, and an eBook version of the text.



Assurance of Learning Ready

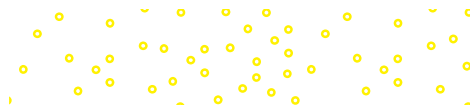
Many educational institutions today are focused on the notion of *assurance of learning*, an important element of some accreditation standards. *The Legal and Regulatory Environment of Business*, 18e, is designed specifically to support your assurance of learning initiatives with a simple, yet powerful solution.

Each test bank question for *The Legal and Regulatory Environment of Business*, 18e, maps to a specific chapter learning outcome/objective listed in the text. You can use our test bank software to easily query for learning outcomes/objectives that directly relate to the learning objectives for your course.

AACSB Statement

The McGraw-Hill Companies is a proud corporate member of AACSB International. Understanding the importance and value of AACSB accreditation, *The Legal and Regulatory Environment of Business*, 18e, recognizes the curricula guidelines detailed in the AACSB standards for business accreditation by connecting selected questions in the text and the test bank to the six general knowledge and skill guidelines in the AACSB standards.

The statements contained in *The Legal and Regulatory Environment of Business*, 18e, are provided only as a guide for the users of this textbook. The AACSB leaves content coverage and assessment within the purview of individual schools, the mission of the school, and the faculty. While *The Legal and Regulatory Environment of Business*, 18e, and the teaching package make no claim of any specific AACSB qualification or evaluation, we have within *The Legal and Regulatory Environment of Business*, 18e, labeled selected questions according to the six general knowledge and skills areas.



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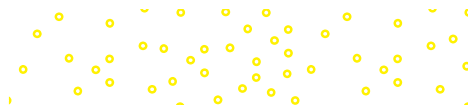
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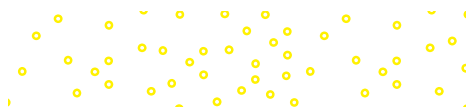
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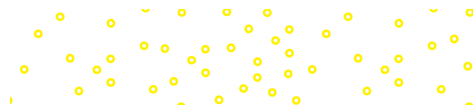
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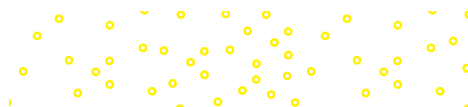
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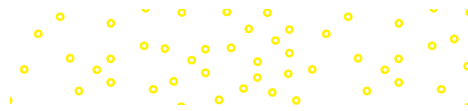
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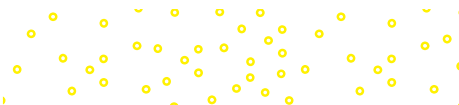
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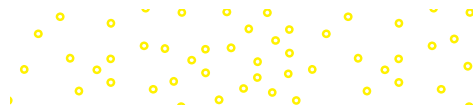
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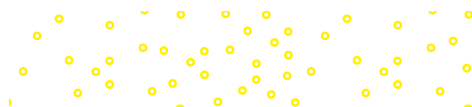
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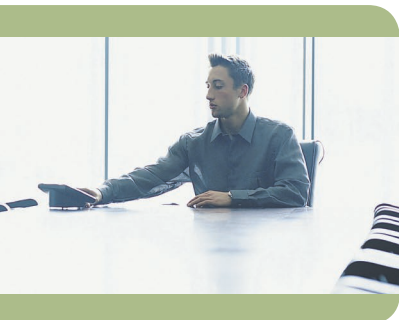
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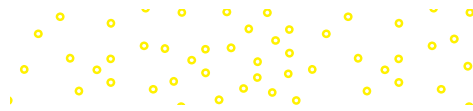
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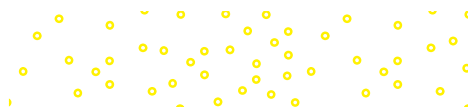
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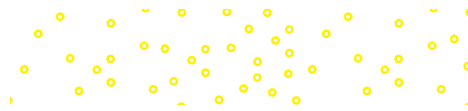
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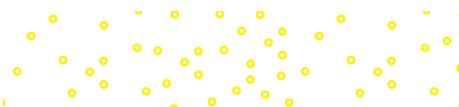
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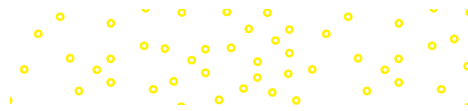
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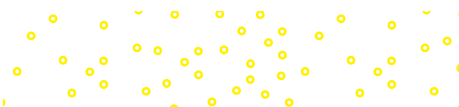
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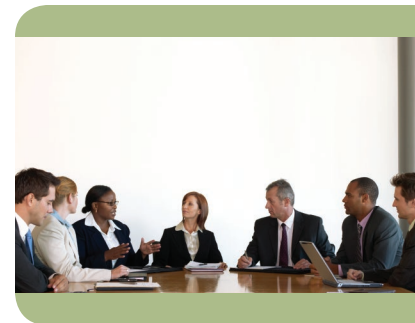
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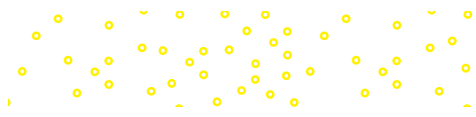
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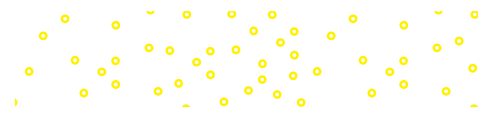
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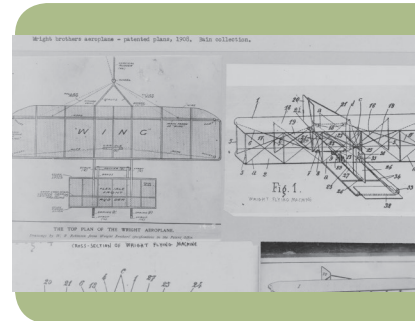
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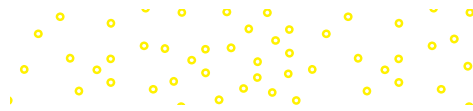
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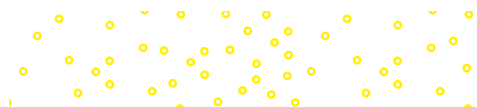
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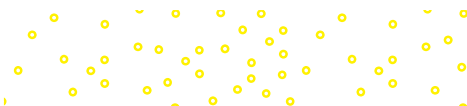
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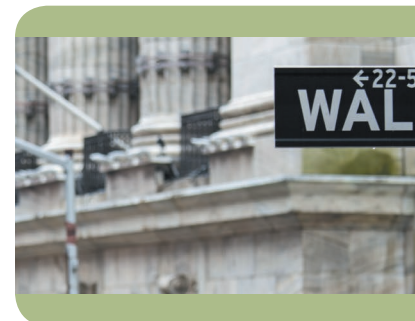
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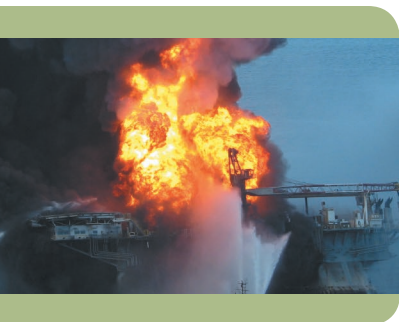
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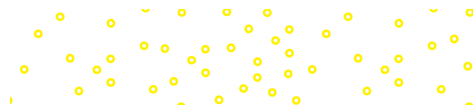
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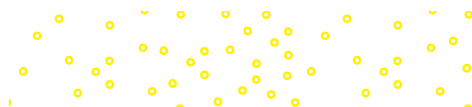
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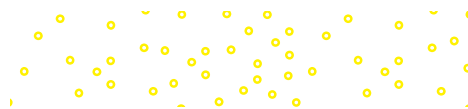
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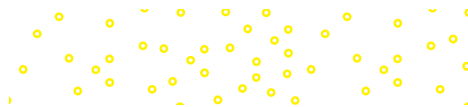
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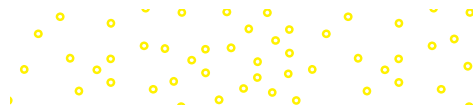
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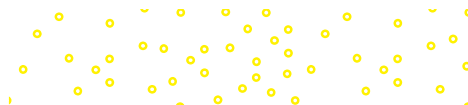
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Part ONE

Introduction: Legal Foundations for Business

In the twenty-first century, business managers who understand how to handle legal challenges will be in a position to use law to their strategic advantage. As President John Adams said, the United States is a nation “of law.” Certainly, law is all around us. The news media are full of stories about law, and many of our most popular television programs concern lawyers, courts, and law enforcement. Law surrounds how we buy and sell goods, when we can drive a car and vote, and who we can see for many licensed services. Law taxes and punishes us as well as grants rights and privileges. Marriage and divorce apply rules of law, and even birth and death have legal significance. The conduct of modern business is hardly possible without the support of law, and everything you own is yours because of law. Part One of this book helps you understand the legal foundations for business.

Chapter 1 emphasizes the importance of understanding the fundamental role of law for business. The chapter explains that there are understandable organizing principles to the legal system, and it asserts that these principles—law, the rule of law, and property—provide a necessary foundation for successful modern business. Chapter 1 also covers the concepts of jurisprudence, explains the sources of law, sets out various classifications of law, identifies legal sanctions, and introduces the concept of corporate governance. A good part of what you do in this course is to learn a legal vocabulary. Even

more important, you must then learn to apply it. Chapter 1 gets this important process under way.

Chapter 2 emphasizes that the social basis of legal rules in a democracy are the traditional values, morals, and ethics of society. In a democracy, law is a very significant expression of society’s moral beliefs and concerns. Law often prohibits behavior that we consider morally wrong and permits or tolerates customary behaviors. Chapter 2 looks at two ethical systems: formalism and consequentialism. It then examines various sources of values for business ethics, including legal regulation, professional and organizational codes of ethics, and individual values. It also suggests an approach to individual ethics in business organizations.

The next three chapters address dispute resolution, by explaining the U.S. court system, as well as the process of litigation and alternative dispute resolution mechanisms. Learning about the court system and ways to resolve disputes will help you understand how business can use the law strategically. Also, as you read law-related news, these basic concepts are fundamental to grasp how and why a company resolves disputes.

Chapter 3 explains the court system, identifying key players: judges, jurors, and lawyers. Each plays a distinct and important role. This chapter also sets forth the organization of the state and federal court systems, including the appellate courts. This chapter also includes a guided reading of the text’s first

court opinion, the U.S. Supreme Court case *Spokeo v. Robins*, which addresses issues related to the publication of inaccurate information on the Internet.

Chapter 4 focuses on how civil cases move through the court system in a process known as *litigation*. This chapter describes how the filing of a complaint commences cases and then explains all of the other pleadings that can be filed, as well as all of the pretrial discovery procedures and motions. The chapter concludes with information about the stages of a trial and any posttrial appeals.

There are many drawbacks to litigation, and Chapter 5 illustrates alternative ways to resolve disputes. This chapter explains different negotiating techniques to settle disputes. It also demonstrates the key differences between mediation and arbitration. Although both use a neutral third party to assist in resolving the dispute, they have significantly different features, which are important to know before agreeing to resolve a dispute.

Chapter 6, the final chapter in Part One, discusses the U.S. Constitution and constitutional guarantees relevant to business, including First Amendment protections, due process, and equal protection. This chapter also explains the significance of the Commerce Clause. Decisions involving the Commerce Clause have played a major role in defining how business works in the United States. This clause has a rich history of empowering the federal government's authority to regulate business.

Taken together, these chapters introduce readers to the legal foundations for business. The following section makes suggestions about the best way to read and study *The Legal and Regulatory Environment of Business*.

How to Study This Textbook

To read this textbook, we highly recommend a certain method called Survey, Question, Read, Recite, Review (SQ3R). SQ3R is much more effective than simply starting at the beginning of a chapter and reading straight through to the end. But it should not take much longer than reading straight through.

If you are allowing two hours for the reading of a chapter, first take no more than five or six minutes and “survey” the chapter. Flip through the chapter and look at all of the main headings and subheadings of the sections, perhaps also looking at the first sentences of several paragraphs in each section. In surveying you are not trying to learn or even understand the material but rather to get an idea of what the chapter is about.

After surveying the material, develop a “question” for each section as you read. If the section heading says “Why Nations Are Economically Weak or Strong,” turn the heading into a question, like “Why are some nations economically weak and others economically strong?” Then “read” the section with the purpose of answering your question. When you finish reading, “recite” aloud or silently to yourself the answer to the question.

The last “R” refers to “review.” Spend the last ten minutes of your study time reviewing the chapter. A good way to do this is to go back to your questions and answer them again. If you will study by this method, we guarantee more effective results than if you simply read the chapter straight through. We have included a longer explanation of SQ3R as Appendix 1 in the back of the book, along with an explanation of the case briefing system, which you may need beginning with Chapter 3. •



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Law as a Foundation for Business

Learning Objectives

In this chapter you will learn:

- 1-1 To understand that laws and regulations are fundamental foundations for business.
- 1-2 To explain that “property” in the law refers not to something that is owned but to the right of ownership itself, which gives incentive for wealth creation.
- 1-3 To analyze why *stare decisis* is different in common law nations than in civil law nations.
- 1-4 To classify what legal sources lawyers turn to in answering legal questions from their clients and the hierarchy of those sources.



Introduction

Business school students may wonder why they need to study the law. The answer is quite straightforward. Law is an essential foundation for business. Learning about the law is key to understanding how law can be used for strategic advantage and to developing sustainable business practices. Consider, for example, the growing area of financial technology or “FinTech.” A wide range of federal and state laws and regulations govern this

industry. Legal concerns include cyber security, data protection, privacy, as well as consumer and investor protection regulations. Compliance with these laws is crucial for the success of FinTech firms.

This text and its accompanying electronic features are designed to create a learning environment in which you will gain:

- The legal vocabulary to communicate with lawyers and business colleagues about areas of the law in a sophisticated manner.

- The ability to identify legal issues potentially relevant to a particular business situation.
- The judgment to make sound business decisions to prevent legal disputes.
- The knowledge to determine legal issues that require advice from counsel.
- The foundation to act as a sophisticated consumer of legal services.

As you read this book, consider the impact of the law on business. This chapter provides a basic overview of the law, helping you understand the common classifications and sources of law. Many examples are provided throughout the chapters to underscore the relevance of the law for business.

LO 1-1

WHY LAW AND REGULATIONS ARE FUNDAMENTAL FOUNDATIONS FOR BUSINESS

In the twenty-first century, it is crucial for companies doing business in the United States to be aware of the legal and regulatory landscape. As vividly evidenced by the experience of JPMorgan Chase & Co. and Deutsche Bank in Sidebar 1.1, companies must take steps to ensure that they are in full compliance with the law to avoid a range of civil and criminal liability. By studying the legal and regulatory environment of business, you will gain an understanding of basic legal vocabulary and gain the ability to identify problematic situations that could result in liability. Moreover, whether you are involved in contract negotiations, the development of intellectual property, or dealing with employees, learning the fundamentals of the law will not only help you make informed decisions, but also to know when to call an attorney for advice.

sidebar 1.1

Massive Legal Liability: Cautionary Tales from JPMorgan Chase and Deutsche Bank

If there was ever a question about the toll that wrongdoing can take on a company, it was addressed by Jamie Dimon, CEO of JPMorgan Chase & Co. In a 30-page letter to shareholders, Dimon addressed the ramifications of the bank's legal cases with multiple government agencies, stating that the previous year was "the most painful, difficult, and nerve wracking experience that I have ever dealt with professionally." At that time, the company had already spent more than \$20 billion to settle a range of cases.

JPMorgan undertook to add more than 13,000 employees to handle regulatory compliance and risk control, including approximately 8,000 employees whose primary responsibility is to combat money laundering. The company is spending \$2 billion to comply with new rules and regulations. In the same letter to shareholders, Dimon acknowledged that the company was too self-assured

when it saw regulators investigating its competitors and that the company needs to be "better listeners and do a better job at examining critiques of others so [it] can learn from other people's mistakes, too."

Also facing massive liability, Deutsche Bank agreed to a \$7.2 billion settlement in 2016 with the U.S. Department of Justice in connection with its sale of toxic mortgage securities. The settlement includes a \$3.1 billion civil penalty and \$4.1 billion in consumer relief, primarily in the form of loan forgiveness. In early 2017, Deutsche Bank agreed to a \$95 million settlement to resolve a lawsuit brought by the U.S. government that accused Deutsche Bank of tax fraud involving shell companies.

Sources: "Deutsche Bank Agrees to Pay \$95 Million to End Tax Fraud Case," *Reuters*, January 5, 2017; "Deutsche Bank Agrees to a \$7.2 Billion Settlement with the U.S.," *Reuters*, December 23, 2016; David Henry, "JPMorgan's Dimon Calls Settling Legal Issues 'Nerve Wracking,'" *Reuters*, April 9, 2014.

In fact, because of the positive role lawyers can play, they are increasingly being asked to join corporate boards. In 2000, only 24 percent of U.S. companies had lawyer-directors on their boards, but by 2009, 43 percent did. A recent study demonstrated that having lawyer-directors resulted in an average 9.5 percent increase in firm value. Without question, lawyers on boards can help companies navigate a myriad of issues and help manage risk.¹

Law, the Rule of Law, and Property

Three concepts establish a necessary framework for the most effectively functioning market in the modern nation: law, the rule of law, and property. Note how they connect to each other.

LAW

In the last 10,000 years, human society has moved from roving bands of hunter-gatherers to large modern nations with populations in the hundreds of millions. The social forces that hold together societies range from custom and religion to law and economic ties. In the modern nation, however, the most significant of the social forces is **law** because law can glue together diverse peoples of different backgrounds into very large, organized groups. Law is known by everyone as being intended to tell members of society what they can or cannot do. Strangers to a society may not understand or appreciate complex and subtle customs of behavior, but they can observe the formal laws governing what kinds of activities are permitted and prohibited in society. Lawyers, judges, and other trained interpreters of the rules can help them in this process.

A simple definition of law follows:

- Law is made up of rules.
- These rules are laid down by the state and backed up by enforcement.

Law is a formal social force, meaning that laws come from the state and are usually written down and accessible so those who need to understand and obey them can. To maintain order in society, adequate enforcement institutions such as courts and the police are a necessary part of the legal system. As countries such as China are finding out, written laws mean little unless they can be promptly and fairly enforced. Without adequate enforcement, resources can be taken from those who have them, and agreements can be disregarded. The certainty and trust necessary to make complex, long-term business arrangements are absent. People must spend much of their time guarding their resources rather than developing them.

THE RULE OF LAW

In a modern nation, law is important to implement either the commands of a dictator or the will of the people in a democracy. However, only in democracies is there true concern for the rule of law, which goes beyond merely thinking of law as

“Privatization without necessary institutional infrastructure [such as law] in the transition countries led to asset stripping rather than wealth creation.”

—Joseph E. Stiglitz,
economist

The first known written set of laws was the Code of Hammurabi, named after the Babylonian king of the eighteenth century BC.

“Without the rule of law, major economic institutions such as corporations, banks, and labor unions would not function, and the government’s many involvements in the economy—regulatory mechanisms, tax systems, customs structure, monetary policy, and the like—would be unfair, inefficient, and opaque.”

—Thomas Carothers,
Director, Democracy
and Rule of Law Project,
Carnegie Endowment
for International
Peace

¹See Lubormi Litov, Simone Sepe and Charles Whitehead, “Lawyers and Fools: Lawyer Directors in Public Corporations,” http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2218855 (January 14, 2014).

governmental commands backed up by force. Under the **rule of law**, laws that are made are *generally* and *equally* applicable. They apply to all or most members of society and they apply to various groups in the same way.

According to the World Justice Project, an organization seeking to advance the rule of law around the world, four universal principles define the rule of law:

1. The government and its officials and agents as well as individuals and private entities are accountable under the law.
2. The laws are clear, publicized, stable, and just; are applied evenly; and protect fundamental rights, including the security of persons and property and certain core human rights.
3. The process by which the laws are enacted, administered, and enforced is accessible, fair and efficient.
4. Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.

In today's international business environment, more and more voices are calling for the rule of law. The secretary-general of the United Nations says that "without confidence based on the rule of law; without trust and transparency—there could be no well-functioning markets." The managing director of the International Monetary Fund asserts that "high quality" economic growth depends "in particular on the rule of law," which is a "lodestar for all countries." Observes the managing director of JPMorgan Chase: "An environment in which courts cannot be relied upon to adhere to the rule of law is an environment in which businesses will be reluctant to invest and in which development will be stunted." He calls the rule of law "a cornerstone of free trade."

Unfortunately, the rule of law is an ideal rather than a complete fact in even the most democratic nation. Special interest groups attempt to persuade lawmakers to benefit these groups at the expense of others. And it is not always clear what it means to apply laws generally and equally. Still, in a democracy well-educated voters who understand the importance of the rule of law can hold to account lawmakers who excessively favor special interests. Judges also play a vital role in maintaining the rule of law. (See Sidebar 1.2.)

"While economic growth can occur in the short run with autocratic regimes, long-run economic growth entails the development of the rule of law."

—Douglas C. North,
acceptance speech
for the Nobel Prize in
Economics, 1993

sidebar 1.2

The Chief Justice and the Rule of Law

Before someone can become a justice of the U.S. Supreme Court, the president must nominate and the U.S. Senate must confirm that person. The Senate must also confirm the president's choice to be chief justice. During the confirmation, the senators always ask questions about the rule of law. Here is how Chief Justice John Roberts responded to a confirmation question about the rule of law.

Somebody asked me . . . , "Are you going to be on the side of the little guy," he said. And you obviously want to give an

immediate answer, but, as you reflect on it, if the Constitution says that the little guy should win, the little guy's going to win in court before me. But if the Constitution says that the big guy should win, well, then the big guy's going to win, because my obligation is to the Constitution.

Compare Chief Justice Roberts' statement to a similar observation made by former Chief Justice Warren E. Burger: "Judges rule on the basis of law, and not public opinion, and they should be totally indifferent to the pressures of the times."

Almost all wealthy countries embrace the rule of law; for example, most European countries. Article 6 of the Treaty on European Union, called the Maastricht Treaty, says the EU is “founded” on “the rule of law.” There are no countries with strong, diverse economies that do not have the rule of law. As former President Eisenhower warned, “The clearest way to show what the rule of law means to us in everyday life is to recall what has happened when there is no rule of law.”

PROPERTY

The third concept necessary for a successful private market in the modern nation is **property**. In a dictionary, property has two common meanings: (1) something that is owned and (2) ownership. We will be using the word in its second definition as “**ownership**.” In law the word “property” (or “ownership”) means the right to turn to public authorities like the police or the courts to help you keep others from interfering with what you own. Property is a legal fence that keeps others out without your permission. It allows you to exclude others from something without your permission.

Three types of ownership fences are

- Public property, which applies to public resources owned by the government (or “state”) like roads, public buildings, public lands, and monuments.
- Private property, which applies to resources that you own as an individual.
- Common property, which applies to resources like land that more than one individual owns jointly.

So important is the right of private property that in this book we often just refer to private property as “property.” We will specifically say “public property” or “common property” if we mean those applications of exclusionary right.

It is through the law of property that individuals and business organizations can possess, use, and transfer their private resources. The enforcement of the property right under the rule of law gives people incentive to develop the resources they own and a property-based legal system that enables such control by allowing people to exclude others from interfering with what their efforts produce. The exclusionary right of property provides a basis for the private market and modern business. Scholars have traced the economic flourishing of Western civilization during the last several hundred years to the increasing recognition of the right of property in the nations of the West.

PROPERTY IN ITS BROADEST SENSE

Property can be thought of as the central concept underlying Western legal systems. (See Figure 1.1.) Most of the topics discussed in this book relate to the exclusionary right of property. Contract law enables an owner to exchange resources (Chapters 8 and 9), especially at a future date. Tort law compensates owners whose resources are wrongfully harmed by the actions of others (Chapter 10). Criminal law punishes those who harm an owner’s resources in particular ways, for example, by theft (Chapter 13). The law of corporate governance and business organizations identifies how individuals can own and use private resources in groups (Chapter 14).

Regulatory law both protects ownership and sets limits on private resource use (Chapter 15). Antitrust law forbids owners from monopolizing classes of resources and sets rules for how businesses can compete to acquire ownership in new

LO 1-2

Property is a legal right that allows you to exclude others from your resources.

Do remember that the property right gives a major incentive to develop resources.

Property is the central concept of Western legal systems.

To say that you have a “right” means that legally you can keep others from interfering with that right. To be able to exclude others is the essence of property.