

Sean P. Melvin / F. E. Guerra-Pujol

The Legal Environment of Business

A Managerial Approach:
Theory to Practice



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Education

fourth edition

The Legal Environment of Business

A Managerial Approach: Theory to Practice

Fourth Edition



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THE LEGAL ENVIRONMENT OF BUSINESS: A MANAGERIAL APPROACH: THEORY TO PRACTICE,
FOURTH EDITION

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This book is printed on acid-free paper.

1 2 3 4 5 6 7 8 9 LWI 24 23 22 21 20

ISBN 978-1-260-24780-0 (bound edition)

MHID 1-260-24780-5 (bound edition)

ISBN 978-1-264-08664-1 (loose-leaf edition)

ISBN 1-264-08664-4 (loose-leaf edition)

Executive Portfolio Manager: *Kathleen Klehr*

Product Developers: *Jaroslav Szymanski; Allie Kukla*

Marketing Manager: *Claire McLemore*

Content Project Managers: *Lori Koetters; Angela Norris*

Buyer: *Laura Fuller*

Design: *Matt Diamond*

Content Licensing Specialist: *Beth Cray*

Cover Image: *philsajonesen/Getty Images*

Compositor: *SPi Global*

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Library of Congress Cataloging-in-Publication Data

Names: Melvin, Sean P., author. | Guerra-Pujol, F. E., author.

Title: The legal environment of business : a managerial approach : theory to practice / Sean P. Melvin, Elizabethtown College; F. E. Guerra-Pujol, University of Central Florida.

Description: Fourth edition. | New York, NY : McGraw-Hill Education, [2020] | Includes bibliographical references and index.

Identifiers: LCCN 2019044810 | ISBN 9781260247800 (hardcover) | ISBN 1260247805 (bound edition) | ISBN 9781264086641 (loose-leaf edition) | ISBN 1264086644 (loose-leaf edition)

Subjects: LCSH: Businesspeople—United States—Textbooks. | Commercial law—United States—Textbooks.

Classification: LCC KF390.B84 M45 2020 | DDC 346.7307—dc23

LC record available at <https://lcn.loc.gov/2019044810>

The Internet addresses listed in the text were accurate at the time of publication. The inclusion of a website does not indicate an endorsement by the authors or McGraw-Hill Education, and McGraw-Hill Education does not guarantee the accuracy of the information presented at these sites.

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For Joanna, Sean, and Ally—always.

S.P.M.

For Sydja, the love of my life.

F.E.G.P.

For our students: past, present, and future.

The Authors

about the authors



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Courtesy of Sean P. Melvin

Sean P. Melvin is an associate professor of business law at Elizabethtown College (Pennsylvania), where he served as department chair for eight years, won the Delta Mu Delta Outstanding Teacher of the Year award, and received several Faculty Merit awards for teaching and scholarship. Prior to his appointment at Elizabethtown, he was an assistant professor of business at a large state university where he taught in both the undergraduate and MBA programs. Before his academic career, Professor Melvin was a corporate lawyer in a large Philadelphia-based law firm and went on to become vice president and general counsel at a publicly traded technology company.

Professor Melvin is the author or co-author of nine books (including five textbooks), has contributed scholarly and professional articles and case studies to over two dozen publications, and is a member of the Academy of Legal Studies in Business (ALSB). His article “Case Study of a Coffee War” was selected as Best International Case Study at the 86th annual ALSB conference.



Courtesy of F. E. Guerra-Pujol

F. E. Guerra-Pujol is a lecturer of business law at the University of Central Florida (UCF), a large state university located in Orlando, where he also serves as faculty editor of the *UCF Undergraduate Research Journal*. Prior to his appointment at UCF, he was an associate professor at the Pontifical Catholic University School of Law in Ponce, Puerto Rico, and practiced corporate and tax law with a large Latin American law firm. Professor Guerra-Pujol received his BA from UC Santa Barbara and his JD from Yale Law School.

Professor Guerra-Pujol has published refereed articles, book chapters, and other scholarly works and is a member of the Academy of Legal Studies in Business (ALSB). He is currently writing a book titled *Alternate Legal Worlds* exploring law from a science fiction perspective, and his work has been featured on Freakonomics Radio, Hacker News, and the website io9.





preface

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Think of this textbook as a road map that guides you through the twists and turns of the laws that impact business entities, owners, and managers. This road map will help you understand ways in which business owners and managers can add value to their companies by using legal insight and strategy for business planning and for limiting liability. We have tailored the text, examples, cases, and teaching features to the needs of business students by providing concise explanations of law (theory) and then supplying the tools necessary for students to apply their knowledge in the business environment (practice).

MASTERING THE MATERIAL

The first step in mastering the material is to recognize that you must *internalize* the concepts presented in your courses. This requires more than a casual reading of assignments. For many years, we have asked students who earned an “A” in our courses to write a few sentences of advice to future students on how to internalize the material and achieve a top grade in the course. We offer you some of their collective wisdom:

- At the beginning of the course, match the syllabus with the textbook. Note the areas that the instructor is focused on by comparing the amount of coverage between topics. For example, if it appears from the syllabus that you will be spending several classes on constitutional law, that is an area that will undoubtedly be assessed (through an examination, project, etc.) and requires more intense study and review.
- The day before a class, study the assignment as follows: (1) read the major and minor headings in the textbook to get a general sense of what the material covers; (2) go back and read the text carefully, using a highlighter and pencil to mark important text and make notes in the margins; and (3) review the concept summaries, flowcharts, and self-checks to be sure you understand the material, and put question marks next to any concept you do not understand.
- The day of your class, if possible, take 15 minutes before your class to review the highlighted text, margin notes, and concept summaries.
- During class, be sure that your text is open and that your notes are tied to any assignments in the text.

For example, suppose your instructor takes time to go over the concept of jurisdiction in some detail during class, draws a flowchart on the board, and goes over the self-check answers. This is a clear sign that jurisdiction will be assessed in some form (most commonly through an examination or quiz). In your notes on jurisdiction, indicate that the concept is important (and requires more intense study) and cross-reference it with page numbers in your textbook.

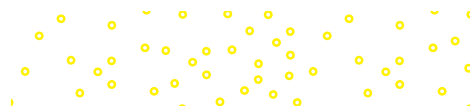
- As soon as possible after class (ideally, immediately after class but no later than that same evening), take 15 minutes to write out 10 note cards. First, write out five of the most important concepts covered in class that day. Second, write out five terms (words or short phrases) that were used by the instructor during class. This will give you a convenient and portable resource for reviewing.

Finally, we offer you the same advice for success in your course that we have offered our own students for more than a decade: The secret is that there is no secret. No methodology, advice, or review cards substitute for a sustained and diligent study of the material.

A NOTE TO THE INSTRUCTOR

The instructor’s materials are based on a turnkey approach that provides a comprehensive set of course materials along with the textbook. These materials have been developed with an eye toward minimizing instructor preparation time while still allowing the instructor to tailor the course in a way that meets the unique needs of instructors and students alike. In addition to the traditional supplementary materials package that includes an Instructor’s Manual, Test Bank, and PowerPoint slides, the instructor resources also include a robust package of online content including McGraw Hill’s interactive exercises via Connect, quizzes, links to streaming videos, case updates, sample text-specific syllabi with alternatives for a variety of classroom circumstances, multiple formats, teaching notes, sample questions, and assignment sheets tied to the simulation materials and the Capstone case studies.

*Sean P. Melvin
F. E. Guerra-Pujol*



changes to this edition



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The authors embrace a commitment to continuous improvement of the content, case selection, features, and approach embodied in this textbook. We are privileged to have candid reviews, suggestions, and guidance from over 100 business law professors from a wide variety of colleges and universities. Much of this fourth edition is based on specific feedback from our reviewers and students.

Chapter 1

- New Case: *South Dakota v. Wayfair Inc.* (2018)
- New material on precedent
- Update to Strategic Legal Solutions: The Big Picture
- Added Case Summary
- Added Key Point

Chapter 2

- New material on due process
- New Case: *Masterpiece Bakeshop, Ltd. v. Colorado Civil Rights Commission* (2018)
- New Case: *Trump v. Hawaii* (2018)
- New Case: *Carpenter v. United States* (2018)
- New Case: *Patel v. Zillow, Inc.* (2019)

Chapter 3

- Updated Table 3.1 on U.S. Supreme Court Acceptance Rate
- Added Concept Summary on precedent
- New Case: *Bristol-Myers Squibb Co. v. Superior Court of California* (2017)
- New Case: *Florida v. Georgia* (2018)

Chapter 4

- Updated Introduction and Learning Objectives
- Added section on Class Action Lawsuits
- New material on Class Action Fairness Act
- New Case: *In re Subway Sandwich Marketing and Sales Litigation*, T. Frank (2017)
- Updated Stages of Litigation
- New Case: *20/20 Financial Consulting, Inc. v. John Does* (2010)

- Updated FAA Section
- New Case: *Schein, Inc. v. Archer & White Sales, Inc.* (2019)
- New Strategy 101 feature: Online Dispute Resolution

Chapter 5

- Revised content and title
- Updated Business Ethics Defined
- Updated Moral Philosophy and Ethical Decisions
- New Ethical Decision-Making Process case study on Google
- New Case: *Brook Brothers Inc. v. Bubbles by Brooks, LLC* (2013)

Chapter 6

- Updated material on unilateral contracts (rewards)
- Streamlined material on Mailbox Rule
- New Key Point
- New summary table
- New Legal Strategy 101 feature

Chapter 7

- New Case: *Holder Construction v. Georgia Tech Facilities, Inc.* (2006)
- New Case: *Thomas v. Montelucia Villas, LLC* (2013)
- Revised material on anticipatory repudiation
- New Key Point
- Streamlined Remedies at Law section
- Revised Legal Strategy 101

Chapter 8

- Updated Battle of the Forms material
- New Case: *Accettura & Wozniak v. Vacationland, Inc.* (2018)
- New Case: *Hemlock Semiconductor Operations v. SolarWorld Industries Sachsen* (2017)
- New material: Statute of Frauds
- New material and new case: Cure
- New Critical Thinking questions
- Updated Legal strategy 101

Chapter 9

- New case: *Turner v. Wells* (2018)
- Revised Assumption of Duty section
- Updated Legal Implications in Cyberspace
- Updated and Legal/Ethical Discussion on Products Liability and Guns
- New End-of-Chapter case summaries
- Updated Legal Strategy 101

Chapter 10

- Updated Classification of Agents
- Added new section on Uber
- New Case: *Carroll Management Group, LLC v. A Carpet & Paint, LLC* (2015)
- Updated and streamlined ABC Test for Agency Status
- Updated Strategic Legal Solutions
- New material on Going-and-Coming Rule
- New material on liability of LLC managers
- New Key Point: Classification

Chapter 11

- Updated Employee-at-will Doctrine
- New Case: *McQueary v. The Pennsylvania State University* (2016)
- Updated Statutory Exceptions
- New Critical Thinking case questions
- Updated material on Whistleblower Statutes
- New material: Affordable Care Act
- Updated Legal Strategy 101

Chapter 12

- Updated Title VII material to account for new sex discrimination cases
- New Case: *Zarda v. Altitude Express* (2018)
- Updated Sexual Harassment, added Impact of the #MeToo Movement
- Updated Hostile Work Environment
- Updated flow chart: Title VII Analysis
- Streamlined Disparate Impact Theory material

Chapter 13

- Updated Choosing a Business Entity
- New Case: *Doctors Hospital at Renaissance v. Andrade* (2016)

- Added material on Personal Guarantees
- Updated Self-Check
- New Key Point
- Updated Legal Strategy 101

Chapter 14

- Updated Overview of LLCs and LLPs
- New Case: *Headfirst Baseball LLC v. Elwood* (2017)
- Updated Chapter Review Questions
- Revised Concept Summary: Dissociation
- New Key Point
- Updated Legal Strategy 101

Chapter 15

- Updated Fiduciary Duties section
- Revised Corporate Opportunity Doctrine
- Streamlined Financing section
- New Legal Strategy 101 feature

Chapter 16

- Updated Crowdfunding
- Updated Peer-to-Peer Lending
- New material: Process of a Public Offering
- Revised material on Regulation D Exemptions
- Revised table: Summary of Exemptions
- Revised table: Crowdfunding Regulation
- Streamlined Safe Harbors
- New material: Insider Trading
- New material: Personal Benefits Test
- New Case: *Digital Realty Trust v. Somers* (2018)
- New table: Insider Trading Theories
- New Legal Strategy 101

Chapter 17

- Updated Scope of Administrative Agency Power
- Updated Limits on Administrative Agencies
- Added Concept Summary: Limits on Administrative Agencies
- Updated Regulatory Flexibility Act
- Updated Legal Strategy 101 feature
- Updated : Net Neutrality

Chapter 18

- Updated Strategic Legal Solutions for Managers



- New material on Clean Air Act
- Updated Deepwater Horizon (BP) Oil Spill
- Added Critical Thinking questions to cases

Chapter 19

- Updated Monopoly Power and Rule of Reason
- Updated “Search Bias” Investigation against Google
- Updated Antitrust and Sports section
- New Critical Thinking case questions
- Updated Legal Strategy 101

Chapter 20

- Updated Bankruptcy Guidelines/Amounts
- Updated material on Bad Faith Filings
- Updated material on Power of Trustees
- Updated Preferential Transfers
- New Critical Thinking case questions
- Updated Legal Strategy 101

Chapter 21

- Updated coverage of Warranties
- Updated section on CFBP
- Updated section on Credit Transactions
- Added Key Points
- Updated Self-Check questions
- Added Critical Thinking questions to cases
- Updated Legal Strategy 101

Chapter 22

- Revised section on the *Park* Doctrine
- Updated Fourth Amendment and the Impact of Technology on Warrants Requirements
- Updated Fourth Amendment summary table
- New Case: *United States v. DeCoster* (2016)
- Updated Criminal Law and Business Entities
- Updated Criminal Procedure
- Updated Business Ethics feature: Enforcement of Insider Trading Laws

Chapter 23

- Revised Introduction and Learning Objectives
- New section on Types of Property Rights
- Revised Eminent Domain section
- New Key Term (transaction costs)
- New Case: *Jackson v. Wyndham Destinations, Inc.* (2019)
- New Case: *Casino Reinvestment Development Authority v. Birnbaum* (2019)

Chapter 24

- Revised Introduction and Learning Objectives
- Revised Trade Secrets section
- New Case: *IBM v. Johnson* (2009)
- Revised Trademarks section
- New Case: *Elliott v. Google, Inc.* (2017)
- New question for Business Ethics Perspective feature
- Updated First Amendment Concerns section
- Extended discussion of SCOTUS case *Matal v. Tam* (2017)
- New developments in the Washington Redskins trademark case
- Revised Copyright Law section
- New Criminal Sanctions for Infringement section
- Revised Defenses to Copyright Infringement Claims section
- Added reference to Google’s PageRank Patent
- New Case: *Rentmeester v. Nike* (2019)
- New Case: *ConnectU v. Zuckerberg* (2008)

Chapter 25

- Updated section on Comity
- Updated “Foreign Official” and the FCPA
- Updated Enforcing Intellectual Property Rights
- Updated section on World Court and European Court of Justice



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NEW CONNECT'S APPLICATION-BASED ACTIVITIES

New for the 4th edition are Application-Based Activities for Business Law. This digital feature provides students valuable practice using problem-solving skills to apply their knowledge to realistic scenarios. Students progress from understanding basic concepts to using their knowledge to analyze complex scenarios and solve problems. Application-Based Activities have been developed for the most-often-taught topics (as ranked by instructors) in the business law course. These unique activities are assignable and auto-gradable in Connect.

Learning Objectives

After studying this chapter, students who have mastered the material will be able to:

- 1-1** Understand the broad definition and origins of law.
- 1-2** List and explain the purposes of the law.
- 1-3** Explain the importance and benefits of legal awareness for business owners and managers in creating a strategy and adding value to a company.
- 1-4** Articulate the role of counsel in legal decision making in a business context.
- 1-5** Recognize, explain, and give examples of sources of American law.
- 1-6** Understand the legal doctrine of stare decisis.
- 1-7** Classify the law into several broad categories.
- 1-8** Differentiate between the concepts of law and equity.
- 1-9** Identify and apply important equitable maxims.

Chapter Features

Each chapter begins with *Learning Objectives* and a short overview that provides students with a map of the chapter. The *Learning Objectives* are a point-by-point checklist of the skills and learning goals that gives students a convenient study guide for previewing and reviewing material in the chapter.

Strategic Legal Solutions

Strategic Legal Solutions provides practical answers for legal problems faced by managers and business owners. *Strategic Legal Solutions* is structured in a problem and solution format that allows students to understand how a particular section's legal concepts may be used to solve real-world business problems.

STRATEGIC LEGAL SOLUTIONS

Developing Codes of Ethics and Conduct

PROBLEM: While many organizations may have a set of informal values and standards to which they aspire to adhere, such informal value systems may be too vague and thus not very helpful in a practical context.

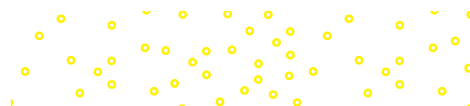
STRATEGIC SOLUTION: Develop an effective code of ethics and code of conduct for your business organization. Such codes should be developed in cooperation with (and not exclusively by) the organization's human resource manager and legal counsel. Ideally, the entire organization, not just

management, should play a role or have a say in the creation and periodic affirmation of such codes.

Depending on the organization, a code of ethics and code of conduct may be expressed in the same document. Here, they are examined separately.

For a code of ethics, consider the following guidelines:

- Identify the ethical values needed to comply with relevant laws and regulations.
- Identify the ethical values most relevant to the main activities in each area of your organization. For example, the chief financial officer may identify objectivity and accuracy as important values.



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BUSINESS ETHICS PERSPECTIVE

Good Faith and the Nuclear Condition Option

Note that while the law imposes a good faith requirement on all contracting parties, as a practical matter the law may also protect those who are ostensibly acting in good faith but may have unethical motives. In some contracts, the parties agree to a conditional clause sometimes known as a *nuclear condition*, that is, a clause whereby one party may cancel the contract completely if a condition is not met to that party's subjective satisfaction. Consider the case in which the president of WidgetCo assigns Manager to purchase a piece of real estate. Manager enters into a contract with Owner for the sale of a piece of commercial real estate. Manager insists that the contract contain an "acceptable financing" clause as follows: "As a specific condition precedent to WidgetCo's obligation to close, the parties agree that WidgetCo must obtain financing for the transaction on terms and conditions acceptable to WidgetCo in WidgetCo's sole discretion."

learns that WidgetCo is able to obtain financing on extremely favorable terms according to industry standards.

1. Given that the contract requires that any financing terms must be acceptable to WidgetCo, what are Manager's legal obligations to go through with the transaction? Does this differ from Manager's ethical obligations?
2. Is it possible for Manager to comply with the good faith requirement and still avoid the contract with Owner?
3. Recall the discussion of ethical decision-making models in Chapter 5, "Business Ethics, Corporate Social Responsibility, and Law." How could these models help guide Manager's course of action?
4. Assume that the president orders Manager to lie on the loan application, thereby ensuring that any financial institution will reject the loan application. Note that lying on a bank loan application is a crime. What are Manager's options at that point?

Business Ethics Perspective

The coverage of business ethics reflects its increasingly important place in the business world. In addition to Chapter 5, "Business Ethics, Corporate Social Responsibility, and Law," the textbook features logically placed boxes with discussion questions intended to help students understand ethical decision making in contemporary contexts.

Legal/Ethical Reflection and Discussion

This feature is strategically placed in parts of the text where the instructor may wish to have students reflect on the ethical dimension of a legal problem. It starts with a short narrative and ends with a series of questions that fundamentally ask students: What would *you* do?

LEGAL/ETHICAL REFLECTION AND DISCUSSION

Made in the USA

A manager for WidgetCo is approached by a foreign vendor who offers to supply widgets at a substantial discount from what his company is currently paying. When determining WidgetCo's course of action, consider both the moral minimum and the maximizing profits approaches to business ethics:

- Why should it matter whether the lower-priced widgets are not made in the USA?

- Why should it matter whether the foreign company is subject to the same quality-control and labor safety regulations as the current USA supplier?
- Why should it matter whether the lower-priced widgets are more (or less) likely to be faulty or substandard?
- Why should it matter whether faulty or substandard widgets could make the company's products more dangerous to users or to the environment?

CASE 3.2 Clemens v. McNamee, 615 F.3d 374 (5th Cir. 2010)

FACT SUMMARY In the summer of 2007, federal agents contacted Brian McNamee in connection with a federal investigation into the illegal manufacture and sale of performance-enhancing drugs in professional sports. McNamee was an athletic trainer who had worked for both the Toronto Blue Jays and the New York Yankees baseball clubs. After authorities convinced McNamee that they had sufficient evidence to convict him for injecting athletes with anabolic steroids, McNamee agreed to cooperate with investigators in exchange for immunity from prosecution. During an interview with investigators, McNamee admitted that he had administered steroids to all-star pitcher Roger Clemens in both Toronto and New York. McNamee repeated this allegation to Major League Baseball investigators and to a reporter during an interview with *Sports Illustrated*. In 2008, Clemens, a citizen of Texas, filed a defamation suit against McNamee, a citizen of New York, in federal court based on diversity of citizenship. The trial court dismissed the complaint due to lack of personal jurisdiction over McNamee because his alleged defama-

contacts as required by the long-arm statute and due process. The court held that to support personal jurisdiction in a defamation claim, the forum must be the "focal point" of the story. Although the court acknowledged that the defamation may cause distress and damage to Clemens's reputation in Texas, it concluded that the alleged defamatory statement was inadequately directed to Texas to satisfy the minimum-contacts requirement.

WORDS OF THE COURT: Minimal Contacts and Injurious Effect "In support of jurisdiction, Clemens points to the harm he suffered in Texas and to McNamee's knowledge of the likelihood of such damage in the forum. Yet under [previous case law], Clemens has not made a prima facie showing that McNamee made statements in which Texas was the focal point: the statements did not concern activity in Texas; nor were they made in Texas or directed to Texas residents any more than residents of any state. As such, the district court did not err in dismissing Clemens' suit for lack of personal jurisdiction over McNamee."

Cases

The textbook uses a *hybrid* format to report case law rather than including lengthy excerpts from judicial opinions. Students are provided with (1) a summary of the facts; (2) a decision and opinion synopsis; (3) short excerpts from the actual opinion, called "Words of the Court," to help students understand a key point in the case; and (4) several case questions to facilitate discussion. Students will find this format useful for understanding legal cases in a business context.



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Self-Checks

Self-Check exercises offer students an opportunity to reinforce and apply the material being studied in the textbook. Students use black-letter law and cases to answer short hypothetical questions on a specific topic. *Self-Checks* appear in the textbook after important legal concepts and are always keyed to problems faced by business managers and owners. Answers to the *Self-Checks* are provided at the end of the chapter.

✓ Self-Check Source of Constitutional Authority

What is the constitutional source of authority for each of the following laws?

1. A federal statute that makes it more difficult for businesses to qualify for protection under bankruptcy laws.
2. An increase in the federal corporate income tax.
3. A federal statute that adds criminal penalties for patent infringement.
4. A federal statute creating an agency to regulate ground shipping between states.
5. A federal statute that requires that 25 percent of federal government construction contracts be awarded to companies that are women- or minority-owned enterprises.

Answers to this *Self-Check* are provided at the end of the chapter.

CONCEPT SUMMARY *Internet and E-mail Jurisdiction*

- Lower federal courts have applied different tests to determine whether online activities can generate sufficient “minimum contacts” for personal jurisdiction purposes, such as the *Zippo* sliding-scale test and the *Calder* effects test.
- Under the *Zippo* sliding-scale test, there are minimum contacts when a defendant actively and repeatedly conducts business over the Internet, while there are no minimum contacts when a defendant merely posts information on a website that anyone can access. In the middle of this sliding scale, however, courts must consider the level and nature of the exchange of information on a case-by-case basis to determine whether there are minimum contacts.
- Under the “effects test,” the minimum contacts requirement is satisfied if it is reasonably *foreseeable* that the defendant’s actions could have an *injurious effect* on a resident of the court’s state.

Concept Summaries and Flowcharts

To help students with *reinforcing* and *reviewing* the application of the law in a business context, each major section within each chapter features a summary of the section. When a legal procedure is involved, flowcharts are used to summarize the process.

Other Textbook Features

Key Points briefly reinforce an important concept.

Legal Speak presents instant definitions of important legal terms in the margins of the text.

KEY POINT

- The primary purposes of the law are
- To provide a system of order that defines conduct and consequences.
 - To promote equality and justice in society.
 - To provide a method for resolving disputes.
 - To promote good faith dealing among merchants.
 - To provide a degree of reliability in applying the law evenly.

Language of the Law

In order to maximize the value of interaction between business owners/managers and attorneys, a basic understanding of legal terminology is useful. Students studying business law face the task of learning legal syntax at the same time as they learn how to apply the legal doctrines in a business context. This is analogous to learning a complicated subject matter in a foreign language, yet it is manageable with careful study. Legal terms are sometimes referred to as *jargon* or *legalese*, but having a working knowledge of some common legal terminology is an important step to mastering the

material. Although much of the language of the law has Latin roots, the terminology is primarily a combination of Latin, early and modern English, and French. The vocabulary of American law is drawn from the various cultures and events that shaped American history. To facilitate your understanding of legal expression, important legal terms are highlighted throughout the text, summarized at the end of each chapter, and also featured alphabetically in the glossary. The authoritative source for legal terms is *Black’s Law Dictionary*, first published in 1891. There are also several websites that provide definitions and examples for legal terms.

LEGAL IMPLICATIONS IN CYBERSPACE

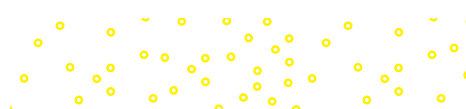
Protections for Online Content Providers

Along with holding the actual tortfeasor liable in a defamation case, the law imposes certain liability upon the publisher of libelous statements as well. However, the law does not impose liability on the distributor of the publication (such as a bookstore or newsstand). For example, suppose a famous movie star is the subject of a gossip feature in a hypothetical tabloid called the *American Tattler*. The feature implies that the movie star was seen at a local restaurant and was so intoxicated that she could not control her conduct. In a lawsuit for defamation, the

movie star proves that the story was false and that it led to her being fired by her movie studio. In terms of liability, both the author of the defamatory feature and the publication (*American Tattler*) may be liable for damages.

However, the rules pertaining to publishers of online content in cyberspace are different. In our movie-star example, suppose that instead of the *American Tattler* publishing the defamatory feature, a gossip columnist hired by America Online (AOL) wrote the article for an AOL entertainment news board. There would be no doubt of the liability of the author, but would AOL be liable as the “publisher”?

Legal Implications in Cyberspace apply traditional legal concepts in the context of the Internet.



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End-of-Chapter Features

Each chapter ends with several features crafted to help students review and connect the different sections of the chapter by applying the material learned in the text in a practical way.

THEORY TO PRACTICE

PART I

Santiago Information Systems (Santiago) is a business based in Baltimore, Maryland, that purchases old computers, refurbishes them with new software and hardware parts, and sells them in bulk for about half the price of a new PC. For the past three years, Santiago has shipped approximately 40 percent of its inventory to the same client. The client is the Wilmington School District (Wilmington) in Wilmington, Delaware, and the school pays approximately \$80,000 to Santiago for the computers per year. Santiago also visits each school to be sure that the computers are installed correctly and that the school district is satisfied with the order. Santiago has a website that gives contact information for the company, but the site is only partially interactive because users can transact business only by sending Santiago an e-mail via the website. Recently, Wilmington discovered that large shipments of Santiago's products were defective, and it has been unable to come to a resolution with Santiago over the matter.

1. If Wilmington wishes to sue Santiago, what court or courts would have jurisdiction over this matter?
2. What would be the best venue and why?
3. If a Delaware court decides that it does not have jurisdiction, how may that affect Wilmington's decision on whether or not to file a lawsuit?

PART II

Assume that one of Santiago's suppliers, Parts R Us (Parts), is headquartered in Union City, New Jersey, and has been shipping Santiago parts for approximately four years in a row. Last year, Parts sold approximately \$7,000 in hardware to Santiago. In the past 10 years, Parts R Us has shipped to businesses in Maryland, New York, New Jersey, and Connecticut. Parts has also e-mailed advertisements to potential leads in each of the 50 states. Wilmington has determined that Parts provided the defective components used in the computer order described in Part I.

1. If Wilmington decides to file suit against Parts in Delaware, will a Delaware court have personal jurisdiction over Parts? Why or why not?
2. Suppose Parts has a website where customers can order products, pay for them via credit card, and have them delivered via a delivery service to any U.S. city. How does this affect your jurisdiction analysis?
3. If Parts's only contact with Delaware is via its website, what standard should the trial court apply to determine whether there are minimum contacts?

Legal Strategy 101: This feature challenges students to apply their legal knowledge in a strategic context. Each chapter reinforces the opening chapter's *Strategic Legal Solutions: The Big Picture* by posing a real-world legal/ethical dilemma that has a strategic dimension and offering questions/exercises to stimulate critical thinking and discussion.

Theory to Practice: Each chapter features a hypothetical legal problem faced by a manager that is related to specific material in that chapter. The hypothetical problem is followed by questions that connect the problem to several different sections in the chapter.

Manager's Challenge: This feature allows students to engage in writing or a group work assignment that sets forth a manager's task relating to the material in the chapter. Some challenges are designed for teams, others for individuals.

Key Terms: Key terms for students are boldfaced in the text and listed as a group at the end of the chapter with a definition and reference to the page number in the chapter where the term is first mentioned.

Case Summaries: Several brief case summaries are included, with a heading for each that indicates its general topic reference to the chapter and with questions about the case summary. These cases are intended to reinforce students' knowledge of how laws apply in different fact circumstances.

Chapter Review Questions and Answers: Several multiple choice questions designed to reinforce learning objectives are featured at the end of each chapter, along with answers and explanations.



walkthrough

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Business Law Simulation Exercises

The textbook features three business law simulation exercises. In a simulation exercise, students are provided with facts, law, and cases related to a hypothetical business dispute and are assigned to analyze the material, understand the legal and ethical issues presented, and then work toward a resolution. The simulations are also excellent for review and reinforcement because the materials involve cases directly related to one or more topics covered in a particular unit of the textbook.



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BUSINESS LAW SIMULATION EXERCISE 1

Restrictive Covenants in Contracts: Neurology Associates, LLP v. Elizabeth Blackwell, M.D.

Learning Objectives

After studying this simulation, students who have mastered the material will be able to:

1. Explain the legal doctrines that govern the use of restrictive covenants.
2. Interpret and apply the rules set forth in current case law.
3. Articulate a cogent argument for each party/side in the dispute.
4. Negotiate a tenable solution as an alternative to a judicial forum.

Chapters 6 and 7 provided you with a variety of legal doctrines and rules governing contract formation and performance and then illustrated how these doctrines and rules apply in the corporate sector context. This

Part 3 is an assignment sheet that will be provided to you by your instructor to be used in conjunction with this simulation.



capstone case study 1

COFFEE WARS: STARBUCKS V. CHARBUCKS¹

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OVERVIEW AND OBJECTIVES

Two years after opening their family-owned coffee bean roastery, Jim and Annie Clark had become accustomed to long workweeks and bootstrap financing. By 1997, their Black Bear Micro Roastery was finally growing, and the Clarks were hopeful that their new specialty blend, Charbucks, would give their uniquely dark-roasted coffee bean a catchy name to remember. Soon after launching the new blend, Annie Clark received a phone call from an insistent in-house lawyer at coffee giant Starbucks that threatened the very existence of the Clarks' company. Starbucks claimed that the Charbucks name and label infringed on its trademark, and it demanded that the Clarks cease the use of the name Charbucks and that any existing products with that name be removed from supermarket shelves. But the Clarks insisted that they had been careful to design the label with Black Bear Micro Roastery logos and that the name was tied to the dark-roasting process and not to anything related to the name Starbucks. Despite their beliefs that no infringement had taken place, the Clarks entered into settlement negotiations to avoid the legal costs associated with defending a trademark lawsuit. After the settlement negotiations failed, Starbucks sued Black Bear Micro Roastery, and the stage was set for a coffee war that pitted a multinational powerhouse against a Main Street merchant. This case study emphasizes use of legal insight and business strategy, gives context for evaluating business ethics, and requires the application of trademark law.

Review Legal Concepts

Prior to reading the case, briefly review the following legal concepts that were covered in the textbook: legal insight and business strategy (Chapter 1); business, societal, and ethical contexts of law (Chapter 5); and

THE BLACK BEAR MICRO ROASTERY

Jim and Annie Clark were native New Englanders who shared a passion for coffee and an entrepreneurial spirit. After three years of research, they launched Black Bear Micro Roastery in 1995 with a mission of creating a unique methodology for roasting gourmet coffee beans through use of advanced technology and the "traditional Yankee work ethic." The company was situated in the lakes region of New Hampshire and targeted connoisseur coffee drinkers, primarily in the New England area, who appreciated the micro-roastery approach of producing small, high-quality batches of coffee beans. The beans were sold via mail order, from the Black Bear website, and through New England specialty stores and supermarkets. Eventually, Black Bear also sold its products through its own retail outlet and café in Portsmouth, New Hampshire.

True to their belief in the micro-roastery concept and their entrepreneurial courage, the Clarks invested their life savings in the company. In order to start the business, the couple sold many of their assets and refinanced the mortgage on their home for extra cash. They enlisted their teenage daughters as their labor force and committed to seven-day workweeks. The family business was the centerpiece of their family's livelihood.

As with many start-ups, business for Black Bear was slow and rocky at first. The price of green coffee beans had fluctuated unexpectedly, and the 1997 Teamsters strike at United Parcel Service had eaten into profit margins. Undeterred, Jim and Annie Clark kept the company going until it began to grow ever so slowly. In order to develop a niche in the gourmet coffee market, Black Bear began to develop unique blends with catchy names that were easy to remember. This included blends such as "Country French," "Kenya Safari," and "Mocha Java."

Capstone Case Studies

Capstone case studies center on the dilemmas of actual corporations that were faced with a corporate crisis involving legal and ethical issues. They are intended to help students connect several different legal and ethical concepts in a single case study. First, students reread concept summaries from specific chapters to reinforce their knowledge of specific legal issues. Second, students study a narrative of facts of the case, dynamics of the marketplace, and important trends of the time. Discussion questions are grouped by topical subject matter such as negligence, products liability, administrative agency regulation, and criminal law. Ethical decision-making questions are integrated into each case. The *Capstone Case Study* feature also provides a short exercise designed for use as a writing assignment, small group work, or class discussion.



online assignments and resources



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NEW Connect’s Business Law Application-Based Activities (ABAs) Application-Based Activities for Business Law provide students valuable practice using problem-solving skills to apply their knowledge to realistic scenarios. Students progress from understanding basic concepts to using their knowledge to analyze complex scenarios and solve problems. Application-Based Activities have been developed for the most-often-taught topics (as ranked by instructors) in the business law course. These unique activities are assignable and auto-gradable in Connect.

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Writing Assignment As part of a larger set of learning activities that provide students with core course content as well as opportunities to practice the skills they need to develop, the new MH writing assignment toolset offers faculty the ability to assign a full range of writing assignments to students (both manual-scoring and auto-scoring) with just-in-time feedback. You may set up manually scored assignments in a way that students can

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The new writing assignment will also have features that allow you to assign milestone draft (optional), easily re-use your text and audio comments, build/score with your rubric, and review your own Originality report of student work. In addition, you may choose from a set of auto-scored, short-answer questions that allow you to add lower-stake writing activities to your course without adding significant grading and feedback to your workload; these promote critical thinking/conceptual understanding of course content and provide students with instantaneous feedback.

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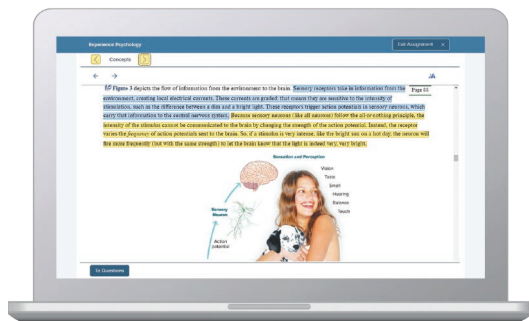


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acknowledgments



We owe a great deal of gratitude to our entire team at McGraw-Hill Education. Although many team members worked diligently with us in developing and strengthening this book over the course of more than a decade, there are a core of professionals who have provided extraordinary support and enthusiasm for the book for many years: Managing Director Tim Vertovec, Executive Portfolio Manager Kathleen Klehr, Product Developers Jaroslaw Szymanski and Allie Kukla, and Content Project Managers Lori Koettters and Angela Norris are exceptional in their creativity, insight, and work ethic.

Throughout the development of each edition of this book, we have been privileged to have the candid and valuable advice of our reviewers and focus groups. Our reviewers provided us with priceless suggestions, feedback, and constructive criticism. The depth and sincerity of their reviews indicate that they are a devoted group of teacher-scholars. The content of the book was greatly enhanced because of their efforts.

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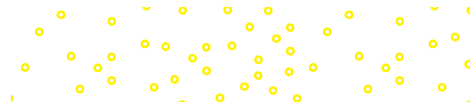
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