

DYNAMIC **BUSINESS LAW**

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Dynamic Business Law

Dynamic Business Law

FOURTH EDITION

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DYNAMIC BUSINESS LAW, FOURTH EDITION

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About the Authors



Nancy K. Kubasek received her J.D. from the University of Toledo College of Law in 1981 and her B.A. from Bowling Green State University in 1978. She joined the BGSU faculty in 1982, became an associate professor in 1988, and became a full professor in 1993.

During her tenure at Bowling Green State University, she has primarily taught courses in business law, legal environment of business, environmental law, health care law, and moral principles. She has published over 75 articles, primarily in law reviews and business journals. Most of her substantive articles focus on environmental questions. She has helped get students involved in legal research, and a number of her articles have been coauthored with students. She has also published a number of pedagogical articles in teaching journals, focusing primarily on the teaching of critical thinking and ethics.

She wrote the first environmental law text for undergraduate students, *Environmental Law*, and coauthored *The Legal Environment of Business: A Critical Thinking Approach*. She has written supplemental materials, such as study guides, test banks, and instructors' manuals.

Active in many professional organizations, she has served as president of the Academy of Legal Studies in Business, the national organization for professors of legal studies in colleges of business. She has also served as president of the Tri-State Academy of Legal Studies in Business, her regional professional association.

In her leisure time, she and her husband, Neil Browne, fish for halibut and salmon in Alaska, as well as largemouth bass in Florida. In addition, they are regular participants in polka, waltz, zydeco, and Cajun dance festivals in Europe and the United States. For almost 30 years, they have been

successful tournament blackjack players. Both are avid exercisers—lifting weights, doing yoga, and running almost every day.



M. Neil Browne is a senior lecturer and Distinguished Teacher Professor of Economics and Law emeritus at Bowling Green State University. He received his B.A. in history and economics at the University of Houston, his Ph.D. in economics at the University of Texas,

and his J.D. from the University of Toledo. He has been a professor at Bowling Green for more than five decades.

Professor Browne teaches courses in economics and law, legal research, jurisprudence, ethical reasoning, critical thinking, and economics at both the undergraduate and graduate levels. He has received recognition as the Silver Medalist National Professor of the Year, the Ohio Professor of the Year, and Distinguished Teacher and Master Teacher at Bowling Green State University, as well as numerous research awards from his university and from professional organizations. His consulting activities with corporate, governmental, and educational institutions focus on improving the quality of critical thinking in those organizations. In addition, he serves as a Rule 26 expert with respect to the quality of the reasoning used by expert witnesses called by the party opponent in legal actions.

Professor Browne has published 35 books and over 160 professional articles in law journals, as well as in economics, sociology, and higher-education journals. His current research interests focus on the relationship between orthodox economic thinking and legal policy. In addition, he is in the midst of writing books about the power of questionable assumptions in economics, the usefulness of asking questions as a learning strategy, and the deficiencies of legal reasoning.



Lucien J. Dhooge is the Sue and John Staton Professor of Law at the Scheller College of Business at the Georgia Institute of Technology, where he teaches international business law and ethics and serves as the area coordinator in law and ethics. Prior to his tenure at

the Georgia Institute of Technology, Professor Dhooge practiced law for 11 years and served on the faculty of the University of the Pacific in California for 12 years. He has authored more than 50 scholarly articles, coauthored and contributed to 13 books, and is a past editor in chief of the *American Business Law Journal* and the *Journal of Legal Studies Education*. Professor Dhooge has presented courses and research throughout the United States, as well as in Asia, Europe, and Central and South America, and has received numerous research and teaching awards, including seven Ralph C. Hoerber Awards for excellence in published research. After completing an undergraduate degree in history at the University of Colorado, Professor Dhooge earned his J.D. from the University of Denver College of Law and his LL.M. from the Georgetown University Law Center.



Daniel J. Herron is a professor of business legal studies in the Richard T. Farmer School of Business at his undergraduate alma mater, Miami University in Oxford, Ohio, where he earned a bachelor's degree in English. He earned his law degree from

Case Western Reserve University School of Law in Cleveland and is a member of the Ohio and federal bars. His research includes articles on business ethics plus a variety of “business and law” topics. In addition to his teaching and scholarly publications, he founded in 1994, and since then has been coaching, the James Lewis Family Mock Trial Program at Miami, a consistent top-10 program in a field of more than 300 mock trial programs nationwide. Before coming to Miami in 1992, he taught at Bowling Green State University, the University of Wyoming, the University of North Carolina–Wilmington, and Western Carolina University. He has been married

for over 35 years to Deborah, and they have two children, Christopher (married to Amanda) and Elisabeth (married to Mark). They have four grandchildren—Jack, Nate, Samantha, and Wesley—plus two rambunctious beagles, Max and Missy.



Linda L. Barkacs received her J.D. from the University of San Diego in 1993. She also has a B.A. in political science from San Diego State University and an A.A. in accounting from Irvine Valley College.

Upon graduating from law school and passing the California bar exam, Professor Barkacs became an associate at a downtown San Diego law firm. During that time she was involved in a number of high-profile trials, including a sexual harassment case against the City of Oceanside that resulted in a \$1.2 million verdict. In 1997, Professor Barkacs and her husband Craig (also a professor at USD) started their own law firm specializing in business and civil litigation (in both federal and state courts), employment law cases, and appeals. They were also involved in numerous mediations and arbitrations.

Professor Barkacs began teaching at USD in 1997 and went full-time in Spring 2002. She is now a tenured Associate Professor of Business Law. As an educator, she has designed and taught numerous courses on law, ethics, and negotiation. She teaches in USD's undergraduate and graduate programs, including the Master of Science in Executive Leadership (a Ken Blanchard program), the Master of Science in Global Leadership, the Master of Science in Real Estate, and the Master of Science in Supply Chain Management. Professor Barkacs often teaches in USD's study-abroad classes and has traveled extensively throughout Europe, Asia, and South America.

Professor Barkacs has received numerous awards for her teaching at USD, including the 2008 USD Outstanding Undergraduate Business Educator; 2008 and 2007 Professor of the Year, USD Senior Class (universitywide); 2007 Creative and Innovative Teaching Award, Academy of Education Leadership (national); and 2009 and 2010 nominee for U.S. Professor of the Year (Carnegie Foundation).

She and her husband are principals in The Barkacs Group (www.tbgexecutivetraining.com), a consulting

firm that provides negotiation, ethics, and team training for the private sector. Professor Barkacs has published numerous journal articles in the areas of law, ethics, and negotiation. She and her husband are coauthoring a book on negotiation. She has been the president, vice president, conference chair, and treasurer of the Pacific Southwest Academy of Legal Studies in Business (www.pswalsb.net).

Professor Barkacs currently spends her time teaching, publishing, consulting for The Barkacs Group, and doing volunteer work for various civic causes. She enjoys walking, weight lifting, and spending her free time with her husband Craig and their three cats, Phoenix, Violet, and Vanessa.

A Guided Tour

We are full of gratitude to the reviewers, adopters, and students who have stimulated us to create this fresh and improved 4th edition of *Dynamic Business Law*. Any book is a work in progress, and certainly this one is no exception. It is humbling indeed to check and proof-read and study, but still omit things that should be included and fail to adequately explain what we do include. But with your assistance, we feel we have a much better book now.

We have constructed a book that is both comprehensive and readable. But the features integrated into the chapters provide its distinctive worth. Each feature stands by itself as an aid to the kind of learning we hope to encourage. Yet the features are also a cohesive unit, contributing both to the liberal education of the students who use this book and to their skills as decision makers in a market economy.

Specifically, we provide a comprehensive examination of all the relevant questions, concepts, and legal rules of business law. Our text addresses the power and authority of constitutions, statutes, case law, and treaties as sources of law. Together the various elements of what we call “the law” make up the foundation and structure of the market exchange process.

Decisions to trade and produce require trust—trust that consumers, firms, workers, financial institutions, and asset owners will do as they promise and that violations of such promises will be unacceptable in the marketplace. Without guarantees that promises will be kept, market exchanges would grind to a halt. Business law provides these guarantees and the boundaries within which certain promises can be made and enforced.

Market decisions are made in a context—a persistently changing context. The law, in turn, is dynamic in response. New technologies and business practices bring new disputes over rights and responsibilities in a business setting. Future business leaders need knowledge of existing business law, as well as a set of skills permitting them to adjust efficiently and effectively to new legal issues that arise over the course of their careers.

We are excited about the contents of our features and want to explain the function of each of them in preparing our students for leadership in business.



BUT WHAT IF . . .

WHAT IF THE FACTS OF THE CASE OPENER WERE DIFFERENT?

Let's say, in the Case Opener, that Hooters and Phillips had settled through arbitration. The arbitrator awarded Hooters a sum of money yet did not give any reasons or cite any laws to support the decision. Is the lack of justification legal? What could Phillips do in response to the decision?

A. BUT WHAT IF . . .

The “But What If” feature is designed to promote critical thinking by providing students with hypothetical variations on the fact patterns outlined in real cases. This feature takes advantage of what we

were taught so regularly in law school: Change the factual context and the legal conclusion may well shift along with the fact pattern. The “But What If” hypotheticals should heighten students’ sensitivity to the importance of details in legal reasoning.

B. COMPARING THE LAW OF OTHER COUNTRIES BOXES

This feature highlights the emerging, interconnected global market. Each chapter contains multiple “Comparing the Law of Other Countries” boxes. Because so many market decisions are made in an international context, future business leaders need to familiarize themselves with the likelihood that a particular legal principle essential to doing business in one country may not be appropriate in other countries. The “Comparing the Law of Other Countries” boxes provide heightened awareness of this likelihood by illustrating how unique the law in a certain country often is. After reading dozens of these “stories of difference,” readers will certainly better understand the need to discover relevant law in all jurisdictions where their market decisions have legal implications.

We believe that students learn innumerable valuable lessons about U.S. business law by contrasting the concepts of our business law system with those of our primary trading partners. We typically use Canada, Japan, China, Russia, Mexico, and the European Union for our comparisons because modern business managers will more likely be interacting with the law in those particular jurisdictions.

COMPARING THE LAW OF OTHER COUNTRIES

ADR IN JAPAN

Some judges, lawyers, and politicians in the United States advocate the adoption of Japan's ADR techniques into the U.S. judiciary system. The techniques come in three forms: compromise, conciliation, and arbitration.

Compromise (waka) is defined as a contractual agreement between parties that becomes the basis for a voluntary settlement. Due to the voluntary nature, no compromise is possible if one party does not wish to settle. Compromise may be proposed at three distinct times. First, a simple compromise may be reached before the initiation of a suit. Second, after initiation, but before litigation, the parties may appear in court and present a compromise. Such a compromise is legally binding on both parties. Third, parties may compromise during litigation, which is when most compromises occur. It has been estimated that nearly one-third of all disputes are settled using compromise.

The second ADR technique used in Japan is *conciliation (chotei)*. Conciliation, reaching compromise through a third party's intervention, has been a part of Japanese culture for hundreds of years. In modern times, conciliation committees consist of one judge and two appointed members of the community. Acceptance of the committee's recommendation is not necessary, but if the parties wish to concede, the recommendation has the force of a judgment.

The final type of ADR is *arbitration (chusai)*. The arbitration procedure in Japan is markedly similar to that in the United States. A two- or three-judge panel reaches a recommendation that is a binding decision.

The success and popularity of all three types of ADR in Japan are attributed to the attitudes of the citizens. People in Japan are reluctant to bring a lawsuit against a fellow citizen. To them, using ADR is a less brash way to resolve a dispute than suing someone outright. Obviously, this attitude is quite distinct from that of the American legal culture.

C. E-COMMERCE BOXES

A central feature of modern business decisions is new technology, specifically the rapid spread of electronic commerce. This development has created new challenges and opportunities that were unforeseeable until very recently. With each edition, we are enhancing our coverage of technology related changes in the law.

Our initial approach was to construct an e-commerce chapter that stood by itself. But the more we thought about that approach and listened to our reviewers, we decided to place E-Commerce boxes in most of our chapters, as well as to integrate the e-commerce material throughout relevant chapters. By this infusion approach, we think we can best convince students of the pervasive influence of this new, complicating aspect of business decisions.

E-COMMERCE AND THE LAW

TORT LAW VERSUS CRIMINAL LAW TO IMPROVE THE ONLINE PERSONALS INDUSTRY

Suppose your ex-boyfriend posed as you on a number of online personals sites, such as iwantu.com. He posted what he described as your rape fantasies and listed your name and address. He then encouraged men to act out your fantasies in person. Would you be afraid? How might criminal law respond? Could tort law also help you? In a real case in 1992, Gary Dellapenta, the ex-boyfriend, was sentenced to six years in prison for violating California's then new cyberstalking law.

If someone were threatening you as Dellapenta threatened his ex-girlfriend, you might want the creator of the website and/or an Internet service provider to assist you in pulling the posts before harm occurs. Unfortunately, Internet service providers are exempt from liability under tort law if they fail to respond to your concerns.

You might be able to pursue the creator of the website, depending on how the facts play out and on your state's law. You might be able to sue for defamation, false-light invasion of privacy, negligence, and/or intentional infliction of emotional distress. You will face an uphill battle, though, in meeting your burden of proof. In the mid-1990s, Ken Zeran brought tort claims against a radio station that broadcast untrue information suggesting he was selling T-shirts and other items with insensitive remarks about the Oklahoma City bombing of a federal building. Zeran was unable to prove any of the torts he alleged. Perhaps as cyberstalking becomes more prevalent, and more frightening, tort law will change to provide more protection.

with a better understanding of the opposing party; consequently, this understanding may actually facilitate a better working relationship between the parties. Therefore, the first advantage of mediation is that it helps disputing parties preserve their relationships.

The second advantage to mediation is the potential for creative solutions. The parties are responsible for offering alternatives to solve problems. A party to mediation is often not necessarily looking for a money award. Instead, that party may be trying to find a solution so that both parties can benefit from the resolution of the dispute.

In addition, parties to mediation have a high level of autonomy. Unlike litigation or arbitration, where a neutral third party makes a decision that resolves the dispute, mediation allows parties to take control of the process and resolve the dispute together. The parties generally have more dedication to the agreement because they helped make the decision. Finally, mediation, like other methods of alternative dispute resolution, is less costly, less time-consuming, and less complicated than litigation.

These benefits can obviously be very worthwhile. However, critics of mediation argue that its informal process improperly creates an image of equality between the parties. Consequently, we improperly assume that the resulting agreement between the parties is also equal. However, if one party has more power than the other, the agreement is not necessarily fair or equal. Thus, the image of equality in mediation can be misleading. Furthermore, a party who knows that he or she has no chance of winning a case could enter the mediation process in bad faith, with no intention of making an agreement. Therefore, some people may abuse the mediation process in an attempt to simply draw out the dispute.

Uses of Mediation. Mediation is used to resolve collective bargaining disputes. Because workers and employers must continue to work together, mediation typically helps preserve the relationship between the workers and the employers. Under the National Labor Rela-

To see how ADR relates to resolving conflicts that arise in the workplace, please see the **Connecting to the Core** activity in Connect.

D. CONNECTING TO THE CORE

The business curriculum, as experienced by students, can easily be seen as a collection of silos, with each silo, or academic department, walled off from the others with its own special language and issues. But successful business decisions start with the recognition that decision makers should take advantage of the interrelatedness of the various subject areas.

The purpose of the Connecting to the Core feature is to drive home the point that concepts from finance, accounting, marketing, management, and economics are closely linked to concepts and dilemmas in business

law. The study of business law is best seen as a foundational component of the larger study of business administration. This feature for the fourth edition has been placed on the website assigned to *Dynamic Business Law*.

E. CRITICAL THINKING

After each case in the book, we have provided critical-thinking questions to highlight the need to think critically about the reasoning used by the court. In addition, we include in every chapter a Point / Counterpoint problem that encourages the reader to evaluate the conflicting reasoning surrounding a key issue in the chapter. Legal evolution occurs through a process of curiosity, an awareness of new problems in the marketplace, and sensitivity to rights and responsibilities that have not been given proper attention.

But we do much more than just ask a lot of critical-thinking questions at particular locations throughout the chapters. We encourage the use of a step-by-step critical-thinking approach that has been developed and used in classrooms in many countries. We do not just repeatedly urge students to “think critically.” Instead, we describe for them what is meant by that phrase in the context of business law. We include this step-by-step approach in Appendix 1A at the end of Chapter 1. Instructors who want to emphasize critical thinking can use that appendix as a structured approach for learning how to evaluate legal reasoning.

be defamatory per se. Rather, the proper inquiry is whether a defamatory statement accuses a professional of lacking a peculiar or unique skill that is necessary for the proper conduct of the profession. The specific trait of truthfulness is not peculiar or unique to being a physician. As the comments to the Restatement illustrate, “a charge that a physician is dishonest in his fees is actionable, although an imputation of dishonesty in other respects does not affect his character or reputation as a physician.” . . . Likewise, “a statement that a physician consorts with harlots is not actionable per se, although a charge that he makes improper advances to his patients is actionable; the one statement does not affect his reputation as a physician

lack of a necessary, peculiar skill which would render Variyam unfit for proper conduct as a physician. Accordingly, to recover for defamation, Variyam was required to prove actual damages, which he did not do. There is no evidence of mental anguish because evidence that Variyam experienced some sleeplessness and other anxiety does not rise to the level of a substantial disruption in his daily routine or a high degree of mental pain and distress. . . . Finally, because Variyam did not establish actual damages, he cannot recover exemplary damages. Accordingly, we reverse the judgment of the court of appeals and render judgment that Variyam take nothing.

Reversed in favor of Defendant

CRITICAL THINKING

What potential stakeholders are adversely affected?

ETHICAL DECISION MAKING

Which set of stakeholders would you weigh the heaviest in deciding a case of this type? Why would you raise their interests above those of other relevant parties?

F. ETHICAL REASONING

After each case in the book, we have provided ethical reasoning questions to highlight the need to think ethically about the reasoning used by the court. Throughout, our book emphasizes consideration of all stakeholder interests in every market decision.

Business ethics should never be an afterthought or something firms consider because they think they must.

Instead, business ethics is what provides the social legitimacy for markets, what distinguishes markets from the life of the jungle. While market decisions are calculating and purposeful, they must at the same time reflect awareness that the good and the right provide social borders that elevate those decisions above simple greed and egoism.

Ethical discussion focuses on the basic observation that we are socially and globally interdependent as entrepreneurs, asset owners, workers, businesspeople, and consumers. Our inescapable contact with one another requires that our aspirations be defined, at least in part, by their impact on others.

Our text has several ethical reasoning possibilities in each chapter. But for the reader to make use of this emphasis requires a practical step-by-step approach. In other words, students need more than just a discussion about values or ethics. They need to have some sense that the discussion is headed somewhere. They want to know, “How will my behavior be any more ethical after I have read the chapter and participated in the class discussions?” Our text answers their question.

Chapter 2 provides a clear explanation of our approach—an approach that students can use on a regular basis. The language and organization of our model of ethical reasoning leans implicitly on standard ethical theories. But it meets the challenge of a fast-paced business world. It pushes stakeholders to the forefront of market decisions, where they belong, and does so in a manner that is both powerful and doable without becoming tedious.

Business ethics are the guidelines we use to shape the world we want to create. As such, they provide guidance for the kind of business behavior we want to reinforce. After each case excerpt, under the heading “Ethical Decision Making,” we pause to think about the ethics of business law by asking a question or questions derived from the practical approach to business ethics developed in Chapter 2. Because we want students to see stakeholder interests as having numerous ethical dimensions, we have included frequent references to the ethical questions arising in modern business enterprises throughout *Dynamic Business Law*.

G. NEW TOPICAL AREAS

Reviewers have urged us to address immigration law and privacy issues in greater detail. The fourth edition responds to that advice by expanded coverage of both those areas of law. In the section in the front matter where changes to the text for the fourth edition are enumerated, readers can see several specific chapters where these topics have been introduced and explained.

What's New in the Fourth Edition?

New Topical Coverage

Reviewers have urged us to address immigration law and privacy issues in greater detail. The fourth edition responds to that advice by expanded coverage of both those areas of law. In the section in the front matter where changes to the text for the fourth edition are enumerated, readers can see several specific chapters where these topics have been introduced and explained.

Changes to the Chapters

We received an incredible amount of feedback prior to writing the fourth edition of *Dynamic Business Law*. The following list of changes and improvements is a testament to our users and their commitment to making *Dynamic Business Law* the best content of its kind.

Every chapter has new cases in the Questions & Problems section in response to suggestions from adopters and reviewers of the third edition.

Chapter 1 An Introduction to Dynamic Business Law

- Updated the example of civil damages from a 1996 example to a 2009 example.
- In the section about Global and Comparative Law, a discussion of WTO was added to the discussion of GATT.
- Changed an example of Administrative Law from a 1990s case to a 2015 Walmart case. In this case, Walmart did not prevent employees from being crushed by a crowd of 2,000 shoppers.

Chapter 2 Business Ethics

- Provided the trial results for the case opener. In 2014, a New Jersey jury awarded Kendall more than \$1.5 million for medical expenses and punitive damages.
- Added an explanation of the similarity and difference between “ethical” and “legal.”
- Added *United States of America et al. ex rel. Andrew Hagerty v. Cyberonics, Inc.*
- Added “The Complexity of Business Ethics: The Story of Two Biotech CEOs.”
- Added new Point/Counterpoint “Do a firm’s ethical responsibilities extend beyond maximization of profits?”

Chapter 3 The U.S. Legal System

- Added Case Nugget “Does a Statutory Violation Constitute an Injury to Satisfy the Standing Requirement?”
- Added a section called “Forum Selection and Choice of Law.”
- Added new Supreme Court case *Atlantic Marine Construction Company, Inc. v. United States District Court for the Western District of Texas et al.*

Chapter 4 Alternative Dispute Resolution

- Added new Supreme Court case *Nitro-Lift Technologies, L.L.C v. Howard*.
- Added new Case Nugget “A Defeat for Consumers: *DirectTV v. Imburgia*.”

Chapter 5 Constitutional Principles

- Inserted new Supreme Court Fourth Amendment case *David Leon Riley v. California and United States v. Wurie*, which involves privacy and discusses “balancing the right to privacy with respect to data on one’s cell phone with security of police officers.”
- Added new Case Nugget *Obergefell et al. v. Hodges*, which is a case that required all states to recognize same sex marriages.

Chapter 6 International and Comparative Law

- Replaced Exhibit 6-1 with “Summary of the ‘FCPA Top Ten’ List.”
- Updated membership in the WTO.
- Added new case *Fallhowe v. Hilton Worldwide, Inc.*
- Added new Case Nugget Forum Non Conveniens in Canada, *Club Resorts v. Van Breda*.

Chapter 7 Crime and the Business Community

- Changed Case Opener to “A Questionable Stock Investment.”
- Added new Case, *United States of America v. Thomas Tanke*.
- Added new Point/Counterpoint “Should Fraud Penalties be Based on a Doctrine of ‘Harm That the Defendant Purposefully Sought to Inflict?’”

Chapter 8 Tort Law

- Added new case *Joseph E. Hanock, Petitioner v. Easwaran P. Variyam, Respondent*.
- Added new invasion of privacy case involving television broadcaster Erin Andrews.
- Added new Point/Counterpoint “Should Medical Malpractice Awards be Capped?”

Chapter 9 Negligence and Strict Liability

- Added new case *Swoboda v. Fontanetta*.
- Added new Point/Counterpoint “Should the Creators of Violent Media Owe a Duty of Care to Victims of Crimes Based on Violent Media?”

Chapter 10 Product Liability

- Added new case *Kesner v. Pneumo Abex LLC*.

Chapter 11 Liability of Accountants and Other Professionals

- Added new E-Commerce and the Law content, “Potential Liability of Professionals for Data Stored on the Cloud.”

- Created new section called “Extending the Attorney-Client Privilege to Accountants.”
- Added new case *United States of America v. Louis Kovel*.
- Inserted new Point/Counterpoint “Should Lawyers be Required to Disclose Whether They Possess Malpractice Insurance?”

Chapter 12 Intellectual Property

- Included new case *In Re Simon Shiao Tam*.
- Created new discussion of efforts by Taylor Swift, Donald Trump, Tim Tebow, and Jeremy Lin to seek trademark protection for what some see as marks that might not really serve the purpose of identifying a product with its producer.
- Inserted new E-Commerce content called “Changes to Copyright Law as Technology Evolves.”

Chapter 13 Introduction to Contracts

- Added new case *Wrench, LLC., Shields, and Rinks, LLC. v. Taco Bell*.
- Inserted new Point/Counterpoint “Should Contract Law be Used to Enforce Surrogacy Agreements?”

Chapter 14 Agreement

- Added new case, *Paul Ehlen v. John M. and LynnDee Melvin*.
- Created new E-Commerce and the Law content called “E-Signatures.”

Chapter 15 Consideration

- Added new Case Nugget about lack of consideration in an option contract.
- Added new case about promissory estoppel *Bouton v. Byers*.

Chapter 16 Capacity and Legality

- Added new case *Adrian Lopez v. Kmart Corporation*.
- Created new Point/Counterpoint “Should Employer-Employee Covenants Not to Compete be Eliminated?”

Chapter 17 Legal Assent

- Added new case *Fantastic Sams Salons Corp. v. Pstevo, LLC and Jeremy Baker*.
- Included a second new case *Tommy E. Porter v. Domtar Paper Company, LLC*.
- Created new Point/Counterpoint “Should Contracts Made through Tweets be Legally Binding?”

Chapter 18 Contracts in Writing

- Added new case *Heritage Constructors, Inc. v. Chrietzberg Electric, Inc., and Richard Marc Chrietzberg*.
- Inserted new Case Nugget “What is an ‘Interest in Land?’” *Richard Sewing v. Steven Wayne Bowman*.

Chapter 19 Third-Party Rights to Contracts

- Added discussion of high interest topic, third-party beneficiaries and agreements to arbitrate, and added a new case in which the court addresses that issue, Case 19-3, *Juan Mendez, Jr., as guardian of Juan Mendez, Sr. v. Hampton Court Nursing Center, LLC*.
- Added new Point/Counterpoint “Should Obligor Have a Say in Who Becomes an Assignee?”

Chapter 20 Discharge and Remedies

- Inserted new case *Mind & Motion Utah Investments, LLC, Appellee v. Celtic Bank Corporation*.
- Transformed classic case of *Hadley v. Baxendale* into in-chapter case description.

Chapter 21 Introduction to Sales and Lease Contracts

- Created new case opener “Can You See the Forest for the Trees?”
- Added three new exhibits, clarifying some fundamental and subtle differences between the UCC and the CISG.
- Changed Point/Counterpoint and tied it in to the case opener “Are ‘Writing Requirements’ Really Necessary Anymore for Contracts?”

Chapter 22 Title, Risk of Loss, and Insurable Interest

- Created new case opener and Wrap-Up “Anyone for a Bar-B-Que?”
- Added new Case Nugget under final section of risk of loss when a breach is alleged.

Chapter 23 Performance and Obligations under Sales and Leases

- Added new case *Levista, Inc. v. Ranbaxy Pharmaceuticals, Inc.*
- Created new Point/Counterpoint “Should Previous Dealings of the Parties Control the Contractual Relationship?”

Chapter 24 Remedies for Breach of Sales and Lease Contracts

- Added new case *Badilla v. Wal-Mart Stores East Inc.*
- Created new Point/Counterpoint “Should the Statute of Limitations Be the Same for All Causes of Action?”

Chapter 25 Warranties

- Added new Case Nugget under Warranty Disclaimers and Waivers *Old Mexican Foods, Inc. v. Hanson Staple Company*.
- Added new Point/Counterpoint “Do the Implied Warranties Diminish the Fundamental Free Market and the Right to Contract?”

Chapter 26 Negotiable Instruments: Negotiability and Transferability

- Added new case *Athanasios Valsamis v. Nestor Gonzales-Romero*.
- Created new Point/Counterpoint “Should the Consumer Financial Protection Board (CFPB) Tighten Regulations on Payday Lenders?”

Chapter 27 Negotiation, Holder in Due Course, and Defenses

- Swapped Point/Counterpoint for “Does the Shelter Principle Violate Basic Rules of Fairness?”
- Replaced Case 27-1 with *Jones v. Wells Fargo Bank*.

Chapter 28 Liability, Defenses, and Discharge

- Revised E-Commerce and the Law with new information concerning electronic signatures.
- Updated Case 28-3 with *John A. Colfax v. JPMorgan Chase Bank, N.A.*

Chapter 29 Checks and Electronic Fund Transfers

- Inserted new case *Aliaga Medical Center, S.C. v. Harris Bank N.A., A/K/A BMO Harris Bank, N.A.*
- Inserted new Case Nugget *Alan Fambrough et al. v. Wal-Mart Stores, Inc.*, illustrating the application of the Safe Harbor defense.

Chapter 30 Secured Transactions

- Added new Case Opener and Case Opener Wrap-Up addressing commercially reasonable sales of collateral.
- Replaced existing Case Nugget with *Helms v. Certified Packaging Corp.*, addressing the definition of the term “proceeds of collateral.”
- Replaced Case 30-3 with *Price Auto Sales, Inc. v. Sanders*, which addresses breach of the peace in the repossession of collateral.
- Revised Questions & Problems to include new cases concerning commercially reasonable sales, classification of collateral, deficiency judgments, and repossession.

Chapter 31 Other Creditors' Remedies and Suretyship

- Added new Case Opener and Case Opener Wrap-Up addressing compliance with mortgage foreclosure procedures.

- Replaced Case 31-1 with *In re Enron Corp.*, regarding artisan's liens.
- Replaced Case 31-3 with *Beal Bank v. Biggers*, regarding modification of guaranty agreements.
- Updated statistics in Point/Counterpoint regarding homestead exemptions and median home prices.
- Revised Questions & Problems to include new cases concerning modification of guaranty agreements and foreclosure of mechanic's liens.

Chapter 32 Bankruptcy and Reorganization

- Updated GM Case Opener and Case Opener Wrap-Up.
- Updated bankruptcy filing statistics.
- Replaced Case 32-1 with *In re Arkuszewski* on the credit counseling requirement contained within the bankruptcy code.
- Added new Case Nugget addressing *In re Miller*, which discusses the accuracy of statements made in bankruptcy petitions.
- Updated the requirements for Chapter 13 bankruptcy.
- Revised Questions & Problems to include new cases concerning the credit counseling requirement, the dischargeability of damage awards based upon intentional conduct, and fraudulent prepetition transfers of property.

Chapter 33 Agency Formation and Duties

- Added a recent California case involving Uber to clarify the importance and implications of determining whether an employee is actually an independent contractor.
- Revamped Point/Counterpoint to address the topic "Should a Business Owner Hire Independent Contractors Instead of Employees?" Responses are also updated.

Chapter 34 Liability to Third Parties and Termination

- Revised Point/Counterpoint, replacing the question with "Should the U.S. Adopt the European Union's Post-Termination Compensation Policies?"

Chapter 35 Forms of Business Organization

- Added new development of the law related to the issue of whether a franchisor stands in an employment or agency position in relation to a franchise and its employees for the purposes of vicarious liability.
- Added the new case of *Patterson v. Domino's Pizza, LLC*.
- Revised Exhibit 35-8, updating the list of "The Top 10 Global Franchises, 2016."
- Improved Point/Counterpoint by addressing the question "Should Aspiring Business Owners Form an LLC Instead of a Corporation?"

Chapter 36 Partnerships: Nature, Formation, and Operation

- Revised the reference to the Uniform Partnership Act to correct the claim that it is the governing statute in partnership law.
- Inserted new Case 36-3 *Robert Law, On Behalf of the Robert M. Law Profit Sharing Plan v. Ronald Zemp*, illustrating how a partnership can be negatively affected by the negligence of a partner.
- Added a new Point/Counterpoint “Should Partners Always Be Held Liable for the Actions of Other Partners?”

Chapter 37 Partnerships: Termination and Limited Partnerships

- Replaced Case 37-1 with *Urbain v. Beierling*.
- Revised Point/Counterpoint by addressing a new issue concerning partnership breach and its fiduciary duty by firing partners to become more profitable.

Chapter 38 Corporations: Formation and Financing

- Updated Case 38-3 with *Wachovia Securities, LLC v. Banco Panamericano* to illustrate when courts may pierce the corporate veil.
- Added new Point/Counterpoint “Should Corporations Receive the Full First Amendment Rights that a Normal Citizen Would be Entitled to?”

Chapter 39 Corporations: Directors, Officers, and Shareholders

- Replaced Case 39-1 *Frieda H. Rabkin v. Philip A. Hunt Chemical Corp.*, with *McCann v. McCann* to illustrate the duties of majority shareholders.
- Revamped Comparing the Law of Other Countries, including “Criminal Liability in France” to contrast the criminal liability in France with that in the United States.
- Refurbished Point/Counterpoint, replacing the question with “Should Shareholders Have More Power to Influence a Corporation’s Business Decisions?”
- Improved Questions & Problems, including recent cases and issues relating to corporations.

Chapter 40 Corporations: Mergers, Consolidations, Terminations

- Added new Point/Counterpoint “Are Mergers a Good Strategy to Grow a Business?”
- Added new case: *Germain v. A.O. Smith Water Prods. Co.*
- Added three new case problems.

Chapter 41 Corporations: Securities and Investor Protection

- Inserted new Case 41-3, *United States of America v. Matthew Kluger*, to illustrate the harshness of the treatment the tipper and tippee can receive.

Chapter 42 Employment and Labor Law

- Added new Learning Objective “What are the rights and responsibilities when hiring foreign workers?”
- Added new case concerned with privacy issues and the Internet regarding MySpace post and subsequent lawsuit for invasion of privacy, *Moreno v. Hanford Sentinel, Inc.*
- Added new Case Nugget regarding wrongful termination in violation of public policy regarding the use of medical marijuana.
- Added new section and discussion regarding immigration law entitled “Employer Rights and Responsibilities When Hiring Foreign Workers.”

Chapter 43 Employment Discrimination

- Added new Learning Objective, new section, and discussion entitled “May Employers Use Social Media in Employment Decisions?” This section also focuses on the issue of privacy of social media.
- Revised section on Same-Sex Harassment, including a discussion of *Oncale v. Sundowner*.
- Added new case on sexual orientation discrimination (first time that EEOC decision holds that a claim of sexual orientation discrimination is by definition also a claim of sex discrimination as defined by Title VII).
- Added new Case Nugget on bona fide occupational qualification.
- Updated discussion of discrimination based on sexual orientation, including discussion of the historic 2015 U.S. Supreme Court decision on same-sex marriage.

Chapter 44 Administrative Law

- Added new case about broad discovery powers of administrative agencies (involving ECPA request for Google to identify the person behind an email address who was posting anonymously).
- Added new Case Nugget about notice-and-comment rule making under the Administrative Procedures Act (APA).

Chapter 45 Consumer Law

- Added new Point/Counterpoint “Should Prescription Drugs be Allowed to be Advertised Directly to Consumers?”
- Added new case: *Crawford v. LVNV Funding*, which provides a legal discussion of the application of the FDCPA.
- New section about data mining, illustrating a new privacy concern.
- Added three new case problems.

Chapter 46 Environmental Law

- Changed Case 46-2 to *Consolidation Coal Company v. Georgia Power Company et al.*
- Revised Point/Counterpoint to discuss “Should Individuals Convicted for Violating Environmental Laws be Punished More Harshly than Violent Criminals?”

Chapter 47 Antitrust Law

- Inserted a new case, *United States v. Apple Inc.*, providing a more current illustration of an alleged per se violation.
- Added a new Point/Counterpoint “Should Monopolies Remain Heavily Regulated?”
- Added three new case problems.

Chapter 48 The Nature of Property, Personal Property, and Bailments

- Revamped Case 48-1 and added new case *J & L Jewelry v. EPK Management*, illustrating whether a bailment exists.
- New Point/Counterpoint called “Should Personal Property Taxes on Business Items be Abolished?”

Chapter 49 Real Property

- Replaced Case 49-3 with *The Spur at Williams Brice Owners Association, Inc. v. Sunil V. Lalla and Sharan W. Lalla*.
- Inserted new Point/Counterpoint entitled “Should Open Range Laws be Abolished?”

Chapter 50 Landlord-Tenant Law

- Updated Case 50-3 with Iowa Supreme Court case *Leonara Caruso v. Apts. Downtown, Inc.*
- Revamped Point/Counterpoint to provide a debate of the issue of whether courts should make greater use of constructive trusts to benefit tenants.

Chapter 51 Insurance Law

- Updated “Examples of Interesting Insurance Policies.”
- Inserted new Case 51-3 from the New Hampshire Supreme Court, *Mellin v. Northern Security Insurance Company*.
- Updated E-Commerce and the Law to “Cyber and Data Protection Insurance.”

Chapter 52 Wills and Trusts

- Updated discussion of Legacy Locker.
- Inserted new Case 52-3 *In re Estate of Duke*.
- Updated E-Commerce and the Law feature.
- Replaced Case Nugget with “Interesting Probate Disputes.”



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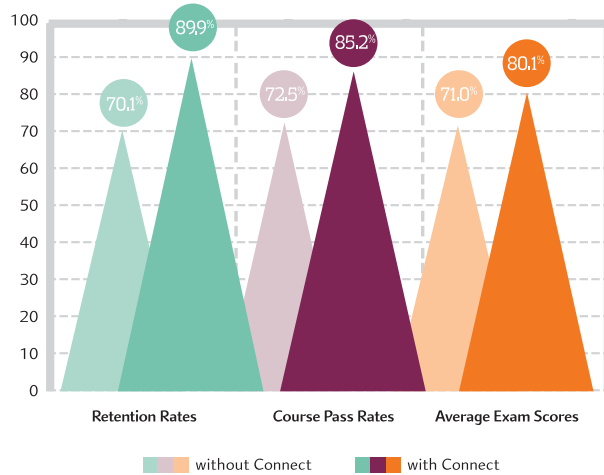
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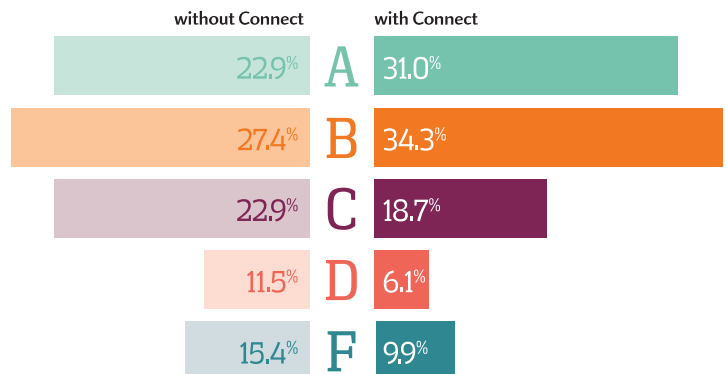
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Acknowledgments

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An Introduction to Dynamic Business Law

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LEARNING OBJECTIVES

After reading this chapter, you will be able to answer the following questions:

- 1-1** What is business law?
- 1-2** How does business law relate to business education?
- 1-3** What are the purposes of law?
- 1-4** What are alternative ways to classify the law?
- 1-5** What are the sources of the law?
- 1-6** What are the various schools of jurisprudence?