

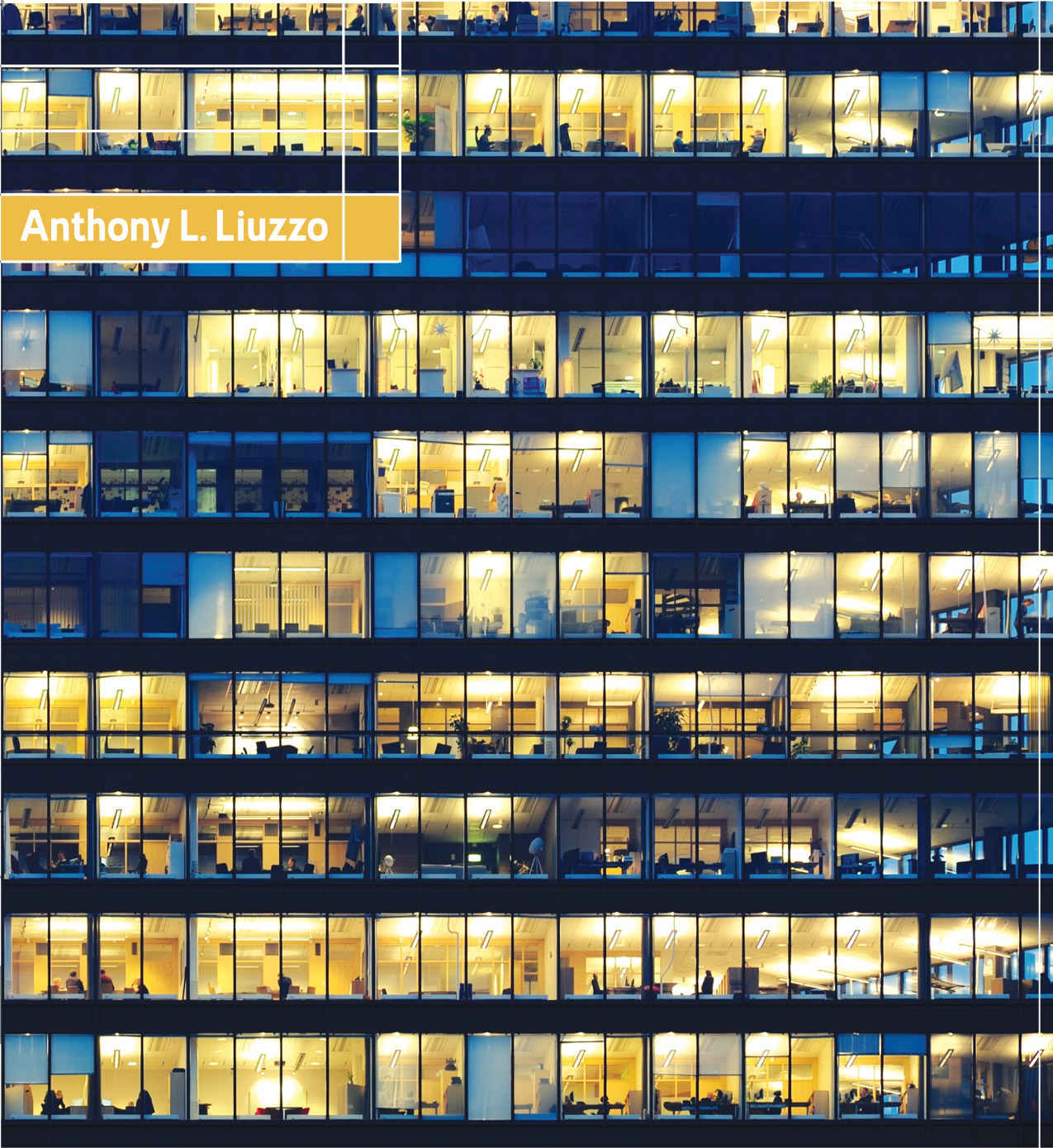
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Ninth Edition

▶ **ESSENTIALS OF
BUSINESS LAW**

▶ **Anthony L. Liuzzo**

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ESSENTIALS OF

BUSINESS LAW



ESSENTIALS OF
BUSINESS LAW

Ninth Edition

Anthony L. Liuzzo, J.D., Ph.D.

*Wilkes University
Mesa, Arizona*

**Mc
Graw
Hill
Education**



ESSENTIALS OF BUSINESS LAW, NINTH EDITION

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Dedication

To my current and former students who,
by rough estimate, number about 13, 000.

“A quality education has the power to transform societies in a single generation: provide children with the protection they need from the hazards of poverty, labor exploitation and disease; and give them the knowledge, skills, and confidence to reach their full potential.”

Audrey Hepburn,
actress and humanitarian

ABOUT OUR AUTHOR



Anthony L. Liuzzo, J.D., Ph.D. Dr. Anthony L. Liuzzo serves as Professor of Business and Economics and Director of Arizona Business Programs at Wilkes University, located in Wilkes-Barre, Pennsylvania and Mesa, Arizona, where he has been a full-time, tenured faculty since 1990. Prior to that, he served as a full-time, tenured Associate Professor of Business and Economics at Manhattan College in New York City.

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Specializing in public policy issues, employment law, and holiday retail sales forecasting, he has been cited on numerous occasions in hundreds of media outlets, including CNN, Fox News, *Forbes*, the *New York Times*, *USA Today*, the *Arizona Republic*, the *New York Daily News*, the *Philadelphia Daily News*, the *Chicago Tribune*, the *Washington Times*, the *Cincinnati Enquirer*, the *Pittsburgh Post-Gazette*, the *Detroit News*, the *Christian Science Monitor*, and the *San Francisco Examiner*, for his views on legal and business issues.

Dr. Liuzzo has received national recognition for his economic models on setting appropriate levels of compensation for deceased pets and commercial animals. He has also had published his models for setting both punitive and hedonic damages awarded to plaintiffs in civil litigation.

Dr. Liuzzo is the sole author of the popular textbook, *Essentials of Business Law*, now in its ninth edition, and accompanying assessment materials, mobile applications, and instructor's manual, published by McGraw-Hill.

Dr. Liuzzo is also the author of several books and numerous articles that have appeared in scholarly and professional journals. He has served as editor-in-chief of a scholarly journal and has been instrumental in creating and advising several successful small businesses.

Dr. Liuzzo is an active member of many professional and community organizations, and currently serves as a member and officer of several Boards of Directors. He also resides in, and serves, the City of Mesa, Arizona as a member of its Human Relations Board and Chair of its Youth Diversity Education Team.



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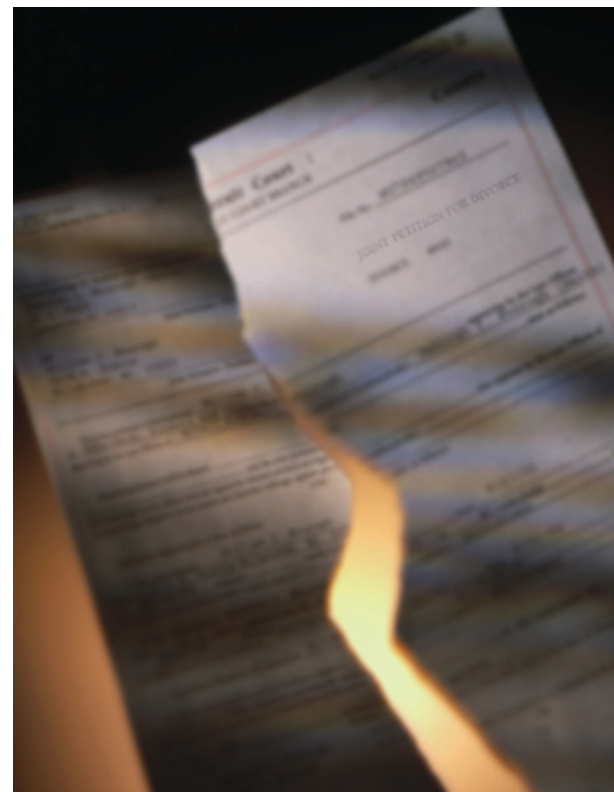
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Preface

WELCOME TO *ESSENTIALS OF BUSINESS LAW*

The new, ninth edition of the *Essentials of Business Law* program is a practical, concise, and broad-based introduction to the vibrant field of business law. While continuing to offer all of the features that have made the eight prior editions successful, this new edition includes a four-color design, a new chapter on the very topical Health Care Law, updated content, and enhanced support materials. Both the traditional areas of law, such as contracts and property, and the emerging areas of law, such as e-commerce and environmental, are covered in short, informative chapters written to capture the essence of each topic. The objective of the text throughout its coverage is ease—ease of use, ease of teaching, ease of assessment, and ease of understanding. It has been developed for those seeking a more fundamental overview of the concepts and principles that are vital to the understanding of business law. Content changes for this edition include:

PRESENTATION AND DESIGN

The design has been updated, and every page of *Essentials of Business Law* has been printed in color, making for a textbook that is modern and visually stimulating, as well as fun and easy to read. Each chapter opens with a photograph that illustrates the chapter topic, and a quote about the topic from a famous individual. Chapter-by-chapter changes include:

CHAPTER 1

Our System of Law has been revised to incorporate a historically significant example of an executive order and to change the 15 Multiple-Choice Quiz questions to 15 True/False questions in order to create consistency with the other 36 chapters.

New to this chapter:

- The inclusion of President Lincoln’s *Emancipation Proclamation* as an example of an executive order
- The addition of the total number of federal district courts and the link to the website for the complete listing, maps, and information regarding the court system
- 15 True/False questions testing the student’s comprehension of material covered in the chapter

CHAPTER 2

Ethics and the Law has been revised to elaborate on the distinctions among morals, ethics, and values.

New to this chapter:

- The incorporation of environmental ethics
- A complete discussion of the concepts of morals, ethics, and values

CHAPTER 3

Criminal Law has been revised to provide information regarding a corporation's liability in criminal cases, and to address the equity issue involved with imposing criminal liability on shareholders for the conduct of a corporation.

New to this chapter:

- Updated information regarding the Bernard Madoff criminal case
- Information regarding a corporation's liability in criminal cases for the actions or omissions of its employees
- A discussion of the equity issue involved with punishing shareholders for corporate misdeeds

CHAPTER 4

Tort Law has not been revised.

CHAPTER 5

Constitutional Law has been revised to correct Article VI, Clause 2: The Supremacy Clause, and to explain more fully case law cited in the chapter.

New to this chapter:

- Explanatory information regarding the Miranda case.

CHAPTER 6

Administrative Law has been revised to provide an example of a newly created federal agency.

New to this chapter:

- The addition of the Consumer Financial Protection Bureau (CFPB) to the listing of federal agencies in Table 6.1

CHAPTER 7

Introduction to Contracts has not been revised.

CHAPTER 8

Offer and Acceptance has not been revised.

CHAPTER 9

Mutual Agreement has not been revised.

CHAPTER 10

Consideration has not been revised.

CHAPTER 11

Competent Parties has been revised to correct the usage of the word "insane," changing it to the term "mentally incompetent."

CHAPTER 12

Legal Purpose of Contracts has not been revised.

CHAPTER 13

Form of Contracts has not been revised.

CHAPTER 14

Operation of Contracts has not been revised.

CHAPTER 15

Discharge of Contracts has not been revised.

CHAPTER 16

Transfer of Title has been revised to modernize the examples used in the chapter.

New to this chapter:

- Example 16.5 has been updated

CHAPTER 17

Sales has been not been revised.

CHAPTER 18

Warranties has been revised to provide correct information regarding Magnuson–Moss.

New to this chapter:

- A complete explanation of the implied warranty of merchantability section, more closely aligning it with its treatment in the Uniform Commercial Code

CHAPTER 19

Agency has not been revised.

CHAPTER 20

Business Organizations has been revised to include more detailed analysis of partnership law.

New to this chapter:

- An explanation of *The Uniform Partnership Act*

CHAPTER 21

Bankruptcy Law has been revised to incorporate website links at appropriate points in the chapter and to provide a complete explanation of Chapter 15 Bankruptcy.

New to this chapter:

- The addition of a link to the federal bankruptcy law website
- An explanation of the word “discharged” as used throughout the chapter and index
- A clarification of Example 21.7
- The incorporation of the correct amounts of debts and percentages of debts for both farming and fishing in Chapter 12 Bankruptcy
- The inclusion of an in-depth discussion of Chapter 15 Bankruptcy
- The inclusion of Example 21.8 in the discussion of Chapter 15 Bankruptcy

CHAPTER 22

Introduction to Commercial Paper has been revised to provide updated citations for a variety of provisions in the Uniform Commercial Code.

CHAPTER 23

Transfer and Discharge of Commercial Paper has been revised to provide updated citations for a variety of provisions in the Uniform Commercial Code.

CHAPTER 24

Real and Personal Property has been revised to provide significantly enhanced coverage of community property states, tenancy in common, warranty deeds, quitclaim deeds, and title insurance.

New to this chapter:

- The addition of a table identifying the states that recognize community property
- A more detailed explanation of the term “tenancy in common”
- A full discussion of the two types of warranty deeds—the general warranty deed and the special warranty deed
- A more complete explanation of the quitclaim deed
- The addition of a full section covering the important subject of title insurance

CHAPTER 25

Bailments has not been revised.

CHAPTER 26

Landlord–Tenant Relations has been revised to include the term “holdover tenancy.”

CHAPTER 27

Wills, Intestacy, and Trusts has been revised to eliminate coverage of advanced health care directives, which is now covered in the new Chapter 37.

New to this chapter:

- A new end of chapter Question of Ethics

CHAPTER 28

Intellectual Property has been revised to provide additional information relating to the word “infringement.”

CHAPTER 29

Computer Privacy and Speech has been revised to incorporate a complete discussion of the law surrounding the emerging topic of social media.

New to this chapter:

- The addition of a full section on social media law, defining the term, and providing numerous examples of legal issues associated with this form of communication
- The incorporation of information regarding the cost of spam and its related scams

CHAPTER 30

Conducting Business in Cyberspace has been revised to provide a full section on new legislation relating to financial reforms.

New to this chapter:

- The addition of a section on “Recent Trends in Financial Regulations,” including a full discussion of the Dodd–Frank Wall Street Reform and Consumer Protection Act

CHAPTER 31

The Employer–Employee Relationship has not been revised.

CHAPTER 32

Employment Law has not been revised.

CHAPTER 33

Product Liability has not been revised.

CHAPTER 34

Professionals’ Liability has been revised to incorporate an explanation of the legal issues associated with “Good Samaritans.”

CHAPTER 35

International Business Law has been revised to provide updated information regarding the European Union, countries using the euro as their currency, and the international treatment of bankruptcies.

New to this chapter:

- An updated listing of the member states, the candidate countries, and the potential candidates of the European Union
- An updated Table 35.2, which includes Estonia in the listing of countries using the euro
- The addition of a section entitled “International Treatment of Bankruptcies,” containing a complete discussion of such

CHAPTER 36

Business and the Environment has been revised to provide important information on a variety of environmental issues.

New to this chapter:

- Updated data on pesticide control, solid waste disposal, e-waste, and space pollution
- The addition of information on NASA’s Orbital Debris Program Office
- A new section on overpopulation, with an accompanying table depicting the top ten countries in population

CHAPTER 37

Health Care Law is new to the text. The chapter provides information, cases, and examples on important issues in this emerging area of the law.

New to this chapter:

- An introduction to health care law
- A complete explanation of advanced directives—including living wills, durable powers of attorney, and matters covered by advanced directives
- A discussion of the types of medical insurance—including community-based insurance, major medical, commercial insurance, self-insurance, health maintenance organizations, Medicare, and Medicaid
- An explanation of typical health-related employee benefits—including medical insurance, family plans, disability insurance, dental insurance, vision insurance, and group life insurance
- Coverage of the *Patient Protection and Affordable Care Act of 2010* (Obamacare)
- Coverage of the *Health Insurance Portability and Accountability Act of 1996*

OTHER SIGNIFICANT CHANGES

- New to the text: A revision of the opening quotations for the following 12 chapters: 6, 11, 15, 19, 20, 21, 26, 31, 34, 35, 36, and 37, in order to modernize them with speakers with whom students will more likely be familiar
- New to the text: 34 carefully selected fictional names in examples and assessments in order to assist in sensitizing students to real-world ethnic and cultural diversity

SUPPLEMENTARY MATERIALS

The Constitution of the United States can be found in the Appendix.

MOBILE APPLICATIONS

We have used content from the textbook to create a new application that you can download for your iPhone, iPad, or other mobile device. The free application is designed to give another layer of assessment, one that can be used anywhere, any time. The mobile application for *Essentials of Business Law* contains:

- An electronic flashcard exercise that features all of the key terms that appear in the ninth edition, as well as several terms that are related to the Constitution of the United States.
- Additional questions based on the content from the book. Students are encouraged to read the chapter, and then use this application to quiz themselves on their understanding of the material.

NOTE TO STUDENTS

The ninth edition of *Essentials of Business Law* covers the latest developments in the legal field. This text will help you discover a wealth of information and learning opportunities that will give you a clear understanding of business law topics. The text will also help you identify, explain, and apply the principles of business law in your daily life and in the larger world in which you live. The world of business is continually changing, especially with the advent and evolution of the global marketplace. The concepts and principles presented in the text will assist you in understanding those changes as they relate to business law.

The chapters in *Essentials of Business Law* are organized in a concise and easy-to-read way. Numerous examples applying the law to real-world situations will assist you in understanding important concepts, whereas key term definitions are provided throughout the text for your reference. The end-of-chapter assessments will help you apply your knowledge and gauge your understanding of the material as you progress, and the extra resources accompanying the text will provide useful and easy-to-use tools to supplement your appreciation of the material.

NOTE TO INSTRUCTORS

What sets *Essentials of Business Law* apart from other programs available is its concise organizational nature and supplementary materials. Chapters are succinct, making it simple for you to plan presentations and teach the course. Each chapter offers an abundance of assessment tools that will help you evaluate your students' progress. The new edition offers expanded coverage of current or emerging areas in the business law field, including employment, bankruptcy, e-commerce, environmental, health care, and international law. In addition, the number of key terms has been increased to include both legal and nonlegal definitions. As a result, *Essentials of Business Law* offers you and your students the coverage of essential topics that many larger, more expensive book programs miss entirely. The ninth edition has been expanded and updated to include a variety of teaching tools that make it simple for you to organize your classroom discussions, effectively communicate the important business law concepts in each chapter, and assess your students' grasp of the material. The book is accompanied by an Online Learning Center, complete with an Instructor's Manual, a Test Bank, and PowerPoint slides for each chapter. Students can also access the Online Learning Center and complete quizzes to gauge their progress. The Instructor's Manual, Test Bank, PowerPoint slides, and quizzes have been prepared for this edition by Richard Gendler of Florida Atlantic University College of Business. Each tool makes planning and teaching the course easier than ever.

Acknowledgments

I would like to extend my sincere appreciation to Patricia Naumann, who has served initially as my graduate assistant, and subsequently, as my full-time assistant. It was only through Ms. Naumann's patient and tireless research efforts that this book has become a reality. I will forever be indebted to her for her loyal and competent service. I would like to thank the reviewers who have contributed their time and ideas to the development of the ninth edition. My sincere appreciation goes to the following individuals:

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Finally, this content was but a raw, unsold manuscript until the skilled publishing team refined it. Our manuscript benefited immeasurably from the guidance of the multiple levels of skill provided to us by McGraw-Hill Education. We respect and honor our Managing Director, Tim Vertovec; our Product Developer, Jaroslaw Szymanski; Brand Manager, Kathleen Klehr; and its Content Project Manager, Mary Jane Lampe.

A GUIDED TOUR

The ninth edition of *Essentials of Business Law* is designed to ensure that students will not only learn fundamental applications of business law, but also will be able to put those basics into practice after reading a multitude of real-world examples and performing several skill assessment activities.

“A concise, well written, introduction into Business Law that focuses on essential knowledge regarding the various topics. An excellent textbook for college students embarking into the subject of Business Law.”

—Fran Tannenbaum, Northern Virginia Community College: Woodbridge Campus

CHAPTER OPENING QUOTE

Each chapter opens with a lighthearted but thoughtful quote. The quotes come from a variety of sources, including famous judges, lawyers, entertainers, and businesspeople.

OUR SYSTEM OF LAW

“As long as I have any choice, I will stay only in a country where political liberty, toleration, and equality of all citizens before the law are the rule.”

Albert Einstein, noted scientist

LEARNING OUTCOMES

After studying this chapter and completing the assessments, you will be able to

- 1.1** Discuss the application of law in today's world.
- 1.2** Provide examples of how the application of law affects (a) one's personal or social life, (b) business or business operations, and (c) governments.
- 1.3** Identify the principal sources of law in the United States.
- 1.4** Explain the reasons for the preparation of the Uniform Commercial Code.
- 1.5** Cite and describe the major classifications of law.
- 1.6** Distinguish moral law from legal obligations.
- 1.7** Describe the structure of our federal and state court systems.

LEARNING OUTCOMES

Learning Outcomes outline the focus of the chapter and provide a roadmap for the material ahead. Each is tied directly to a main heading in the chapter, as well as a corresponding chapter summary point, to help reiterate important topics throughout.



LEGAL TERMS

Legal Terms are identified at the beginning of each chapter, as well as in the margins where they first appear in the text. They offer expanded coverage to ensure students are comfortable with the language after completing the course.

terms

LEGAL

plaintiff
defendant
stare decisis
common law
precedent
case law
statutory law

ordinance
administrative law
Uniform Commercial Code (UCC)
moral law
jurisdiction



EXAMPLE 2.1

Senior executives of a multimillion-dollar energy company, Enron Corporation, and its outside accounting firm, Arthur Andersen LLP, were found to have engaged in massive unethical and illegal behavior involving questionable accounting practices, fraud, deception, insider trading, and attempts to influence politicians and the media. According to widespread media coverage, executives who knew the firm was headed for bankruptcy were quietly selling their shares of stock while encouraging employees to retain and even buy additional shares. Employees' individual investments in Enron's plummeting stock suffered enormous losses, as did their pension funds similarly invested. It was charged that such financial skulduggery could have happened only with the complicity of Enron's outside accounting firm.

EXAMPLES

Examples throughout the chapter help students understand concepts in a real-world context. Each creates a scenario that ties directly to a key topic, ensuring students will be able to recognize and apply what they have learned in their careers.

"I particularly like these examples because they are real life cases that explain the material that the student just read. My students have said the examples help them to understand the Principles of Law."

—Kristin Mueller,
Ivy Tech Community College

CHAPTER SUMMARIES

Chapter Summaries correspond to particular performance objectives and chapter headings, making quick reference and retention of key concepts easy.

CHAPTER SUMMARY

1. Examples of how ethics in our world have negatively affected business practices include investors acting on insider information, accounting scandals, investment fraud, businesses polluting our natural habitat, and individuals acting unethically in the development of medical and electronic technology. The expansion of global markets also raises some ethical predicaments for business professionals.
2. Morals are concerned with an individual person's beliefs as to right and wrong. Ethics is about the standards and principles for the behavior of individuals within a society. Values are beliefs or standards considered worthwhile.
3. Individual and group values are influenced by religion, tradition, and customs.
4. Legal mandates are imposed on individuals or groups by authorities or governments. In contrast, ethical considerations generally spring from within individuals or organizations. However, ethical beliefs are the foundation of many of our laws.
5. Business firms respond to ethical concerns by acts of corporate responsibility and the formulation of codes of ethics, or credos. Educational institutions offer courses and workshops and expand their existing programs. Governments enact legislation and create programs to protect consumers and the environment and to ensure ethical behavior of business firms and the government itself. Trade and professional associations develop guidelines for business and professional members.
6. Some ways business can ensure ethical practices include integrating corporate codes of ethics and relying on whistleblowers. Corporate codes of ethics vary from one firm or industry to another. Whistleblowing is the exposing of an unethical situation to an authority or the media.

A GUIDED TOUR

CHAPTER ONE ASSESSMENT

MATCHING LEGAL TERMS

Match each of the numbered definitions with the correct term in the following list. Write the letter of your choice in the answer column.

- | | | |
|-----------------------|--------------------------|----------------------------|
| a. administrative law | g. executive order | m. <i>stare decisis</i> |
| b. appellate court | h. moral law | n. trial court |
| c. civil law | i. original jurisdiction | o. Uniform Commercial Code |
| d. common law | j. plaintiffs | |
| e. criminal law | k. precedents | |
| f. defendants | l. statutory law | |

1. A legally binding directive issued by the president. 1. _____
2. The portion of the law based on the decisions of the old English courts. 2. _____

CHAPTER ASSESSMENTS

Chapter Assessments sharpen students' critical thinking, decision making, teamwork, technology, and communication skills and aid in student retention. Assessments include:

- Matching Key Terms
- True/False Quiz
- Discussion Questions
- Thinking Critically about the Law
- Case Questions
- Case Analysis
- Legal Research

THE ONLINE LEARNING CENTER (OLC)

The Online Learning Center (OLC) follows the text chapter by chapter with digital content to accompany and enhance the book. Assets include self-grading quizzes, review material, and interactive exercises for students to test themselves on core outcomes.

The instructor's side of the OLC contains useful resource materials, including an Asset Map (a tool designed to help instructors organize their courses efficiently), an Instructor's Manual, and PowerPoint slides. The full version of the Uniform Commercial Codes is also available to review or download for students and instructors.

Introduction to Law

1. Our System of Law

2. Ethics and the Law

3. Criminal Law

4. Tort Law

5. Constitutional Law

6. Administrative Law



chapter 1

Our System of Law

LEARNING OUTCOMES

After studying this chapter and completing the assessments, you will be able to

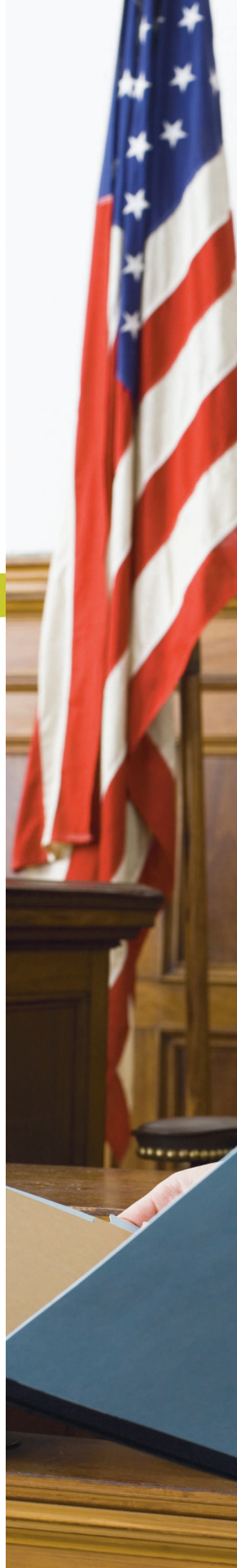
- 1.1 Discuss the application of law in today's world.
- 1.2 Provide examples of how the application of law affects (a) one's personal or social life, (b) business or business operations, and (c) governments.
- 1.3 Identify the principal sources of law in the United States.
- 1.4 Explain the reasons for the preparation of the Uniform Commercial Code.
- 1.5 Cite and describe the major classifications of law.
- 1.6 Distinguish moral law from legal obligations.
- 1.7 Describe the structure of our federal and state court systems.

terms

LEGAL

plaintiff
defendant
stare decisis
common law
precedent
case law
statutory law

ordinance
administrative law
Uniform Commercial Code (UCC)
moral law
jurisdiction





OUR SYSTEM OF LAW

“As long as I have any choice, I will stay only in a country where political liberty, toleration, and equality of all citizens before the law are the rule.”

Albert Einstein, noted scientist



The US Supreme Court Building.

1.1 THE LAW IN OUR WORLD

When students in their 20s were asked to say the first thing that came to mind when they heard the word *law*, responses included “cops and robbers,” “courtroom,” “narcs,” “drug raid,” “legislators,” “speed limit,” and “traffic violation.” Without doubt, the impressions that most people have of the law are influenced not so much by actual experience, but by the way the law is portrayed on television and in movies. Sometimes the picture is distorted. Justice always seems to triumph, the “good guys” usually win, and the “bad guys” ultimately are caught and punished—a view that society wishes were true.

Unfortunately, movies and television shows provide the only picture many people get of the law. What people do not see are the many day-in, day-out applications of the law that deal with such ordinary matters as an automobile driver charged with having caused injury to another driver, or one corporation suing another corporation over responsibility for defective merchandise. In real life, the administration of justice can be much less exciting than is often portrayed. There are areas of the law that do not hinge on clear-cut “right” or “wrong” but on an ill-defined middle ground. Still, justice and law are hallmarks of a free society in today’s world.

The fact of the matter is that our system of law functions largely outside the spotlight of public attention. Every business day, in every city, town, and village in this country, courts are in session, juries are being selected, and attorneys are busy seeking favorable decisions for their clients, who might be either a **plaintiff**, the person who brings a lawsuit against another, or a **defendant**, the person against whom a lawsuit is brought or who is charged with a violation of the law.

Although the ordinary applications of law are not quite as exciting as a television drama, it is important to understand certain essential legal principles because they affect both your business and your personal life. Accountants, for example, need to know that if they do their work carelessly and cause someone to sustain a loss, they could be sued. Just as important, a person who is planning to rent an apartment or buy a home needs to know his or her legal rights as they relate to property.

No one person can possibly know the entire body of law. Even learned judges and lawyers tend to specialize in certain fields of law. The average person should, however, strive to understand some of the general principles of law, how to avoid common problems and pitfalls, and when to seek professional help.

The law presented in this text deals primarily with the general principles of law and their applications to business. Some chapters focus on personal applications of the law, however, and others treat ethical aspects of personal and business behavior.

plaintiff

The party who begins a lawsuit by filing a complaint in the appropriate court.

defendant

The party against whom a lawsuit is brought and from whom recovery is sought.

1.2 APPLICATIONS OF LAW

The effects of law are felt throughout society. Indeed, some aspects of the law apply to all persons, institutions, and organizations.

PERSONAL APPLICATIONS OF LAW

Imagine, for a moment, how the law affects just one day in your life. The alarm clock that awakens you in the morning is set to a time that is regulated by a law establishing standard

time zones. Various federal and state laws regulate the purity and wholesomeness of your breakfast foods. The clothing you wear is labeled in compliance with governmental regulations. Your right to drive a car is regulated by state laws, and speed limits and other traffic laws are often the responsibility of state or local officials. You know that no one else may occupy your home while you are away at school or work because the law protects your property rights. The safety and freedom you enjoy are possible because you live in a nation of order—and that order is a result of laws passed for the benefit of the people and the protection of their rights.

BUSINESS APPLICATIONS OF LAW

If your personal life is influenced by law, think of how much more businesses, and those who work for businesses, are affected by law. Every business must comply with many federal, state, and local laws that are primarily aimed at regulating business activity. A firm that wishes to set up business in a particular community may find that there are laws that prohibit such activities. For example, local zoning ordinances might prohibit the operation of a noisy factory in a residential area. State and federal laws prohibit or regulate the operation of certain businesses that might pollute the environment. Still other laws require that businesses provide safe working conditions for employees or demand that only qualified persons perform certain jobs. State laws, for instance, require that barbers and pharmacists pass examinations to be licensed.

GOVERNMENT APPLICATIONS OF LAW

Legislatures at all levels of government pass many laws that apply only to businesses and individuals, but some laws apply specifically to governments. For example, the federal government may pass a law that provides funding for building highways or for low-income housing. The same law may require that states, counties, or municipalities maintain them.

1.3 SOURCES OF LAW

The ever-changing body of law that affects everyone in our country has arisen from a number of sources. As a result, laws sometimes conflict with one another. The way these conflicts are resolved will be discussed in this chapter.

CONSTITUTIONAL LAW

In our country, the principles and ideals that protect individual liberty and freedom are incorporated in the Constitution of the United States (the federal Constitution). This historic document gives the federal government certain reasonable powers and, at the same time, clearly limits the use of those powers. In addition, each state has a constitution of its own that gives certain powers to the various levels of government within that state. Like the federal Constitution, state constitutions provide safeguards for the rights of individuals within that particular state. You will learn more about the Constitution of the United States and the important foundation it provides to our legal system in Chapter 5 (see Appendix).



The United States Constitution.

EXECUTIVE ORDERS

An executive order is a legally binding directive issued by the president with the intent to change the manner in which federal agencies and officials operate so as to improve the practices of the federal government. Perhaps the most historically significant example of an executive order was President Lincoln's *Emancipation Proclamation*, an order issued on January 1, 1863, proclaiming all those enslaved to be forever free, and ordering all segments of the executive branch to treat these persons as free.

TREATIES

A treaty is a written agreement between two or more countries that serves to establish terms of an international relationship. Treaties become legally binding when they are approved by two-thirds of the Senate (see Chapter 35).

COMMON LAW

After the Revolutionary War, one of the most difficult tasks faced by our newly independent nation was to establish a system of law. Because the original states were formerly English colonies, it is not surprising that the new states adopted the system of laws that had been used in England for hundreds of years—that is, relying on

previous legal decisions when similar disputes arose. This practice of relying on previous decisions is known as **stare decisis**, which means “to stand on decided cases.” The English system is known as the **common law** and still influences legal decisions in the United States today.

stare decisis

The practice of relying on previous decisions in which similar disputes arose.

common law

The body of recorded decisions that courts refer to and rely upon when making later legal decisions.

precedent

A model case that a court can follow when facing a similar situation.

PRECEDENT

A **precedent** is a court decision on which later courts rely in similar cases. In some instances, a court may be influenced by precedent; in other cases it may not. Whether a court follows a precedent, or decides to overrule it, depends on the court that has ruled on the case and whether the previous case was decided by the highest court in the same state. Decisions made by the U.S. Supreme Court, for example, must be followed by other courts.

Court decisions are recorded in writing so that lawyers and judges can refer to them in preparing or hearing a case. These decisions are published in books called reporters, and many of these decisions are available online. Each case decision is identified by a citation, which includes the names of the parties involved followed by the volume number, the name of the reporter, and the beginning page number of the case. For example, the case of *Milkovich v. News-Herald*, 473 N.E.2d 1191, is reported in volume 473 of the *Northeastern Reporter, Second Series*, beginning on page 1191.

CASE LAW

Sometimes a statute or a common law precedent may be difficult to apply to certain cases or, with the passing of time, may take on different meaning. An existing statute or an accepted precedent may be based on outmoded standards of justice. In such cases, a court may disregard earlier interpretations of a statute or a principle of common law, or it may



Court decisions are published in books called reporters.

interpret them differently. The court's decisions in these cases influence later cases because they too become precedents that may be followed in similar cases. The effects of these decisions have been called **case law**.

STATUTORY LAW

Both federal and state constitutions are general statements of the powers of governments and the rights of individuals. The specific applications of powers and rights are provided for in laws enacted by federal, state, and local governments. Each state constitution provides for a legislature that represents the people. These legislatures have the power to enact laws so long as they do not conflict with either the federal or the state constitution. The laws passed by Congress and by state legislatures are called statutes, and the field of the law that deals with these statutes is known as **statutory law**. A law that is passed by a local government, such as a city council, is often called an **ordinance**.

Not only do statutes provide the specific applications of the powers and rights in the constitutions, they also allow governments to respond to particular circumstances. For example, when the federal and state constitutions were written, cellular telephones and automobiles were not even imagined, much less matters to be regulated. Yet after these were developed, various legislatures passed statutes that restricted the use of cellular telephones while driving.

ADMINISTRATIVE LAW

Protection of the rights and freedom of individuals and organizations is well established by the federal and state constitutions, by statutory law, and by common law. Still, today's complex society and system of justice present special needs that require certain laws that include their own administrative machinery. Sometimes when a federal, state, or local legislative body enacts a law, it also sets up an organization to establish rules and enforce them. **Administrative law** is the body of rules, regulations, and decisions created by administrative agencies.

case law

The effects of court decisions that involve the same or similar facts.

statutory law

The field of law involving statutes, which are laws passed by Congress or by state legislatures.

ordinance

A law that is passed by a local government, such as a city council.

administrative law

The body of rules, regulations, and decisions created by administrative agencies.

The practice of establishing specialized administrative agencies has several advantages. For example, it relieves the police and the courts from having to establish and enforce regulations that are often highly technical. Administrative agencies include federal agencies such as the National Labor Relations Board, state agencies such as public service commissions, and local agencies such as boards of health. These agencies have in common the authority to establish rules that have the force of law, to maintain “courts” that are often called appeal boards, and to conduct “trials” that are often called hearings. Because administrative law has become such an important part of our legal system, an entire chapter will be devoted to it.

1.4 UNIFORM COMMERCIAL CODE

When the United States was primarily a farming nation and there was relatively little commerce between states, it did not matter that the state constitutions and statutes differed from state to state. As trade between the states increased, however, so did the problems caused by the conflict in business laws among the different states. For example, a businessperson knowing the laws of his or her state had little difficulty so long as customers were all from the same state. But when business was conducted with customers in many states, he or she had to know the law in all of them.

Uniform Commercial Code (UCC)

A set of laws that govern various commercial transactions and that are designed to bring uniformity to the laws of the states.

To solve this problem, the **Uniform Commercial Code (UCC)** was prepared in 1952 by the National Conference of Commissioners on Uniform State Laws. The UCC is a set of laws that govern various commercial transactions and are designed to bring uniformity to the laws of the states. Over a period of 15 years, 49 states adopted the UCC as part of their state law. Not every state has adopted the entire UCC, and often state courts have differing interpretations of their UCC sections. For example, Louisiana, having been a French territory and therefore greatly influenced by French civil law, has adopted only parts of the Code. Because the UCC is so widely accepted, this book is based on it.

1.5 CLASSIFICATION OF LAWS

The various laws, regardless of origin, can be grouped into several broad classifications, each of which represents a legal specialty. Frequently a lawyer will specialize in one of these areas.

- ▶ *Constitutional law* is the study of the federal Constitution, its interpretation by the federal courts, and its relationship to existing laws.
- ▶ *Civil law* is the study of the rights and obligations of individuals and includes the law of property, the law of contracts, and the law of torts.
- ▶ *Criminal law* is concerned with acts against society (criminal acts) and the regulation of criminal activity.
- ▶ *Administrative law* is concerned with the conduct of governmental administrative agencies and their regulations. Examples are tax laws and laws dealing with transportation and trade.
- ▶ *International law* is concerned with the conduct of nations in their relations with other nations.



Moral law refers to the unenforceable obligations that people have to one another.

1.6 MORAL LAW

Since earliest times, people have recognized that they are to a certain extent responsible for one another and have obligations to one another beyond those required by the law. For example, a person who sees someone drowning has a moral obligation to try to save him or her, and a person who hears someone screaming for help in the night has a moral duty to at least call the police. Such obligations are based on **moral law**—that is, the “law” concerned with the unenforceable obligations that people have to one another. Many legal obligations are based on moral obligations, but not all moral obligations are legally enforceable; a person’s conscience is often the only means of enforcement.

moral law

The “law” concerned with the unenforceable obligations that people have to one another.

1.7 A SYSTEM OF COURTS

Some of our laws came from sources that were not originally concerned with human freedom. However, most legal scholars agree that today’s laws provide adequate protection of the rights of the individual. But the mere existence of laws is not enough.

There must be a means of administering the law to protect the rights of individuals and businesses and to curtail the activities of wrongdoers. In this country, courts and governmental agencies have been established to administer the law. The federal and state constitutions and the entire body of written law would be of little value to individuals and businesses if there were no provision for enforcing the law. Police alone cannot fulfill this function. The federal and state constitutions provide for the establishment of a system of courts that ensure citizens’ rights and enforce federal and state statutes.