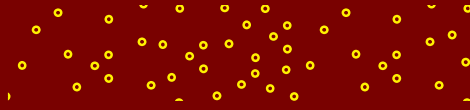


DYNAMIC BUSINESS LAW

THE ESSENTIALS

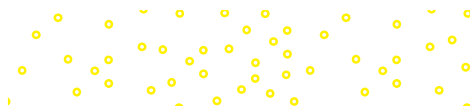
KUBASEK
BROWNE
HERRON
DHOOGHE
BARKACS

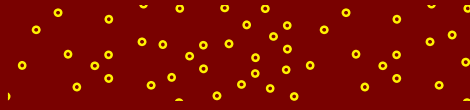


Dynamic Business Law

THE ESSENTIALS

Fourth Edition





Dynamic Business Law

THE ESSENTIALS

Fourth Edition

Nancy Kubasek

Bowling Green State University

M. Neil Browne

Bowling Green State University

Daniel J. Herron

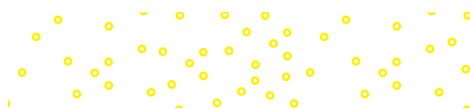
Miami University

Lucien J. Dhooge

Georgia Institute of Technology

Linda Barkacs

University of San Diego





DYNAMIC BUSINESS LAW: THE ESSENTIALS, FOURTH EDITION

Published by McGraw-Hill Education, 2 Penn Plaza, New York, NY 10121. Copyright © 2019 by McGraw-Hill Education. All rights reserved. Printed in the United States of America. Previous editions © 2016, 2013, and 2010. No part of this publication may be reproduced or distributed in any form or by any means, or stored in a database or retrieval system, without the prior written consent of McGraw-Hill Education, including, but not limited to, in any network or other electronic storage or transmission, or broadcast for distance learning.

Some ancillaries, including electronic and print components, may not be available to customers outside the United States.

This book is printed on acid-free paper.

1 2 3 4 5 6 7 8 9 LMN 21 20 19 18

ISBN 978-1-259-91710-3

MHID 1-259-91710-X

Portfolio Manager: *Kathleen Klehr*

Product Developer: *Jaroslav Szymanski*

Marketing Manager: *Michelle Williams*

Content Project Managers: *Pat Frederickson* and *Angela Norris*

Buyer: *Laura Fuller*

Design: *Tara McDermott*

Content Licensing Specialists: *Ann Marie Jannette*

Cover Image: ©*Design Pics / Tim Antoniuk*

Compositor: *SPi Global*

All credits appearing on page or at the end of the book are considered to be an extension of the copyright page.

Library of Congress Cataloging-in-Publication Data

Names: Kubasek, Nancy K., author. | Browne, M. Neil, 1944- author. | Herron, Daniel J., author. | Dhooge, Lucien J., author. | Barkacs, Linda L., author.

Title: Dynamic business law : the essentials / Nancy Kubasek, Bowling Green State University; M. Neil Browne, Bowling Green State University; Daniel J. Herron, Miami University; Lucien J. Dhooge, Scheller College of Business, Georgia Institute of Technology; Linda L. Barkacs, University of San Diego Diego.

Description: Fourth edition. | New York, NY : McGraw-Hill Education, [2019]

Identifiers: LCCN 2017048602 | ISBN 9781259917103 (alk. paper)

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

Classification: LCC KF889.85 .K83 2019 | DDC 346.7307—dc23

LC record available at <https://lcn.loc.gov/2017048602>

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.

About the Authors

Nancy K. Kubasek received her JD from the University of Toledo College of Law in 1981 and her BA from Bowling Green State University in 1978. She joined the BGSU faculty in 1982 and became an associate professor in 1988 and 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, and she writes a quarterly column about environmental issues for the *Real Estate Law Journal*. She has helped get students involved in legal research, and a number of her articles are co-authored with students. She has also published a number of pedagogical articles in teaching journals, focusing primarily on teaching critical thinking and ethics.

She wrote the first environmental law text for undergraduate students, *Environmental Law*, and co-authored *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 and large-mouth 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 as well. Both are avid exercisers—lifting weights, doing yoga, and running almost every day.

M. Neil Browne is senior lecturer and research associate and a distinguished teaching professor emeritus at Bowling Green State University. He received his BA in history and economics at the University of Houston, his PhD in economics at the University of Texas, and his JD from the University of Toledo. He has been a professor at Bowling Green for five decades.

Professor Browne teaches courses in jurisprudence, ethical reasoning, critical thinking, and economics at both the undergraduate and graduate levels. He has received

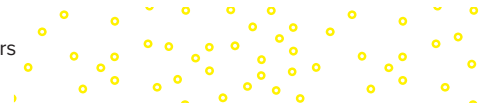
recognition as the Silver Medalist National Professor of the Year, the Ohio Professor of the Year, and Distinguished Teacher and Master Teacher at Bowling Green State University, as well as numerous research awards from his university and from professional organizations. His consulting activities with corporate, government, 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 20 books and more than 130 professional journal articles in law journals and 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 importance of critical thinking in environmental arguments.

Professor Browne tries to find time for a broad array of outside activities. He and his wife, Nancy Kubasek, fish for halibut and salmon in Alaska and large-mouth bass in Florida as frequently as possible. 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 as well. Both are avid exercisers—lifting weights, doing yoga, and running almost every day.

Daniel J. Herron is a professor of business legal studies at Miami University in Oxford, Ohio. He received his law degree from Case Western Reserve University School of Law in 1978 and is a member of the Ohio and federal bars. He has taught at Miami University, his alma mater, since 1992 and previously taught at the University of Wyoming, Western Carolina University, the University of North Carolina–Wilmington, and Bowling Green State University. He has been a member of the Academy of Legal Studies in Business for nearly 25 years and has served as its executive secretary since 1991. His research interests focus on law and ethics, employment law, and legal history.

He has been married for more than 30 years to his wife Deborah, and they have two children, Elisabeth and Christopher, and a daughter-in-law, Amanda, and one grandchild, Jack. Herron and his wife reside in Oxford, Ohio, with their two beagles, Max and Missy.



Lucien J. Dhooge is the faculty director of the Global Executive MBA Program and is the Sue and John Staton Professor of Law at the Georgia Institute of Technology. He teaches business law, real estate law, and ethics.

After completing an undergraduate degree in history at the University of Colorado in 1980, Professor Dhooge attended the University of Denver College of Law, where he received his JD in 1983. He received his LL.M. in 1995 from Georgetown University Law Center where he specialized in international and comparative law. Before coming to the College of Management at the Georgia Institute of Technology, Professor Dhooge spent 11 years in private law practice and 12 years serving on the faculty of the University of the Pacific in California.

Professor Dhooge has authored more than 50 scholarly articles, co-authored seven books, and presented research papers and courses throughout the United States as well as in Asia, Europe, and South America. Professor Dhooge is the recipient of numerous research awards given by the Academy of Legal Studies in Business, including seven Ralph C. Hoerber Awards for excellence in research. He was designated the outstanding junior business law faculty member in the United States by the Academy in 2002 and received the Kay Duffy Award for outstanding service in 2005. He was designated as an International Scholar by the Soros Foundation in 2006. Professor Dhooge was the program chair for the Academy's 2009 international conference in Denver and served as the Academy's president from 2009 to 2010. He is a past editor-in-chief of the *American Business Law Journal* and the *Journal of Legal Studies Education*.

A native of Chicago but raised in Denver, Professor Dhooge enjoys spending time with his family and following the fortunes of the Chicago Cubs and Colorado Rockies professional baseball teams.

Linda L. Barkacs received her JD from the University of San Diego in 1993. She also has a BA in political science from San Diego State University and an AA 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 her time with that firm, 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 was tenured in 2011. 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, 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 USD's 2010 Professor Impact (MSCM Program); the 2008 USD School of Business Outstanding Undergraduate Business Educator of the Year; and the 2007 and 2008 Professor of the Year, USD Senior Class (universitywide).

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 co-authoring a book on negotiation. She has been the president, vice president, conference chair, and treasurer for 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 and their three cats, Phoenix, Violet, and Vanessa.



Preface

We wrote this book because our primary sense of who we are as professionals is that we are teachers. We play various roles in our careers, but we are especially dedicated to our students. We want them to listen, read, create, and evaluate more effectively as a result of their experience in a business law class. Above all, we want them to sense the importance and excitement of the law.

We want them to be aware that business resides in an atmosphere of legal rights and responsibilities. The more they have an understanding of relevant law, the more their business activities will flourish.

We tried to construct a book that contains the basics of business law but does not get bogged down in the kind of details that would be more appropriate in an upper-level law class.

This 4th edition continues and advances the pedagogical strengths of earlier editions. As difficult as it is to recall what it is like to know almost nothing about business law, we tried repeatedly to force ourselves to remember that the text is for students, not for us to reveal our previous training. Toward that end, we have simplified and clarified as often as we could.

Our pedagogical features that provide the distinctive value of this book. 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 read it and to their skills as decision makers in a market economy.

Specifically, we provide what competing texts deliver, an examination of the basic questions, concepts, and legal rules of business law. Our text must address 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.

We knew that the 4th edition needed to be different from the 3rd because law is evolving. Certain areas of business law experience recurring re-examination and revision. For example, we created new material for this edition, emphasizing privacy, cyber, and immigration law. In addition, each author pledged to refresh our chapters with recent developments in business law.

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 as they 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 students for leadership positions in business.

WHAT IF . . .

Business law is a set of rules and regulations that modern managers must obey, but those rules and regulations apply in specific situations to particular facts. Those facts create a special setting, one not exactly like any other business decision. We added a But What If feature to highlight for readers the need to think about the implications of specific facts for the application of business laws.

BUT WHAT IF . . .

WHAT IF THE FACTS OF THE CASE OPENER WERE DIFFERENT?

Recall that in the Case Opener the company sold products in Kentucky and its products caused an injury in that state. Let’s say in the Case Opener that Caterpillar did not sell products in the state of Kentucky, but its products did cause an injury in that state. Could a Kentucky court still exercise *in personam* jurisdiction over Caterpillar and serve the company? Why?

In addition, this feature provides a reminder that applying the law is a complex activity, requiring a thorough knowledge of the law. An alert business manager needs to consider how each of the facts in the dilemma she or he faces may have legal implications that are not always clear when simply reading the law for the first time. The facts of a case guide the application.

Those who have formal legal training know that a common form of teaching law is to pose hypotheticals. The But What If feature mimics that approach.

In other words, at first glance the law seems to point in a certain direction, thereby giving business decision makers confidence that they know what is legally permissible or required, but changing a single fact can sometimes dramatically alter the eventual application of the law. An awareness of the significance of facts in the law can greatly enhance legal compliance and save firms huge expenses.



GLOBAL Context

The Court Structure in England

Even though we trace the roots of the U.S. legal system back to England, changes have occurred in both countries' court structures; as a result, the court structures in the United States and England share similarities but also have distinct features. The lowest criminal courts in England are the magistrates courts, which hear minor offenses. More serious cases are tried before a judge and jury in the crown court, which also hears cases appealed from the magistrates courts on factual points. The high court (in the Queen's Bench Division) hears appeals on points of law, and the court of appeal

in the Criminal Division hears appeals on sentences and convictions.

Civil cases are first heard in the county courts (for minor claims) or the high court, which is divided into three divisions: Queen's Bench, Family, and Chancery. Cases may be appealed to the court of appeal (Civil Division). Cases may also be appealed from the county court to the high court.

The House of Lords is the supreme court of appeal. Its cases are heard by up to 13 senior judges known as *law lords*. In addition to the courts, there are specialized tribunals, which hear appeals on decisions made by various public bodies and government departments in areas such as employment, immigration, social security, tax, and land.

Global Boxes

This feature highlights the emerging, interconnected market. Where relevant, the chapters contain Global Context boxes. Because so many market decisions are made in an international context, learners 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 Global Context boxes illustrate how unique the law in a certain country often is. After reading these stories of difference, readers will certainly understand better 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 American 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.

Critical Thinking

After each case in the book, we have provided critical-thinking questions to highlight the need to think critically about the reasoning the court used. 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.

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.

CASE 16-1

ALASKA PACIFIC TRADING CO. v. EAGON FOREST PRODUCTS INC. WASHINGTON APPELLATE DIVISION 1

933 P.2d 417 (1997)

FACTS: *Alaska Pacific Trading Company (ALPAC) and Eagon Forest Products Inc. contracted to buy and sell raw logs. ALPAC and Eagon engaged in months of communications about a shipment of 15,000 cubic meters of logs from Argentina to Korea between the end of July and the end of August 1993. The delivery date passed without ALPAC shipping the logs. Eagon canceled the contract, alleging that ALPAC had breached the agreement by failing to deliver. ALPAC alleged that its failure to deliver was not a material breach and that the parties had modified the delivery date. Alternatively, ALPAC argued that Eagon breached the contract by failing to provide adequate assurances or repudiating the contract. The miscommunication between the parties occurred after the market for logs began to soften, making the contract less attractive to Eagon. ALPAC was reluctant to ship the goods because it was concerned that Eagon might not accept the shipment. However, Eagon never stated that it would not accept the cargo.*

ISSUE: The question for the court is whether to apply the common law doctrine of material breach or the UCC doctrine of perfect tender.

REASONING: In the court's own words:

As a contract for the sale of goods, this contract is governed by the Uniform Commercial Code, Article II (UCC II) which replaced the common law of material breach, on which ALPAC relies, with the "perfect tender" rule. Under this rule, "If the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may . . . reject the whole." . . . Both the plain language of the rule and the official comments clearly state that, if the tender of the goods differs from the terms of the contract in any way, the seller breaches the contract and the buyer is released from its duty to accept the goods.

DECISION AND REMEDY: The court applied the literal language of the UCC, holding that the perfect tender rule applied and that ALPAC's failure to deliver was a breach of contract.

SIGNIFICANCE OF THE CASE: Though difficult to measure at times, the perfect tender rule is a departure from the common law rule of substantial performance. Any deviation from the contract may indeed constitute a breach of the perfect tender rule, materiality notwithstanding.

CRITICAL THINKING

Here, Eagon got lucky. The company got out of a contract that was unfavorable to it, given the softening market for logs. In what way did the judge simplify the case? Is it fair to say the judge oversimplified the case?

ETHICAL DECISION MAKING

What ethical norm or value underlies the judge's decision? Explain.

We include this step-by-step approach in Appendix 1A at the end of Chapter 1. Instructors who wish to emphasize critical thinking can use that appendix as a structured approach for learning how to evaluate legal reasoning.

Ethical Reasoning

Our book emphasizes consideration of all stakeholder interests in every market decision. Business ethics should never be an afterthought or something firms consider only because they think they must. In response to requests from our users, we created a separate chapter, Chapter 2, devoted entirely to business ethics. We expanded the discussion of business ethics while simplifying the framework for applying ethical reasoning.

Instead, business ethics is what provides the social legitimacy for markets, what distinguishes markets from the life of the jungle. Although 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 our aspirations to 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 use 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 serve as the guidelines we use to shape the world we wish to create. As such, they provide guidance for the kind of business behavior we want to reinforce. After each case discussion, we pause to think about the ethics of business law by asking a question derived from the practical approach to business ethics developed in Chapter 2.

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. By including boxes that call attention to these challenges, we think we can convince students most effectively of the pervasive influence of this new, complicating aspect of business decisions.

BUSINESS Ethics Flashpoint 2.5

The Dofasco Steel Company's Approach to Workers

Dofasco is the second-largest steel producer in Canada and sells a wide range of steel products. In the 1980s, Dofasco experienced shrinking profits and decided to change its approach to business.

One of the ways that Dofasco changed was in its approach to its workers. Specifically, Dofasco attempted to implement a philosophy taking into account the whole person at work. In other words, this approach sought to include wellness as an important characteristic of the employee experience.

In line with this new philosophy, the Dofasco management claimed it would abide by the following policy statement issued in its 1996 guides of the company's health, safety, and lifestyle activities: “At Dofasco, there is nothing more important than the health and safety of our people.”

Consistent with this policy statement, Dofasco provided training for employees in problem solving, manufacturing processes, and customer service. Dofasco also built on its tradition of providing its workers with ergonomic and fitness resources as well as preventive medical services.

Yet another way that Dofasco sought to focus its energies on employee needs was by encouraging healthy lifestyle practices at work. A healthy lifestyle at work would be achieved by preventing workplace accidents and maintaining a safe environment. In addition, Dofasco assessed employee needs in response to worker suggestions.

Dofasco believes that its focus on a safe and healthy workplace has improved its business. Specifically, the company claims that its policies have reduced lost time associated with work injuries and minimized Workers Safety Insurance Board payments.

In addition to focusing on worker safety and well-being, Dofasco also has a history of being environmentally responsible. For example, Dofasco was the first corporation in Canada voluntarily to sign an Environmental Management Agreement with Environment Canada and Ontario's Ministry of the Environment. In this agreement, Dofasco made commitments to abide by specific air and water quality standards and sustainable energy use and waste management. Through this agreement, Dofasco expressed its commitment to the community.

In addition, Dofasco created a Sustainable Development Strategy Team and is a founding sponsor of the Sustainable Enterprise Academy at York University's Schulich School of Business. The mission of this academy is to provide executives with training in how to manage businesses with an eye for sustainability.

Dofasco's organizational practices resulted in being named one of the world's most sustainable companies in the Dow Jones Sustainability Group Index.

Sources: Dan Corbett, “Excellence in Canada: Healthy Organizations—Achieve Results by Acting Responsibly,” *Journal of Business Ethics* 55, no. 2 (December 2004), pp. 124, 130; Joan Enric Ricart, et al., “The Sustainable Enterprise: Learning from DSI Leaders,” Fundacion BBVA (2005).

E-COMMERCE and the Law

The Sliding-Scale Standard for Internet Transactions

Does a business that has Internet contact with a plaintiff in a different state satisfy the minimum-contacts standard?

A federal district court established the following sliding-scale standard in a 1997 case:^{*}

[T]he likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet. This sliding scale is consistent with well developed personal jurisdiction principles.

At one end of the spectrum are situations when a defendant clearly does business over the Internet. If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated

transmission of computer files over the Internet, personal jurisdiction is proper.

At the opposite end are situations when a defendant has simply posted information on an Internet website that is accessible to users in foreign jurisdictions. A passive website that does little more than make information available to those who are interested in it is not grounds for the exercise of personal jurisdiction.

The middle ground is occupied by interactive websites through which a user can exchange information with the host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and the commercial nature of the exchange of information that occurs on the website.


^{*} *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 at 1124 (1997).

Online Assignments and Resources

We have designed our features around the things we do in our classes to encourage excitement about business law. We believe they provide Business Law Plus. We also have a variety of supplementary material available for instructors, to aid in course development, and for students, to provide additional study.



McGraw-Hill Education has partnered with Roger CPA Review, a global leader in CPA Exam preparation, to provide students a smooth transition from the accounting classroom to successful completion of the CPA Exam. While many aspiring accountants wait until they have completed their academic studies to begin preparing for the CPA Exam, research shows that those who become familiar with exam content earlier in the process have a stronger chance of successfully passing the CPA Exam. Accordingly, students using these McGraw-Hill materials will have access to sample CPA Exam Multiple-Choice questions and Task-based Simulations from Roger CPA Review, with expert-written explanations and solutions. All questions are either directly from the AICPA or are modeled on AICPA questions that appear in the exam. Task-based Simulations are delivered via the Roger CPA Review platform, which mirrors the look, feel and functionality of the actual exam. McGraw-Hill Education and Roger CPA Review are dedicated to supporting every accounting student along their journey, ultimately helping them achieve career success in the accounting profession. For more information about the full Roger CPA Review program, exam requirements and exam content, visit www.rogercpareview.com.

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

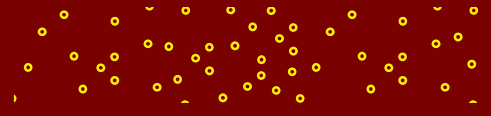
Interactive Applications McGraw-Hill Connect's Interactive Applications offer a variety of automatically graded exercises that require students to apply key concepts. Whether the assignment includes a *click and drag*, *video case*, or *decision generator*, these applications provide instant feedback and progress tracking for students and detailed results for the instructor.

Instructor's Manual Written by our co-author Neil Browne, this resource includes lecture notes, case briefs, answers to all questions in each chapter, assignment ideas, teaching assistance (emphasizing practical tips that new or part-time teachers can try right away), and suggested handouts.

Test Bank and Quizzes Our test bank and quizzes contain a variety of true/false, multiple-choice, and essay questions as well as scenario-based questions, which are application-based and use a situation described in a narrative, with three to five multiple-choice test questions based on the situation.

PowerPoint Presentation Slides This edition's revised PowerPoints contain an easy-to-follow lecture outline summarizing key points for every chapter.





You Be the Judge Online This interactive product features case videos that showcase courtroom arguments of business law cases. These case videos give students the opportunity to watch profile interviews of the plaintiff and defendant; read background information; hear each case; review the evidence; make their decisions; and then access an actual, unscripted judge’s decision and reasoning.

Videos Links to brief videos for classroom use are provided.

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

AACSB Statement

McGraw-Hill Education is a proud corporate member of AACSB International. The authors of *Dynamic Business Law: The Essentials*, Fourth Edition understand the importance and value of AACSB accreditation and recognize the curricula guidelines detailed in the AACSB standards for business accreditation by connecting selected questions in the test bank to the general knowledge and skill guidelines in the AACSB standards.

The statements contained in *Dynamic Business Law: The Essentials*, Fourth Edition, are provided only as a guide for the users of this textbook. The AACSB leaves content coverage and assessment within the purview of individual schools, the mission of the school, and the faculty. Although *Dynamic Business Law: The Essentials*, Fourth Edition, and the teaching package make no claim of any specific AACSB qualification or evaluation, we have within *Dynamic Business Law: The Essentials*, Fourth Edition, labeled selected questions according to the general knowledge and skill areas.

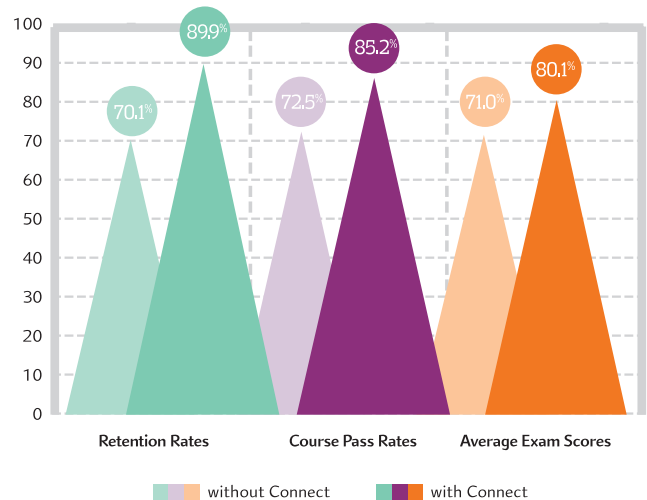
McGraw-Hill Connect® is a highly reliable, easy-to-use homework and learning management solution that utilizes learning science and award-winning adaptive tools to improve student results.

Homework and Adaptive Learning

- Connect's assignments help students contextualize what they've learned through application, so they can better understand the material and think critically.
- Connect will create a personalized study path customized to individual student needs through SmartBook®.
- SmartBook helps students study more efficiently by delivering an interactive reading experience through adaptive highlighting and review.

Over **7 billion questions** have been answered, making McGraw-Hill Education products more intelligent, reliable, and precise.

Connect's Impact on Retention Rates, Pass Rates, and Average Exam Scores



Using **Connect** improves retention rates by **19.8%**, passing rates by **12.7%**, and exam scores by **9.1%**.

73% of instructors who use **Connect** require it; instructor satisfaction **increases** by 28% when **Connect** is required.

Quality Content and Learning Resources

- Connect content is authored by the world's best subject matter experts, and is available to your class through a simple and intuitive interface.
- The Connect eBook makes it easy for students to access their reading material on smartphones and tablets. They can study on the go and don't need internet access to use the eBook as a reference, with full functionality.
- Multimedia content such as videos, simulations, and games drive student engagement and critical thinking skills.

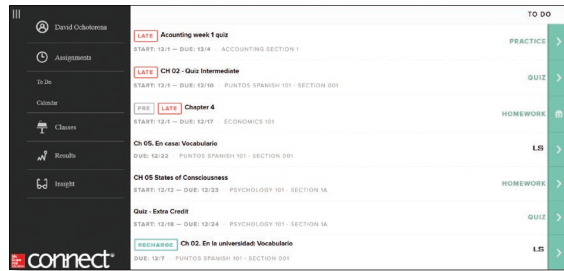


Robust Analytics and Reporting

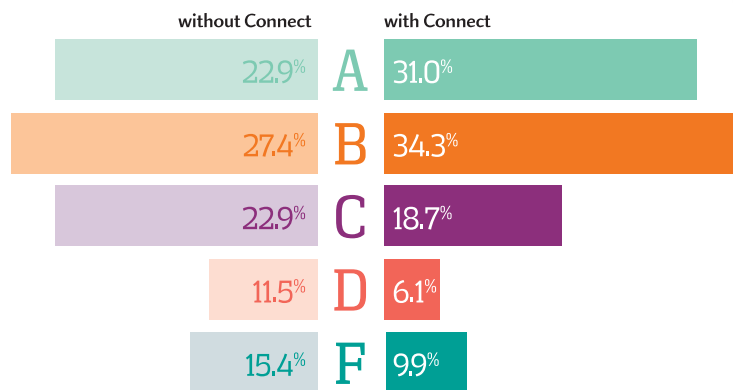
- Connect Insight® generates easy-to-read reports on individual students, the class as a whole, and on specific assignments.
- The Connect Insight dashboard delivers data on performance, study behavior, and effort. Instructors can quickly identify students who struggle and focus on material that the class has yet to master.
- Connect automatically grades assignments and quizzes, providing easy-to-read reports on individual and class performance.



©Hero Images/Getty Images



Impact on Final Course Grade Distribution



More students earn
As and **Bs** when they
use **Connect**.

Trusted Service and Support

- Connect integrates with your LMS to provide single sign-on and automatic syncing of grades. Integration with Blackboard®, D2L®, and Canvas also provides automatic syncing of the course calendar and assignment-level linking.
- Connect offers comprehensive service, support, and training throughout every phase of your implementation.
- If you're looking for some guidance on how to use Connect, or want to learn tips and tricks from super users, you can find tutorials as you work. Our Digital Faculty Consultants and Student Ambassadors offer insight into how to achieve the results you want with Connect.

Important Changes in This Edition

Following are the updates that were made to the 4th edition. Note that we have multiple chapters and cases where we integrated two new themes: privacy law and small business.

CHAPTER 1: An Introduction to the Fundamentals of Dynamic Business Law

- New example of civil damages in which Mississippi Valley Silica Co. was ordered to pay a plaintiff \$9 million because the court ruled that it sold sand to plaintiff's employer with the knowledge that using that sand on a regular basis would expose a worker to a form of cancer, yet Mississippi Valley did not alert those who bought the sand about the risk.
- In the section about Global and Comparative Law, added a discussion of WTO to GATT, as reviewers suggested. In 1995, the World Trade Organization was created to replace GATT. The WTO stimulates negotiations among member nations to reduce barriers to international trade. The WTO attempts to enforce trade agreements governing trade among its 160 member nations. In this role, it serves as a world court adjudicating trade disagreements that threaten to disrupt international trade.

CHAPTER 2: Business Ethics and Social Responsibility

- Added Exhibit 2-1: Business Ethics Issues Take Many Forms to provide a sense of the scope of issues that stimulate ethical questions.
- Added a Point/Counterpoint to the chapter: The Social Responsibility of Corporations.

CHAPTER 3: The U.S. Legal System and Alternative Dispute Resolution

- To highlight how technology is changing service of process, this chapter contains a new section about service by email, and followed that section with new Case 3-3: *Atlantic Marine Construction Company, Inc. v. United States District Court for the Western District of Texas, et al*, which focuses on the same topic.
- Added new Figure 3-6; Steps in a Civil Law Suit, to summarize the numerous steps in a civil action.
- Added new Figure 3-7; Forms of ADR, to review the different ADR methods, at the suggestion of reviewers.
- Added new Point/Counterpoint related to the updated material about service of process: Should Courts Increase Their Use of Service of Process by Social Media?

CHAPTER 4: Administrative Law

- Added new Case Nugget in “How are Agencies Run” section:
 - *Perez v. Mortgage Bankers Association*.
- Added new Case 4-1: *Doe v. United States SEC*, on privacy; this case demonstrates that agencies have broad investigative powers, more so than parties in a typical civil case.
- Added new Case 4-4: *Wilfredo Golez v. John E. Potter, Postmaster General, U.S. Postal Service*, on privacy; this case demonstrates that absent a compelling need, individuals do retain a right to privacy in information related to their employment records.
- Added new Point/Counterpoint: Should Agencies Be Eliminated? (small business)

CHAPTER 5: Constitutional Law

- Updated discussion of freedom of religion and its clash with part of the Affordable Care Act using the *Hobby Lobby* case.
- Added new Case 5-3: *David Leon Riley v. California and United States v. Wurie*, that explains how the court addresses the privacy related issue of whether the warrantless seizure of a cell phone violates the Fourth Amendment.
- Added new Case Nugget: *Obergefell et al. v. Hodges*, to update what has occurred with respect to the constitutionality of same sex marriage.

- Updated the Point/Counterpoint to Should Warrantless Wiretapping Be Allowed under the Fourth Amendment? to reflect the increasing interest in privacy issues.

CHAPTER 6: Criminal Law and Business

- Updated Case Opener to: A Questionable Stock Investment.
- Added new Case 6-1: *United States of America V. Thomas Tanke* to illustrate how the courts address the second element of mail fraud.

CHAPTER 7: Tort Law

- Added a new section about privacy torts to reflect the increasing interest in these types of torts.
- Added new Case 7-2: *Swobota v. Fontanetta*, to illustrate the doctrine of *res ipsa loquitur*.
- Added new Point/Counterpoint: Should the Creators of Violent Media Owe a Duty of Care to Victims of Crimes Based on Violent Media? This issue may be more interesting to our students because a lot of them play video games and watch movies containing violence.

CHAPTER 8: Real, Personal, and Intellectual Property

- Inserted a new Case 8-2: *In Re Simon Shio Tam* highlighting how trademark law has recently changed to potentially allow more controversial trademarks to be issued.
- Added a new box E-Commerce and the Law: Copyright law has undergone multiple changes as new ways to reproduce and distribute copyrighted content multiply alongside frequent new developments in technology.
- Added a new Point/Counterpoint: Should Corporations be Allowed to Patent Genes? This issue is becoming more important as pharmaceutical companies work to develop new treatments based on genetic manipulations.

CHAPTER 9: Introduction to Contracts and Agreement

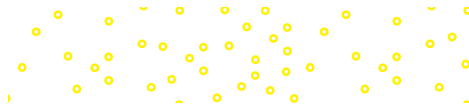
- Added new Exhibit 9-1: *The Formation of A Contract*, that illustrates how a contract is formed, which may help those students who are more visual learners.
- Added new Case 9-2: *Wrench, LLC. V. Taco Bell Corp.*, a case illustrating circumstance under which a court may find an implied-in-fact contract.
- Inserted new Point/Counterpoint: Should Contract Law be Used to Enforce Surrogacy Agreements? This controversy may lead to some interesting discussions because it forces students to think about not just surrogacy contracts, but the general issue of whether there are certain things that we should not be allowed to contract for.

CHAPTER 10: Consideration

- Added new Case Nugget in “Adequacy of Consideration” section: *McClellan v. Charly*.
- Added new Case 10-2: *Bouton v. Byers*.
- Added New Case 10-4 in “Rules of Consideration” section: *Simmons v. Simmons* Students are often shocked to discover that a promise, even when made in writing and put into an affidavit by a lawyer, may not be binding.
- Updated Point/Counterpoint to: Should Past Consideration Be Acceptable Consideration for a Contract?

CHAPTER 11: Capacity and Legality

- Added new Case 11-1: *Lopez v. K-Mart Corporation*, that illustrates how the courts grapple with the issue of whether to allow a minor to disaffirm a contract.
- Added new Exhibit 11-1: The Three *I*'s of Incapacity: General Rules
- Added new Point/Counterpoint: Should Employer-Employee Covenants Not to Compete be Eliminated?

**CHAPTER 12: Reality of Assent**

- Added new Case 12-2: *Fantastic Sams Salons Corp. v Pstevo, LLC and Jeremy, Baker* about how to prove the elements of fraud.
- Added new Point/Counterpoint: Should Contracts Made through Tweets be Legally Binding?

CHAPTER 13: Contracts in Writing and Third-Party Contracts

- Added new Case 13-1: *Heritage Constructors, Inc. v Chrietzberg Electric, Inc. and Richard Marc Chrietzberg*.
- Added Exhibit 13-1: Requirements of a Writing Sufficient to Satisfy the Statute of Frauds under the Common Law
- Added new Point/Counterpoint: Should Obligors Have a Say in Who Becomes an Assignee?

CHAPTER 14: Discharge and Remedies

- Added new Exhibit 14-1: Methods of Discharging a Contract.
- Added new Case 14-1: *Mind & Motion Utah Investments, LLC, Appellee v. Celtic Bank Corporation*.
- Added new Point/Counterpoint: Should Specific Performance Automatically be Granted in Every Breach of Contract for the Sale of Real Property?

CHAPTER 15: Formation and Performance of Sales and Lease Contracts

- New exhibits 15-3 and 15-4 provides greater clarity in understanding in a table format differences in the UCC, Common law, and CISG.

CHAPTER 16: Sales and Lease Contracts: Performance, Warranties, and Remedies

- New Case Nugget: Implied or Express Warranty in the “Warranty Disclaimers and Waivers” section.
- New Point/Counterpoint at end of chapter to tie in with the new Case Nugget on warranty disclaimer.

CHAPTER 17: Negotiable Instruments: Negotiability and Transferability

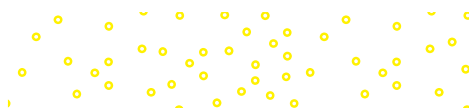
- Added new Case Nugget: Requirements for ATM Operators to Recover Use Fees.
- Added new Point/Counterpoint: Should the Consumer Financial Protection Board (CFPB) Tighten Regulations on Payday Lenders?
- Added new Case 17-2: *Jones v. Wells Fargo Bank*.

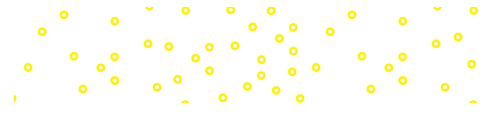
CHAPTER 18: Holder in Due Course, Liability, and Defenses

- Added new Case 18-2: *Creative Ventures, LLC v. Jim Ward and Associates*, to reinforce the importance of being a holder in due course.
- Created a new Point/Counterpoint: Does the Shelter Principle Violate Basic Rules of Fairness?

CHAPTER 19: Secured Transactions and Bankruptcy

- Updated Case Opener: *M&T Bank v. Bolden*.
- Added new Case 19-1: *Price Auto Sales, Inc. v. Sanders*, regarding peaceful repossession of collateral entitled.
- Added new Case Nugget: *Helms v. Certified Packaging Corp.*, presenting the problem of what constitutes proceeds of collateral. The case addresses both topics in the chapter by presenting conflicting claims of a secured creditor and a bankruptcy trustee to insurance proceeds paid as a result of damage to the underlying collateral.



- 
- Added new Case 19-2: *In re Arkuszewski*, which determined whether a debtor who began mandatory credit counseling but did not complete it until after the filing of the petition was still eligible for bankruptcy protection.
 - Updated federal bankruptcy exemptions in Exhibit 19-4 and non-dischargeable debts under the Bankruptcy Code in Exhibit 19-6.

CHAPTER 20: Agency and Liability to Third Parties

- Added 2016 material discussing Federal changes in the law affecting the rules governing agency/employer responsibilities and liability.
- Added New Point/Counterpoint: Should the U.S. Adopt the European Union's Post-Termination Compensation Policies?
- Added new Case 20-1: *Glenn v. Gibbs*.

CHAPTER 21: Forms of Business Organization

- Added new Point/Counterpoint: Should Aspiring Business Owners Form an LLC Instead of a Corporation?
- Added new Case 21-2: *Patterson v. Domino's Pizza*.

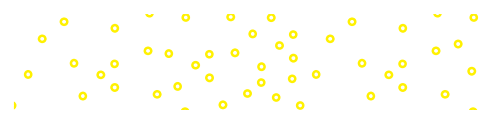
CHAPTER 22: Corporations: Formation and Organization

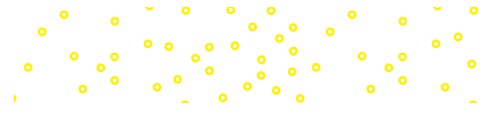
- Clarified that *ultra vires* is uncommon, but important, in response to a reviewer's suggestion.
- Clarified the extent of the requirements of the Uniform Partnership Act in response to a reviewer's suggestion.
- Added clarification as to why LLCs are now such a popular form of business in response to a reviewer's suggestion.
- Added additional description regarding franchises in response to a reviewer's suggestion.
- Added new Case 22-2: *KDW Restructuring & Liquidation v. Greenfield*, which represents a clear statement of the contemporary application of the business judgment rule.

CHAPTER 23: Securities Regulation

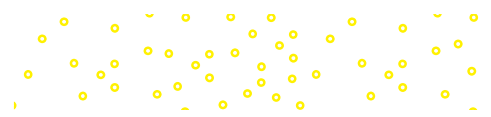
- Added new Case 23-2: *Levista, Inc. v. Ranbaxy Pharmaceuticals, Inc.*
- Added new Point/Counterpoint: Should Previous Dealings of the Parties Control the Contractual Relationship?

CHAPTER 24: Employment and Discrimination Law

- Added two new learning objectives and sections:
 - 24-7 May employers use social media in employment decisions?
Justification: Why add? The issue of the use of social media by employers in hiring and firing decisions is a hot topic and one that is fraught with potential pitfalls. Savvy employers must be informed as to when and how using social media for such purposes is wise and when it should be avoided (privacy issue).
 - 24-8 What are the rights and responsibilities of employers when hiring foreign workers?
Justification: Why add? The recent executive orders related to immigration have made this a hot topic. United States' employers want to be able to access the best talent worldwide but also avoid legal entanglements. All businesses need to be aware of the responsibilities they undertake when hiring foreign workers (immigration issue).
 - Sexual Orientation Discrimination: Added two major developments in the law regarding sexual orientation discrimination – an agency case and a federal circuit court case extending the definition of “sex” discrimination under Title VII to include discrimination based on sexual orientation.
- 

- 
- Added new Case 24-2: *Donald Baldwin, Complainant v. Anthony Foxx, Secretary, Dept. Of Transportation (FAA), Agency*, First time the EEOC (as an agency) interprets “sex” discrimination under Title VII as including discrimination based on sexual orientation.
 - Discrimination Based on Marriage: Deleted section re: split among states. Added new section re: U.S. Supreme Court’s 2015 decision granting marriage equality.
 - Added new Case 24-3: *Nickel v. Staples Contract and Commercial*, an age discrimination case in which “substantial evidence” of discrimination prevailed over allegations of employee theft, resulting in \$16M verdict.
 - Added new Case Nugget: *Roe v. Teletech Customer Care Mgmt. (Colo.) LLC* on whether an employee may be fired for using medical marijuana.
 - Added new Point/Counterpoint: Should Employers Be Permitted to Use Social Media in Hiring and/or Firing Decisions?

CHAPTER 25: Consumer Law

- Clarified the rulemaking authority of the FTC in response to a reviewer’s comment that the concept had not been introduced at the time it first appeared in the chapter.
 - Added a section about data mining and privacy.
 - Added a discussion of the reduced regulations placed on data mining by legislation during President Trump’s first hundred days.
 - Added new Point/Counterpoint: Should Prescription Drugs be Advertised Directly to Consumers?
 - Added new Case 25-2: *Crawford v LVNV Funding*
- 

Acknowledgments

This final component of the Preface contains a palpable tone of gratitude and humility. Any project the scope of *Dynamic Business Law: The Essentials*, Fourth Edition, is a collective activity; the authors are but the visible component of a remarkably large joint effort. We want to thank several contributors by name, but there are doubtlessly many other students, colleagues, and friends who made essential contributions to these pages.

Our largest gratitude goes to the dozens of business law colleagues who saved us from many embarrassing errors while tolerating our stubborn reluctance to adhere to certain of their suggestions. In addition, the book could not have been written without the competent and dedicated research assistance we received from Arata-Enrique Kaku, Alex Jacobs, and Caitlyn Reeder. Their desire to improve our book is a compliment to their character.

We'd like to thank the following people for helping us with their comments and feedback on various stages of our manuscript:

William H. Bradley, *Azusa Pacific University*
Carol Brady, *Milwaukee Area Technical College*

Peter D. Churchill, *Diablo Valley Community College*

Nanette Clinch, *San Jose State University*

Richard Alan Cooper, *Lindenwood University*

Patrick Creehan, *Flagler College—Tallahassee Branch*

Peter Dawson, *Collin College*

Cheryl Davison Gracie, *Washtenaw Community College*

Laura Drake, *Cincinnati State*

Pamela Evers, *University of North Carolina Wilmington*

Ronald Feinberg, *Suffolk County Community College*

Armand Grunberger, *American University—Washington, D.C.*

Marc Hall, *Auburn University—Montgomery*

Mark E. Handley, *Delaware Technical & Community College*

Cheryl L. Head, *Central Piedmont Community College*

Lynda Hodge, *Guilford Technical Community College*

Sarah Holcomb, *Northern Arizona University*

Russell E. Holmes, *Des Moines Area Community College*

Catherine G. Jones-Ridders, *Grand Valley State University*

Steven C. Kaber, *Baldwin-Wallace College*

Raymond Keener, *Marshall University*

Christine W. Lewis, *Auburn University—Montgomery*

Darryll Lewis, *University of Nebraska—Omaha*

Jessica A. Magaldi, *Pace University*

Jason Bryan Malone, *Virginia Tech*

Lisa Mayer, *Bergen Community College*

Linda B. Meltzer, *Queensborough Community College*

Christine Mooney, *Queensborough Community College*

Sandra Mullings, *Baruch College, CUNY*

Tonia Murphy, *University of Notre Dame*

Michael J. O'Hara, *University of Nebraska—Omaha*

Gary Patterson, *California State University, San Bernardino*

James Alan Pilant, *Northwest Arkansas Community College*

Michael Rogers, *Albany State University*

Sean D. Scott, *St. Petersburg College*

Stanley Seat, *University of Texas at Arlington*

Bonnie S. Shane, *Sinclair Community College*

Harvey Slentz, *Florida State College—Jacksonville*

Michael Spagnoli, *American International College*

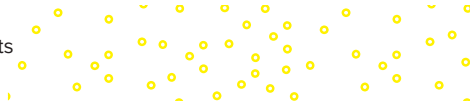
Jennifer Thor, *Oakland University*

Mary Tripp, *Wisconsin Indianhead Technical College*

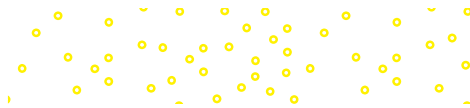
Dr. Robert J. Woods, *Texas Woman's University*

Stephen Yoder, *University of Alabama at Birmingham*

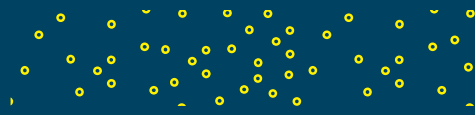
Acknowledgments



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; Executive Portfolio Manager, Kathleen Klehr; Senior Marketing Manager, Michelle Williams; and Lead Content Project Manager, Pat Frederickson.



Brief Contents



PART 1

The Legal Environment of Business

- chapter 1** An Introduction to the Fundamentals of Dynamic Business Law 1
- chapter 2** Business Ethics and Social Responsibility 13
- chapter 3** The U.S. Legal System and Alternative Dispute Resolution 28
- chapter 4** Administrative Law 59
- chapter 5** Constitutional Law 80
- chapter 6** Criminal Law and Business 105
- chapter 7** Tort Law 131
- chapter 8** Real, Personal, and Intellectual Property 157

PART 2

Contract Law

- chapter 9** Introduction to Contracts and Agreement 180
- chapter 10** Consideration 200
- chapter 11** Capacity and Legality 216
- chapter 12** Reality of Assent 236
- chapter 13** Contracts in Writing and Third-Party Contracts 252
- chapter 14** Discharge and Remedies 281

PART 3

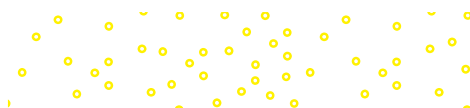
Domestic and International Sales Law

- chapter 15** Formation and Performance of Sales and Lease Contracts 303
- chapter 16** Sales and Lease Contracts: Performance, Warranties, and Remedies 324

PART 4

Negotiable Instruments and Banking

- chapter 17** Negotiable Instruments: Negotiability and Transferability 344
- chapter 18** Holder in Due Course, Liability, and Defenses 371



PART 5**Creditors' Rights and Bankruptcy**

chapter 19 Secured Transactions and Bankruptcy 395**PART 6****Agency**

chapter 20 Agency and Liability to Third Parties 421**PART 7****Business Organizations**

chapter 21 Forms of Business Organization 450**chapter 22** Corporations: Formation and Organization 472**chapter 23** Securities Regulation 503**PART 8****Government Regulation**

chapter 24 Employment and Discrimination Law 525**chapter 25** Consumer Law 557**APPENDIXES**

appendix A The Constitution of the United States of America A**appendix B** Sarbanes-Oxley Act of 2002 B-1*Glossary G-1**Index I*

Contents

Preface vii

PART 1

The Legal Environment of Business

1 An Introduction to the Fundamentals of Dynamic Business Law 1

Law and Its Purposes 3

Classification of the Law 3

Sources of Business Law 4

Constitutions 4

Statutes 4

Cases 5

Administrative Law 7

Treaties 7

Executive Orders 8

Schools of Legal Interpretation 8

Global and Comparative Law 9

Questions & Problems 10

2 Business Ethics and Social Responsibility 13

Business Law and Business Ethics 15

Ethical Failures can be Bad for Business 16

What Are Values? 17

How do Values Provide a Starting Point for Thinking about Business Ethics? 18

The WH Framework for Business Ethics 19

Who are the Relevant Stakeholders? 20

How Do We Make Ethical Decisions? 20

Point/Counterpoint 24

Questions & Problems 25

3 The U.S. Legal System and Alternative Dispute Resolution 28

Case Opener: Questionable Jurisdiction over Caterpillar 28

Jurisdiction 29

Original Versus Appellate Jurisdiction 29

Jurisdiction Over Persons and Property 29

Case 3-1: Illinois v. Hemi Group LLC 31

Subject-Matter Jurisdiction 32

Case 3-2: Hertz Corporation v. Friend United States Supreme Court 33

Venue 35

Forum Selection and Choice of Law 35

Case 3-3: Atlantic Marine Construction Company, Inc. v. United States District Court for the Western District of Texas Et Al. 35

The Structure of the Court System 37

The Federal Court System 37

State Court Systems 38

Threshold Requirements 40

Standing 40

Case or Controversy 41

Ripeness 41

Steps in Civil Litigation 41

The Pretrial Stage 42

The Trial 45

Posttrial Motions 47

Appellate Procedure 47

Alternative Dispute Resolution 49

Primary Forms of ADR 50

Negotiation 50

Mediation 51

Arbitration 52

Other ADR Methods 54

Med-arb 54

Summary Jury Trial 54

Minitrial 54

Early Neutral Case Evaluation 54

Private Trials 55

Summary 55

Point/Counterpoint 56

Questions & Problems 57

4 Administrative Law 59

Case Opener: Does the EPA Have an Obligation to Regulate Automobile Emissions? 59

Introduction to Administrative Law 60

What is Administrative Law 60

Why and How are Agencies Created? 60

Types of Administrative Agencies 61

How Are Agencies Run? 63

Informal Rule Making 63

Formal Rule Making 64

Hybrid Rule Making 65

Exempted Rule Making 65

Case 4-1: Doe v. United States Sec U.S. District Court for the Northern District of California 66*Regulated Negotiation 67**Problems Associated with Rule Making 67**Other Administrative Activities 68***Case 4-2: Yan Ju Wang v. George Valverde Court of Appeal of California, Second Appellate District 68**

Limitations on Agency Powers 69

*Political Limitations 69**Statutory Limitations 70**Judicial Limitations 70***Case 4-3: Northwestern University and College Athletes Players Association (Capa) 71***Informational Limitations 73***Case 4-4: Wilfredo Golez v. John E. Potter, Postmaster General, U.S. Postal Service 73**

Federal and State Administrative Agencies 75

*Summary 76**Point/Counterpoint 77**Questions & Problems 77***5 Constitutional Law 80****Case Opener: The Constitutionality of the Affordable Care Act 80**

The U.S. Constitution 81

Judicial Review 81

The Supremacy Clause and Federal Preemption 82

The Commerce Clause 83

*The Commerce Clause as a Source of Authority for the Federal Government 83***Case 5-1: Christy Brzonkala v. Antonio J. Morrison Et Al. United States Supreme Court 84***The Commerce Clause as a Restriction On State Authority 85***Case 5-2: Black Star Farms, LLC, Et Al. v. Jerry Oliver, Arizona Department of Liquor License and Control Et Al. U.S. Court of Appeals for the Ninth Circuit 86**

Taxing and Spending Powers of the Federal Government 87

Other Constitutional Restrictions on Government 88

*The Privileges and Immunities Clause 88**The Full Faith and Credit Clause 88**The Contract Clause 88*

The Amendments to the Constitution 89

*The First Amendment 89**The Fourth Amendment 94***Case 5-3: David Leon Riley v. California and United States v. Wurie 95***The Fifth Amendment 96**The Ninth Amendment 99**The Fourteenth Amendment 99**Summary 100**Point/Counterpoint 101**Questions & Problems 102***6 Criminal Law and Business 105****Case Opener: A Questionable Stock Investment 105**

The Nature and Elements of a Crime 106

*Elements of a Crime 106**Classification of Crimes 107*

White-Collar Crime 107

*Specific White-Collar Crimes 108***Case 6-1: United States of America v. Thomas Tanke 111**

Corporate Criminal Liability 117

Case 6-2: United States v. Park United States Supreme Court 118

Criminal Procedure 119

*Pretrial Procedure 119**Trial Procedure 121**Posttrial Procedure 122*

Tools for Fighting Business Crime 124

*RICO 124**The False Claims Act 124**The Sarbanes-Oxley Act 125**State Whistle-Blower Protection Laws 127**Summary 127**Point/Counterpoint 128**Questions & Problems 128***7 Tort Law 131****Case Opener: Plastic Surgeon Defamation 131**

Introduction to Tort Law 132

Classification of Torts 133

Intentional Torts 133

*Intentional Torts against Persons 133***Case 7-1: Aaron Olson, Appellant, v. Centurylink, Respondent Court of Appeals of Minnesota 138***Intentional Torts against Property 139**Intentional Torts against Economic Interests 140*

Negligence 142

*Duty 142**Breach of Duty 143**Causation 143**Damages 145*

Plaintiff's Doctrines 145

*Res Ipsa Loquitur 145***Case 7-2: Swoboda v. Fontanetta 146***Negligence per se 147*

Defenses to Negligence 147

*Contributory Negligence 147**Comparative Negligence 148**Assumption of the Risk 148**Special Defenses to Negligence 149*

Strict Liability 149

Damages Available in Tort Cases 150

Compensatory Damages 150

Nominal Damages 150

Punitive Damages 151

Case 7-3: Clark v. Chrysler Corporation U.S. Court of Appeals for the Sixth Circuit 152

Summary 153

Point/Counterpoint 154

Questions & Problems 155

8 Real, Personal, and Intellectual Property 157

Case Opener: Technology Companies at War 157

The Nature of Real, Personal, and Intellectual Property 158

Real Property 159

Extent of Ownership 159

Interests in Real Property 160

Property Transfer 161

Case 8-1: Kelo v. City of New London United States Supreme Court 163

Personal Property 164

Voluntary Transfer of Property 165

Involuntary Transfer of Personal Property 166

Other Means of Acquiring Ownership of Property 166

Intellectual Property 166

Trademarks 167

Case 8-2: In Re Simon Shiao Tam 168

Case 8-3: Toys “R” Us, Inc. v. Canarsie Kiddie Shop, Inc. District Court of the Eastern District of New York 170

Copyrights 171

Patents 173

The America Invents Act 175

Trade Secrets 175

Summary 176

Point/Counterpoint 176

Questions & Problems 177

PART 2

Contract Law

9 Introduction to Contracts and Agreement 180

Case Opener: The Problematic Promotion 180

The Definition of a Contract 181

Elements of a Contract 181

Defenses to the Enforcement of a Contract 182

Sources of Contract Law 182

Common Law 182

Uniform Commercial Code 182

Classification of Contracts 183

Bilateral Versus Unilateral Contracts 183

Case 9-1: Zappos.com Inc., Customer Data Security Breach Litigation United States District Court of Nevada 183

Express Versus Implied Contracts 185

Case 9-2: Wrench, LLC. v. Taco Bell Corp. 185

Quasi-Contracts 186

Valid, Void, Voidable, and Unenforceable Contracts 187

Executed Versus Executory Contracts 187

Formal Versus Informal Contracts 187

The Agreement 188

Elements of the Offer 189

Intent 189

Case 9-3: Lucy v. Zehmer Supreme Court of Appeals of Virginia 189

Definite and Certain Terms 191

Communication to the Offeree 192

Termination of the Offer 192

Revocation by the Offeror 192

Rejection by the Offeree 192

Death or Incapacity of the Offeror 193

Destruction or Subsequent Illegality of the Subject Matter 193

Lapse of Time or Failure of Another Condition Specified in the Offer 193

Elements of the Acceptance 193

Manifestation of Intent to be Bound to the Contract 193

Acceptance of Definite and Certain Terms: The Mirror-Image Rule 194

Communication to the Offeror 195

Summary 196

Point/Counterpoint 196

Questions & Problems 197

10 Consideration 200

Case Opener: Upper Deck—Contract Liability or Gift? 200

What Is Consideration? 201

Case 10-1: Hamer v. Sidway New York Court of Appeals 201

Rules of Consideration 202

Lack of Consideration 202

Case 10-2: Bouton v. Byers 203

Adequacy of Consideration 205

Case 10-3: Thelma Agnes Smith v. David Phillip Riley Court of Appeals of Tennessee, Eastern Section, at Knoxville 205

Illusory Promise 206

Past Consideration 206

Case 10-4: Simmons v. Simmons United States District Court of Appeals for Arkansas 208

Preexisting Duty 209

Partial Payment of a Debt 210
Summary 212
Point/Counterpoint 213
Questions & Problems 213

11 Capacity and Legality 216

Case Opener: Liability of Minors for Purchase of Game App 216

Capacity 217
Minors 217

Case 11-1: Adrian Lopez V. Kmart Corporation United States District Court for the Northern District of California 218

Mentally Incapacitated Persons 221
Intoxicated Persons 222

Legality 223

Contracts That Violate State or Federal Statutes 223

Case 11-2: King v. Riedl Alabama Civil Court of Appeals 224

Agreements That Violate Public Policy 226

Case 11-3: Eric Lucier and Karen A. Haley v. Angela and James Williams, Cambridge Associates, Ltd., and Al Vasys Superior Court of New Jersey, Appellate Division 229

Effect of Illegal Agreements 231

Summary 232

Point/Counterpoint 233

Questions & Problems 234

12 Reality of Assent 236

Case Opener: Disagreement Over an Agreement 236

The Importance of Genuine Assent 237

Mistake 237

Unilateral Mistake 238

Mutual Mistake 238

Case 12-1: Simkin v. Blank Court of Appeals of New York 240

Misrepresentation 241

Innocent Misrepresentation 241

Negligent Misrepresentation 241

Fraudulent Misrepresentation 241

Case 12-2: Fantastic Sams Salons Corp. v. Pstevo, LLC and Jeremy Baker United States District Court for the Northern District of Illinois, Eastern Division 242

Undue Influence 245

Duress 245

Case 12-3: Telekenex Inc, Inc. v. Charlotte Russe, Inc. Court of Appeals of Washington, Division One 246

Summary 248

Point/Counterpoint 248

Questions & Problems 249

13 Contracts in Writing and Third-Party Contracts 252

Case Opener: Fallout from a Forgettable Fight 252

Statute of Frauds 253

Contracts Falling within the Statute of Frauds 253

Contracts Whose Terms Prevent Possible Performance within One Year 254

Promises Made in Consideration of Marriage 254

Contracts for One Party to Pay the Debt of Another if the Initial Party Fails to Pay 255

Contracts Related to an Interest in Land 255

Contracts for the Sale of Goods Totaling More Than \$500 257

Further Requirements Specific to Certain States 257

Exceptions to the Statute of Frauds 257

Admission 257

Partial Performance 258

Promissory Estoppel 258

Exceptions Under the UCC 258

Sufficiency of the Writing 259

Case 13-1: Heritage Constructors, Inc. v. Chrietzberg Electric, Inc. and Richard Marc Chrietzberg 259

Parol Evidence Rule 261

Exceptions to the Parol Evidence Rule 262

Contracts That have been Subsequently Modified 262

Contracts Conditioned on Orally Agreed-On Terms, Nonfinalized, Partially Written and Partially Oral, Contracts 262

Contracts Containing Ambiguous Terms 263

Incomplete Contracts 263

Contracts with Obvious Typographical Errors 263

Void or Voidable Contracts 263

Evidence of Prior Dealings or Usage of Trade 263

Integrated Contracts 264

Third-Party Rights to Contracts 264

Assignments and Delegations 264

Assignment 265

Delegation 268

Assignment of the Contract 269

Third-Party Beneficiary Contracts 270

Intended Beneficiaries 270

Case 13-2: Allan v. Nersesova 271

Case 13-3: Lawrence v. Fox Court of Appeals of New York 272

Incidental Beneficiaries 275

Summary 276

Point/Counterpoint 277

Questions & Problems 278

14 Discharge and Remedies 281

Case Opener: The Battle of the Pharmacies 281

Methods of Discharging a Contract 282

Conditions 282

Case 14-1: Mind & Motion Utah Investments, LIC, Appellee v. Celtic Bank Corporation 283

Discharge by Performance 284

Discharge by Material Breach 286

Case 14-2: Hamilton v. State Farm Fire & Casualty Insurance Company United States Court of Appeals for the Fifth Circuit 286

Discharge by Mutual Agreement 287

Discharge by Operation of Law 288

Case 14-3: Thrifty Rent-A-Car System v. South Florida Transport U.S. District Court for the Northern District of Oklahoma 289

Remedies 292

Legal Remedies (Monetary Damages) 292

Case 14-4: S. Brooke Purll, Inc., T/A Purll Construction v. Patrick Darrell Vailes District of Columbia Court of Appeals 295

Equitable Remedies 297

Summary 299

Point/Counterpoint 299

Questions & Problems 300

PART 3

Domestic and International Sales Law

15 Formation and Performance of Sales and Lease Contracts 303

Case Opener: Anyone for a Bar-B-Que? 303

The Uniform Commercial Code 304

The Scope of the UCC 304

The Significance of the UCC 304

Articles 2 and 2(A) of the UCC 305

Article 2 of the UCC 305

Article 2(A) of the UCC 308

Contracts for the International Sale of Goods 308

The Scope and Significance of the CISG 308

How Sales and Lease Contracts are Formed under the UCC 309

Formation in General 310

Offer and Acceptance 310

Consideration 311

Battle of the Forms 311

Requirements under the Statute of Frauds 312

Unconscionability 312

Title 312

Three Kinds of Title 312

Acquiring Good Title 312

Case 15-1: Alfonso Candela, Appellant, v. Port Motors, Inc., Respondent, et al., Defendant Supreme Court of New York, Appellate Division, Second Department 313

Voidable Title 313

Entrustment 314

Title Versus Other Interests in the Goods 314

Types of Sales Contracts 315

Simple Delivery Contract 316

Common-Carrier Delivery Contract 316

Goods-in-Bailment Contract 317

Conditional Sales Contract 318

Risk of Loss during a Breach of Contract 318

When the Seller Is in Breach 318

When the Buyer Is in Breach 318

Summary 319

Point/Counterpoint 321

Questions & Problems 321

16 Sales and Lease Contracts: Performance, Warranties, and Remedies 324

Case Opener: How Much Is That Doggy in the Window? 324

The Basic Performance Obligation 325

Good Faith 325

Specific Obligations of Sellers and Lessors 326

The Perfect Tender Rule 326

Case 16-1: Alaska Pacific Trading Co. v. Eagon Forest Products Inc. Washington Appellate Division 1 328

Exceptions to the Perfect Tender Rule 328

Specific Obligations of Buyers and Lessees 330

The Basic Obligation: Inspection, Payment, and Acceptance 330

Exceptions to the Basic Obligation 330

Warranties 330

Warranties of Title 331

Express Warranties 331

Implied Warranties of Quality 331

Case 16-2: Priscilla D. Webster v. Blue Ship Tea Room, Inc. Supreme Judicial Court of Massachusetts 332

Warranty Rights of Third Parties 333

Warranty Disclaimers and Waivers 334

The Goal of Contract Remedies 335

Remedies Available to Sellers and Lessors under the UCC 336

Cancel the Contract 336

Withhold Delivery 336

Resell or Dispose of the Goods 336

Sue to Get the Benefit of the Bargain 336

Stop Delivery 336

Reclaim the Goods 336

Remedies Available to Buyers and Lessees under the UCC 337	<i>Availability Schedule For Deposited Checks</i> 361
<i>Cancel the Contract</i> 337	<i>The Truth-in-Savings Act</i> 362
<i>Obtain Cover</i> 337	When a Bank May Charge a Customer's Account 362
<i>Sue to Recover Damages</i> 337	<i>Wrongful Dishonor</i> 362
<i>Recover the Goods</i> 337	<i>Stop-Payment Order</i> 363
<i>Obtain Specific Performance</i> 338	<i>Postdated Checks</i> 363
<i>Reject Nonconforming Goods</i> 339	<i>Stale Checks</i> 363
<i>Revoke Acceptance of Nonconforming Goods</i> 339	<i>Forgeries And Alterations</i> 363
<i>Accept the Nonconforming Goods and Seek Damages</i> 339	Electronic Fund Transfers 365
Modifications or Limitations to the Remedies Otherwise Provided by the UCC 339	<i>Consumer Fund Transfers</i> 365
<i>Summary</i> 340	<i>Commercial Fund Transfers</i> 365
<i>Point/Counterpoint</i> 341	E-Money and Online Banking 365
<i>Questions & Problems</i> 342	<i>Online Banking Services</i> 366
	<i>Regulatory Compliance</i> 366
	<i>Privacy Protection</i> 366
	<i>Summary</i> 367
	<i>Point/Counterpoint</i> 368
	<i>Questions & Problems</i> 369

PART 4

Negotiable Instruments and Banking

17 Negotiable Instruments: Negotiability and Transferability 344

Case Opener: Oral Agreements and Negotiable Instruments 344

The Need for Negotiable Instruments 345
<i>Contracts as Commercial Paper</i> 345
<i>Problems with Commercial Paper</i> 345

Types of Negotiable Instruments 346

An Overview of the Law of Negotiable Instruments 346

Case 17-1: Reger Development, LIC v. National City Bank United States Court of Appeals, Seventh Circuit 347

Requirements for Negotiability 348

Negotiation 352

<i>Delivery</i> 352
<i>Endorsement</i> 352
<i>Noncriminal Endorsement Problems</i> 353

Case 17-2: Jones v. Wells Fargo Bank 353

Banking 356

Checks 356

<i>Cashier's Checks</i> 357
<i>Traveler's Checks</i> 358
<i>Money Orders</i> 358
<i>Certified Checks</i> 359
<i>Why Use Cashier's or Certified Checks?</i> 359
<i>Lost, Stolen, or Destroyed Cashier's or Certified Checks</i> 360

Accepting Deposits 360

<i>The Check Collection Process</i> 360
<i>Electronic Check Presentment</i> 361

18 Holder in Due Course, Liability, and Defenses 371

Case Opener: Dishonored Check and Holder-in-Due-Course Status 371

Holder-in-Due-Course Doctrine 372

Reason for Holder-in-Due-Course Status 372

Requirements for Holder-in-Due-Course Status 372

<i>Be A Holder of A Complete and Authentic Negotiable Instrument</i> 373
<i>Take Instrument for Value</i> 374
<i>Take Instrument in Good Faith</i> 375

Case 18-1: Wawel Savings Bank v. Jersey Tractor Trailer Training, Inc. United States Court of Appeals for the Third District 375

Take Instrument without Notice 376

Case 18-2: Creative Ventures, LLC v. Jim Ward & Associates 379

The Shelter Principle and HDC 379

Liability 380

Signature Liability 380

<i>Primary Liability Of Makers And Acceptors</i> 380
<i>Secondary Liability of Drawers and Endorsers</i> 381
<i>Accommodation Parties</i> 383
<i>Unauthorized Signatures and Endorsements</i> 383

Warranty Liability 385

<i>Transfer Warranty</i> 385
<i>Presentment Warranty</i> 385

Avoiding Liability for Negotiable Instruments 386

<i>Defenses to Liability</i> 386
<i>Discharge of Liability on Instruments</i> 388

Summary 390

Point/Counterpoint 391

Questions & Problems 392

PART 5**Creditors' Rights and Bankruptcy****19 Secured Transactions and Bankruptcy 395****Case Opener: A Commercially Reasonable Sale? 395**

Important Definitions Associated with Secured Transactions 396

Creation of Secured Interests 397

Written Agreement 397

Value 397

Debtor Rights in the Collateral 397

Purchase-Money Security Interest 397

Perfected Security Interest 398

Perfection by Filing 398

Perfection by Possession 398

Automatic Perfection 399

Perfection of Movable Collateral 399

Perfection of Security Interests in Automobiles and Boats 399

The Scope of a Security Interest 400

After-Acquired Property 400

Proceeds 400

Termination of a Security Interest 400

Priority Disputes 400

Secured Versus Unsecured Creditors 401

Secured Versus Secured Creditors 401

Secured Party Versus Buyer 401

Default 403

Taking Possession of the Collateral 403

Case 19-1: Price Auto Sales, Inc. v. Sanders Texas Court of Appeals 404

Proceeding to Judgment 405

Bankruptcy and Reorganization 405

The Bankruptcy Act and Its Goals 406

Title 11 of The United States Code 406

Bankruptcy Proceedings 406

Specific Types of Relief Available 406

Case 19-2: In Re Arkuszewski U.S. Bankruptcy Court, Northern District of Illinois 407

Chapter 7: Liquidation Proceedings 408

Chapter 11: Reorganizations 413

Chapter 13: Individual Repayment Plans 414

Chapter 12: Family-Farmer and Family-Fisherman Plans 415

Summary 416

Point/Counterpoint 417

Questions & Problems 418

PART 6**Agency****20 Agency and Liability to Third Parties 421****Case Opener: FedEx and Independent Contractors 421**

Introduction to Agency Law 422

Creation of the Agency Relationship 422

Expressed Agency (Agency By Agreement) 423

Agency by Implied Authority 424

Apparent Agency (Agency by Estoppel) 425

Agency by Ratification 426

Recent Developments in Agent/Employer Law 427

Agency Relationships 427

Principal-Agent Relationship 427

Employer-Employee Relationship 427

Employer-Independent Contractor Relationship 428

Case 20-1: Glenn v. Gibbs 429

Duties of the Agent and the Principal 430

Principal's Duties to the Agent 430

Agent's Duties to the Principal 432

Rights and Remedies 433

Principal's Rights and Remedies Against the Agent 433

Agent's Rights and Remedies Against the Principal 434

Authority of the Agent: The Link to the Principal's Liability 435

Express Authority 435

Implied Authority 435

Apparent Authority and Estoppel 436

Contractual Liability of the Principal and Agent 436

Classification of the Principal 436

Authorized Acts 436

Unauthorized Acts 437

Tort Liability and the Agency Relationship 438

Principal's Tortious Conduct 438

Case 20-2: Iglesia Cristiana la Casa del Senor, Inc., etc. v. L.M. Court of Appeal of Florida, Third District 439

Agent Misrepresentation 440

Principal's Liability and the Independent Contractor 441

Termination of the Agency Relationship 442

Termination by Acts of Parties 443

Termination by Operation of Law 444

Summary 445

Point/Counterpoint 447

Questions & Problems 447

PART 7

Business Organizations

21 Forms of Business

Organization 450

Case Opener: The Dunkin' Donuts Franchise Agreement 450

Major Forms of Business Organization 451

*Sole Proprietorship 451**Partnership 452**Different Types of Partnerships 456**Corporation 457**Limited Liability Company 458*

Specialized Forms of Business Organization 461

*Cooperative 461**Joint Stock Company 461**Business Trust 461**Syndicate 461**Joint Venture 461***Case 21-1: Meyer v. Christie U.S. Court of Appeals for the Tenth Circuit 462***Franchise 463***Case 21-2: Patterson v. Domino's Pizza 465****Case 21-3: Cousins Subs Systems, Inc. v. Michael R. McKinney U.S. District Court for the Eastern District of Wisconsin 467***Summary 468**Point/Counterpoint 468**Questions & Problems 469*

22 Corporations: Formation and Organization 472

Case Opener: The Formation of the Facebook Corporation 472

Characteristics of Corporations 473

*Legal Entity 473**Rights as A Person and A Citizen 473**Creature of the State 473**Limited Liability 473**Free Transferability of Corporate Shares 473**Perpetual Existence 473**Centralized Management 474**Corporate Taxation 474**Liability for Officers and Employees 474*

Corporate Powers 475

*Express and Implied Powers 475**Ultra Vires Act 475*

Classification of Corporations 475

*Public or Private 475**Profit or Nonprofit 476**Domestic, Foreign, and Alien Corporations 476**Publicly Held or Closely Held 476**Subchapter S Corporation 476**Professional Corporation 477*

Formation of the Corporation 477

*Organizing and Promoting the Corporation 477**Selecting a State for Incorporation 477*

Legal Process of Incorporation 478

*Selection of Corporate Name 478**Incorporators 478**Articles of Incorporation 478**First Organizational Meeting 478*

Potential Problems with Formation of the Corporation 479

Responses to Defective Incorporation 479

Corporate Financing 481

*Debt Securities 481**Equity Securities 482*

Importance of Regulating Interactions among Directors, Officers, and Shareholders within a Corporation 482

Roles of Directors, Officers, and Shareholders 482

*Directors' Roles 483**Officers' Roles 483**Shareholders' Roles 483*

Duties of Directors, Officers, and Shareholders 485

*Duties of Directors and Officers 485**Duties of Shareholders 488***Case 22-1: Mccann v. Mccann Supreme Court of Idaho 488**

Liabilities of Directors, Officers, and Shareholders 489

*Liability of Directors and Officers 489***Case 22-2: KDW Restructuring & Liquidation v. Greenfield 490***Liability of Shareholders 491*

Rights of Directors, Officers, and Shareholders 492

*Directors' Rights 492**Officers' Rights 492**Shareholders' Rights 492*

Purchase of Stock 495

The Nature of Takeovers 495

*Types of Takeovers 495**Response to Takeovers 496***Case 22-3: Campbell, Kesser, and Williams v. Pothas Corporation U.S. Court of Appeals for the Sixth Circuit 496**

Response to Termination 497

*Dissolution 497**Summary 498**Point/Counterpoint 499**Questions & Problems 500*

23 Securities Regulation 503

Case Opener: The Martha Stewart Case 503

What Is a Security? 504

Case 23-1: Securities and Exchange Commission v. Mutual Benefits Corp Eleventh Circuit Court 504

Securities Regulation 505

The Securities and Exchange Commission 506

The Securities Act of 1933 506

Registration Statement 507

Prospectus 507

Periods of the Filing Process 507

Special Registration Provisions 508

Exemptions Under The 1933 Act 508

Violations and Liability 511

The Securities Exchange Act of 1934 511

Section 10(B) and Rule 10B-5 512

Insider Trading 512

Case 23-2: Securities and Exchange Commission v. Texas Gulf Sulphur Co. U.S. Court of Appeals for the Second Circuit 513

The Private Securities Litigation Reform Act of 1995 514

Outsiders and Insider Trading 514

Case 23-3: United States of America v. Matthew Kluger United States Court of Appeals for the Third Circuit 515

Section 16(B) 516

Proxy Solicitations 517

Violations of the 1934 Act 517

Regulation of Investment Companies 518

State Securities Laws 519

Summary 520

Point/Counterpoint 521

Questions & Problems 522

PART 8

Government Regulation

24 Employment and Discrimination Law 525

Case Opener: Brad Gets Fired from So Clean! 525

When May an Employee be Fired? 526

Federal Employment Discrimination Laws Governing Employers 526

Civil Rights Act—Title VII 527

Disparate-Treatment Discrimination Under Title VII 527

Disparate-Impact Discrimination Under Title VII 528

Sexual Harassment Under Title VII 529

Case 24-1: Teresa Harris v. Forklift Systems, Inc. United States Supreme Court 530

Harassment of Other Protected Classes under Title VII 531

Pregnancy Discrimination Act of 1987—An Amendment to Title VII 531

Defenses to Claims under Title VII 532

Remedies under Title VII 532

Procedure for Filing a Claim under Title VII 533

Discrimination Based on Sexual Orientation—Actionable? 533

Case 24-2: Donald Baldwin, Complainant v. Anthony Foxx, Secretary of Dept. of Transportation (FAA), Agency 534

Discrimination Based on Marriage 535

Age Discrimination in Employment Act of 1967 536

Case 24-3: Bobby Dean Nickel v. Staples Contract & Commercial Inc. 536

Americans with Disabilities Act 537

May an Employer Discriminate against a Smoker? 538

Equal Pay Act of 1963 538

Additional Laws Governing the Employment Relationship 539

Fair Labor Standards Act 539

Family and Medical Leave Act 540

Unemployment Compensation 540

Workers' Compensation Laws 540

Consolidated Omnibus Budget Reconciliation Act of 1985 540

Employee Retirement Income Security Act of 1974 541

Occupational Safety and Health Act of 1970 541

Employee Privacy in the Workplace 542

Electronic Monitoring and Communication 542

Use of Social Media in Employment Decisions 543

Use of Social Media in Hiring Decisions 543

Use of Social Media in Firing Decisions 543

Responsibilities of Employers in Hiring Foreign Workers 544

Labor Laws and Unions 548

The Wagner Act of 1935 549

The Taft-Hartley Act of 1947 550

The Landrum-Griffin Act of 1959 550

The National Labor Relations Board 550

The Collective Bargaining Process 551

Summary 551

Point/Counterpoint 553

Questions & Problems 553

25 Consumer Law 557

Case Opener: Deceptive Advertising and the Ultimate Weight Loss Cure 557

The Federal Trade Commission 558

How the FTC Brings an Action 558

Trade Regulation Rules 559

Deceptive Advertising 559

Case 25-1: Gotlin v. Lederman United States Court of Appeals for the Second Circuit 561

Bait-and-Switch Advertising 562
FTC Actions Against Deceptive Advertising 563
Telemarketing and Electronic Advertising 563
Data Mining and Privacy 564
Tobacco Advertising 566

Labeling and Packaging Laws 566

Sales 567

Door-to-Door Sales 567
Telephone and Mail-Order Sales 568
FTC Regulation of Sales in Specific Industries 568

Credit Protection 570

The Truth in Lending Act 570
The Fair Credit Reporting Act 571
The Fair Debt Collection Practices Act 572

Case 25-2: Crawford v. LVNV Funding, LLC 573

The Credit Card Fraud Act 574
The Fair Credit Billing Act 574
The Fair and Accurate Credit Transactions Act 574
The Credit Card Holders' Bill of Rights Act 575

Consumer Health and Safety 576

The Federal Food, Drug, and Cosmetic Act 576

Case 25-3: Food and Drug Administration et al. v. Brown & Williamson Tobacco Corporation et al. United States Supreme Court 576

The Consumer Product Safety Act 577

Summary 578

Point/Counterpoint 580

Questions & Problems 580

Appendixes

APPENDIX A

The Constitution of the United States of America A

APPENDIX B

Sarbanes-Oxley Act of 2002 B-1

Glossary G-1

Index I

CHAPTER 1

An Introduction to the Fundamentals of Dynamic Business Law

LEARNING OBJECTIVES

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

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



LO 1-1 What is business law?

This book is for future business managers, especially those who wish to be leaders. An essential factor in preparing for that career is awareness of the legal issues arising in business. Businesses need to finance capital growth, purchase inputs, and hire and develop employees. In addition, they must sell to consumers, please owners, and comply with government rules. All these activities are full of potential legal conflicts.

A theme of this book will be a surprising number of legal implications that result from what on the surface might look like a simple, everyday business decision. Think along with us about the desire of a young entrepreneur who has a new idea and wants to develop its market potential.

In the seemingly ever-expanding market for smart phone apps, individuals are often rewarded for creating apps that make lives simpler or that entertain people. You have watched the business success of hundreds of smart phone applications. You have certainly downloaded your share of them. You have an idea for a phone app that you believe has the potential to become the next Vine or Instagram.

Your proposed app will allow users to search for lawyers based on the location and specialization that the user desires. The app will also rate different lawyers and provide personal information about the lawyers who are being rated. Your goal is to make it easier for uninformed consumers to locate the lawyer best suited for their needs.

You and a friend, who has a background in computer science, develop software to run the application. You also create a design for the app: what the app will look like and how it will function.

After you complete the design of the app, you decide that you would like to upload it to the Apple App Store. You contact Apple, and a representative tells you that you will be able to upload the app if you pay a fee and sign a few forms.

In this textbook, you will find legal concepts and terms that will allow you to see this scenario with different eyes. What you will learn will warn you about the dangers of letting the excitement of the moment—your big moment—cause you to forget that business is, in part, a series of conflicts. And in those struggles, you need to understand your interests and responsibilities. From the instant you first interact with another party in a business relationship, insights from your study of business law should kick in to protect you.

Let's walk through just a small sample of the legal issues you will face as you try to make your app the next big thing.

Because you need a platform on which to sell your app, you will need to establish a contract with an app store such as the Apple App Store. This book will teach you about the elements required to establish a legal contract. In other words, only certain kinds of legal agreements will provide legal protection if a later dispute arises. Whether these elements are met will dictate whether the party with whom you are contracting is obligated to perform a certain duty. For example, if you believe that Apple has a legal duty to put your app in its App Store or, perhaps, place your app in a particular position in its online store, you would have to prove that a contract creating such a duty exists.

The knowledge you will gain regarding contract law will also help you understand the complexity of the relationship between you and the user purchasing your app. For example, if the app you created malfunctions after a user has purchased it, how will you and the customer settle a dispute? Will you go to court, or would you prefer disputes to be settled through alternate dispute resolution methods such as arbitration? Will you create a binding arbitration clause to require consumer disputes to be resolved through arbitration? After reading this textbook, you will become more aware of the various conflict resolution mechanisms available to businesses and consumers.

In addition to the contractual issues underlying your app business, you will also need to be aware of possible tort issues related to your app. (A tort, at its simplest level, is legal language for a civil [non-criminal] harm committed against another in which the injured party can sue for damages.) For example, because your app will compare the desirability of certain lawyers to others, the lawyers whom you are rating might feel threatened by your app. Will these lawyers be able to file a suit in tort against you for defamation or privacy torts such as false light or public disclosure of private facts?

Alternatively, what can you do when a competing business writes a column in a newspaper mocking and generally trashing your new app? To answer that question, you need a good understanding of the torts of disparagement or slander of quality, two torts that you might be able to use to defend your business against fraudulent claims. The sections in this textbook on tort law will enable you to ask questions about potential tort claims related to the eventual marketing of your app.

Later, when you market your app, you will also have to be aware of the restrictions on advertising that exist under consumer protection laws. Will you make any promises to consumers regarding your app in your advertisements? Will these advertisements constitute legally permitted puffery, or will they be deceptive advertisement under the Federal Trade Commission Act? As you read about consumer law in this textbook, you will learn about the restrictions the law places on advertising.

When you design your app, you will have to make sure that you do not infringe on the intellectual property—such as patents or trademarks—of other app businesses. What words and symbols will you use? Do those words and symbols constitute trademark infringement? This book will explain the intellectual property law that governs the invention of an app.

Finally, once you have studied this book, you will realize the importance of carefully selecting the form of business organization you and your friend choose for operating this app. For example, will you operate the app under a sole proprietorship or a partnership agreement? As you will learn, each of these forms of business organization provide you with different advantages and disadvantages.

Business law consists of the enforceable rules of conduct that govern commercial relationships. In other words, buyers and sellers interact in market exchanges within the rules that indicate the boundaries of legal business behavior. Constitutions, legislatures, regulatory bodies, and courts spell out what market participants may or may not legally do.

business law

The enforceable rules of conduct that govern the actions of buyers and sellers in market exchanges.

LO 1-2 How does business law relate to business education?

Understanding business law is necessary for future businesspeople because there simply is no market transaction that occurs outside legal guidelines. All contracts, employment decisions, and payments to a supplier are limited and protected by business law. Each of the six functional areas of business—management, production and transportation, marketing, research and development, accounting and finance, and human resource management—sits on a foundation of business law.

Law and Its Purposes

LO 1-3 What are the purposes of law?

Many of us might like to impose rules on others, defining their rights and responsibilities. Few of us can do this as individuals, but a majority of citizens in a democracy can agree to establish rules for business behavior. They can permit certain authorities to make and enforce rules describing what behavior is permitted and encouraged in their community. These rules are what we refer to as the **law**, and they are enforceable in the courts of that community. Exhibit 1-1 lists a few of the numerous purposes fulfilled by the law.

Exhibit 1-1 is a reminder of why we are very proud when we say we are a society of laws. The respect we give to the law as a source of authority is in part a recognition of the fact that in the absence of law, we would rely solely on the goodwill and dependability of one another. Most of us greatly prefer the law to that option.

law

Rules of conduct in any organized society that are enforced by the governing authority of the community.

Classification of the Law

LO 1-4 What are the purposes of law?

There are many ways of thinking about the law. For example, we can divide law into *national* versus *international* law, *federal* versus *state* law, and *public* versus *private* law. **Private law** involves disputes between private individuals or groups. As an illustration, if a businessperson owns a computer equipment store and is delinquent in paying rent to the landlord, the dispute between

private law

Law that involves suits between private individuals or groups.

Exhibit 1-1

Purposes of the Law

- Providing order such that one can depend on a promise or an expectation of obligations.
- Serving as an alternative to fighting.
- Facilitating a sense that change is possible, but only after a rational consideration of options.
- Encouraging social justice.
- Guaranteeing personal freedoms.
- Serving as a moral guide by indicating minimal expectations of citizens and organizations.

public law

Law that involves suits between private individuals or groups and their government.

civil law

The body of laws that govern the rights and responsibilities either between persons or between persons and their government.

criminal law

The body of laws that involve the rights and responsibilities an individual has with respect to the public as a whole.

them entails private law. **Public law** involves disputes between private individuals or groups and their government. For instance, if a computer store dumps waste behind its building in violation of local, state, or federal environmental regulations, the resulting dispute focuses on public law.

Another distinction among types of laws is civil law versus criminal law. **Civil law** involves the rights and responsibilities found in relationships between persons and between persons and their government. It also involves the remedies available when someone's rights are violated. For example, in 2009, Mississippi Valley Silica Co. was ordered to pay a plaintiff \$9 million because the court ruled that it sold sand to the plaintiff's employer with the knowledge that using that sand on a regular basis would expose a worker to a form of cancer. Yet Mississippi Valley did not alert those who bought the sand about the risk.

In contrast to civil law, **criminal law** applies to situations in which someone commits an act against the public as a unit. These crimes are prosecuted not by individuals but by the state or federal government.

One example of a criminal law is the prohibition against insider trading on the stock exchange. Insider trading occurs when an individual uses insider, or secret, company information to increase her or his own finances or those of family or friends. For example, several years ago, an IBM secretary allegedly told her husband, who told several other people, that the company was going to take over operations of Lotus Development. This information was spread among a number of individuals before it was publicly announced.

On the basis of this leak, 25 people bought stock that increased greatly in value following IBM's public announcement. The Securities and Exchange Commission filed charges against the 25 stock purchasers because they were creating an unfair trading environment for the public.

Sources of Business Law

LO 1-5 What are the sources of the law?

How is law created, and where do we look to find the laws?

Constitutions

The United States Constitution and the constitution of each state establish the fundamental principles and rules by which the United States and the individual states are governed. The term **constitutional law** refers to the general limits and powers of the federal and state governments as stated in their written constitutions. The U.S. Constitution is the supreme law of the land, the foundation for all laws in the United States. It is the primary authority when we are trying to identify the relationship between business organizations and government.

Statutes

Legislative actions, called *statutes*, are another important source of law. The assortment of rules and regulations put forth by legislatures is what we call **statutory law**. These legislative acts can be

constitutional law

The general limits and powers of a government as interpreted from its written constitution.

statutory law

The assortment of rules and regulations put forth by legislatures.

found in the U.S. Code when they are passed by Congress or in the various state codes when they are enacted by state legislatures. The codes are a collection of all the laws in one convenient location.

Because so much business activity occurs within the jurisdiction of state courts, business managers must be familiar with the local city and county ordinances that govern matters not covered by federal or state codes. These ordinances address important business considerations such as local taxes, environmental standards, zoning ordinances, and building codes.

For example, if you want to open a Krispy Kreme franchise in Santa Fe, New Mexico, you must follow local guidelines regarding the area where you may build your store, the materials that you may use to build, and the state minimum wage that you must pay to employees making donuts. The regulations will be different if you want to open your franchise in Toledo, Ohio, or in Seattle, Washington.

Although they are not a source of law in the same sense as constitutions and statutory law, **model** or **uniform laws** serve as a basis for some statutory law at the state level. Business activity is made more difficult when state laws vary. To prevent such problems, a group of legal scholars and lawyers formed the National Conference of Commissioners on Uniform State Laws (NCC). The NCC regularly urges states to enact model laws to provide greater uniformity of law. The response is entirely in the hands of the state legislatures. They can ignore a suggestion or adopt part or all of the proposed model law.

The proposals of the NCC, though not laws themselves, have been adopted on more than 200 occasions by state legislatures. The NCC is an especially important influence on business law. Paired with the publications of the American Law Institute, the NCC became the source of the *Uniform Commercial Code (UCC)*. The UCC is a body of law so significant for business activities that it will be the focus of intensive study in several chapters of this text. The UCC laws include sales laws and other regulations affecting commerce, such as bank deposits and collections, title documents, and warranties. For example, these laws govern the different types of warranties that companies such as Microsoft, Sony, and Honda provide with their products.

Cases

Constitutions, legislatures, and administrative agencies encourage certain behavior and prevent other actions. But the boundaries of these laws are seldom self-explanatory. Consequently, law must be interpreted.

Case law is the collection of legal interpretations made by judges. An alternative name for case law is **common law**. These interpretations are law unless they are revoked later by new statutory law.

Judicial opinions are especially significant for businesses because a modern business often operates in multiple legal jurisdictions. Because statutory laws are subject to interpretation, one court may have interpreted particular laws one way at one business location, and a second court may interpret a similarly worded statute differently at a second business location.

We will often refer to these judicial opinions as “cases.” Be sure to distinguish judicial opinions in your mind from the business cases you may study in your other business classes, where the cases refer to business situations where you are being asked to apply the business principles you have learned.

Courts issue judicial decisions that often include interpretations of statutes and administrative regulations. These decisions contain the reasoning the courts use to arrive at their decisions. The reasoning depends heavily on **precedent**, the use of past decisions to guide future decisions. An earlier decision in a similar fact pattern is a precedent that guides later decisions, thereby providing greater stability and predictability to the law.

The 2014 case of *Air Wisconsin Airlines Corp. v. Hoeper* (No. 12-315, slip op. Sup. Ct. January 27, 2014) provides an illustration of how important knowledge of business law and precedent can be. Mr. Hoeper was a pilot for Wisconsin Air. He needed to be certified to fly a new kind of aircraft his employer bought. At the conclusion of his fourth failed attempt to be certified, Mr. Hoeper raised his voice, tossed his headset, used profanity, and accused the instructor of railroading him.

The manager who booked a return flight for Hoeper discussed Hoeper’s behavior with officials of Wisconsin Air. They knew that Hoeper was licensed to carry a firearm. Consequently,

model laws

Laws created to account for the variability of laws among states. These laws serve to standardize the otherwise different interstate laws. Also called *uniform laws*.

case law

The collection of legal interpretations made by judges. They are considered to be law unless otherwise revoked by a statutory law. Also known as *common law*.

precedent

A tool used by judges to make rulings on cases on the basis of key similarities to previous cases.

an airline executive warned the Transportation Security Administration (TSA). During the call, the executive said that the airline was concerned about Hoyer's mental stability and the whereabouts of his firearm.

The TSA removed the pilot from the airplane, searched him, and questioned him about the whereabouts of his firearm. Hoyer sued for defamation. The jury found for Hoyer, and the Colorado Supreme Court agreed with the jury on appeal.

When the U.S. Supreme Court heard the case, it reversed the decision, finding against Hoyer's defamation claim. In the course of that opinion, Justice Sotomayor, writing for the Court, relied heavily on the earlier *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496 (1991) case for precedent.

Hoyer maintained that the Wisconsin Air executive who warned the TSA should have qualified the concern about the location of Hoyer's weapon by saying that "it had no reason to think he actually was armed." But Justice Sotomayor pointed out that *Masson* provided that in a defamation action, a materially false statement would have to be one that would have had a different effect on the mind of the listener from that which the truth would have produced and, in this case, a reasonable TSA officer would have searched the pilot for a gun after hearing that the pilot was upset.

It is crucial for business managers to pay attention to changes in the law and cases in which new precedents are set. These precedents must be taken into account when making future business decisions. For instance, courts sometimes make new rulings regarding the kinds of warnings companies should be required to provide to consumers about potential harm that could result from their products.

One example was a case filed against McDonald's. After a woman was severely burned by very hot coffee, the company was found negligent for failing to provide a warning label on its hot-beverage cups. Now many retailers of hot beverages provide warning labels on their beverage cups because of the precedent that was set by this case.

When courts rely on precedent, they are obeying **stare decisis** ("standing by the decision"). Following stare decisis creates greater predictability for both businesses and individuals that look to the courts for the rules on which they should rely when they engage in market exchanges. In accordance with stare decisis, rulings that are made in higher courts become binding precedent for lower courts.

Even though this practice is meant to create a consistent and reliable justice system, different judges may view the facts of a case in different ways. In addition, courts are sometimes presented with a new issue and do not have a binding decision to follow. In such instances, they may look to decisions made in similar cases by nonbinding courts in other states or jurisdictions.

If a new issue comes before two state courts and there is no binding decision from the state supreme court, both state courts need to look for other rulings on similar cases. They are not bound by each other's decision, so they might have different decisions on the same subject. The decisions in these lower courts can be appealed to the state appeals court, however, and the appeals court's decision can be appealed to the state supreme court.

One example of a case that has been used in accordance with stare decisis as a binding precedent is *Brown v. Board of Education*,¹ which abolished discriminatory policies for individuals of different racial backgrounds. For instance, in *Regents of the University of California v. Bakke*,² the plaintiff, a white male, had applied to the University of California at Davis medical school two years in a row and been denied admittance. He alleged that the admissions process was discriminatory because out of 100 slots, 16 were reserved for members of minority races.

The U.S. Supreme Court found that the school's admissions policy was not legal, referencing *Brown* and stating that the basic principle behind it and similar cases was that individuals could not be excluded on the basis of race or ethnicity. The Court wrote, "Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake."

Just as state statutes have been strongly influenced by the suggestions of the NCC, common law evolves with the assistance of a mechanism called **Restatements of the Law**. These

stare decisis

"Standing by the decision" a principle stating that rulings made in higher courts are binding precedent for lower courts.

Restatements of the Law

Summaries of common law rules in a particular area of the law. Restatements do not carry the weight of law but can be used to guide interpretations of particular cases.

¹ 347 U.S. 483 (1954).

² 438 U.S. 265 (1978).

Restatements are summaries of the common law rules in a particular area of the law that have been enacted by most states.

In addition to the Restatements, many influences are at work in the minds of judges when they interpret constitutions, statutes, and regulations. For example, the values and social backgrounds of the judges function as lights and shadows, moving the judges toward particular legal decisions.

Administrative Law

Constitutions and statutes are never complete in the sense of covering all the detailed rules that affect government and business relations. The federal government, as well as state and local governments, has dozens of administrative agencies whose task is to perform a particular government function. For example, the Environmental Protection Agency (EPA) has broad responsibilities to enforce federal statutes in the area of environmental protection.

Administrative law is the collection of rules and decisions made by all these administrative agencies. Just glance at Exhibit 1-2 to get a sense of the scope of a few of the major federal administrative agencies.

Businesses function within the rules established by agencies like these. For example, the Occupational Safety and Health Administration (OSHA) oversees health and workplace safety and makes sure that employees are working in conditions that are not hazardous.

In 2015, illustrating the implications of OSHA for business managers, Walmart was fined \$7,000 when a store in Valley Stream, New York, did not “furnish a place of employment which was free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to the hazards of asphyxiation or being struck due to crowd crush, crowd surge or crowd trampling.” Walmart’s managers and employees failed to provide effective crowd management training and did not use appropriate crowd management techniques to safely manage a large crowd of approximately 2,000 customers.

Treaties

A *treaty* is a binding agreement between two states or international organizations. Treaties may be called several things: international agreements, covenants, exchanges of letters, conventions, or protocols. In the United States, a treaty is generally negotiated by the executive branch. To be binding, it must then be approved by two-thirds of the Senate.

A treaty is similar to a contract in two important ways. Both treaties and contracts are attempts by parties to determine rights and obligations among themselves. In addition, when a party fails to obey a treaty or an international contract, international law imposes liability on that party.

administrative law

The collection of rules and decisions made by administrative agencies to fill in particular details missing from constitutions and statutes.

INDEPENDENT AGENCIES	EXECUTIVE AGENCIES
Commodity Futures Trading Commission (CFTC)	Federal Deposit Insurance Corporation (FDIC)
Consumer Product Safety Commission (CPSC)	Occupational Safety and Health Administration (OSHA)
Equal Employment Opportunity Commission (EEOC)	General Services Administration (GSA)
Federal Trade Commission (FTC)	National Aeronautics and Space Administration (NASA)
Federal Communications Commission (FCC)	Small Business Administration (SBA)
Interstate Commerce Commission (ICC)	International Development Cooperative Agency (IDCA)
National Labor Relations Board (NLRB)	National Science Foundation (NSF)
National Transportation Safety Board (NTSB)	Veterans Administration (VA)
Nuclear Regulatory Commission (NRC)	Office of Personnel Management (OPM)
Securities and Exchange Commission (SEC)	

Exhibit 1-2

Major Federal Administrative Agencies

Executive Orders

The president and state governors can issue directives requiring officials in the executive branch to perform their functions in a particular manner. The Code of Federal Regulations (CFR) contains all the executive orders created by the president. (The CFR is online at www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR.) Presidents claim the power to issue such orders on the basis of their Article II, Section 1, constitutional power to “take care that the laws be faithfully executed.”

An illustration of an especially controversial executive order is Order 9066, issued by President Franklin Roosevelt during World War II. On the basis of this order, Japanese-Americans on the West Coast, as well as thousands of Italian-American and German-American families, were sent to internment camps for the duration of the war.

Schools of Legal Interpretation

LO 1-6 What are the various schools of jurisprudence?

When legislators or courts make law, they do so guided by certain habits of mind and specific beliefs about human nature. These views guide them toward particular legal solutions and away from others. This section briefly describes several of the more common guides to legal interpretation.

The point of learning about these alternative methods for interpreting the implications of particular legal facts is to encourage you to see the law as a human creation shaped by many perspectives and approaches to what a court decision or statute means.

identification with the vulnerable

A school of jurisprudence that holds that society should be fair. Particular attention is therefore paid to the poor, the ill, and the elderly.

Identification with the Vulnerable Some thoughtful legal scholars claim that our very nature as humans compels us to advancing the law on the basis of **identification with the vulnerable**. Some members of our society can take care of themselves in terms of most life situations. Others, especially the ill, children, the aged, the disabled, and the poor, require assistance to meet their fundamental needs of life, health, and education.

This guide to legal change is tied closely to the pursuit of fairness in our society. The metaphor of a level playing field is linked with some higher law or body of moral principles that connects all of us in the human community. We might look at a particular employment contract, for example, and react by observing that “it is just not fair.” Our caring impulse as a human feels outrage at that legal arrangement. That outrage can be a stimulus for legal change. One example of identification with the vulnerable is minimum-wage laws. They reflect the beliefs that workers should receive a minimum hourly wage and that employers should not be allowed to pay them less.

historical school

A school of jurisprudence that uses traditions as the model for future laws and behavior. Also called *tradition* or *custom*.

Historical School: Tradition One of the most often used guidelines for shaping the law is **tradition**, or *custom*, which is also called the **historical school**. Stare decisis is rooted in this perspective. When we follow tradition, we attempt to link our future behavior to the behavior of those who faced similar problems in earlier historical periods. The logic of the approach is that we need not reinvent the wheel each time a legal problem arises. Past practice is assumed to have been the product of careful thought.

legal realism

A school of jurisprudence that holds that context must be considered as well as law. Context includes factors such as economic conditions and social conditions.

Legal Realism **Legal realism** is based on the idea that, when ruling on a case, judges need to consider more than just the law. This school of thought dictates that they also take factors such as social and economic conditions into consideration when making a judgment. Followers of legal realism argue that the law must not be the sole factor in deciding a case since legal guidelines were designed by humans and exist in an ever-changing society.

Judges who follow this school of thought are more likely to depart from past court decisions to account for the fact that our society is constantly shifting and evolving. Those who subscribe to legal realism also believe that the law can never be enforced with complete consistency. They argue that because judges are human, they will bring different methods of reasoning to very similar cases.

One example of a law that has been enacted to reflect changes in our society is the Family and Medical Leave Act (FMLA). This act mandates that businesses employing more than

50 people must provide their workers with up to 12 weeks' unpaid leave every year to take care of family-related affairs such as caring for ill parents, adopting a child, or having a child. The FMLA protects pregnant women who take time off work because their employers must provide them with the same pay and the same or an equivalent job when they return to work. This act reflects the fact that more mothers are working outside the home and more women are returning to work soon after they have a child. The FMLA also protects new parents against some types of employer discrimination that might occur after they return to work.

Cost-Benefit Analysis From this perspective, we need to examine all the costs and benefits for alternative laws or decisions and place monetary values on those costs and benefits. If we possessed those calculations, we could use **cost-benefit analysis** as a guide to legal change, choosing the legal alternatives that maximize the ratio of benefits to costs. For instance, in a contract dispute, someone using this approach would attempt to attach responsibility for the problem in such a way that total benefit is maximized in relation to costs.

This approach to legal change is tied closely to the pursuit of efficiency. If a law yields more benefits than costs, then we have saved resources. Those resources can, in turn, be used to provide us with more goods and services. Our economy is thus more efficient in the sense of producing more for less.

For example, regulations enacted by the EPA can affect costs and benefits in the national economy. Polluted land is an economic loss because it cannot be used for farming or recreation. Polluted water can be toxic for fish and cannot be used for drinking. Polluted air can cause health problems and result in higher health care costs. Although EPA regulations may end up costing companies more initially to control pollutants, the cost of environmental cleanup, and the loss of productivity in the economy as a whole, may be greater than the resources companies expend to control pollution.

cost-benefit analysis

An economic school of jurisprudence in which all costs and benefits of a law are given monetary values. Laws with the highest ratios of benefits to costs are then preferable to those with lower ratios.

Global and Comparative Law

Comparative and international law is extremely important for future business managers. Because of advances in technology and transportation, trade with other countries is far easier today than it was in past years. Now it is possible to make different components for the same product in various countries all over the world and then assemble them in another country. It is possible to operate an antique store in Poughkeepsie but sell to customers in Moscow or Taipei through a website.

As a result of this ease in trade, business managers must be familiar with global trade laws that regulate business practices among nations. For instance, the United States and other countries have entered into agreements such as the North American Free Trade Agreement (NAFTA) and the General Agreement on Tariffs and Trade (GATT). These agreements help establish the conditions of trade between countries.

In 1995, the World Trade Organization (WTO) was created to replace GATT. The WTO stimulates negotiations among member nations to reduce barriers to international trade. The WTO attempts to enforce trade agreements governing trade among its 160 member nations. In this role, it serves as a world court adjudicating trade disagreements that threaten to disrupt international trade.

It is also important for future business managers to understand comparative law, comparing and studying the laws in different countries. Business managers need to be aware of various trade laws and restrictions in different countries so that they can act accordingly when they set out to do business in those countries. The European Union, for example, has laws that differ from those of the United States in terms of regulating the taxes on Internet sales and the amount of pollution that can be released into the environment. Companies doing business in the EU must take these standards into account.

An example of a company that has conformed to a foreign country's laws is Google, which has agreed to restrict the content of searches performed on Google.cn, the Chinese version of the company's search engine. Google took this action to satisfy regulations set by the Chinese government, which did not want its citizens to have access to certain websites or pieces of information. To do business in China, Google had to conform to these standards. This loss of freedom of information or access to information was considered by some to be such an evil that they felt Google had violated its own mission statement: "Don't be evil."