

# Law for Business

13<sup>th</sup> edition

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# Law for Business

Thirteenth Edition

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*All of Indiana University*





## LAW FOR BUSINESS, THIRTEENTH EDITION

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# Preface

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For more than 30 years, *Law for Business* has set the standard as an easy-to-read textbook that provides students with the tools for understanding the legal environment of business. This, the 13th edition, has not strayed from that winning formula. The text goes well beyond merely identifying the current legal rules and regulations affecting business by offering insights into new developments and trends that promise to greatly affect the future of both domestic and international businesses. The result is a comprehensive, yet concise, treatment of the legal issues of fundamental importance to business students and the business profession.

We are extremely pleased with the number of institutions and instructors that continue to adopt *Law for Business*. They represent a wide range of programs in business in both two-year and four-year colleges and universities throughout the country and the world. Feedback from faculty and students alike confirms that they particularly like the clear exposition, the careful selection and editing of high-interest cases, and the text's attractive and readable design.

## What's New in the Thirteenth Edition?

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In preparing this latest edition of *Law for Business*, we have tried to maintain the strengths of the past editions while updating the material and cases.

In addition to the edited and updated questions and problem cases in chapters, the following changes have been made to the 13th edition of *Law for Business*:

### CHAPTER 1

- Added five new cases: *Yates v. United States*, *Sesay v. Attorney General*, *Apple v. Samsung*, *United States v. Gorski*, and *Peterson v. Katten Muchin Rosenman*; replacing cases *Lozman v. City of Riviera Beach*, *Lawrence v. Texas*, *Bowles v. Hardwick*, *Lasar v. Ford Motor Company*, and *United States v. Stewart*.
- Added two new topics: Alternative Litigation Financing; crime/fraud exception to the attorney-client privilege

### CHAPTER 2

- Added one new case: *OBB Personenverkehr A.G. v. Sachs*; replacing *Attaway v. Omega*.

### CHAPTER 3

- Added two new cases: *United States v. Litvak* and *Stormans v. Wiesman*; replacing cases *Hart v. Electronic Arts*, *Everson v. Michigan Department of Corrections*, and *United States v. Park*.
- Added three new topics: Discussion of Volkswagen's use of defeat devices on diesel-powered cars; DOJ's new Memorandum on Individual Accountability for Corporate Wrongdoing; story on inside directors

## CHAPTER 4

- Added six new cases: *Arizona v. Tribal Council*, *American Beverage v. Snyder*, *Horne v. Department of Agriculture*, *Reed v. Town of Gilbert*, *Burwell v. Hobby Lobby*, and *Michigan v. Environmental Protection Agency*; replacing cases *U.S. Smokeless Tobacco v. City of New York*, *Florida Transportation v. Miami-Dade County*, *Kelo v. City of New London*, *R.J. Reynolds Tobacco v. FDA*, *McMullen v. Coakley*, and *Pica v. Mukasey*.
- Added two new topics: Freedom of religion; Affordable Care Act's relationships with the Religious Freedom Restoration Act (*Burrell v. Hobby Lobby* case)

## CHAPTER 5

- Added two new cases: *Elonis v. United States* and *Rodriguez v. United States*; replacing cases *Lock v. State* and *United States v. Jones*.

## CHAPTER 6

- Added two new cases: *J.H. v. St. Vincent Hospital & Health Care Center, Inc.* and *Bertrand v. Mullin*; replacing cases *Cheser v. Neyer*, *Hatfill v. New York Times Co.*, and *Roberts v. McAfee Inc.*

## CHAPTER 7

- Added three new cases: *Byers v. Moredock*, *Thomson v. St. Joseph Regional Medical Center*, and *Gruber v. YMCA*; replacing cases *Putnam County Sheriff v. Price*, *Norfolk Southern Railway Co. v. Sorrell*, and *Phillips v. DuPont de Nemours & Co.*

## CHAPTER 8

- Added six new cases: *Apple v. Samsung Electronics*, *Bed'N Linen v. Dutta-Roy*, *Bikram's Yoga College v. Evolution Yoga*, *Authors Guild v. Google*, *Seneca Companies v. Midway Industrial Supply*, and *Kimble v. Marvel Entertainment*; replacing cases *Bowman v. Monsanto*, *Schwan's v. Kraft Pizza Company*, *Kirtsaeng v. John Wiley & Sons*, and *PhoneDog v. Kravitz*.

## CHAPTER 9

- Added two new cases: *Gruppo Essenziero Italiano S.P.A. v. Aromi D'Italia, Inc.* and *Harmon v. Delaware Harness Racing Commission*; replacing cases *Conwell v. Gray Loon Outdoor Marketing Group, Inc.* and *Palese v. Delaware State Lottery Office*.

## CHAPTER 10

- Added three new cases: *Kolodziej v. Mason*, *Berkson v. Gogo LLC*, and *Groce v. American Family Mutual Ins. Co.*; replacing cases *Republican National Committee v. Taylor*, *Chateau des Charmes Wines v. Sabate USA*, *Bragg b. Linden Research, Inc.*, and *Morales v. Sun Constructors, Inc.*

## CHAPTER 11

- Added two new cases: *Allied Dynamics Corp. v. Kennametal, Inc.* and *Bauer v. Quest Communications Co., LLC*; replacing *Lambert v. Don M. Barron Contractors, Inc.*

## CHAPTER 12

- Added two new cases: *J.L. v. J.L.* and *Jane Doe v. Roman Catholic Archdiocese of Indianapolis*; replacing cases *Zhang v. Sorichetti* and *Double H Housing Corp. v. David*

## CHAPTER 13

- Added two new cases: *Lopez v. Kmart* and *Wethington v. Swainson*; replacing cases *NYC Mgmt. Group Inc. v. Brown-Miller* and *Woodman v. Kera LLC*

## CHAPTER 14

- Added two new cases: *Kesling v. Hubler Nissan, Inc.* and *Johnson v. Wysocki*

## CHAPTER 15

- Added two new cases: *Hi-Tec Properties, LLC v. Murphy* and *Clark’s Sales and Services, Inc. v. Smith*; replacing cases *Perez c. Rent-A-Center Inc.*, *Johnson v. New River Scenic Whitewater Tours, Inc.* and *Home Paramount Pest Control Companies, Inc. v. Shaffer*

## CHAPTER 16

- Added three new cases: *William J. Jenack Estate Appraisers & Auctioneers, Inc. v. Rabizadeh, E. Mishan & Sons, Inc. v. Homeland Housewares, LLC*, and *Founders Insurance Co. v. May*; replacing cases *Coca-Cola v. Babyback’s International, Inc.*, *MEMC Electronic Materials, Inc. v. BP Solar Int’l. Inc.*, and *State Automobile Mutual Insurance Company v. Flexdare, Inc.*

## CHAPTER 17

- Added one new case: *Industrial Development Bd. of the City of Montgomery v. Russell*; replacing cases *Riegleman v. Krieg* and *Audler v. CBC Innovis, Inc.*

## CHAPTER 18

- Added three new cases: *Addie v. Kjaer*, *Indiana v. International Business Machines*, and *Pinnacle Healthcare, LLC v. Sheets*; replacing cases *Rockford Mutual Insurance Company c. Pirtle*, *Arnhold v. Ocean Atlantic Woodland Corp.*, and *i.Lan Systems, Inc. v. NetScout Service Level Corp.*

## CHAPTER 19

- Added one new case: *Zaretsky v. William Goldberg Diamond Co.*; replacing cases *Alsafi Oriental Rugs v. American Loan Co.* and *Sutton v. Snider*

## CHAPTER 20

- Updated text material concerning Implied Warranty of Merchantability
- Added one new case: *In re General Motors LLC Ignition Switch Litigation (Fleck v. General Motors)*; replacing case *Uniroyal Goodrich Tire Co. v. Martinez*

## CHAPTER 21

- Added one new case: *Pittman v. Henry Moncure Motors*; replacing cases *Weil v. Murray* and *Waddell v. L.V.R.V., Inc.*

## CHAPTER 22

- Added one new case: *Helena Chemical Co. v. Williamson*; replacing case *Poli v. DaimlerChrysler Corp.*

## CHAPTER 23

- Added four new cases: *In re Madoff*, *Mike Vaughn Custom Sports v. Piku*, *In re Porter*, and *The Barton Group v. NCR Corporation*; replacing cases *Iragorri v. United Technologies*, *Wesco Autobody Supply v. Ernest*, *Ikola v. Schoene*, and *A.A. Sales & Associates v. Coni-Seal*

## CHAPTER 24

- Added five new cases: *Precedo Capital Group v. Twitter*, *Krusch v. TAMKO Building Products*, *Ameristone Tile v. Ceramic Consulting Corporation*, *JMB Manufacturing v. Child Craft*, and *McClain v. RBS Citizen’s Bank*; replacing cases *Ophthalmic Surgeons v. Paychex*, *North American Specialty Insurance v. Employers Reinsurance*, *NCP Litigation Trust v. KPMG LLP*, and *TGM Ashley Lakes v. Jennings*.

## CHAPTER 25

- Added two new cases: *Jones v. Gulf Coast Health Care of Delaware, LLC* and *EEOC v. Abercrombie & Fitch Stores, Inc.*; replacing cases *Lewis v. School District #70* and *Lewis v. Chicago*
- Updated *Glatt v. Fox Searchlight Pictures, Inc.*

CHAPTER 26

- Added two new cases: *In re Bridgeview Aerosol*; and *In re Crest By The Sea*; replacing cases *Katris v. Carroll* and *In re Garrison-Ashburn*

CHAPTER 27

- Added two new cases: *Leal v. Mokhabery* and *Second Measure v. Kim*; replacing cases *Dowd & Dowd v. Gleason*, *Long v. Lopez*, and *Warnick v. Warnick*

CHAPTER 28

- Added four new cases: *Nuss v. Sabad*, *Modern Board v. Board Institute*, *Flame S.A. v. Freight Bulk Pte.*, and *Arnold v. KJD Real Estate*; replacing cases *SmithStearn Yachts v. Gyrographic Communication*, *Hildreth v. Tidewater Equipment*, *Kertesz v. Korn*, and *F.B.I. Farms v. Moore*

CHAPTER 29

- Added two new cases: *In re Congaree* and *Friedman v. Sebelius*; replacing cases *Telxon Corporation v. Meyerson* and *SEC v. Gemstar-TV Guide International*

CHAPTER 30

- Added three new cases: *FleetBoston Financial Corporation v. Alt*, *Trinity Wall Street v. Wal-Mart Stores*, and *Central Laborers' Pension Fund v. Dimon*; replacing cases *Levco Altmerative Fund v. The Reader's Digest*, *American Federation v. American International Group*, and *Pirelli Armstrong Tire Corporation v. Raines*

CHAPTER 31

- Added four new cases: *United States v. Tropikgadget FZE*, *SEC v. Newman*, *Berman v. Neo@Ogilvy*, and *United States v. Hoskins*; replacing cases *SEC v. Charles Edwards*, *SEC v. Rocklage*, and *USA v. Lindsey*
- Added three new topics: New insider trading rules governing tippee liability; Antiretaliation provisions in Dodd-Frank whistleblower law; and new Anti-Spoofing rule

CHAPTER 32

- Added two new cases: *Omnicare v. Laborers District Council*; and *United States v. Vaughn*; replacing cases *APA Excelsior III v. Premier Technologies* and *Knappe v. United States*

CHAPTER 33

- Added one new case: *Grande v. Jennings*; replacing case *Corliss v. Wenner* and *Anderson*

CHAPTER 34

- Added two new cases: *Stratford v. Long* and *Kitsap County v. Kitsap Rifle & Revolver Club*; replacing cases *Vezev v. Green* and *United States v. Wade*

CHAPTER 35

- Added one new case: *Morris v. Holmes*; replacing *Schultz v. Wurdlow*

CHAPTER 37

- Added four new cases: *Artisan and Truckers Casualty Company v. Hanover Insurance*, *Indian Harbor Insurance v. F & M Equipment*, *Fugah v. State Farm Fire and Casualty Company*, and *Ohio National Life Assurance v. Davis*; replacing cases *State Farm Mutual Automobile Insurance v. Kastner*, *Terra Nova Insurance v. Fray-Witzer*, and *Mayo v. Harfield Life Insurance*

CHAPTER 39

- Added one new case: *RR Maloan Investment v. New HE*; replacing case *Golden Years Nursing Home v. Gabbard*

CHAPTER 40

- Added two new cases: *National College Student Loan Trust 2004-1 v. Irizarry* and *Huntington National Bank v. Guishard, Wilburn & Shorts LLC*; replacing cases *American Federal Bank FSB v. Parker* and *Bank One N.A. v. Streeter*

## CHAPTER 41

- Added three new cases: *Forcht Bank v. Gribbins*, *Aliaga Medical Center v. Harris Bank*, and *Anderson v. Branch Banking and Trust Company*; replacing cases *Lor-Mar/toro v. 1st Constitution Bank* and *Seigel v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.*
- Rewrote, updating, the section on electronic transfers
- Rewrote the section on wire transfers

## CHAPTER 42

- Added one new case: *Allstate Lien & Recovery Corporation Stansbury*; replacing case *Swift, Inc. v. Sheffey*

## CHAPTER 43

- Added one new case: *Palmatier v. Wells Fargo Financial National Bank*; replacing case *In re Shirrel*

## CHAPTER 44

- Added one new case: *In re Ferreria*; replacing case *In re Mestemaker*
- Updated the dollar amounts to conform to current Bankruptcy Code

## CHAPTER 45

- Added four new cases: *Insulate SB v. Advanced Finished Systems*, *In re Chocolate Confectionary Antitrust Litigation*, *United States v. Apple*, and *North Carolina State Board of Dental Examiners v. FTC*; replacing cases *valuepest.com v. Bayer*, *Leegin v. Creative Leather Products*, and *In re Vitamin C Antitrust Litigation*

## CHAPTER 46

- Added three new cases: *Federal Trade Commission v. Ross*, *Jesinoski v. Countrywide Home Loans*, and *Bradley v. Franklin Collection Services*; replacing cases *FTC v. Accusearch Inc.* and *Dunham v. Portfolio Recovery Associates, LLC*

## CHAPTER 47

- Updated the text to include a discussion of the Clean Power Plan adopted by the Obama EPA to reduce emission of greenhouse gasses that contribute to global climate change and also a discussion of the continuing controversy over the jurisdictional reach of the Clean Water Act —i.e., which water bodies and wetlands can be regulated by the federal government.

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- *Quizzes.* Connect Quizzes offer an assignable check-in to ensure student understanding of key chapter content.
- *PowerPoint Slides.* PowerPoint slide sets for every chapter are for use in the classroom or for studying. These slides refer back to figures and concept summaries from the text and introduce original material not found anywhere else.
- *Instructor’s Manual.* The authors of *Law for Business* have prepared an instructor’s manual providing insights into the major topics introduced in each chapter. Each case is briefly summarized and accompanied by a “Points for Discussion” section that poses



ideas for stimulating classroom dialogue. This manual also includes the answers to all the Questions and Problem Cases that appear in the text, as well as references to appropriate places within the chapter to discuss particular end-of-chapter cases.

- *Test Bank.* The Test Bank consists of true/false, multiple choice, and short essay questions in each chapter. We've aligned our Test Bank with new AACSB guidelines, tagging each question according to its learning objective, knowledge, and skill areas.
- *TestGen.* TestGen is a complete, state-of-the-art test generator and editing application software that allows instructors to quickly and easily select test items from McGraw-Hill's Test bank content. The instructors can then organize, edit, and customize questions and answers to rapidly generate tests for paper or online administration. Questions can include stylized text, symbols, graphics, and equations that are inserted directly into questions using built-in mathematical templates. TestGen's random generator provides the option to display different text or calculated number values each time questions are used. With both quick-and-simple test creation and flexible robust editing tools, TestGen is a complete test generator system for today's educators.
- *The Business Law Newsletter, Proceedings.* We have developed this resource to help keep your classes interesting and current. One electronic newsletter is emailed to you per month. Instructors across the country have told us they are looking for ways to include current examples and cases, and we hope this newsletter provides you with just that. It is meant to be an easy and effective place to turn for some new discussion topics for your business law courses. Each edition includes the following:
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## Pedagogy

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We have employed a number of proven pedagogical devices to aid students in their comprehension and critical analysis of the often complex topics raised in any business law course.

*Chapter Openers*—Most chapters begin with high-interest vignettes that provide a context for the law in the upcoming chapter. They generally take the form of a real-life case and are followed by a list of questions or issues that introduce the reader to the concepts presented in the chapter.

*Learning Objectives*—Succinct, crisply written learning objectives follow the chapter openers at the beginning of each chapter. The numbered objectives describe what the students can expect to learn as a result of completing the chapter. Each objective is identified by a unique symbol in the margin where the material appears in the text. Learning Objectives are coded to the assessment questions in Connect.

*Concept Summaries*—Each chapter contains numerous outlines, figures, or drawings that reinforce important or complex legal rules, issues, or concepts.

*Visual Illustrations*—Flowcharts and other visual illustrations are inserted in each chapter to facilitate student comprehension of key topics.

## Cases

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Textual material is supplemented by recent, high-interest cases decided by state and federal courts. Cases have been selected to illustrate practical applications of the important legal concepts introduced in each chapter. Although the cases are brief, they provide sufficient facts and analysis to clearly explain the law in action. To enhance understanding of the material, each case is placed immediately after the textual point it discusses.

## E-Commerce

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Most chapters contain one or more e-commerce boxes, cases, or sections that introduce important e-commerce and Internet law topics related to the chapter material. This key feature should enable students to more accurately identify future regulatory efforts and their implications for business.

## Ethics in Action

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Ethics in Action boxes are interspersed throughout each chapter. Appearing in the form of questions or commentaries, they should assist students in recognizing the ethical issues confronting businesspeople on a daily basis. In many chapters, these features introduce and explore various features of the *Sarbanes–Oxley Act of 2002*. These supplements to the regular textual material will permit students to more fully appreciate the complex and pervasive nature of ethical issues they will encounter in their professional lives. Finally, our increased focus on ethics is demonstrated by the continued inclusion of Chapter 3—“Business Ethics and Corporate Social Responsibility.” This chapter clearly explains the predominant theories of ethical reasoning and provides guidelines for making ethical decisions.

## International Focus

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Where relevant, the authors have inserted cases and textual material introducing the legal and business risks that often attend global operations. Through this global approach, students are taught that international issues are an integral part of business.

## AACSB Standards

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McGraw-Hill Education is a proud corporate member of AACSB International. Understanding the importance and value of AACSB accreditation, the authors of *Law for Business* have sought to 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 found in the AACSB standards.

The statements contained in *Law for Business* are provided only as a guide for the users of this text. The AACSB leaves content coverage and assessment clearly within the realm and control of the individual school, the mission of the school, and the faculty. The AACSB does charge schools with the obligation of doing assessment against their own content and learning goals. While *Law for Business* and the teaching package make no claim of any specific AACSB qualification or evaluation, we have, within the book, labeled selected questions according to the six general knowledge and skill areas. The labels or tags within *Law for Business* are as indicated. There are, of course, many more within each Test Bank, the text, and the teaching package that may be used as a standard for your course.



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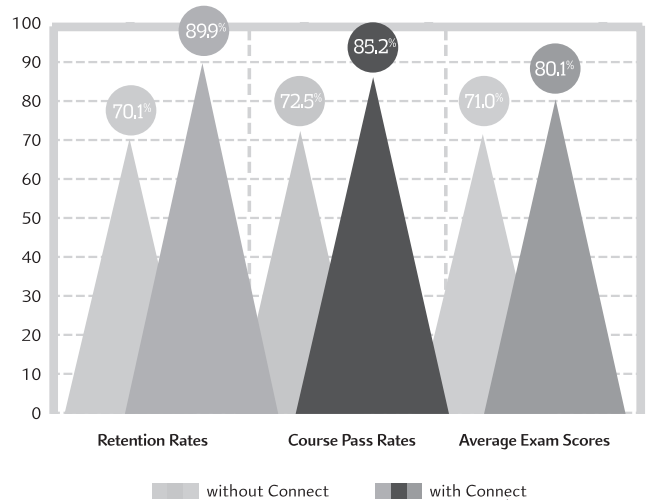
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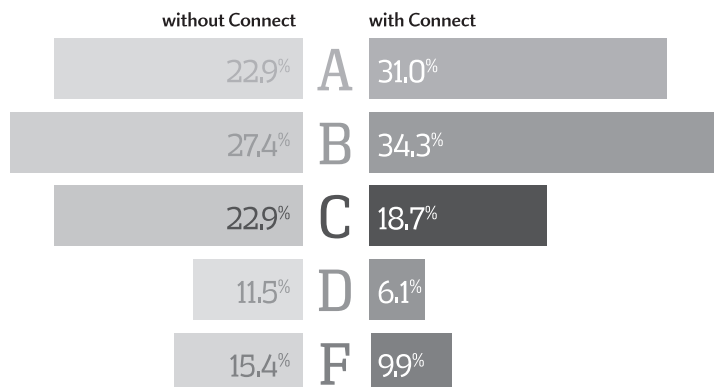
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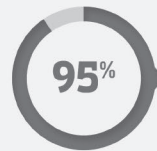
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# Acknowledgments

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We wish to thank the many adopters of our prior editions; we have greatly profited from their suggestions. Of course, we have had to use our judgment in determining which ones to follow. Accordingly, responsibility for any shortcomings in this edition remain ours. We do solicit the comments and criticism of instructors and students who use this edition.

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*Liberty University*

**Peter Churchill**

*Diablo Valley College*

**Richard Fountain**

*University of West Florida*

**Patrick Griffin**

*Lewis University*

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College*

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# About the Authors

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## **A. James Barnes, J.D.**

Professor of Public and Environmental Affairs and Professor of Law at Indiana University, Bloomington. He previously served as Dean of the School of Public and Environmental Affairs and has taught business law at Indiana University and Georgetown University. He has won teaching awards in both the School of Business and the law school. His teaching interests include commercial law, environmental law, alternative dispute resolution, law and public policy, and ethics and the public official. He is the co-author of several leading books on business law.

From 1985 to 1988, Professor Barnes served as the deputy administrator of the U.S. Environmental Protection Agency. From 1983 to 1985, he was the EPA general counsel, and in the early 1970s served as chief of staff to the first administrator of EPA. Professor Barnes also served as a trial attorney in the U.S. Department of Justice and as general counsel of the U.S. Department of Agriculture. For six years, from 1975 to 1981, he had a commercial and environmental law practice with the firm of Beveridge and Diamond in Washington, D.C.

Professor Barnes is a Fellow in the American College of Environmental Lawyers and a Fellow of the National Academy of Public Administration. From 1992 to 1998, he was a member of the Board of Directors of the Long Island Lighting Company (LILCO). From 2004 to 2010, he chaired the Environmental Protection Agency's Environmental Finance Advisory Board. He was a member of the Department of Energy's Environmental Management Board from 2005 to 2011.

## **Terry Morehead Dworkin, J.D.**

The Jack R. Wentworth Emerita Professor, Business Law, Kelley School of Business, and Visiting Professor, Seattle University School of Law. She previously served as Dean of the Office of Women's Affairs, Indiana University, and as President of the Academy of Legal Studies in Business. She also served as the co-director of the I.U. Center for International Business Education and Research (CIBER) and as the Director for the Program in European Studies at the Center for European Studies, Rijksuniversiteit Limburg in Maastricht, The Netherlands.

Professor Dworkin's primary research interests focus on employment and women's issues, particularly discrimination, whistleblowing, privacy, and leadership. She is the author of numerous articles on employment law, corporate compliance, and product liability law, and of books on business law and whistleblowing. Several of her publications have an international focus. She has earned numerous awards for her research and teaching.

Professor Dworkin has significant international experience, including invited lectures on international ethics and management in various countries, teaching in Germany and The Netherlands, being a scholar at the Institute for Advanced Legal Studies in England, and presenting a workshop at the UN/NGO Forum on Women in Beijing. In 2010, she was a Fulbright Senior Specialist in Australia. She has also presented papers at a variety of international conferences.

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# Law for Business



Part

# 1

## Introduction to the Law

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1. Law, Legal Reasoning, and the Legal Profession
2. Dispute Settlement
3. Business Ethics and Corporate Social Responsibility
4. Business and the Constitution
5. Crimes
6. Intentional Torts
7. Negligence and Strict Liability
8. Licensing and Intellectual Property





# Law, Legal Reasoning, and the Legal Profession



## Learning Objectives

After you have studied this chapter, you should be able to:

1. Identify the basic functions of law.
2. Describe the various sources of law.
3. Analyze a case using the four steps in the process of legal interpretation.
4. Make a legal decision by applying the three-step *stare decisis* process.
5. Explain how law is able to change despite *stare decisis*.
6. Read a judicial decision and identify which school of legal jurisprudence the judge has followed.
7. Explain when the attorney-client privilege and work product privilege arise and when they are lost.



When a female employee complained of discrimination, her supervisor, James Twisdale, participated in the investigation by giving information to the investigating officials. Twisdale told them that he was skeptical of the woman's claim. After the complaint was resolved in her favor, Twisdale claims that the employer retaliated against him by reducing his responsibilities. He sued the employer under *Title VII of the Civil Rights Act of 1964*. That federal statute outlaws various forms of employment discrimination and makes it unlawful to retaliate against an employee who "has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under" the statute. *Twisdale v. Snow*, 325 F.3d 950 (7th Cir. 2003).

- Which of the basic functions of law are furthered by this federal statute?
- How will the court determine if Twisdale is protected by this law?
- Is Twisdale protected by the statute?

## Introduction

---

What is law? What roles does it play in our lives? These are important questions to consider as you read this first chapter. People view law in different ways. Some think of the police, whereas others think of any rules governing day-to-day behavior. Each perception is partially correct. To truly comprehend law and a legal system, one must understand the nature of the underlying society. Law is a reflection of the people, organizations, and values it simultaneously serves and controls. Never lose sight of the dynamic nature of any legal system. To survive and effectively guide, it must draw from the past, reflect the present, and pave the way for the future.

### Law in Business

Effective managers and employees must develop knowledge of both law and business because people involved in business also are involved in, and are greatly affected by, the law concerning business. With each passing day, this link between law and business grows even stronger.

### Chapter Overview

This introductory chapter begins by investigating the essential features of law and the U.S. legal system. Then, after consideration of several fundamental classifications of law, attention turns to the constitutional underpinnings of the legal system. This discussion is followed by an introduction to the primary sources of law and legal reasoning (how courts decide cases). Next is a discussion of the important concept called *stare decisis*, which promotes orderly change within the legal system. The chapter then provides a brief look at the predominant schools of legal philosophy (legal jurisprudence) that provide a context for legal decision making. Then, after looking at the role of the legal profession, the chapter closes by introducing students to the importance of practicing preventive law.

## The Nature of Law

---

Law is much more than a set of rules. Our legal system involves processes for social control. It consists of institutions such as legislatures and government agencies for the creation of rules of behavior. It also includes police forces and courts to enforce the rules and resolve disputes. In short, the U.S. legal system encompasses a process and structure for creating, enforcing, and interpreting those rules. This section looks at the idea of rules, the reasons for having rules, and the structure that manages them.

### Legal Rules

At its most basic level, law can be seen as rules that limit people's freedom of action. These rules may be called "laws," "statutes," or "ordinances." The label doesn't really matter. The important thing they have in common is that they require people to conform their behavior to some particular standard. This concept of law may be viewed as a **set of principles** that

1. Have **general application** to society.
2. Were developed by a **legitimate authority** within society.
3. May threaten **sanctions** against those who fail to comply with the principles.

## Functions of Law

The basic functions of law are



1. Keeping the peace.
2. Enforcing rules to maintain order.
3. Facilitating planning.
4. Promoting social justice.

For instance, laws against underage consumption of alcoholic beverages establish certain standards of conduct in an attempt to maintain order and, perhaps, keep the peace. Those functions—*keeping the peace* and *enforcing standards of conduct to maintain order*—help further another function of law that is especially important: *facilitating planning*. Contract law is an example of this function. In making the courts available to enforce contracts, the legal system ensures that parties to contracts either carry out their promises or pay for the damages they cause. For example, through contracts, a manufacturing company can count on either receiving the raw materials and machinery it has ordered or else getting money from the contracting supplier to cover the extra expense of buying substitutes.

Although all societies use law to keep peace and maintain order, societies such as ours also use the law to achieve additional goals. The tax laws, for example, seek not only to raise revenue for government expenditure but also to redistribute wealth by imposing higher inheritance and income taxes on wealthy people. The government also may tax certain activities in order to discourage them. Taxes on tobacco products have this intent. The antitrust laws seek to prevent certain practices that might reduce competition and thus increase prices. The Civil Rights Act is designed to promote social justice.

### Concept Summary: The Nature of Law



#### Definition

A set of principles, rules, and standards of conduct that

1. Have general application in the society
2. Have been developed by an authority for that society
3. Have an associated penalty imposed upon violations

#### Functions of Law

- Keeping the peace
- Enforcing standards of conduct to maintain order
- Facilitating planning
- Promoting social justice

The function of these statutes is to *promote social justice* by protecting the disadvantaged. Courts, in applying the law, also seem to be seeking to balance the scales to benefit the “little guy” in dealing with big business, big labor, and big government. Helping the ordinary citizen to deal with a very complex and quite impersonal economy also is the objective of federal legislation establishing social security, welfare, housing, and medical programs.

## Classifications of Law

There are many ways to subdivide the law. One is to distinguish between substantive law and procedural law. Another important distinction is between criminal and civil law. This section examines these legal classifications.

## Substantive versus Procedural Law

**Substantive law** sets out the rights and duties governing people as they act in society. *Duties* tend to take the form of a command: “Do this!” or “Don’t do that!” An example is the Civil Rights Act of 1964. It tells employers that they must not discriminate among people in hiring and employment on the basis of race, color, religion, sex, or national origin.

Substantive law also establishes *rights and privileges*. An example is the freedom of speech granted by the U.S. Constitution. Another is the right you have to defend yourself if physically attacked—the so-called right of self-defense. A slightly different example is the privilege of receiving food stamps if you meet the qualifications set up by the government.

**Procedural law** establishes the rules under which the substantive rules of law are enforced. Rules as to what cases a court can decide, how a trial is conducted, and how a judgment by a court is to be enforced are all part of procedural law.

### Ethics in Action



Can you think of an example of a duty imposed by substantive law that might violate some moral or ethical belief of an individual? How should such conflicts be resolved? Consider the following case: Two clinics operated in Fargo, North Dakota. One performed abortions and the other provided only pregnancy tests and antiabortion counseling services. However, the antiabortion clinic used a name similar to that of the abortion clinic in order to confuse the public into mistakenly contacting the wrong clinic. Further, it misled the public into believing that it performed abortions, and then, when women seeking abortions arrived, they were given antiabortion materials. After the antiabortion clinic started these tactics, there was a considerable decline in the abortion clinic’s business. The jury found that the antiabortion clinic violated the state’s false advertising statute.<sup>1</sup>

## Criminal versus Civil Law

**Criminal law** defines breaches of duty to society at large. It is society, through government employees called *prosecutors* (such as district attorneys), that brings court action against violators. If you are found guilty of a crime such as theft, you will be punished by imprisonment or a fine. When a fine is paid, the money generally goes to the state, not to the victim of the crime. A criminal conviction generally is not possible unless it can be shown that an individual violated the terms of a published statute. This is because it is not believed to be fair to punish people unless they should have known that their behavior was illegal. Consider the next case, which involves an unsuccessful criminal prosecution.

Private duties owed by one person (including corporations) to another are established by **civil law**. For example, we have a duty to carry out our contractual promises. Tort law defines a host of duties people owe to each other. One of the most common is a duty to exercise reasonable care with regard to others. Failure to do so is the tort of negligence.

Suit for the breach of a civil duty must be brought by the person wronged. Generally, the court does not seek to punish the wrongdoer but rather to make the wronged party whole through a money award called *damages*. For example, if someone carelessly runs a car into yours, that person has committed the civil wrong (tort) of negligence. If you have suffered a broken leg, you will be able to recover damages from the driver (or his or her insurance company). The damages will be an amount of money sufficient to repair your auto, to pay your medical bills, to pay for wages you have lost, and to give you something

<sup>1</sup> *Fargo Women’s Health Organization v. FM Women’s Help and Caring Connection*, 444 N.W.2d 683 (N.D. Sup. Ct. 1989).

# United States v. Farinella

558 F.3d 695 (7th Cir. 2009)

## FACTS

Farinella bought 1.6 million bottles of Henri's Salad Dressing produced by Unilever. The label on each bottle said "best when purchased by" followed by a date that had been picked by Unilever. Because the "best when purchased by" date was approaching, Farinella pasted on each bottle a new label that displayed a later date. He then resold the salad dressing to discount stores. As a result, he was charged with the crime of introducing into interstate commerce misbranded food with the intent to mislead. Selling salad dressing after the "best when purchased by" date does not endanger human health. Henri's Salad Dressing is edible a decade or more after it is manufactured. There also is no evidence of any regulation by any government body that defines "best purchased by" or forbids a wholesaler or retailer to change the date. However, at the trial an official from the Food and Drug Administration (FDA) testified that FDA approval is necessary to change labels and that no such approval was given to Farinella.

## ISSUE

Should Farinella be convicted of the crime of misbranding food?

## DECISION

No. The testimony by the FDA official should not have been admitted into evidence. If there is a requirement that the FDA's approval must be obtained before a "best when purchased by" date may be changed, it would, to be a lawful predicate of a criminal conviction, have to be found in some statute or regulation, or at least in some written interpretive guideline or opinion, and not just in the oral testimony of an agency employee. It is a denial of due process of law to convict a person of a crime because he violated some bureaucrat's secret understanding of the law. The idea of secret laws is repugnant. People cannot comply with laws the existence of which is concealed.

for any permanent disability such as a limp. Damages for "pain and suffering" also may be awarded.

Although the civil law generally does not aim to punish, there is an exception. If the behavior of someone who commits a tort is outrageous, that person can be made to pay *punitive* damages (also called *exemplary damages*). Unlike a fine paid in a criminal case, punitive damages go to the injured party. (Some states require that a portion of a punitive damage award be placed in a public fund to assist various social causes.)

Sometimes, the same behavior can violate both the civil law and the criminal law. For instance, a person whose drunken driving causes the death of another may face both a criminal prosecution by the state and a civil suit for damages by the survivors of the victim. If both suits are successful, the driver would pay back society for the harm done with a criminal fine and/or be incarcerated and compensate the survivors with the payment of money damages.

### Concept Summary: Criminal versus Civil Law



	Criminal Case	Civil Case
Elements	Intentional violation of a statute	Harm to another person or property (tort) or breach of a contract
Actors	Prosecutor v. Defendant (government) (accused)	Plaintiff v. Defendant (wronged party) (party causing harm)
Punishment	Fines, imprisonment, execution	Defendant may have to pay the plaintiff compensatory and punitive damages

## Constitutional Foundations

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Although law is made and enforced by the government, it also defines and organizes the government. To understand the American legal system, you need to be familiar with the constitutional foundation of American government. A very brief review is presented here.

### Checks and Balances

The original 13 colonies became sovereign (independent) nations after they won independence from England. Although people in each state were fearful their state might be dominated by other states with different interests, they came to realize the federal government needed more power than had been given to the Continental Congress. So, the founders set up a system of **checks and balances** between the powers of the states and those of the federal government. However, they also wrote the *supremacy clause* into the Constitution. It declares that where state laws conflict with legitimate federal laws, federal law shall prevail.

The founders also devised a system of checks and balances within the federal government. They established three equal branches of government—legislative, executive, and judicial—which have different but complementary functions. As a check on the passage of statutes that might be ill advised, proposals will not become law unless the president and both houses of Congress approve them. A two-thirds majority is required in each house to override a veto by the president. Furthermore, Congress itself cannot enforce a statute; that is left to the executive and judicial branches. The initiative for enforcement must be taken by the executive branch—originally the attorney general.

Today, regulatory agencies take the lead in enforcing certain statutes. However, the executive must go to the judicial branch to punish violations of a statute. Also, this branch—the judicial—interprets statutes and other sources of law.

### Constitutional Powers

Under the Constitution, laws enacted by Congress are invalid if the Constitution does not give Congress the power to pass that kind of legislation or if the Constitution prohibits such a law. These restraints are also a part of the system of checks and balances.

Most federal regulations are based on power given to Congress under the Constitution's **Commerce Clause**, which permits Congress to regulate interstate and foreign commerce. Supreme Court decisions since the 1930s generally have interpreted that power very broadly. For example, the Civil Rights Acts were passed under the Commerce Clause power; so was the Clean Air Act.

The federal **taxing power** has been used to regulate business activities. For example, high import duties can be used to shut off the importation of certain foreign goods. In addition, the income tax laws (the Internal Revenue Code) are used to regulate behavior. When the government wants to encourage certain kinds of investments, it offers tax credits.

### Constitutional Limitations

Many prohibitions against government regulation are contained in the **Bill of Rights** (the first 10 amendments to the Constitution). These amendments guarantee certain rights to the people, including the familiar rights of free speech, freedom of religion, and the privilege against unreasonable search and seizure.

Judicial interpretations of the protections offered by the Constitution have varied throughout history. At one time the **Due Process Clause** of the Fourteenth Amendment was construed to prohibit many types of business regulation by state governments. Its statement that a person's liberty shall not be taken without due process was interpreted to be a guaranty of almost total freedom of contract. Under this approach, judges regularly

held state and federal regulations unconstitutional. Interpretations of the law change over time, however, and today few statutes regulating business activity are found to violate the Due Process Clause.

### Federalism

Under the notion of **federalism**, the United States is composed of 51 legal systems. The Constitution established a federal government with limited powers rather than a national government. This variety of legal systems is part of the concept of checks and balances. There is a federal legal system, and each state has its own system. However, as noted earlier, when conflict exists between the two systems, the federal rules prevail. This, of course, assumes the federal government is acting under one of the powers granted to it by the Constitution.

## Sources of Law

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There are numerous sources of law within each of the 51 systems. The primary sources are



1. Constitutions
2. Treaties
3. Statutes
4. Administrative rules and decisions
5. Executive orders
6. Judicial decisions
7. Private law

### Constitutions

The U.S. Constitution is the highest source of law in the United States. Every other form of law must be consistent with the Constitution or it will be struck down by the courts. Each state also has a constitution that is similar to the U.S. Constitution in the design of the government it provides. However, many of them are much more specific and detailed. As a result, they are not as adaptable to changing conditions as the U.S. Constitution, and many have been completely rewritten one or more times. The U.S. Constitution, on the other hand, has had only 17 additional amendments in the more than 200 years since the adoption of the Bill of Rights.

Although state constitutions are subordinate to the U.S. Constitution, they are superior to law derived from other sources within the state. The importance of this will become clearer when the power of judicial review is discussed later in this chapter.

### Treaties

The Constitution declares that treaties made by the president with foreign governments and ratified by at least two-thirds of the Senate are “the supreme law of the land.” They therefore may override acts of Congress or state legislatures and other laws that are inconsistent. However, conflicts of this sort seldom arise, because the states may not make treaties with foreign countries.

### Statutes

Within each legal system, federal or state, statutes stand next in the hierarchy. A statute is the product of the lawmaking of a legislature. Statutes may add details to the government framework by establishing a regulatory agency or an agency to provide a public service. Or statutes may establish rules that govern certain kinds of activities, such as the use of