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DYNAMIC BUSINESS LAW

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WILLIAMSON



Dynamic Business Law

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Dynamic Business Law

THIRD EDITION

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DYNAMIC BUSINESS LAW, THIRD EDITION

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About the Authors



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

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

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

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

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

almost 30 years, they have been successful tournament blackjack players. Both are avid exercisers—lifting weights, doing yoga, and running almost every day.



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

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

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

Professor Browne has published 25 books and over 140 professional articles in law journals, as well as in economics, sociology, and higher-education journals. His current research interests focus on the relationship between orthodox economic thinking and legal policy. In addition, he is in the midst of writing books about the power of questionable assumptions in economics, the usefulness of asking questions as a learning strategy, and the deficiencies of legal reasoning.



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



Daniel J. Herron is a professor of business legal studies in the Richard T. Farmer School of Business at his undergraduate alma mater, Miami University in Oxford, Ohio, where he earned a bachelor's degree in English. He earned his law degree from Case Western Reserve University School of Law in Cleveland and is a member of the Ohio and federal bars. His research includes articles on business ethics plus a variety of "business and law" topics. In addition to his teaching and scholarly publications, he founded in 1994, and since then has been coaching, the James Lewis Family Mock Trial Program at Miami, a consistent top-10 program in a field of more than 300 mock trial programs nationwide. Before coming to Miami in 1992, he taught at Bowling Green State University, the University of Wyoming, the University of North Carolina–Wilmington, and Western Carolina University. He has been married for over 35 years to Deborah, and they have two children, Christopher

(married to Amanda) and Elisabeth (married to Mark). They have four grandchildren—Jack, Nate, Samantha, and Wesley—plus two rambunctious beagles, Max and Missy.



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

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

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

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

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

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

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



Carrie Williamson is an associate in the intellectual property litigation group at DLA Piper US LLP. She has participated in three patent infringement trials. She earned her J.D. from Boalt Hall, University of California at Berkeley, and her B.A. from Bowling Green State University. She has coauthored *Practical Business Ethics: A Guide for a Busy Manager*, and six legal journal articles. Her research interests include critical thinking, ethics, the use of expert testimony, women's legal issues, and patent litigation issues.

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.

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

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

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

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

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



BUT WHAT IF . . .

WHAT IF THE FACTS OF THE CASE OPENER WERE DIFFERENT?

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

A. BUT WHAT IF . . .

NEW to the third edition, the But What If feature is designed to promote critical thinking by providing students with hypothetical variations on the fact patterns outlined in real cases. This feature takes advantage

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

B. COMPARING THE LAW OF OTHER COUNTRIES BOXES


This feature highlights the emerging, interconnected market. Each chapter contains multiple Comparing the Law of Other Countries 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 Comparing the Law of Other Countries boxes provide heightened awareness of this likelihood by illustrating how unique the law in a certain country often is. After reading dozens of these “stories of difference,” readers will certainly better understand the need to discover relevant law in all jurisdictions where their market decisions have legal implications.

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

C. E-COMMERCE BOXES

A central feature of modern business decisions is new technology, specifically the rapid spread of electronic commerce. This development has created new challenges and opportunities that were unforeseeable until very recently.

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



COMPARING THE LAW OF OTHER COUNTRIES


THE SUPREME COURT IN THE REPUBLIC OF CHINA (TAIWAN)

In Taiwan, the country's core laws are called the “organic law of the court.” These laws stipulate that the country relies on a “three-level and three-instance” court system. In other words, cases begin at one of the district court and may then move to a high court and finally to the Supreme Court. The Supreme Court is the court of last resort. Thus, at first glance, Taiwan's system appears similar to the U.S. federal system, and with respect to matters not involving interpretation of the the country's constitution, it is. But Taiwan's system also has an additional court that is absent from the U.S. system.

While Taiwan's Supreme Court is the court of last resort for civil and criminal cases, the Supreme Court is not responsible for interpreting the country's constitution. This responsibility falls to the Constitutional Court of the Judicial Yuan.

The Constitutional Court of the Judicial Yuan is a council composed of 15 grand justices. The president of Taiwan chooses the Judicial Yuan president and vice president from among the active justices, and both individuals serve terms that last four years. Seven of the fifteen members serve eight-year terms. This court also has a few additional powers, such as the ability to impeach the president and vice president of the republic.

Cases heard by the Supreme Court are presented to five judges, including a Supreme Court president who not only attends to administrative concerns but also acts as a presiding judge over the fellow members of the court.



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-contact standard? Anyone who engages in transactions over the Internet should be concerned about this question.

A federal district court established the following “sliding-scale” standard in the 1997 case *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*“

[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 in which 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 in which 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 at which a user can exchange information with the host computer. In such cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the website.

* 952 F. Supp. 1119, 1124 (W.D. Pa. 1997).

gaming activities on the Internet and discovered that a Costa Rican company, Rio International Interlink (RII), was operating an online, international sports book that allegedly infringed on Rio Properties' registered trademark. When the court attempted to serve RII at its U.S. address, the court found that it was only an address for an international courier that was not authorized to accept service on behalf of the company, and the court could not find any address for the company in Costa Rico. Rio Properties then filed a motion for alternative service of process with the court for permission to serve RII via its e-mail address, and the motion was granted by the district court. The court of appeals upheld the validity of the district court's order, noting that the Constitution does not require any specific means of service, only a means of service "reasonably calculated to provide notice and an opportunity to respond."¹ Because the method seemed to be the method of service most likely to reach RII, the court found that it clearly met the standard.

To read more about how the choice of where to incorporate relates to jurisdiction, please see the **Connecting to the Core** activity on the text website at www.mhhe.com/kubasek3e.

If the defendant is a corporation, courts generally serve either the president of the corporation or an agent that the corporation has appointed to receive service. Most states require that corporations appoint an agent for service when they incorporate. Corporations are subject to *in personam* jurisdiction in three locations: the state of their incorporation, the location of their main offices, and the geographic areas in which they conduct business.

Courts have *in personam* jurisdiction only over persons within a specific geographic region. In the past, a state court could not acquire *in personam* jurisdiction over out-of-state defendants unless it served the defendants within the court's home state. Thus, defendants who injured plaintiffs could evade legal action by leaving the state and remaining outside its borders. To alleviate this problem, most

¹ *Rio Properties, Inc. v. Rio International Interlink*, 284 F.3d 1007 (2002).

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

E. CRITICAL THINKING

After each case in the book, we have provided critical-thinking questions to highlight the need to think critically about the reasoning used by the court. In addition, we include in every chapter a Point / Counterpoint problem that encourages the reader to evaluate the conflicting reasoning surrounding a key issue in the chapter.

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

state-law rules that stand as an obstacle to the accomplishment of the FAA's objectives. The FAA's overarching purpose is to ensure the enforcement of arbitration agreements according to their terms so as to facilitate informal, streamlined proceedings. Parties may agree to limit the issues subject to arbitration, to arbitrate according to specific rules, and to limit with whom they will arbitrate.

d. Class arbitration, to the extent it is manufactured by Discover Bank rather than consensual, interferes with fundamental attributes of arbitration. The switch from bilateral

class arbitration greatly increases risks to defendants. The absence of multilayered review makes it more likely that errors will go uncorrected. That risk of error may become unacceptable when damages allegedly owed to thousands of claimants are aggregated and decided at once. Arbitration is poorly suited to these higher stakes. In litigation, a defendant may appeal a certification decision and a final judgment, but 9 U.S.C. §10 limits the grounds on which courts can vacate arbitral awards.

REVERSED and REMANDED.

CRITICAL THINKING

Do you think AT&T was being dishonest when it linked its stipulation for arbitration to ensuring a smooth and streamlined resolution process? Are there rival reasons that the company was hiding?

ETHICAL DECISION MAKING

Why would companies favor arbitration over class action lawsuits? Is it fair for a company to ban resolution practices just because they could be more expensive for the company, among other problems?

D. CONNECTING TO THE CORE

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

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

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

F. ETHICAL REASONING

After each case in the book, we have provided ethical reasoning questions to highlight the need to think ethically

about the reasoning used by the court. Throughout, our book emphasizes consideration of all stakeholder interests in every market decision. Business ethics should never be an afterthought or something firms consider because they think they must.

Instead, business ethics is what provides the social legitimacy for markets, what distinguishes markets from the life of the jungle. While market decisions are calculating and

purposeful, they must at the same time reflect awareness that the good and the right provide social borders that elevate those decisions above simple greed and egoism.

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

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

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

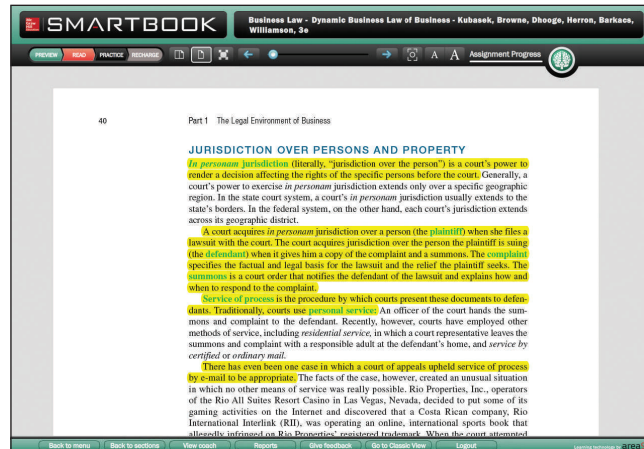
Business ethics are the guidelines we use to shape the world we want to create. As such, they provide guidance for the kind of business behavior we want to reinforce. After each case excerpt, under the heading “Ethical Decision Making,” we pause to think about the ethics of business law by asking a question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

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Distinguishing what students know from what they don't, and honing in on concepts they are most likely to forget, SmartBook personalizes content for each student in a continuously adapting reading experience. Reading is no longer a passive and linear experience, but an engaging and dynamic one in which students are more likely



to master and retain important concepts, coming to class better prepared. Valuable reports provide instructors insight as to how students are progressing through textbook content, and they are useful for shaping in-class time or assessment. As a result of the adaptive reading experience found in SmartBook, students are more likely to retain knowledge, stay in class, and get better grades.

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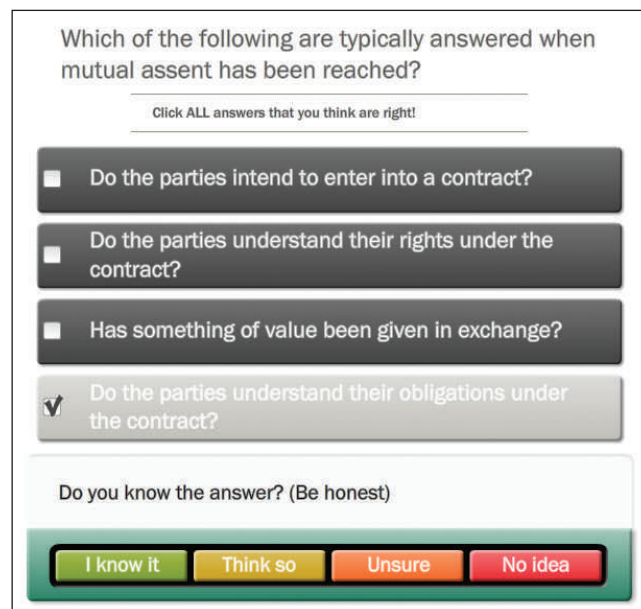
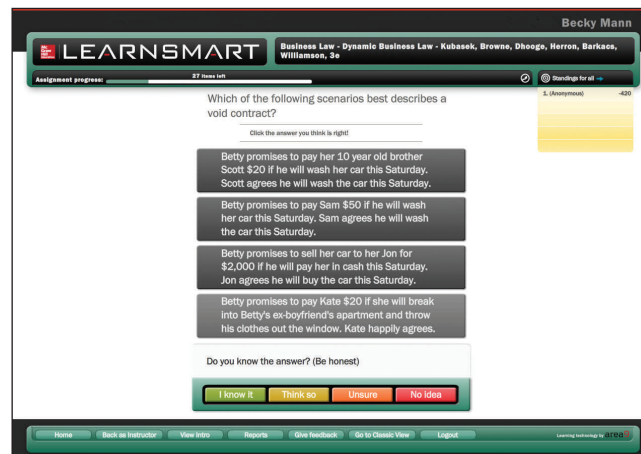
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Distinguishing what students know from what they don't, and honing in on concepts they are most likely to forget, LearnSmart continuously adapts to each student's needs by building an individual learning path so that students study smarter and retain more knowledge. Turnkey reports provide valuable insight to instructors, so precious class time can be spent on higher-level concepts and discussion.

This revolutionary learning resource is available only from McGraw-Hill Education, and because LearnSmart is available for most course areas, instructors can recommend it to students in almost every class they teach.



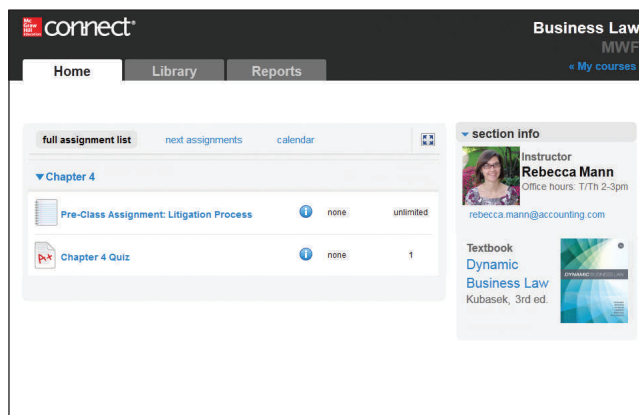
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McGraw-Hill *Connect Business Law* is an online assignment and assessment system that gives students the means to better connect with their coursework, with their instructors, and with the important concepts that they will need to know for success now and in the future. With *Connect Business Law*, instructors can deliver assignments, quizzes, and tests easily online. *Connect Business Law* helps students master critical conceptual material in the course. By using *Connect Business Law* to master concepts, students are better prepared to apply those concepts to higher-level discussions and topics in the business law course. *Connect Business Law* offers you the following features:

- Chapter quizzes for the 52 chapters, consisting of 15 to 25 multiple-choice questions, testing students' overall comprehension of concepts presented in the chapter.
- At least two specially crafted interactive applications for each of the 52 chapters that drill students in the use and application of the concepts and tools of strategic analysis.
- Automatic grading for the majority of the *Connect* exercises, which simplifies the tasks of evaluating each class member's performance and monitoring the learning outcomes.



*As a student I need to interact with course material in order to retain it, and **Connect** offers a perfect platform for this kind of learning. Rather than just reading through textbooks, **Connect** has given me the tools to feel engaged in the learning process.*

—Jennah Epstein Kraus, Student, Bunker Hill Community College

Beyond the Classroom

Interactive Applications

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

Click and Drag Interactive Applications—These fun and interactive click and drag exercises motivate students to apply concepts within the context of a scenario or case allowing them to think about legal issues.

Comprehensive Case Interactive Applications—These cases generate deeper understanding of the core concepts by applying chapter concepts in an open-ended question format. They are the most difficult Interactive Applications in Connect and are the only exercises that are manually graded.

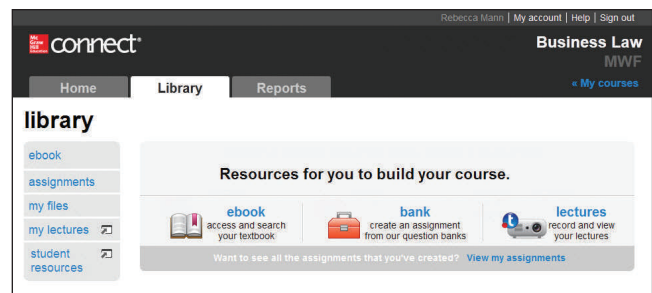
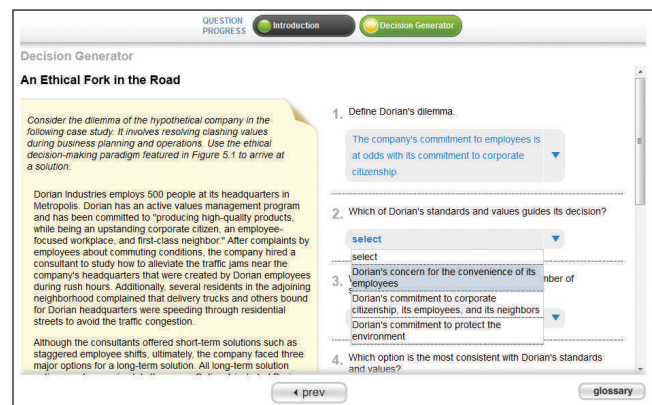
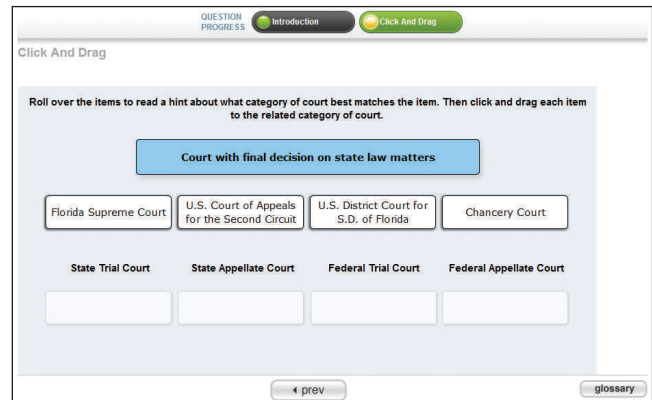
Decision Generator Interactive Applications—These exercises ask students to apply critical thinking skills and allow students to see the interdependencies of their decisions in a mini case scenario.

Video Case Interactive Applications—These case study videos include pop-up questions that appear as the video plays to test concept and/or terminology comprehension.

But What If Interactive Applications—These exercises, only available with Dynamic Business Law, ask students to apply critical thinking skills and allow students to see how changing the factual context may change the legal conclusion.

Student Library

The *Connect Business Law* Student Library gives students access to additional resources such as recorded lectures, online practice materials, an eBook, and more.



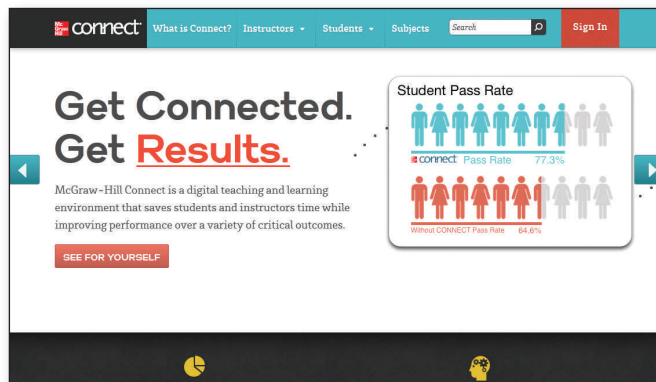
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Connect Business Law offers a number of powerful tools and features to make managing assignments easier, so faculty can spend more time teaching.

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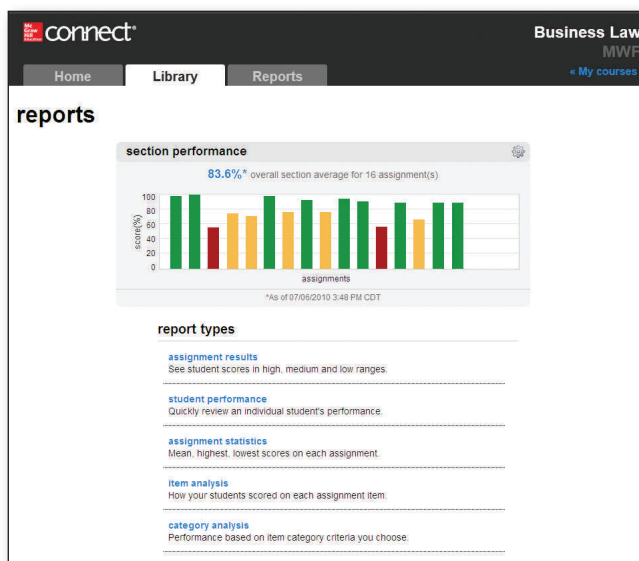
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- Reinforce classroom concepts with practice tests and instant quizzes.



Student Reporting

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Chapter 3. The U.S. Legal System

reading images my notebook

Page 48 **The Structure of the Court System** Chapter 3 Sections ▾

LO3

How is our dual court system structured?

The U.S. legal system has two parallel court structures: a federal system and a state system. Once a plaintiff files a case in one of the systems, the case remains in that system throughout the appeals process. The only exception to this rule occurs when a party to a lawsuit appeals the decision of a state supreme court to the U.S. Supreme Court.

THE FEDERAL COURT SYSTEM

The federal court system derives its power from Article III, Section 2, of the U.S. Constitution and consists of three main levels: trial courts, intermediate appellate courts, and the court of last resort. [Exhibit 3-2](#) illustrates this system.

Exhibit 3-2
The Federal Court System

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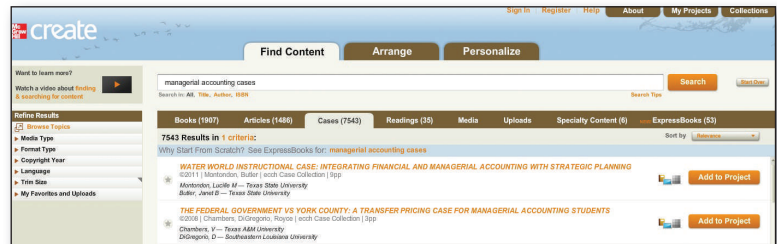
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What's New in the Third Edition?

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

Chapter 1 An Introduction to Dynamic Business Law

- Revised the critical-thinking model to reflect the importance of curiosity.

Chapter 2 Business Ethics

- Replaced previous Case Opener, Wrap-Up, and Case 2-1 with more recent legal cases to reflect current issues in business ethics.
- Updated example of value conflicts in the “What Are the Ultimate *Purposes* of the Decision?” section.
- Revised “Public Disclosure Test” section to include a more recent example of violation of the public disclosure test.
- Inserted Case Nugget about Tyson Foods in the “Universalization Test” section.
- Included information about the AIG bailout to provide a more recent example of corporate violations of business ethics.
- Replaced E-Commerce and the Law topic “Computer Use and Ethics” with “Technological Records and Ethics” to reflect ongoing ethical issues.
- Revised Questions & Problems to reflect changes made throughout the chapter

Chapter 3 The U.S. Legal System

- Inserted new case, *Hertz Corp. v. Friend* to illustrate the potential difficulty of determining whether a case falls under concurrent jurisdiction.
- Repositioned E-Commerce and the Law box for better clarity and relevance to the chapter.
- Inserted paragraph to explain the E-Commerce and the Law topic and its significance.
- Added Case Nugget about *Wachovia Bank N.A. v. Schmidt* to demonstrate diversity of citizenship.
- Updated Questions & Problems to match changes made throughout the chapter.

Chapter 4 Alternative Dispute Resolution

- Inserted *A.T. & T. Mobility LLC v. Concepcion* to demonstrate the court’s refusal to uphold arbitration agreements when federal statutory rights are at issue.
- Improved Questions & Problems to reflect the changes in the chapter.

Chapter 5 Constitutional Principles

- Refurbished Case Opener to demonstrate more recent issues concerning constitutionality of laws.
- Inserted paragraph explaining *Bronkala v. Morrison* and the Affordable Care Act’s relevance to the commerce clause and, thereby, Congress’s scope of regulating commerce.
- Replaced Case 5-2 with *Family Winemakers of California v. Jenkins* to model current developments in the scope of the state’s power to restrict interstate commerce.
- Revised Case Nugget to include *Trunk v. City of San Diego* to exhibit conflicts between freedom of speech and California’s no preference clause.
- Removed E-Commerce and the Law “Is Computer Code Speech” due to the outdated nature of the case.
- Replaced Case Opener Wrap-Up.
- Updated Questions & Problems to mirror changes made in the chapter.

Chapter 6 International and Comparative Law

- Updated membership in the World Trade Organization.
- Provided information regarding U.S. free trade agreements.
- Updated minimum-wage laws in the United States and other countries.
- Added new Case Nugget addressing personal jurisdiction and the Internet.
- Added new U.S. Supreme Court case regarding personal jurisdiction.
- Revised Questions & Problems to include new cases concerning personal jurisdiction, forum selection agreement, choice-of-law clauses, and international sales contracts.

Chapter 7 Crime and the Business Community

- Revised Case Opener to reflect more recent examples of insider trading.
- Edited content to ensure consistency throughout the chapter.
- Replaced Case 7-1 with *U.S. v. Ruiz* to include a more recent case illustrating fraud.
- Refurbished Case Opener Wrap-Up to mimic the Case Opener.
- Added text to clarify the Racketeer Influenced and Corrupt Organizations Act (RICO).
- Improved Questions & Problems to mirror changes made throughout the chapter.

Chapter 8 Tort Law

- Added text to “Intentional Infliction of Emotional Distress” section to explain the role of the intentional infliction of emotional distress tort in business.
- Replaced *Cindy R. Lourcey et al. v. Estate of Charles Scarlett* with *Aaron Olson, Appellant v. CenturyLink, Respondent*.
- Refurbished Questions & Problems to reflect more recent issues in tort law.

Chapter 9 Negligence and Strict Liability

- Revamped Case Opener and Case Opener Wrap-Up with a more recent case.
- Enhanced “Duty” subsection of “Elements of Negligence” to include content relevant to the Case Opener.
- Revised content in the “Duty,” “Breach of Duty,” “Causation,” “Damages,” and “*Res Ipsa Loquitur*” subsections to better explain the text of each subsection.
- Replaced Case 9-2, *Barbara Debusscher v. Sam’s East, Inc.*, with *District of Columbia v. Wayne Singleton, et al.*, to provide a more recent example of *res ipsa loquitur*.
- Inserted Case Nugget to explain the application of assumption of the risk.
- Updated Questions & Problems to mirror changes made in the chapter.

Chapter 10 Product Liability

- Added Case Nugget regarding application of product liability theories to intangible products.
- Enhanced discussion of duty to warn.
- Added discussion of the “sophisticated-user” defense that acts as a complete defense to failure-to-warn claims.
- Updated discussion of Toyota’s settlements of loss-of-economic-value claims in “Damages” section.

- Added discussion regarding seller's exception statutes.
- Enhanced discussion of the risk-utility and consumer expectations tests.
- Added case problems regarding failure to warn, evidence necessary for design defect claims, and manufacturing defects.

Chapter 11 Liability of Accountants and Other Professionals

- Replaced Case Nugget topic *Lee v. Ernst & Young, L.L.P.*, with *In re Century Aluminum Company Securities Litigation* to echo recent violations of the Securities Act of 1933.
- Updated Case 11-3 with *Matrixx Initiatives, Inc., et al. v. Siracusano et al.* to illustrate a recent example of liability under Section 10(b) of the Securities Exchange Act and SEC Rule 10b-5.
- Updated Questions & Problems to mirror changes made throughout the chapter.

Chapter 12 Intellectual Property

- Revised Case Opener to introduce intellectual property issues in the context of smartphone wars.
- Updated Case Nugget regarding registering a color as a trademark with Second Circuit decision in the context of the fashion industry.
- Added *Grokster* Supreme Court case and discussion regarding fair-use defense and peer-to-peer file sharing in the music industry.
- Included section discussing the America Invents Act (AIA).
- Enhanced discussion of trade secrets by adding issues business managers will want to consider, such as having a company policy regarding marking information as confidential and trade secret.
- Added case problems regarding copyrights, trademarks, and trade secrets in popular culture.

Chapter 13 Introduction to Contracts

- Added text to subsections “Common Law” and “Bilateral versus Unilateral Contracts.”
- Removed case example *D.L. Peoples Group, Inc. v. Hawley* due to outdated nature of the case.
- Refurbished Questions & Problems to reflect changes made throughout the chapter.

Chapter 14 Agreement

- Updated Case 14-3 with *Alexander v. Lafayette Crime Stoppers, Inc.*, to provide a more recent interpretation of the provisions specifying the means of acceptance.
- Replaced E-Commerce and the Law “When Clicking ‘OK’ Might Not Be OK” with “Disclosure of Definite and Certain Terms.”
- Updated Questions & Problems, including more recent cases relevant to the chapter.

Chapter 15 Consideration

- Added Comparing the Law of Other Countries box on contract enforcement in China relative to other countries.
- Deleted learning objective and text related to Uniform Commercial Code (covered in another chapter).

- Revised and enhanced Exhibits 15-1 and 15-2.
- Enhanced discussion of past consideration through addition of a case regarding a dispute in the NBA.
- Deleted Case Nugget on discussion of requirements contracts (related to UCC).
- Updated Questions & Problems.

Chapter 16 Capacity and Legality

- Refurbished Case Opener and Case Opener Wrap-Up to include a newer case involving contracts.
- Discarded *Swalberg v. Hannegan* case to be more concise.
- Added *King v. Riedl* to demonstrate the effect of licensing statutes on contracts.
- Inserted E-Commerce and the Law “Observing Sabbath Days Online.”
- Improved Questions & Problems by adding more current problems and questions relevant to the material in the chapter.

Chapter 17 Legal Assent

- Replaced *Ronald Jackson and Willa Jackson, Appellant v. Robert R. Blanchard, Helen M. Blanchard, Maynard L. Shellhammer, and Philip Schlemmer, Appellee* with *Simkin v. Blanki* to provide a more recent example of a mutual mistake.
- Revamped Questions & Problems with more recent problems concerning contracts.

Chapter 18 Contracts in Writing:

- Revised Case Opener and Case Opener Wrap-Up to include a more recent case involving oral contracts made after the creation of a written contract.
- Inserted E-Commerce and the Law “The Statute of Frauds and Legally Binding Electronic Transactions.”
- Improved Questions & Problems to echo recent developments relevant to contracts.

Chapter 19 Third-Party Rights to Contracts

- Updated Case 19-3 to include *Allan v. Nersesova*, to better illustrate a case involving a creditor beneficiary.
- Added new exhibits to illustrate the assignment of the same right to two parties and legal recourse of third-party beneficiaries.
- Refurbished Questions & Problems to include recent issues with third-party rights to contracts.

Chapter 20 Discharge and Remedies

- Replaced Case 20-1, *Miller v. Mills Constriction, Inc.*, with *Hamilton v. State Farm Fire & Casualty Insurance Company* to better illustrate the potential analysis used to determine whether a defendant’s behavior forms a material breach.
- Updated Questions and Problems to include more recent court cases and problems.

Chapter 21 Introduction to Sales and Lease Contracts

- Expanded coverage and application of the CISG.
- Explored in detail the nature of UCC Article 2 offers: Are trade names covered and do “quotes” constitute an offer?

Chapter 22 Title, Risk of Loss, and Insurable Interests

- Introduced the United Nation's Law of the Seas (UNCLOS) and its application to transactional activity.
- Included debate about the wisdom of application of the rule regarding passing of title and "entrustment."

Chapter 23 Performance and Obligations under Sales and Leases

- Added comparison of the U.S. Restatements with the innovative European "restatement" known as *PECL*, "Principles of European Contract Law."
- Expanded discussion of contractual remedies such as whether "cure" should be mandatory under the UCC.

Chapter 24 Remedies for Breach of Sales and Lease Contracts

- Introduced discussion of "hot damages."
- Added Case Nugget that explores the expanding doctrine of consequential damages.
- Inserted comparison of the U.S. approach to liquidated damages with the approach taken by the People's Republic of China.

Chapter 25 Warranties

- Inserted Case Nugget that examines how far the implied warranty of title extends and should extend with subsequent purchasers.
- Added Case Nugget that discusses when the statute of limitations tolls.

Chapter 26 Negotiable Instruments: Negotiability and Transferability

- Inserted Case 26-1 *Reger Development, LLC v. National City Bank* to demonstrate the use of a promissory note as a demand instrument.
- Added E-Commerce and the Law "Can All Negotiable Instruments Be in Electronic Format?"
- Replaced Comparing the Law of Other Countries "Formation of a Negotiable Instrument in Dutch Commercial Law" with "Negotiable Instruments in South African Law."
- Removed case *New Wave Technologies, Inc. v. Legacy Bank of Texas*.
- Revamped "Questions & Problems, adding questions and problems that reflect more recent issues.

Chapter 27 Negotiation, Holder in Due Course, and Defenses

- Swapped Comparing the Law of Other Countries "The Evolution of Bills of Exchange in Russia" with "Bills of Exchange Act in Australia" to provide a better of example of the use of bills of exchange.
- Repositioned Case 27-3 and replaced *Buckeye Check Cashing, Inc. v. Camp* with *Wawel Savings Bank v. Jersey Tractor Trailer Training, Inc.*
- Improved Questions & Problems, removing outdated questions and adding relevant and recent problems.

Chapter 28 Liability, Defenses, and Discharge

- Revised E-Commerce and the Law with new information concerning electronic signatures.
- Updated Case 28-1 *Start Bank v. Theodore Jackson, Jr.*, with *Heartland State Bank v. American Bank & Trust*.
- Replaced Comparing the Law of Other Countries “Negotiability and Forgery in Japan” with “Negotiable Instruments Law of the People’s Republic of China.”
- Refurbished Questions & Problems to include more recent cases and problems relevant to the chapter.

Chapter 29 Checks and Electronic Fund Transfers

- Replaced Case Opener and Case Opener Wrap-Up with a recent example of fraudulent electronic fund transfers.
- Inserted Comparing the Law of Other Countries box about money orders in India to contrast them to money orders in the United States.
- Revised Case 29-3 with *Merister v. Bank of America* to illustrate liability in cases involving fraud.
- Added paragraph in subsection “Unauthorized Transfers,” tying the section to the Case Opener.
- Updated Questions & Problems with newer questions that reflect recent developments in cases involving checks and electronic fund transfers.

Chapter 30 Secured Transactions

- Added new Case Opener addressing secured transactions, motor vehicles, and repossession.
- Revised material concerning security agreements.
- Added new case on the distinction between consumer goods and business equipment.
- Revised material relating to perfection of security interests in movable collateral.
- Updated material on the disposition of collateral by a creditor after default.
- Revised Questions & Problems to include new cases concerning perfection of security interests, repossession, and disposition of collateral by creditors after default and lien searches.

Chapter 31 Other Creditors’ Remedies and Suretyship

- Added new Case Opener addressing compliance with mortgage foreclosure procedures.
- Added new case describing qualifications to be considered a mechanic or artisan entitled to lien rights.
- Updated material on exemptions from writs of execution.
- Added new case addressing proceeds subject to garnishment.
- Updated material concerning the amount of homestead exemptions.
- Revised Questions & Problems to include new cases concerning entitlement to artisan liens, garnishment of pension funds, and the consequences of abusive residential real estate lending practices.

Chapter 32 Bankruptcy and Reorganization

- Updated Case Opener.
- Provided new bankruptcy filing statistics.
- Updated discussion of bankruptcy laws in Spain.
- Added new Case Nugget discussing bankruptcy and requirements for credit counseling.
- Updated procedures relating to involuntary bankruptcy proceedings.
- Updated values of property subject to bankruptcy exemptions.
- Revised list of largest corporate bankruptcy filings.
- Revised Questions & Problems to include new cases concerning determination of the proper bankruptcy chapter to utilize in a filing, effect of discharge, undue hardship as a means of discharging student loan debt, and fraudulent prepetition transfers of property.

Chapter 33 Agency Formation and Duties

- Changed text in the “Introduction to Agency Law” section to explain the relationship between agency laws and the states, especially agency laws concerning athletes.
- Inserted exhibits to help explain agency laws.
- Replaced Comparing the Law of Other Countries “Formation of Power of Attorney under Civil Law in France” with “Formation of Power of Attorney in Luxembourg” to better explain agency by implied authority.
- Updated Case 33-1 by replacing *Thomas & Linda Genovese v. Theresa Bergeron* with *Ackerman v. Sobol Family Partnership, LLP*, a more recent case that focuses on the actions of the principal in an agency issue.
- Revamped Point / Counterpoint to address the topic “Should sports agents be held personally accountable for NCAA violations involving signing college athlete clients?” and updated the responses.
- Improved Questions & Problems to include more recent issues concerning agency law.

Chapter 34 Liability to Third Parties and Termination

- Updated Case Opener and Case Opener Wrap-Up with a more recent example of vicarious liability.
- Replaced case *Sharon D. Jones v. Renee S. Brandt* with *In re Estate of Kurrelmeyer* to demonstrate the extent of power of attorney.
- Enhanced footnotes to include further explanation and clarification concerning the liability of agency.
- Swapped Comparing the Law of Other Countries “Termination in the Netherlands” for “Termination in the United Arab Emirates.”
- Revised Point / Counterpoint, replacing the question with “Should attorneys and agents be required to pass mental fitness assessments before being given roles in power-of-attorney circumstances?” and replacing the responses with new answers that correspond to the new question.
- Refurbished Questions & Problems to include more recent issues.

Chapter 35 Forms of Business Organization

- Swapped Comparing the Law of Other Countries “Sole Traders in Germany” with “Limited Liability Partnerships in Japan” to better compare and contrast partnerships in other countries with partnerships in the United States.
- Updated Case 35-1 with *Meyer v. Christie* to illustrate joint ventures.
- Revised Exhibit 35-8, updating the list of “The Top 10 Global Franchises, 2013.”
- Improved Questions & Problems, including more recent issues and cases concerning termination, franchisees, and trusts.

Chapter 36 Partnerships: Nature, Formation, and Operation

- Revised Case Opener and Case Opener Wrap-Up to demonstrate potential liability of a partnership.
- Swapped Case 36-1, *Ingram v. Deere*, with *Leoff v. S&J Land Co.* to illustrate whether a partnership relationship exists.
- Enhanced text in subsection “Liability to Third Parties” to include information from the new Case Opener.
- Replaced Comparing the Law of Other Countries “Silent Partnerships in Germany” with “Duties of Partnerships in Japan” to contrast partnerships in Japan with partnerships in the United States.
- Inserted E-Commerce and the Law “Partnerships: An Essential Part of Online Business” to explain the benefits of an e-company having a partner.
- Updated Questions & Problems to include newer issues and cases relating to the chapter.

Chapter 37 Partnerships: Termination and Limited Partnerships

- Replaced Case 37-1, *Liem Phan Vu v. Davis Ha et al.*, with *Miller v. Bill & Carolyn Ltd. P’Ship* to illustrate the dissolution of a partnership due to a court decision.
- Revised Comparing the Law of Other Countries with “Dissolution of Partnerships in India” to explain the cause for dissolution of a firm in India.
- Removed Comparing the Law of Other Countries “Effects of Dissolution in Scotland.”
- Improved Questions & Problems to include more recent cases and issues.

Chapter 38 Corporations: Formation and Financing

- Added Comparing the Law of Other Countries “Corporate Structure in China” to compare and contrast forms of centralized management in the United States and in China.
- Inserted E-Commerce and the Law “Nonprofit Corporations” to explain the role of technology and the Internet in the operation of nonprofits.
- Updated Case 38-2 with *King v. American Family Mutual Insurance Company* to describe the process of authorization.
- Refurbished Questions & Problems to include issues concerning age discrimination and the termination of contracts.

Chapter 39 Corporations: Directors, Officers, and Shareholders

- Updated Case Opener and Case Opener Wrap-Up to provide a recent example of the power of shareholders in a company.
- Replaced Case 39-1, *Frieda H. Rabkin v. Philip A. Hunt Chemical Corp.*, with *McCann v. McCann* to illustrate the duties of majority shareholders.

- Revamped Comparing the Law of Other Countries, including “Criminal Liability in France” to contrast the criminal liability in France with that in the United States.
- Refurbished Point / Counterpoint, replacing the question with “Should shareholder and stock information be permitted as discussion topics on social media websites?”
- Improved Questions & Problems, including recent cases and issues relating to corporations.

Chapter 40 Corporations: Mergers, Consolidations, Terminations

- Changed Case Opener and Case Opener Wrap-Up to “Acquisitions as Horizontal Mergers.”
- Swapped Case 40-2, *Charland v. Country View Golf Club, Inc.*, with *Shifan v. Morgan Joseph Holdings, Inc.*
- Added E-Commerce and the Law “Hostile Takeovers Online” to demonstrate possible measures taken to prevent hostile takeovers.
- Improved Point / Counterpoint by replacing the question with “Should the SEC require early disclosure of major cash tender stock purchases for publicly traded stock?” and updating the responses.
- Replaced Questions & Problems that were outdated.

Chapter 41 Corporations: Securities and Investor Protection

- Revised Case 41-1, *Securities and Exchange Commission v. Life Partners, Inc.*, with *Securities and Exchange Commission v. Mutual Benefits Corp.* to provide a more recent example of how courts apply the Howey test.
- Updated Questions & Problems to include more recent issues related to securities and investor protection.

Chapter 42 Employment and Labor Law

- Added case related to privacy of e-mails sent between attorney and client.
- Updated Questions & Problems.

Chapter 43 Employment Discrimination

- Enhanced discussion of age discrimination including a new Case Nugget on the topic.
- Added new case on the Equal Pay Act.
- Revised and updated discussion of discrimination based on sexual orientation, including same-sex marriage laws and the 2013 U.S. Supreme Court decisions on both the Defense of Marriage Act and California’s Proposition 8.
- Updated Questions & Problems.

Chapter 44 Administrative Law

- Enhanced discussion of the Freedom of Information Act (FOIA) through addition of a case regarding the National Security Administration (NSA).
- Revised and updated discussion of California’s request for a waiver from the Environmental Protection Agency (EPA) under the Clean Air Act.
- Updated Questions & Problems.

Chapter 45 Consumer Law

- Replaced Case Opener and Case Opener Wrap-Up with “Deceptive Advertising and the Ultimate Weight Loss Cure” to provide an example of misrepresentation.
- Improved E-Commerce and the Law by replacing “Consumers on the Net” with “Deceptive Ads Could Lead to Computer Consequences” to explain “bait and click.”
- Updated Comparing the Law of Other Countries with “Advertising in China” to explain the Chinese definition of false advertising.
- Revamped Questions & Problems to include updated issues related to consumer law.

Chapter 46 Environmental Law

- Changed Case 46-1 to *Brodsky v. United States Nuclear Regulatory Commission* to demonstrate a case concerning whether an EIS is required.
- Added Comparing the Law of Other Countries “An Alternative Approach to Cleaner Air: Germany’s Shift to Renewable Energy.”
- Revised Questions & Problems to include recent environmental law issues and cases.

Chapter 47 Antitrust Law

- Replaced Case 47-1 with *California v. Safeway*, a more recent case involving a violation of the Sherman Act.
- Inserted E-Commerce and the Law “Is Google a Monopoly?” to illustrate the difficulty in determining monopolies in e-commerce.
- Added E-Commerce and the Law “Making Bid-Rigging Easy” to explain the problem of bid rigging online.
- Refurbished Questions & Problems to include updated cases concerning antitrust law.

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

- Revamped Case 48-2, replacing the original case with *Campbell v. Robinson* to illustrate a conditional contract.
- Updated Questions & Problems, including recent cases and disputes involving property.

Chapter 49 Real Property

- Replaced Case Opener and Case Opener Wrap-Up with an example of riparian water rights.
- Inserted Case Nugget “The Importance of Knowing Types of Tenancies” to illustrate the differences in tenancies.
- Enhanced Case Opener Wrap-Up to include more details about the case.
- Improved Questions & Problems to include more recent examples of issues concerning real property.

Chapter 50 Landlord-Tenant Law

- Updated Case 50-1 with *Choices in Cmty. Living, Inc. v. Petkus* to demonstrate a recent example of a potential violation of the Housing Act.
- Added Comparing the Law of Other Countries “Eviction in Japan” to contrast the eviction rates in Japan and the United States.

- Revamped Point / Counterpoint to include a new question: “Should landlords be permitted to screen potential tenants for criminal background checks?” and provided new answers to correspond with the question.
- Revised Questions & Problems to include current developments in landlord-tenant law.

Chapter 51 Insurance Law

- Added updated Case Opener addressing insurance coverage for Chinese drywall claims.
- Revised list of interesting insurance policies.
- Added new case addressing the types of interests protected by insurance policies.
- Added new case on interpretation of automobile insurance policies.
- Revised Questions & Problems to include new cases concerning coverage for flooding, differences between commercial and noncommercial policies, the interpretation of automobile policies, liability for injuries occurring as a result of an accident involving a loaned vehicle, and insurable interests in life insurance policies.

Chapter 52 Wills and Trusts

- Added new Case Opener addressing problems arising from the use of preprinted wills.
- Included new case concerning the determination of heirs under state law in the context of modern science.
- Added new case concerning undue influence and fraud in the context of preparation of a will.
- Added new Case Nugget addressing tortious interference with the expectancy of inheritance or gift.
- Updated material on organ donation in Japan.
- Revised Questions & Problems to include new cases addressing the enforceability of unsigned wills and *in terrorem* clauses, the recognition of holographic wills, competency to make a will, and interpretation of vague clauses.

Acknowledgments

This element of the Preface contains a palpable tone of gratitude and humility. Any project the scope of *Dynamic Business Law* 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.

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An Introduction to Dynamic Business Law

LEARNING OBJECTIVES

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

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

L01

What is business law?

This book is for future business managers, especially those who wish to be leaders. The preparation for that career requires, in part, an awareness of the legal issues arising in business. Businesses need to finance capital growth, purchase inputs, and hire and develop employees. They must sell to consumers, please owners, and comply with government rules. All these activities are full of potential legal conflicts. Appendix 1A explains the role of critical thinking in resolving these conflicts.

L02

How does business law relate to business education?

Business law consists of the enforceable rules of conduct that govern commercial relationships. For example, a firm is required by law to obey the antitrust laws when it considers merging with another firm. In other words, buyers and sellers interact in market exchanges within the rules that specify the boundaries of legal business behavior. Constitutions, legislatures, regulatory bodies, and courts spell out what market participants may and may not legally do. These rules and responsibilities provide the stability required in a thriving market economy.

Business activities must follow legal guidelines. All contracts, employment decisions, and payments to a supplier are constrained 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, as Exhibit 1-1 illustrates.

Law and Its Purposes

L03

What are the purposes of law?

As individuals, few of us can impose rules on others, but a majority of citizens in a democracy can agree to permit certain authorities to make and enforce rules of behavior in their community. These rules are the *law*, and they are enforceable in the courts the community maintains. Exhibit 1-2 lists just a few of the many purposes fulfilled by the law.

Each is important, but taken together they remind us why we are proud to say we are a society of laws. The respect we give the law as a source of authority is in part our recognition that in its absence, we would rely solely on the goodwill and dependability of one another. Most of us greatly prefer the law.

Classification of the Law

L04

What are alternative ways to classify the law?

There are many ways of dividing laws into different groups. Some include national versus international law, federal versus state law, and public versus private law. **Private law** regulates disputes between private individuals or groups. If a store owner is delinquent in paying rent to the landlord, the resulting dispute is governed by private law. **Public law** controls disputes between private individuals or groups and their government. If a store dumps waste behind its building in violation of local, state, or federal environmental regulations, public law will resolve the dispute.

Another distinction we make is between civil and criminal law. (See Exhibit 1-3.) **Civil law** delineates the rights and responsibilities implied in relationships between persons and between persons and their government. It also identifies the remedies available when someone's rights are violated. For example, in 1993 the restaurant chain Jack-In-the-Box was ordered to pay civil damages after a two-year-old child died of food poisoning and several other people became ill from eating meat tainted with *E. coli* bacteria.

Criminal law, in contrast, regulates incidents in which someone commits an act against the public as a whole, such as by conducting 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. Several years ago an IBM secretary allegedly told her husband, who in turn told several other people, that the company was

FUNCTIONAL AREA OF BUSINESS	RELEVANT AREAS OF BUSINESS LAW
Corporate management	International and comparative law White-collar crime Contracts Corporate law Antitrust law Administrative law Agency law Insurance law Employment law
Production and transportation	Tort law Contracts Environmental law Consumer law
Marketing	Tort law Contracts Antitrust law Consumer law Intellectual property
Research and development	Product liability Intellectual property Property law Consumer law
Accounting and finance	Liability of accountants Contracts Negotiable instruments and banking Bankruptcy White-collar crime
Human resource management	Agency law Contracts Employment and labor law Employment discrimination

Exhibit 1-1

Business Law and the Six Functional Areas of Business

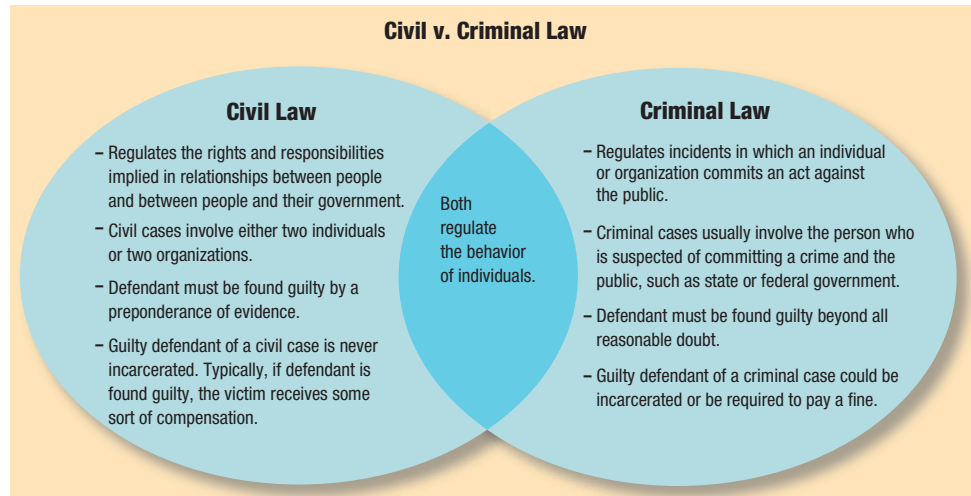
- Providing order such that one can depend on a promise or an expectation of obligations
- Serving as an alternative to fighting
- Facilitating a sense that change is possible, but only after a rational consideration of options
- Encouraging social justice
- Guaranteeing personal freedoms
- Serving as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

Exhibit 1-2

Purposes of the Law

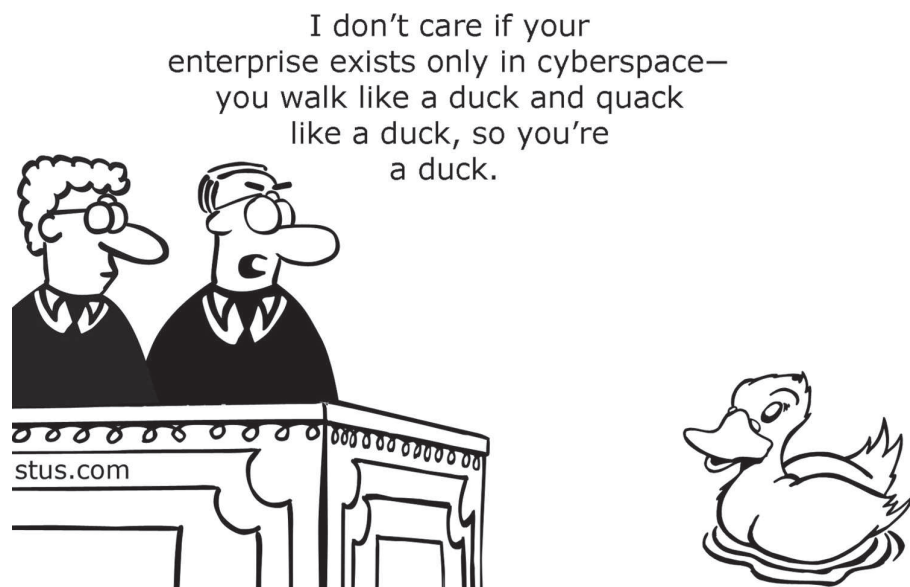
Exhibit 1-3

Civil versus Criminal Law



going to take over operations of Lotus Development. The leaked information spread among a number of individuals, 25 of whom bought stock that increased greatly in value following IBM's public announcement of the takeover. The Securities and Exchange Commission filed charges against them for creating an unfair trading environment for the public. Criminal law cases are prosecuted not by individuals but by the state, federal, or local government.

While some new laws have been adopted to regulate the kinds of activities businesses can now conduct online, **cyberlaw** is based primarily on existing laws. Laws governing contracts, for instance, are essentially the same in all situations, yet adaptations are necessary because contracts can now be made and signed online through retailers such as Amazon and eBay. Activities by companies such as Napster and YouTube have raised the question of whether and when the copying of certain intellectual property, such as music and video, constitutes theft.



Sources of Business Law

How is law created, and where do we look to find the laws? The sources of law are discussed below.

L05

What are the sources of the law?

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 these 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 to study when trying to identify the relationship between business organizations and government.

STATUTES

The assortment of *statutes*, or rules and regulations put forth by legislatures, is what we call **statutory law**. These legislative acts are written into the United States Code when they are passed by Congress or into the appropriate state codes when they are enacted by state legislatures. The codes are a collection of all the laws in one convenient location.

Business managers must also 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, and building codes. If you wish to open a Krispy Kreme franchise in Santa Fe, New Mexico, you must follow local guidelines regarding where you may build your store, the materials you may use, and the state minimum wage you must pay employees making donuts. The regulations will be different if you wish to open your franchise in Toledo, Ohio, or Seattle, Washington.

While 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 laws vary from state to state. 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. 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, while 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, it 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 behaviors and prevent others. But laws are seldom self-explanatory and often require interpretation. **Case law**, also called **common law**, is the collection of legal interpretations made by judges. These interpretations are law unless revoked later by new statutory law.