



12th Edition

Roger LeRoy Miller

Standard Edition:
Text &
Summarized Cases

Business Law Today



BUSINESS LAW TODAY SERIES

12th Edition

Business Law Today

Standard Edition
Text & Summarized Cases



BUSINESS LAW TODAY SERIES

Roger LeRoy Miller

Institute for University Studies
Arlington, Texas



Australia • Brazil • Mexico • Singapore • United Kingdom • United States

**Business Law Today, Standard Edition
Text & Summarized Cases
12th Edition
Roger LeRoy Miller**

Senior Vice President, Higher Ed Product,
Content, and Market Development: Erin Joyner

Product Director: Bryan Gambrel

Senior Product Manager: Vicky True-Baker

Senior Content Manager: Martha Conway

Cengage Subject Matter Expert: Lisa Elliott

Learning Designer: Sarah Huber

Digital Delivery Lead: Jennifer Chinn

Product Assistant: Christian Wood

Marketing Manager: Andrew Miller

Intellectual Property Analyst: Jennifer Bowes

Intellectual Property Project Manager:
Jillian Shafer

Production Service: SPI Global

Designer: Chris Doughman

Cover and Internal Designer: Ke Design/Ted Knapke

Cover Image: Ditty_about_summer/
Shutterstock.com

Design Images: Front & back matter header:
Ditty_about_summer / Shutterstock.com;
Unit-opener statue of Lady Justice: Michal
Kalasek/Shutterstock.com; Case: silvae/
Shutterstock.com; Classic Case: Orhan Cam/
Shutterstock.com; Spotlight Case: Kozlik/
Shutterstock.com; Linking Business Law: Hekla/
Shutterstock.com; Unit-ending Task-Based
Simulation: Kamil Fazrin Rauf/Shutterstock.com;
Adapting the Law to the Online Environment:
Artem Samokhvalov/Shutterstock.com;
Landmark in the Law: Yuriy Kulik/Shutterstock.
com; Business Law Analysis: winui/Shutterstock.
com; Business Web Log: Creative Images/
Shutterstock.com; Beyond Our Borders: iDEAR
Replay/Shutterstock.com; Ethical Issue puzzle
piece: Gary Lanfer/Shutterstock.com; Managerial
Strategy: Rawpixel.com/Shutterstock.com

© 2020, 2017 Cengage Learning, Inc.

Unless otherwise noted, all content is © Cengage.

ALL RIGHTS RESERVED. No part of this work covered by the copyright herein may be reproduced or distributed in any form or by any means, except as permitted by U.S. copyright law, without the prior written permission of the copyright owner.

For product information and technology assistance, contact us at
Cengage Customer & Sales Support, 1-800-354-9706 or
support.cengage.com.

For permission to use material from this text or product, submit all
requests online at **www.cengage.com/permissions.**

Library of Congress Control Number: 2018950163

Soft-cover Edition:

ISBN: 978-0-357-03816-1

Loose-leaf Edition:

ISBN: 978-0-357-03028-8

Cengage

20 Channel Center Street

Boston, MA 02210

USA

Cengage is a leading provider of customized learning solutions with employees residing in nearly 40 different countries and sales in more than 125 countries around the world. Find your local representative at **www.cengage.com.**

Cengage products are represented in Canada by
Nelson Education, Ltd.

To learn more about Cengage platforms and services, register or access your online learning solution, or purchase materials for your course, visit **www.cengage.com.**



Contents in Brief

Unit 1 The Legal Environment of Business 1

- 1 Law and Legal Reasoning 2
- 2 Constitutional Law 32
- 3 Ethics in Business 57
- 4 Courts and Alternative Dispute Resolution 86
- 5 Tort Law 122
- 6 Product Liability 149
- 7 Intellectual Property Rights 170
- 8 Internet Law, Social Media, and Privacy 198
- 9 Criminal Law and Cyber Crime 222

Unit 2 Contracts and E-Contracts 255

- 10 Nature and Classification 256
- 11 Agreement 274
- 12 Consideration, Capacity, and Legality 298
- 13 Defenses to Contract Enforceability 324
- 14 Third Party Rights and Discharge 347
- 15 Breach and Remedies 372

Unit 3 Commercial Transactions 393

- 16 Sales and Lease Contracts 394
- 17 Performance and Breach of Sales and Lease Contracts 428
- 18 Negotiable Instruments 459
- 19 International and Space Law 493
- 20 Banking in the Digital Age 515
- 21 Security Interests and Creditors' Rights 538
- 22 Bankruptcy 567

Unit 4 Agency and Employment Law 595

- 23 Agency Relationships in Business 596
- 24 Employment, Immigration, and Labor Law 624
- 25 Employment Discrimination 652

Unit 5 Business Organizations 681

- 26 Sole Proprietorships and Franchises 682
- 27 All Forms of Partnership 698
- 28 Limited Liability Companies and Special Business Forms 721
- 29 Corporations 739
- 30 Investor Protection, Insider Trading, and Corporate Governance 773

Unit 6 Government Regulation 801

- 31 Antitrust Law and Promoting Competition 802
- 32 Consumer and Environmental Law 825
- 33 Liability of Accountants and Other Professionals 855

Unit 7 Property and Its Protection 877

- 34 Personal Property and Bailments 878
- 35 Real Property and Landlord-Tenant Law 900
- 36 Insurance, Wills, and Trusts 923

APPENDICES

- A How to Brief Cases and Analyze Case Problems A-1
- B The Constitution of the United States A-3
- C The Uniform Commercial Code A-3
- D Answers to the *Issue Spotters* A-4
- E Sample Answers for *Business Case Problems with Sample Answer* A-12

Glossary G-1

Table of Cases TC-1

Index I-1

Contents

Unit 1 The Legal Environment of Business 1

Chapter 1

Law and Legal Reasoning

Business Activities and the Legal Environment

Sources of American Law

- Linking Business Law to Corporate Management: Dealing with Administrative Law
- Ethical Issue: *Do administrative agencies exercise too much authority?*

The Common Law

- Landmark in the Law: Equitable Maxims

Classifications of Law

- Beyond Our Borders: National Law Systems

Appendix to Chapter 1: Finding and Analyzing the Law

- Business Law Analysis: Case Briefing and IRAC Legal Reasoning

Chapter 2

Constitutional Law

The Constitutional Powers of Government

- Managerial Strategy: Marriage Equality and the Constitution
- Landmark in the Law: *Gibbons v. Ogden* (1824)

Classic Case 2.1: *Heart of Atlanta Motel v. United States* (1964)

Business and the Bill of Rights

- Beyond Our Borders: The Impact of Foreign Law on the United States Supreme Court
- Adapting the Law to the Online Environment: Does Everyone Have a Constitutional Right to Use Social Media?

Case 2.2: *Animal Legal Defense Fund v. Wasden* (2018)

- Ethical Issue: *Can a high school suspend teenagers from extracurricular activities because they posted suggestive photos of themselves online at social networking sites?*

	Spotlight on Beer Labels: Case 2.3: <i>Bad Frog Brewery, Inc. v. New York State Liquor Authority</i> (1998)	45
2	■ Business Law Analysis: Determining When Public Religious Displays Violate the Establishment Clause	48
3	Due Process and Equal Protection	49
4	Privacy Rights	51

Chapter 3

Ethics in Business 57

15	Ethics and the Role of Business	58
16	■ Business Web Log: Bogus Bank and Credit Card Accounts at Wells Fargo Bank	59
17	■ Adapting the Law to the Online Environment: Should Employees Have a “Right of Disconnecting”?	62
22	Case 3.1: <i>Al-Dabagh v. Case Western Reserve University</i> (2015)	63
30	Ethical Principles and Philosophies	65
	Sources of Ethical Issues in Business Decisions	69
	Case 3.2: <i>Watson Laboratories, Inc. v. State of Mississippi</i> (2018)	70
32	Making Ethical Business Decisions	73
33	■ Business Law Analysis: Applying the IDDR Framework	77
34	Business Ethics on a Global Level	78
36	Appendix to Chapter 3: Costco Code of Ethics	85

Chapter 4

Courts and Alternative Dispute Resolution 86

41	■ Business Web Log: Samsung and Forced Arbitration	87
42	The Judiciary’s Role in American Government	87
43	■ Landmark in the Law: <i>Marbury v. Madison</i> (1803)	88
44	Basic Judicial Requirements	89
	Spotlight on Gucci: Case 4.1: <i>Gucci America, Inc. v. Wang Huoqing</i> (2011)	94

The State and Federal Court Systems	95	■ Business Law Analysis: How State Legislation Can Limit Recovery for Design Defects	157
■ Beyond Our Borders: Islamic Law Courts Abroad and at Home	97	■ Ethical Issue: <i>Can a Taser be considered unreasonably dangerous as designed?</i>	157
Case 4.2: <i>Johnson v. Oxy USA, Inc.</i> (2016)	98	Case 6.2: <i>Stange v. Janssen Pharmaceuticals, Inc.</i> (2018)	159
■ Managerial Strategy: Should You Consent to Have Your Business Case Decided by a U.S. Magistrate Judge?	100	■ Managerial Strategy: When Is a Warning Legally Bulletproof?	160
■ Ethical Issue: <i>Should Supreme Court justices follow the Code of Conduct for United States Judges?</i>	102	Defenses to Product Liability	162
Following a State Court Case	102	■ Spotlight on Injuries from Vaccinations: Case 6.3: <i>Bruesewitz v. Wyeth, LLC</i> (2011)	163
■ Adapting the Law to the Online Environment: Using Social Media for Service of Process	104		
Case 4.3: <i>Klipsch Group, Inc. v. ePRO E-Commerce Limited</i> (2018)	108		
Courts Online	111		
Alternative Dispute Resolution	112		
		Chapter 7	
		Intellectual Property Rights	170
		Trademarks	171
		■ Linking Business Law to Marketing: Trademarks and Service Marks	171
	122	Classic Case 7.1: <i>Coca-Cola Co. v. Koke Co. of America</i> (1920)	172
	122	■ Ethical Issue: <i>Should the law allow offensive trademark names?</i>	174
	124	■ Beyond Our Borders: ALEVE versus FLANAX—Same Pain Killer, But in Different Countries	175
	126	Case 7.2: <i>LFP IP, LLC v. Hustler Cincinnati, Inc.</i> (2016)	176
	128	■ Business Web Log: Amazon Faces Fake Products	180
	130	Patents	181
	131	Copyrights	184
	135	■ Business Law Analysis: Licensing Is a Defense to Copyright Infringement	187
	137	■ Adapting the Law to the Online Environment: Beyoncé, Sampling, and a \$20 Million Lawsuit	188
	138	Case 7.3: <i>Oracle USA, Inc. v. Rimini Street, Inc.</i> (2018)	190
	141	Trade Secrets	190
	143	International Protections	191
	144		
		Chapter 8	
		Internet Law, Social Media, and Privacy	198
		Internet Law	199
	149	■ Spotlight on Internet Porn: Case 8.1: <i>Hasbro, Inc. v. Internet Entertainment Group, Ltd.</i> (1996)	203
	150	Copyrights in Digital Information	204
	151	■ Landmark in the Law: The Digital Millennium Copyright Act	205
	152	■ Adapting the Law to the Online Environment: Riot Games, Inc., Protects Its Online Video Game Copyrights	206
	153		
	155		
Chapter 5			
Tort Law			
The Basis of Tort Law			
Intentional Torts against Persons			
■ Business Law Analysis: Analyzing Intentional Infliction of Emotional Distress Claims			
Case 5.1: <i>Blake v. Giustibelli</i> (2016)			
■ Ethical Issue: <i>When does an online criticism of a physician become defamation?</i>			
■ Adapting the Law to the Online Environment: Revenge Porn and Invasion of Privacy			
Intentional Torts against Property			
Negligence			
Case 5.2: <i>Bogenberger v. Pi Kappa Alpha Corporation, Inc.</i> (2018)			
■ Landmark in the Law: <i>Palsgraf v. Long Island Railroad Co.</i> (1928)			
■ Spotlight on the Seattle Mariners: Case 5.3: <i>Taylor v. Baseball Club of Seattle, L.P.</i> (2006)			
Strict Liability			
Chapter 6			
Product Liability			
Product Liability Claims			
■ Business Web Log: Johnson & Johnson Faces Continuing Lawsuits Over Its Talcum Powder			
■ Landmark in the Law: <i>MacPherson v. Buick Motor Co.</i> (1916)			
Case 6.1: <i>Schwarck v. Arctic Cat, Inc.</i> (2016)			
Strict Product Liability			
■ Linking Business Law to Corporate Management: Quality Control			

Case 8.2: <i>BMG Rights Management (US), LLC v. Cox Communications, Inc.</i> (2018)	207	<ul style="list-style-type: none"> Adapting the Law to the Online Environment: Using Twitter to Cause Seizures—A Crime? 	225
Social Media	208	Case 9.1: <i>United States v. Crabtree</i> (2018)	226
Online Defamation	212	<ul style="list-style-type: none"> Managerial Strategy: The Criminalization of American Business 	228
<ul style="list-style-type: none"> Business Law Analysis: Immunity of ISPs under the Communications Decency Act 	213	Types of Crimes	229
Case 8.3: <i>David v. Textor</i> (2016)	214	<ul style="list-style-type: none"> Business Law Analysis: Proof of Credit-Card Theft 	231
Privacy	215	Spotlight on White-Collar Crime: Case 9.2: <i>People v. Sisuphan</i> (2010)	233
<ul style="list-style-type: none"> Beyond Our Borders: “The Right to Be Forgotten” in the European Union 	216	Defenses to Criminal Liability	237
<ul style="list-style-type: none"> Ethical Issue: <i>Should smart-TV manufacturers collect consumer-use data?</i> 	217	Constitutional Safeguards and Criminal Procedures	239
Chapter 9		<ul style="list-style-type: none"> Ethical Issue: <i>Should police be able to force you to unlock your mobile phone?</i> 	241
Criminal Law and Cyber Crime	222	<ul style="list-style-type: none"> Landmark in the Law: <i>Miranda v. Arizona</i> (1966) 	242
Civil Law and Criminal Law	222	Cyber Crime	245
Criminal Liability	225	Case 9.3: <i>United States v. Warner</i> (2016)	246
		Unit One: Task-Based Simulation	254

Unit 2 Contracts and E-Contracts 255

Chapter 10

Nature and Classification 256

An Overview of Contract Law 256

Elements of a Contract 258

Case 10.1: *Weston v. Cornell University* (2016) 259

Types of Contracts 260

- Ethical Issue: *Does a “You break it, you buy it” sign create a unilateral contract?*

Case 10.2: *Boswell v. Panera Bread Co.* (2018) 261

Quasi Contracts 262

- Business Law Analysis: Deciding If a Court Would Impose a Quasi Contract

Interpretation of Contracts 267

Spotlight on Columbia Pictures: Case 10.3: *Wagner v. Columbia Pictures Industries, Inc.* (2007) 268

Chapter 11

Agreement 274

Offer 274

Classic Case 11.1: *Lucy v. Zehmer* (1954) 275

Spotlight on Amazon.com: Case 11.2: *Basis Technology Corp. v. Amazon.com, Inc.* (2008) 277

- Business Law Analysis: Offers of a Reward 279

Acceptance 282

- Adapting the Law to the Online Environment: Can Your E-Mails or Instant Messages Create a Valid Contract? 283

E-Contracts 285

- Linking Business Law to Marketing: Customer Relationship Management 286

Case 11.3: *Bailey v. Kentucky Lottery Corp.* (2018) 289

- Ethical Issue: *How enforceable are click-on agreements to donate funds to a charity?* 290

The Uniform Electronic Transactions Act 292

Chapter 12

Consideration, Capacity, and Legality 298

Consideration 298

- Landmark in the Law: *Hamer v. Sidway* (1891) 299

Case 12.1: *USS–POSCO Industries v. Case* (2016) 300

Spotlight on Nike: Case 12.2: *Already, LLC v. Nike, Inc.* (2013) 305

Promissory Estoppel 306

Contractual Capacity	307	Delegations	351
Legality	310	Case 14.1: <i>Mirandette v. Nelnet, Inc.</i> (2018)	353
■ Business Law Analysis: Determining If a Contract with an Unlicensed Party Is Enforceable		Third Party Beneficiaries	353
Case 12.3: <i>Woischke v. Stursberg & Fine, Inc.</i> (2018)	311	Case 14.2: <i>Bozzio v. EMI Group, Ltd.</i> (2016)	354
■ Ethical Issue: <i>Are expansive noncompete agreements reducing worker mobility?</i>	312	Contract Discharge	357
■ Managerial Strategy: Creating Liability Waivers That Are Not Unconscionable	313	■ Business Law Analysis: Determining When a Breach Is Material	361
The Effect of Illegality	316	■ Ethical Issue: <i>Is it a material breach of contract for a hospital to accept a donation and then refuse to honor part of its commitment?</i>	362
	317	Case 14.3: <i>Hampton Road Bankshares, Inc. v. Harvard</i> (2016)	365
		■ Beyond Our Borders: Impossibility or Impracticability of Performance in Germany	367
Chapter 13		Chapter 15	
Defenses to Contract Enforceability	324	Breach and Remedies	372
Mistakes	324	Damages	373
■ Ethical Issue: <i>Should a surviving member of Lynyrd Skynyrd abide by a thirty-year-old consent decree?</i>	326	Case 15.1: <i>Baird v. Owens Community College</i> (2016)	374
Fraudulent Misrepresentation	327	■ Landmark in the Law: <i>Hadley v. Baxendale</i> (1854)	377
Case 13.1: <i>McCullough v. Allstate Property and Casualty Insurance Co.</i> (2018)	328	Spotlight on Liquidated Damages: Case 15.2: <i>Kent State University v. Ford</i> (2015)	379
■ Adapting the Law to the Online Environment: “Catfishing”: Is That Online “Friend” for Real?	331	Equitable Remedies	379
Undue Influence and Duress	332	■ Business Law Analysis: Enforceability of Liquidated Damages Provisions	380
The Writing Requirement	333	Case 15.3: <i>Cipriano Square Plaza Corp. v. Munawar</i> (2018)	381
Case 13.2: <i>Sloop v. Kiker</i> (2016)	334	Recovery Based on Quasi Contract	384
■ Beyond Our Borders: The Statute of Frauds and International Sales Contracts	337	Contract Provisions Limiting Remedies	385
The Parol Evidence Rule	340	■ Ethical Issue: <i>Can contracts for mixed martial arts fighters limit a fighter's right to stop fighting?</i>	385
		Unit Two: Task-Based Simulation	391

Unit 3 Commercial Transactions 393

Chapter 16		Case 16.1: <i>Toll Processing Services, LLC v. Kastalon, Inc.</i> (2018)	400
Sales and Lease Contracts	394	■ Business Law Analysis: Additional Terms between Merchants	404
■ Landmark in the Law: The Uniform Commercial Code	395	Classic Case 16.2: <i>Jones v. Star Credit Corp.</i> (1969)	409
The Scope of Articles 2 and 2A	395	Title and Risk of Loss	410
■ Adapting the Law to the Online Environment: Taxing Web Purchases	397	Case 16.3: <i>BMW Group, LLC v. Castle Oil Corp.</i> (2016)	411
The Formation of Sales and Lease Contracts	399	■ Managerial Strategy: Commercial Use of Drones	413
		Contracts for the International Sale of Goods	417
		Appendix to Chapter 16: An Example of a Contract for the International Sale of Coffee	424

Chapter 17**Performance and Breach of Sales and Lease Contracts** 428**Obligations of the Seller or Lessor** 429

Case 17.1: *All the Way Towing, LLC v. Bucks County International, Inc.* (2018) 431

Obligations of the Buyer or Lessee 434**Remedies of the Seller or Lessor** 436**Remedies of the Buyer or Lessee** 439

- Beyond Our Borders: The CISG's Approach to Revocation of Acceptance 443

Spotlight on Baseball Cards: Case 17.2: *Fitl v. Strek* (2005) 444

Warranties 445

Classic Case 17.3: *Webster v. Blue Ship Tea Room, Inc.* (1964) 449

- Business Law Analysis: Implied Warranties 450

Chapter 18**Negotiable Instruments** 459**Formation of Negotiable Instruments** 460

- Adapting the Law to the Online Environment: Pay with Your Smartphone 462

Case 18.1: *OneWest Bank, FSB v. Nunez* (2016) 466

- Business Law Analysis: Deciding If an Instrument Is Negotiable 467

Case 18.2: *Charles R. Tips Family Trust v. PB Commercial, LLC* (2015) 470

Transfer of Instruments 471

- Beyond Our Borders: Severe Restrictions on Check Indorsements in France 472

Holder in Due Course (HDC) 475

Case 18.3: *Jarrell v. Conerly* (2018) 478

Signature and Warranty Liability 480**Defenses, Limitations, and Discharge** 484

- Landmark in the Law: Federal Trade Commission Rule 433 486

Chapter 19**International and Space Law** 493**International Law** 493

- Beyond Our Borders: Border Searches of Your Electronic Devices 494

Case 19.1: *Rubin v. Islamic Republic of Iran* (2018) 498

- Business Law Analysis: Sovereign Immunity Claims 499

Doing Business Internationally 500

- Ethical Issue: Is it ethical (and legal) to brew "imported" beer brands domestically? 500

Regulation of Specific Business Activities 502

Case 19.2: *Changzhou Trina Solar Energy Co. v. International Trade Commission* (2018) 504

U.S. Laws in a Global Context 506

Spotlight on International Torts: Case 19.3: *Daimler AG v. Bauman* (2014) 507

Space Law 508**Chapter 20****Banking in the Digital Age** 515**Checks and the Bank-Customer Relationship** 516**The Bank's Duty to Honor Checks** 519

Case 20.1: *Legg v. West Bank* (2016) 519

Case 20.2: *Horton v. JPMorgan Chase Bank, N.A.* (2018) 522

The Bank's Duty to Accept Deposits 525

Case 20.3: *Shahin v. Delaware Federal Credit Union* (2015) 526

- Landmark in the Law: Check Clearing for the 21st Century Act (Check 21) 527

Electronic Fund Transfers 529**Online Banking and E-Money** 531

- Adapting the Law to the Online Environment: Electronic Payment Systems and the Use of Checks 532

Chapter 21**Security Interests and Creditors' Rights** 538**Creating and Perfecting a Security Interest** 538

Spotlight on Wedding Rings: Case 21.1: *Royal Jewelers, Inc. v. Light* (2015) 540

- Adapting the Law to the Online Environment: Secured Transactions Online 541

- Business Law Analysis: Perfecting a Security Interest 543

Scope of a Security Interest 547

Case 21.2: *In re Tusa-Expo Holdings, Inc.* (2016) 547

Priorities, Rights, and Duties 550**Default** 552

Case 21.3: *SunTrust Bank v. Monroe* (2018) 554

- Ethical Issue: How long should a secured party have to seek a deficiency judgment? 556

Other Laws Assisting Creditors 556

Chapter 22**Bankruptcy****567****The Bankruptcy Code**

567

- Business Web Log: Online Retail Competition Causes Yet Another Brick-and-Mortar Retailer to File for Bankruptcy
- Landmark in the Law: The Bankruptcy Abuse Prevention and Consumer Protection Act

568

569

Chapter 7—Liquidation

570

- Business Law Analysis: Violations of the Automatic Stay

574

Case 22.1: In re *Anderson* (2016) 579

- Ethical Issue: *Should there be more relief for student loan defaults?* 581

Case 22.2: In re *Cummings* (2015) 582**Chapter 11—Reorganization** 583

- Linking Business Law to Corporate Management: What Can You Do to Prepare for a Chapter 11 Reorganization? 584

Bankruptcy Relief under Chapter 13 and Chapter 12 587**Case 22.3:** In re *Chamberlain* (2018) 589**Unit Three: Task-Based Simulation** 594**Unit 4 Agency and Employment Law 595****Chapter 23****Agency Relationships in Business 596****Agency Law**

597

- Ethical Issue: *Is it fair to classify Uber and Lyft drivers as independent contractors?*

598

Formation of an Agency

600

Case 23.1: *Reidel v. Akron General Health System* (2018)

602

Duties of Agents and Principals

603

Spotlight on Taser International: Case 23.2: *Taser International, Inc. v. Ward* (2010)

604

Agent's Authority

607

Liability in Agency Relationships

609

- Business Law Analysis: Liability of Disclosed Principals
- Landmark in the Law: The Doctrine of *Respondeat Superior*
- Beyond Our Borders: Islamic Law and *Respondeat Superior*

610

613

615

Case 23.3: *M.J. v. Wisan* (2016)

615

Termination of an Agency

616

Case 24.2: *Encino Motorcars, LLC v. Navarro* (2018) 629**Health, Safety, Income Security, and Privacy** 632

- Business Law Analysis: Workers' Compensation Claims 633

- Adapting the Law to the Online Environment: Social Media in the Workplace Come of Age 637

Immigration Law 638**Labor Law** 641

- Managerial Strategy: Union Organizing Using a Company's E-Mail System 644

Case 24.3: *Contemporary Cars, Inc. v. National Labor Relations Board* (2016) 645**Chapter 25****Employment Discrimination 652****Title VII of the Civil Rights Act** 653

- Linking Business Law to Corporate Management: Human Resource Management 654

- Adapting the Law to the Online Environment: Hiring Discrimination Based on Social Media Posts 658

Case 25.1: *Bauer v. Lynch* (2016) 659**Case 25.2:** *Young v. United Parcel Service, Inc.* (2015) 660

- Ethical Issue: *Should corporations be forced to publicize the ratio of CEO-to-worker pay?* 662

- Business Law Analysis: Retaliation Claims 664

Case 25.3: *Franchina v. City of Providence* (2018) 665

- Beyond Our Borders: Sexual Harassment in Other Nations 666

Discrimination Based on Age, Disability, or Military Status 667**Defenses to Employment Discrimination** 673**Affirmative Action** 674**Unit Four: Task-Based Simulation** 680**Chapter 24****Employment, Immigration, and Labor Law 624****Employment at Will**

625

Case 24.1: *Caterpillar, Inc. v. Sudlow* (2016)

626

Wages, Hours, and Leave

627

- Ethical Issue: *Are employees entitled to receive wages for all the time they spend at work, including times when they are taking a personal break?*

628

- Beyond Our Borders: Brazil Requires Employers to Pay Overtime for Use of Smartphones after Work Hours

629

Unit 5 Business Organizations 681

Chapter 26

Sole Proprietorships and Franchises

Sole Proprietorships

Case 26.1: *A. Gadley Enterprises, Inc. v. Department of Labor and Industry Office of Unemployment Compensation Tax Services* (2016)

- Ethical Issue: *Can the religious beliefs of a small business owner justify the business refusing to provide services to members of the LGBT community?*
- Adapting the Law to the Online Environment: A Sole Proprietorship, Facebook Poker, and Bankruptcy

Franchises

- Beyond Our Borders: Franchising in Foreign Nations

The Franchise Contract

Franchise Termination

Case 26.2: *S&P Brake Supply, Inc. v. Daimler Trucks North America, LLC* (2018)

Spotlight on Holiday Inns: Case 26.3: *Holiday Inn Franchising, Inc. v. Hotel Associates, Inc.* (2011)

Chapter 27

All Forms of Partnership

Basic Partnership Concepts

Case 27.1: *Harun v. Rashid* (2018)

Formation and Operation

- Beyond Our Borders: Doing Business with Foreign Partners

Classic Case 27.2: *Meinhard v. Salmon* (1928)

Dissociation and Termination

Limited Liability Partnerships

Limited Partnerships

Case 27.3: *DeWine v. Valley View Enterprises, Inc.* (2015)

- Ethical Issue: *Should an innocent general partner be jointly liable for fraud?*

Chapter 28

Limited Liability Companies and Special Business Forms

The Limited Liability Company

- Landmark in the Law: Limited Liability Company (LLC) Statutes

Case 28.1: *Hodge v. Strong Built International, LLC* (2015)

- Beyond Our Borders: Limited Liability Companies in Other Nations

LLC Operation and Management

- Managerial Strategy: Can a Person Who Is Not a Member of a Protected Class Sue for Discrimination?

Case 28.2: *Schaefer v. Orth* (2018)

Dissociation and Dissolution of an LLC

Case 28.3: *Reese v. Newman* (2016)

- Business Law Analysis: When Will a Court Order the Dissolution of an LLC?

Special Business Forms

Chapter 29

Corporations

Nature and Classification

- Adapting the Law to the Online Environment: Programs That Predict Employee Misconduct

Case 29.1: *Drake Manufacturing Co. v. Polyflow, Inc.* (2015)

Case 29.2: *Greenfield v. Mandalay Shores Community Association* (2018)

Formation and Powers

- Beyond Our Borders: Does Cloud Computing Have a Nationality?

- Business Law Analysis: Piercing the Corporate Veil

Directors and Officers

Classic Case 29.3: *Guth v. Loft, Inc.* (1939)

Shareholders

Major Business Forms Compared

682	Limited Liability Companies and Special Business Forms	721
683	The Limited Liability Company	721
	■ Landmark in the Law: Limited Liability Company (LLC) Statutes	722
683	Case 28.1: <i>Hodge v. Strong Built International, LLC</i> (2015)	725
	■ Beyond Our Borders: Limited Liability Companies in Other Nations	726
684	LLC Operation and Management	727
	■ Managerial Strategy: Can a Person Who Is Not a Member of a Protected Class Sue for Discrimination?	728
686	Case 28.2: <i>Schaefer v. Orth</i> (2018)	729
687	Dissociation and Dissolution of an LLC	730
690	Case 28.3: <i>Reese v. Newman</i> (2016)	731
691	■ Business Law Analysis: When Will a Court Order the Dissolution of an LLC?	732
692	Special Business Forms	732
693		
	Chapter 29	
	Corporations	739
698	Nature and Classification	739
	■ Adapting the Law to the Online Environment: Programs That Predict Employee Misconduct	741
700	Case 29.1: <i>Drake Manufacturing Co. v. Polyflow, Inc.</i> (2015)	742
702	Case 29.2: <i>Greenfield v. Mandalay Shores Community Association</i> (2018)	745
703	Formation and Powers	746
	■ Beyond Our Borders: Does Cloud Computing Have a Nationality?	751
706	■ Business Law Analysis: Piercing the Corporate Veil	753
708	Directors and Officers	754
711	Classic Case 29.3: <i>Guth v. Loft, Inc.</i> (1939)	758
712	Shareholders	760
713	Major Business Forms Compared	765
715		

Chapter 30**Investor Protection, Insider Trading, and Corporate Governance 773**

Securities Act of 1933	774
■ Managerial Strategy: The SEC's New Pay-Ratio Disclosure Rule	776
■ Adapting the Law to the Online Environment: Investment Crowdfunding—Regulations and Restrictions	778
■ Landmark in the Law: Changes to Regulation A: "Reg A+"	779

Case 30.1: <i>Omnicare, Inc. v. Laborers District Council Construction Industry Pension Fund</i> (2015)	782
Securities Exchange Act of 1934	783
Classic Case 30.2: <i>Securities and Exchange Commission v. Texas Gulf Sulphur Co.</i> (1968)	785
Case 30.3: <i>Singer v. Reali</i> (2018)	789
State Securities Laws	791
Corporate Governance	792
■ Beyond Our Borders: Corporate Governance in Other Nations	792
Unit Five: Task-Based Simulation	800

Unit 6 Government Regulation 801**Chapter 31****Antitrust Law and Promoting Competition 802**

The Sherman Antitrust Act	803
■ Business Web Log: Facebook and Google in a World of Antitrust Law	803
■ Landmark in the Law: The Sherman Antitrust Act	804
Section 1 of the Sherman Act	806
Section 2 of the Sherman Act	809
Case 31.1: <i>McWane, Inc. v. Federal Trade Commission</i> (2015)	811
The Clayton Act	813
Case 31.2: <i>Candelore v. Tinder, Inc.</i> (2018)	814
Enforcement and Exemptions	817
Case 31.3: <i>TransWeb, LLC v. 3M Innovative Properties Co.</i> (2016)	818
U.S. Antitrust Laws in the Global Context	818
■ Adapting the Law to the Online Environment: The European Union Issues Record Fine against Google in Antitrust Case	820

Case 32.2: <i>Haywood v. Massage Envy Franchising, LLC</i> (2018)	830
Protection of Health and Safety	834
Credit Protection	836
Case 32.3: <i>Santangelo v. Comcast Corp.</i> (2016)	838
■ Ethical Issue: <i>Can a company that provides background checks willfully violate the Fair Credit Reporting Act?</i>	839
Protecting the Environment	840
■ Beyond Our Borders: Can a River Be a Legal Person?	841
Air and Water Pollution	843
Toxic Chemicals and Hazardous Waste	847

Chapter 33**Liability of Accountants and Other Professionals 855****Chapter 32****Consumer and Environmental Law 825**

Advertising, Marketing, Sales, and Labeling	826
Case 32.1: <i>POM Wonderful, LLC v. Federal Trade Commission</i> (2015)	827
■ Adapting the Law to the Online Environment: Regulating "Native" Ads on the Internet	829

Potential Liability to Clients	856
■ Landmark in the Law: The SEC Adopts Global Accounting Rules	857
■ Ethical Issue: <i>What are an attorney's responsibilities with respect to protecting data stored on the cloud?</i>	859
Potential Liability to Third Parties	861
Liability of Accountants under Other Federal Laws	863
Case 33.1: <i>Laccetti v. Securities and Exchange Commission</i> (2018)	865
Potential Criminal Liability	869
Confidentiality and Privilege	869
Case 33.2: <i>Commonwealth of Pennsylvania v. Schultz</i> (2016)	870
Unit Six: Task-Based Simulation	876

Unit 7 Property and Its Protection 877

Chapter 34

Personal Property and Bailments 878

Personal Property versus Real Property 878

Acquiring Ownership of Personal Property 880

- Adapting the Law to the Online Environment: The Exploding World of Digital Property 880

- Ethical Issue: *Who owns the engagement ring?* 881

- Business Law Analysis: Effective Gift of a Brokerage Account 882

Classic Case 34.1: *In re Estate of Piper* (1984) 883

Mislaid, Lost, and Abandoned Property 885

Case 34.2: *State of Washington v. Preston* (2018) 887

Bailments 887

Case 34.3: *Zissu v. IH2 Property Illinois, L.P.* (2016) 892

Chapter 35

Real Property and Landlord-Tenant Law 900

The Nature of Real Property 900

Ownership Interests and Leases 902

Case 35.1: *In the Matter of the Estate of Nelson* (2018) 903

Transfer of Ownership 908

Spotlight on Sales of Haunted Houses: Case 35.2:
Stambovsky v. Ackley (1991) 909

- Business Law Analysis: When Possession of Property Is Not “Adverse” 912

Case 35.3: *Montgomery County v. Bhatt* (2016) 913

- Ethical Issue: *Should eminent domain be used to promote private development?* 914

Landlord-Tenant Relationships 915

Chapter 36

Insurance, Wills, and Trusts 923

Insurance 923

Case 36.1: *Breedon v. Buchanan* (2015) 926

Wills 931

Case 36.2: *In re Navarra* (2018) 934

- Adapting the Law to the Online Environment: Social Media Estate Planning 937

Trusts 940

Case 36.3: *Dowdy v. Dowdy* (2016) 941

Unit Seven: Task-Based Simulation 951

APPENDICES

A How to Brief Cases and Analyze Case Problems A–1

B The Constitution of the United States A–3

C The Uniform Commercial Code A–3

D Answers to the *Issue Spotters* A–4

E Sample Answers for *Business Case Problems with Sample Answer* A–12

Glossary G–1

Table of Cases TC–1

Index I–1

The study of business law and the legal environment has universal applicability. A student entering any field of business must have at least a passing understanding of business law in order to function in the real world. *Business Law Today*, Twelfth Edition, provides the information in an interesting and contemporary way. The Twelfth Edition continues its established tradition of being the most up-to-date text on the market.

Instructors have come to rely on the coverage, accuracy, and applicability of *Business Law Today*. This best-selling text engages your students, solidifies their understanding of legal concepts, and provides the best teaching tools available. I have spent a great deal of effort making this edition more contemporary, exciting, and visually appealing than ever before. Special pedagogical devices within the text focus on legal, ethical, global, and corporate issues, while addressing core curriculum requirements.

The Twelfth Edition incorporates the latest legal developments and United States Supreme Court decisions. It also includes more than fifty new features and sixty new cases, hundreds of new examples and case examples, new exhibits, learning objectives, margin definitions, and case problems.

New and Updated Features

The Twelfth Edition of *Business Law Today* is filled with exciting new and updated features designed to cover current legal topics of high interest.

- 1. Entirely New Business Web Log** features underscore the importance of the text material to real-world businesses. Each of these features discusses a major U.S. company that is engaged in a dispute involving a topic covered in the chapter. Some examples include:
 - *Samsung and Forced Arbitration* (Chapter 4)
 - *Amazon Faces Fake Products* (Chapter 7)
 - *Facebook and Google in a World of Antitrust Law* (Chapter 31)
- 2. Entirely New Business Law Analysis** features appear in numerous chapters of the text. These features are useful tools to help students master the legal analysis skills that they will need to answer questions and case problems in the book, on exams, and in business situations. Subjects include:
 - *Deciding If a Court Would Impose a Quasi Contract* (Chapter 10)
 - *Enforceability of Liquidated Damages Provisions* (Chapter 15)
 - *When Will a Court Order the Dissolution of an LLC?* (Chapter 28)
- 3. Entirely New Hypotheticals in many chapter introductions** provide a real-world link that generates student interest and highlights specific legal concepts that will be discussed in the chapter. These hypotheticals—often based on real cases or business situations—help to introduce and illustrate legal issues facing managers, companies, and even industries.
- 4. Adapting the Law to the Online Environment** features examine cutting-edge cyberlaw topics, such as:
 - *Does Everyone Have a Constitutional Right to Use Social Media?* (Chapter 2)
 - *Using Twitter to Cause Seizures—A Crime?* (Chapter 9)
 - *Programs That Predict Employee Misconduct* (Chapter 29)

5. **Ethical Issue** features focus on the ethical aspects of a topic being discussed in order to emphasize that ethics is an integral part of a business law course. Examples include:
 - *How Enforceable Are Click-on Agreements to Donate Funds to Charity?* (Chapter 11)
 - *Is It Ethical (and Legal) to Brew “Imported” Beer Brands Domestically?* (Chapter 19)
 - *Is It Fair to Classify Uber and Lyft Drivers as Independent Contractors?* (Chapter 23)
6. **Beyond Our Borders** features illustrate how other nations deal with specific legal issues to give students a sense of the global legal environment. Topics include:
 - *Does Cloud Computing Have a Nationality?* (Chapter 29)
 - *Can a River Be a Legal Person?* (Chapter 32)
7. **Managerial Strategy** features emphasize the management aspects of business law and the legal environment, such as:
 - *Marriage Equality and the Constitution* (Chapter 2)
 - *The Criminalization of American Business* (Chapter 9)
 - *The SEC’s New Pay-Ratio Disclosure Rule* (Chapter 30)
8. **Landmark in the Law** features discuss a landmark case, statute, or development that has significantly affected business law. Examples include:
 - *Palsgraf v. Long Island Railroad Co.* (Chapter 5)
 - *The Bankruptcy Abuse Prevention and Consumer Protection Act* (Chapter 22)
 - *Changes to Regulation A: “Reg A+”* (Chapter 30)
9. **Linking Business Law to [one of the six functional fields of business]** features appear in select chapters to underscore how the law relates to other fields of business. For instance, Chapter 1 has a feature titled, *Linking Business Law to Corporate Management: Dealing with Administrative Law*.

New Emphasis on Making Ethical Business Decisions—The IDDR Approach

The ability of businesspersons to reason through ethical issues is now more important than ever. For the Twelfth Edition of *Business Law Today*, I have created a completely new framework for helping students (and businesspersons) make ethical decisions—the IDDR Approach, which is presented in Chapter 3. This systematic approach provides students with a clear step-by-step process to analyze the legal and ethical implications of decisions that arise in everyday business operations. The IDDR Approach uses four logical steps:

- **Step 1: Inquiry**
- **Step 2: Discussion**
- **Step 3: Decision**
- **Step 4: Review**

Students can remember the first letter of each step easily by using the phrase “I Desire to Do Right.” A completely revised Chapter 3 (**Ethics in Business**) details the goals of each IDDR step and then provides a Sample Scenario to show students how to apply this new approach to ethical decision making. In addition to introducing the IDDR Approach, I have made Chapter 3 more current and more practical and reduced the amount of theoretical ethical principles it presents. The text now focuses on real-life application of ethical principles.

After Chapter 3, to reinforce the application of the IDDR Approach, students are asked to use its various steps when answering each chapter’s *A Question of Ethics*. To challenge

students in analyzing the ethical angles in today's business legal environment, all of the *A Question of Ethics* problems have been updated and are based on a 2017 case. In addition, the Twelfth Edition retains the *Ethical Issue* feature in most chapters, many of which have been refreshed with timely topics involving the ever-evolving technologies and trends in business.

New Cases and Case Problems

The Twelfth Edition of *Business Law Today* has new cases and case problems from 2018 and 2017 in every chapter. The new cases have been carefully selected to illustrate important points of law and to be of high interest to students and instructors. I have made it a point to find recent cases that enhance learning and are straightforward enough for business law students to understand.

Certain cases and case problems have been carefully chosen as good teaching cases and are designated as *Spotlight Cases* and *Spotlight Case Problems*. Some examples include *Spotlight on Apple*, *Spotlight on Beer Labels*, *Spotlight on Nike*, and *Spotlight on the Seattle Mariners*. Instructors will find these *Spotlight* decisions useful to illustrate the legal concepts under discussion, and students will enjoy studying the cases because they involve interesting and memorable facts. Other cases have been chosen as *Classic Cases* because they establish a legal precedent in a particular area of law.

Each case concludes with a section, called *Critical Thinking*, that includes at least one question. Each question is labeled *Ethical*, *Economic*, *Legal Environment*, *Political*, *Social*, or *What If the Facts Were Different?* In addition, *Classic Cases* include an *Impact of This Case on Today's Law* section that clarifies how the case has affected the legal environment. Suggested answers to all case-ending questions can be found in the *Solutions Manual* for this text.

Many New Highlighted and Numbered Case Examples

Many instructors use cases and examples to illustrate how the law applies to business. This edition of *Business Law Today* offers hundreds of highlighted and consecutively numbered *Examples* and *Case Examples*. *Examples* illustrate how the law applies in a specific situation, and *Case Examples* present the facts and issues of an actual case and then describe the court's decision and rationale.

New to this edition are *Spotlight Case Examples*, which deal with especially high-interest cases, and *Classic Case Examples*, which discuss older, landmark decisions. The numbered *Examples* and *Case Examples* features are integrated throughout the text to help students better understand how courts apply legal principles in the real world.

Critical Thinking and Legal Reasoning Elements

For this edition of *Business Law Today*, I have included a discussion of legal reasoning in Chapter 1. The all-new *Business Law Analysis* features that can be found throughout the text emphasize legal reasoning skills as well. Critical thinking questions conclude most of the features and cases in this text. Also, at the end of each chapter, a *Debate This* question requires students to think critically about the rationale underlying the law on a particular topic.

Answers to all *Critical Thinking* questions, as well as to the *Business Scenarios and Case Problems* at the end of every chapter, are presented in the Twelfth Edition's *Solutions Manual*. In addition, the answers to one case problem in each chapter, called the *Business Case Problem with Sample Answer*, appear in *Appendix E*.

The chapter-ending materials also include a separate section of questions that focus on critical thinking and writing. This section always includes a *Time-Limited Group Assignment*

and may also include a *Critical Legal Thinking* question requiring students to think critically about some aspect of the law discussed in the chapter or a *Business Law Writing* question requiring students to compose a written response.

Other Pedagogical Devices within Each Chapter

- **Learning Objectives** (questions listed at the beginning of each chapter and repeated in the margins of the text provide a framework of main chapter concepts for the student).
- **Margin definitions** of each boldfaced **Key Term**.
- **Quotations** and **Know This** (margin features).
- **Exhibits** (in most chapters).
- **Photographs** (with critical-thinking questions) **and cartoons**.

Chapter-Ending Pedagogy

- **Practice and Review** (in every chapter).
- **Debate This** (a statement or question at the end of *Practice and Review*).
- **Key Terms** (with appropriate page references to their margin definitions).
- **Chapter Summary** (in table format).
- **Issue Spotters** (in every chapter with answers in *Appendix D*).
- **Business Scenarios and Case Problems** (including in every chapter, a *Business Case Problem with Sample Answer* that is answered in *Appendix E*; in selected chapters, a *Spotlight Case Problem*; and in every chapter, a new *A Question of Ethics* problem—based on a 2017 case—that applies this Twelfth Edition’s **all-new IDDR Approach** to business ethics).
- **Critical Thinking and Writing Assignments** (including a *Time-Limited Group Assignment* in every chapter, and a *Business Law Writing* or a *Critical Legal Thinking* question in selected chapters).

Unit-Ending Pedagogy

Each of the seven units in the Twelfth Edition of *Business Law Today* concludes with a *Task-Based Simulation*. This feature presents a hypothetical business situation and then asks a series of questions about how the law applies to various actions taken by the firm. To answer the questions, the student must apply the laws discussed throughout the unit. (Answers are provided in the *Solutions Manual*.)

Supplements

Business Law Today, Twelfth Edition, provides a comprehensive supplements package designed to make the tasks of teaching and learning more enjoyable and efficient. The following supplements are available for instructors.

MindTap Business Law for Business Law Today, Twelfth Edition

MindTap™ is a fully online, highly personalized learning experience built on authoritative Cengage Learning content. By combining readings, multimedia, activities, and assessments into a singular Learning Path, *MindTap Business Law* guides students through their course with ease and engagement. Instructors personalize the Learning Path by customizing

Cengage Learning resources and adding their own content via apps that integrate into the *MindTap* framework seamlessly with Learning Management Systems.

The *MindTap Business Law* product provides a four-step Learning Path, Case Repository, Adaptive Test Prep, and an Interactive eBook designed to meet instructors' needs while also allowing instructors to measure skills and outcomes with ease. Each and every item is assignable and gradable. This gives instructors knowledge of class standings and students' mastery of concepts that may be difficult. Additionally, students gain knowledge about where they stand—both individually and compared to the highest performers in class.

Cengage Testing Powered by Cognero

Cengage Testing Powered by Cognero is a flexible online system that allows instructors to do the following:

- Author, edit, and manage *Test Bank* content from multiple Cengage Learning solutions.
- Create multiple test versions in an instant.
- Deliver tests from their Learning Management System (LMS), classroom, or wherever they want.

Start Right Away! *Cengage Testing Powered by Cognero* works on any operating system or browser.

- Use your standard browser; no special installs or downloads are needed.
- Create tests from school, home, the coffee shop—anywhere with Internet access.

What Instructors Will Find

- ***Simplicity at every step.*** A desktop-inspired interface features drop-down menus and familiar, intuitive tools that take instructors through content creation and management with ease.
- ***Full-featured test generator.*** Create ideal assessments with a choice of fifteen question types—including true/false, multiple choice, opinion scale/Likert, and essay. Multi-language support, an equation editor, and unlimited metadata help ensure instructor tests are complete and compliant.
- ***Cross-compatible capability.*** Import and export content into other systems.

Instructor's Companion Website

The *Instructor's Companion Website* contains the following supplements:

- ***Instructor's Manual.*** Includes sections entitled "*Additional Cases Addressing This Issue*" at the end of selected case synopses.
- ***Solutions Manual.*** Provides answers to all questions presented in the text, including the *Learning Objectives*, the questions in each case and feature, the *Issue Spotters*, the *Business Scenarios and Case Problems*, *Critical Thinking and Writing Assignments*, and the unit-ending *Task-Based Simulation* features.
- ***Test Bank.*** A comprehensive test bank contains multiple choice, true/false, and short essay questions.
- ***Case-Problem Cases.***
- ***Case Printouts.***
- ***PowerPoint Slides.***
- ***Lecture Outlines.***
- ***MindTap Integrated Syllabus.***
- ***MindTap Answer Key.***

Acknowledgments

Since I began this project many years ago, numerous business law professors and users of *Business Law Today* have been kind enough to help me revise the book, including the following:

John J. Balek
Morton College, Illinois

John Jay Ballantine
University of Colorado, Boulder

Lorraine K. Bannai
Western Washington University

Marlene E. Barken
Ithaca College, New York

Laura Barnard
Lakeland Community College, Ohio

Denise A. Bartles, J.D.
Missouri Western State University

Daryl Barton
Eastern Michigan University

Merlin Bauer
Mid State Technical College, Wisconsin

Donna E. Becker
Frederick Community College, Maryland

Richard J. Bennet
Three Rivers Community College,
Connecticut

Dr. Anne Berre
Schreiner University, Texas

Robert C. Bird
University of Connecticut

Bonnie S. Bolinger
Ivy Tech Community College, Wabash Valley
Region, Indiana

Brad Botz
Garden City Community College, Kansas

Teresa Brady
Holy Family College, Pennsylvania

Dean Bredeson
University of Texas at Austin

Lee B. Burgunder
California Polytechnic University,
San Luis Obispo

Thomas D. Cavenagh
North Central College, Illinois

Bradley D. Childs
Belmont University, Tennessee

Corey Ciocchetti
University of Denver, Colorado

Peter Clapp
St. Mary's College, California

Dale Clark
Corning Community College, New York

Tammy W. Cowart
University of Texas, Tyler

Stanley J. Dabrowski
Hudson County Community College,
New Jersey

Sandra J. Defebaugh
Eastern Michigan University

Patricia L. DeFrain
Glendale College, California

Julia G. Derrick
Brevard Community College, Florida

Joe D. Dillsaver
Northeastern State University, Oklahoma

Claude W. Dotson
Northwest College, Wyoming

Larry R. Edwards
Tarrant County Junior College,
South Campus, Texas

Jacolin Eichelberger
Hillsborough Community College, Florida

George E. Eigsti
Kansas City, Kansas, Community College

Florence E. Elliott-Howard
Stephen F. Austin State University, Texas

Tony Enerva
Lakeland Community College, Ohio

Benjamin C. Fassberg
Prince George's Community College, Maryland

Joseph L. Flack
Washtenaw Community College, Michigan

Jerry Furniss
University of Montana

Joan Gabel
Florida State University

Elizabeth J. Guerriero
Northeast Louisiana University

Phil Harmeson
University of South Dakota

Nancy L. Hart
Midland College, Texas

Mo Hassan
Cabrillo College, California

Andy E. Hendrick
Coastal Carolina University, South Carolina

Janine S. Hiller
Virginia Polytechnic Institute & State University

Karen A. Holmes
Hudson Valley Community College, New York

Fred Ittner
College of Alameda, California

Susan S. Jarvis
University of Texas, Pan American

Jack E. Karns
East Carolina University, North Carolina

Sarah Weiner Keidan
Oakland Community College, Michigan

Richard N. Kleeberg
Solano Community College, California

Bradley T. Lutz
Hillsborough Community College, Florida

Diane MacDonald
Pacific Lutheran University, Washington

Darlene Mallick
Anne Arundel Community College, Maryland

John D. Mallonee
Manatee Community College, Florida

Joseph D. Marcus
Prince George's Community College, Maryland

Woodrow J. Maxwell
Hudson Valley Community College, New York

Diane May
Winona State University, Minnesota

Beverly McCormick
Morehead State University, Kentucky

William J. McDevitt
Saint Joseph's University, Pennsylvania

John W. McGee
Aims Community College, Colorado

James K. Miersma
Milwaukee Area Technical Institute, Wisconsin

Susan J. Mitchell
Des Moines Area Community College, Iowa

Jim Lee Morgan
West Los Angeles College, California

Jack K. Morton
University of Montana

Annie Laurie I. Myers
Northampton Community College, Pennsylvania

Solange North
Fox Valley Technical Institute, Wisconsin

Jamie L. O'Brien
South Dakota State University

Ruth R. O'Keefe
Jacksonville University, Florida

Robert H. Orr
Florida Community College at Jacksonville

George Otto
Truman College, Illinois

Thomas L. Palmer
Northern Arizona University

David W. Pan
University of Tulsa, Oklahoma

Victor C. Parker, Jr.
North Georgia College and State University

Donald L. Petote
Genesee Community College, New York

Francis D. Polk
Ocean County College, New Jersey

Gregory Rabb
Jamestown Community College, New York

Brad Reid
Abilene Christian University, Texas

Anne Montgomery Ricketts
University of Findlay, Ohio

Donald A. Roark
University of West Florida

Hugh Rode
Utah Valley State College

Gerald M. Rogers
Front Range Community College, Colorado

Dr. William J. Russell
Northwest Nazarene University, Idaho

William M. Rutledge
Macomb Community College, Michigan

Martha Wright Sartoris
North Hennepin Community College, Minnesota

Anne W. Schacherl
Madison Area Technical College, Wisconsin

Edward F. Shafer
Rochester Community College, Minnesota

Lance Shoemaker, J.D.,
M.C.P., M.A.
West Valley College, California

Lou Ann Simpson
Drake University, Iowa

Denise Smith
Missouri Western State College

Hugh M. Spall
Central Washington University

Catherine A. Stevens
College of Southern Maryland

Maurice Tonissi
Quinsigamond Community College,
Massachusetts

James D. Van Tassel
Mission College, California

Russell A. Waldon
College of the Canyons, California

Frederick J. Walsh
Franklin Pierce College, New Hampshire

James E. Walsh, Jr.
Tidewater Community College, Virginia

Randy Waterman
Richland College, Texas

Jerry Wegman
University of Idaho

Edward L. Welsh, Jr.
Phoenix College, Arizona

Clark W. Wheeler
Santa Fe Community College, Florida

Lori Whisenant
University of Houston, Texas

Kay O. Wilburn
The University of Alabama at Birmingham

John G. Williams, J.D.
Northwestern State University, Louisiana

James L. Wittenbach
University of Notre Dame, Indiana

Eric D. Yordy
Northern Arizona University

Joseph Zavaglia, Jr.
Brookdale Community College,
New Jersey

In addition, I give my thanks to the staff at Cengage Learning, especially Vicky True-Baker, senior product manager; Bryan Gambrel, product director; Martha Conway, senior content manager; Sarah Huber, learning designer; Jennifer Chinn, digital delivery lead; Lisa Elliott, subject matter expert; and Christian Wood, product assistant. I also thank Andy Miller in marketing; Jillian Shafer, permissions project manager; and Jennifer Bowes, permissions analyst. Additionally, I would like to thank project managers Ann Borman and Phil Scott at SPi Global, our compositor, for accurately generating pages for the text and making it possible for me to meet my ambitious schedule for the print and digital products.

I give special thanks to Katherine Marie Silsbee for managing the project and providing exceptional research and editorial skills. I also thank William Eric Hollowell, co-author of the *Solutions Manual* and *Test Bank*, for his excellent research efforts. I am grateful for the copyediting services of Jeanne Yost and proofreading services of Beverly Peavler. I also thank Vickie Reiersen, Roxanna Lee, and Suzanne Jasin for their many efforts on this project and for helping to ensure an error-free text.

Roger LeRoy Miller

Dedication

To Lavina,

Your help in this book's
creation is still evident.
I cannot thank you enough.

Your friend,

R.L.M.



Unit 1

The Legal Environment of Business

- 1 Law and Legal Reasoning
- 2 Constitutional Law
- 3 Ethics in Business
- 4 Courts and Alternative Dispute Resolution
- 5 Tort Law
- 6 Product Liability
- 7 Intellectual Property Rights
- 8 Internet Law, Social Media, and Privacy
- 9 Criminal Law and Cyber Crime



Feverpitched/Stock/Getty Images

1

Law and Legal Reasoning

Learning Objectives

The four Learning Objectives below are designed to help improve your understanding. After reading this chapter, you should be able to answer the following questions:

1. What are four primary sources of law in the United States?
2. What is a precedent? When might a court depart from precedent?
3. What is the difference between remedies at law and remedies in equity?
4. What are some important differences between civil law and criminal law?

Law A body of enforceable rules governing relationships among individuals and between individuals and their society.

“Laws should be like clothes. They should be made to fit the people they are meant to serve.”

Clarence Darrow
1857–1938
(American lawyer)

In the chapter-opening quotation, Clarence Darrow asserts that law should be created to serve the public. Because you are part of that public, the law is important to you. In particular, those entering the world of business will find themselves subject to numerous laws and government regulations. A basic knowledge of these laws and regulations is beneficial—if not essential—to anyone contemplating a successful career in today’s business environment.

Although the law has various definitions, all of them are based on the general observation that **law** consists of *enforceable rules governing relationships among individuals and between individuals and their society*. In some societies, these enforceable rules consist of unwritten principles of behavior. In other societies, they are set forth in ancient or contemporary law codes. In the United States, our rules consist of written laws and court decisions created by modern legislative and judicial bodies. Regardless of how such rules are created, they all have one feature in common: *they establish rights, duties, and privileges that are consistent with the values and beliefs of a society or its ruling group*.

In this introductory chapter, we look at how business law and the legal environment affect business decisions. For instance, suppose that Hellix Communications, Inc., wants to buy a competing cellular company. It also wants to offer unlimited data plans once it has acquired this competitor. Management fears that if the company does not expand, one of its bigger rivals will put it out of business. But Hellix Communications cannot simply buy its rivals. Nor can it just offer a low-cost cell-phone plan to its customers. It has to follow the laws pertaining to its proposed actions. Some of these laws (or regulations) depend on interpretations by those running various regulatory federal agencies. The rules

that control Hellix Communications' actions reflect past and current thinking about how large telecommunications companies should and should not act.

Our goal in this text is not only to teach you about specific laws, but also to teach you how to think about the law and legal environment, and to develop your critical-thinking and legal reasoning skills. The laws may change, but the ability to analyze and evaluate the legal (and ethical) ramifications of situations as they arise is an invaluable and lasting skill.

1-1 Business Activities and the Legal Environment

Laws and government regulations affect almost all business activities—from hiring and firing decisions to workplace safety, the manufacturing and marketing of products, business financing, and more. To make good business decisions, businesspersons need to understand the laws and regulations governing these activities.

Realize also that in today's business world, simply being aware of what conduct can lead to legal **liability** is not enough. Businesspersons must develop critical-thinking and legal reasoning skills so that they can evaluate how various laws might apply to a given situation and determine the best course of action. Businesspersons are also pressured to make ethical decisions. Thus, the study of business law necessarily involves an ethical dimension.

Liability The state of being legally responsible (liable) for something, such as a debt or obligation.

1-1a Many Different Laws May Affect a Single Business Transaction

As you will note, each chapter in this text covers a specific area of the law and shows how the legal rules in that area affect business activities. Although compartmentalizing the law in this fashion facilitates learning, it does not indicate the extent to which many different laws may apply to just one transaction. Exhibit 1-1 illustrates the various areas of the law that may influence business decision making.

Example 1.1 When Mark Zuckerberg, as a Harvard student, first launched Facebook, others claimed that Zuckerberg had stolen their ideas for a social-networking site. They filed a lawsuit against him alleging theft of intellectual property, fraudulent misrepresentation, and violations of partnership law and securities law. Facebook ultimately paid \$65 million to settle those claims out of court.

Since then, Facebook has been sued repeatedly for violating users' privacy (and federal laws) by tracking their website usage and by scanning private messages for purposes of data mining and user profiling. Facebook's business decisions have also come under scrutiny by federal regulators, such as the Federal Trade Commission (FTC), and by international authorities, such as the European Union. The company settled a complaint filed by the FTC alleging that Facebook had failed to keep "friends" lists and other user information private. ■



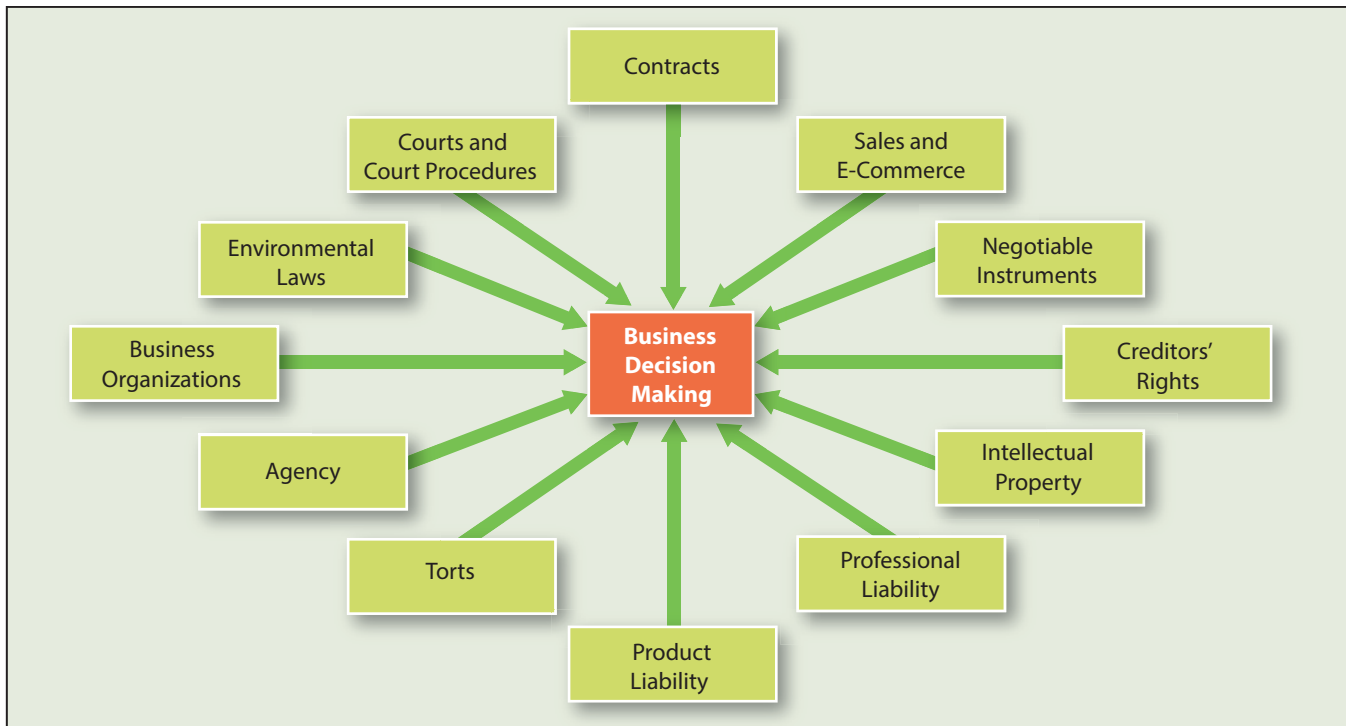
Justin Sullivan/Getty Images

Mark Zuckerberg, founder of Facebook, has faced numerous legal challenges. These include privacy issues and the alleged theft of intellectual property. Can large Internet firms completely avoid such legal problems?

1-1b Linking Business Law to the Six Functional Fields of Business

In all likelihood, you are taking a business law or legal environment course because you intend to enter the business world, though some of you may plan to become attorneys. Many of you are taking other business school courses and may therefore be familiar with the functional fields of business listed below:

1. Corporate management.
2. Production and transportation.

Exhibit 1-1 Areas of the Law That May Affect Business Decision Making

3. Marketing.
4. Research and development.
5. Accounting and finance.
6. Human resource management.

One of our goals in this text is to show how legal concepts can be useful for managers and businesspersons, whether their activities focus on management, marketing, accounting, or some other field. To that end, numerous chapters, including this chapter, contain a special feature called “*Linking Business Law to* [one of the six functional fields of business].”

Primary Source of Law A document that establishes the law on a particular issue, such as a constitution, a statute, an administrative rule, or a court decision.

Learning Objective 1

What are four primary sources of law in the United States?

1-2 Sources of American Law

There are numerous sources of American law. **Primary sources of law**, or sources that establish the law, include the following:

- The U.S. Constitution and the constitutions of the various states.
- Statutory law—including laws passed by Congress, state legislatures, and local governing bodies.
- Regulations created by administrative agencies, such as the federal Food and Drug Administration.
- Case law (court decisions).

We describe each of these important primary sources of law in the following pages. (See the appendix at the end of this chapter for a discussion of how to find statutes, regulations, and case law.)

Secondary sources of law are books and articles that summarize and clarify the primary sources of law. Legal encyclopedias, compilations (such as *Restatements of the Law*, which summarize court decisions on a particular topic), official comments to statutes, treatises, articles in law reviews published by law schools, and articles in other legal journals are examples of secondary sources of law. Courts often refer to secondary sources of law for guidance in interpreting and applying the primary sources of law discussed here.

Secondary Source of Law A publication that summarizes or interprets the law, such as a legal encyclopedia, a legal treatise, or an article in a law review.

1–2a Constitutional Law

The federal government and the states have written constitutions that set forth the general organization, powers, and limits of their respective governments. **Constitutional law**, which deals with the fundamental principles by which the government exercises its authority, is the law as expressed in these constitutions.

Constitutional Law The body of law derived from the U.S. Constitution and the constitutions of the various states.

The U.S. Constitution is the basis of all law in the United States. It provides a framework for statutes and regulations, and thus is the supreme law of the land. A law in violation of the U.S. Constitution, if challenged, will be declared unconstitutional and will not be enforced, no matter what its source.

The Tenth Amendment to the U.S. Constitution reserves to the states all powers not granted to the federal government. Each state in the union has its own constitution. Unless it conflicts with the U.S. Constitution or a federal law, a state constitution is supreme within that state's borders.

Statutory Law The body of law enacted by legislative bodies (as opposed to constitutional law, administrative law, or case law).

1–2b Statutory Law

Laws enacted by legislative bodies at any level of government, such as the statutes passed by Congress or by state legislatures, make up the body of law generally referred to as **statutory law**. When a legislature passes a statute, that statute ultimately is included in the federal code of laws or the relevant state code of laws.

Citation A reference to a publication in which a legal authority—such as a statute or a court decision—or other source can be found.

Whenever a particular statute is mentioned in this text, we usually provide a footnote showing its **citation** (a reference to a publication in which a legal authority—such as a statute or a court decision—or other source can be found). In the appendix following this chapter, we explain how you can use these citations to find statutory law.

Ordinance A regulation enacted by a city or county legislative body that becomes part of that state's statutory law.

Local Ordinances Statutory law also includes local **ordinances**—regulations passed by municipal or county governing units to deal with matters not covered by federal or state law. Ordinances commonly have to do with city or county land use (zoning ordinances), building and safety codes, and other matters affecting only the local governing unit.

Applicability of Statutes A federal statute, of course, applies to all states. A state statute, in contrast, applies only within the state's borders. State laws thus may vary from state to state. No federal statute may violate the U.S. Constitution, and no state statute or local ordinance may violate the U.S. Constitution or the relevant state constitution.

Example 1.2 The tension between federal, state, and local laws is evident in the national debate over so-called sanctuary cities—cities that limit their cooperation with federal immigration authorities. Normally, law enforcement officials are supposed to alert federal immigration authorities when they come into



Michael Dwyer/Alamy

How have local “sanctuary cities” frustrated federal immigration procedures?

contact with undocumented immigrants. Then, immigration officials request the state and local authorities to detain the individual for possible deportation.

But a number of cities across the United States have adopted either local ordinances or explicit policies that do not follow this procedure. Police in these cities often do not ask or report the immigration status of individuals with whom they come into contact. Other places refuse to detain undocumented immigrants who are accused of low-level offenses. ■

Uniform Laws During the 1800s, the differences among state laws frequently created difficulties for businesspersons conducting trade and commerce among the states. To counter these problems, a group of legal scholars and lawyers formed the National Conference of Commissioners on Uniform State Laws (NCCUSL, online at www.uniformlaws.org) in 1892 to draft **uniform laws** (“model statutes”) for the states to consider adopting. The NCCUSL still exists today and continues to issue uniform laws.

Each state has the option of adopting or rejecting a uniform law. *Only if a state legislature adopts a uniform law does that law become part of the statutory law of that state.* Furthermore, a state legislature may choose to adopt only part of a uniform law or to rewrite the sections that are adopted. Hence, even though many states may have adopted a uniform law, those laws may not be entirely “uniform.”

The Uniform Commercial Code (UCC) One of the most important uniform acts is the Uniform Commercial Code (UCC), which was created through the joint efforts of the NCCUSL and the American Law Institute.¹ The UCC was first issued in 1952 and has been adopted in all fifty states,² the District of Columbia, and the Virgin Islands.

The UCC facilitates commerce among the states by providing a uniform, yet flexible, set of rules governing commercial transactions. Because of its importance in the area of commercial law, we cite the UCC frequently in this text. From time to time, the NCCUSL revises the articles contained in the UCC and submits the revised versions to the states for adoption.

1–2c Administrative Law

Another important source of American law is **administrative law**, which consists of the rules, orders, and decisions of administrative agencies. An **administrative agency** is a federal, state, or local government agency established to perform a specific function.

Rules issued by various administrative agencies affect almost every aspect of a business’s operations. Regulations govern a business’s capital structure and financing, its hiring and firing procedures, its relations with employees and unions, and the way it manufactures and markets its products. (See this chapter’s *Linking Business Law to Corporate Management* feature.)

Federal Agencies At the national level, numerous *executive agencies* exist within the cabinet departments of the executive branch. The Food and Drug Administration, for example, is an agency within the U.S. Department of Health and Human Services. Executive agencies are subject to the authority of the president, who has the power to appoint and remove their officers.

There are also major *independent regulatory agencies* at the federal level, including the Federal Trade Commission, the Securities and Exchange Commission, and the Federal Communications Commission. The president’s power is less pronounced in regard to independent agencies, whose officers serve for fixed terms and cannot be removed without just cause.

Uniform Law A model law developed by the National Conference of Commissioners on Uniform State Laws for the states to consider enacting into statute.

Administrative Law The body of law created by administrative agencies in order to carry out their duties and responsibilities.

Administrative Agency A federal, state, or local government agency created by the legislature to perform a specific function, such as to make and enforce rules pertaining to the environment.

1. This institute was formed in the 1920s and consists of practicing attorneys, legal scholars, and judges.

2. Louisiana has adopted only Articles 1, 3, 4, 5, 7, 8, and 9.



Linking Business Law to Corporate Management

Whether you work for a large corporation or own a small business,

Dealing with Administrative Law

you will be dealing with multiple aspects of administrative law. All federal, state, and local government administrative agencies create rules that have the force of law. As a manager, you probably will need to pay more attention to administrative rules and regulations than to laws passed by local, state, and federal legislatures.

The three levels of government create three levels of rules and regulations through their respective administrative agencies. As a manager, you will have to learn about agency regulations that pertain to your business activities. It will be up to you, as a corporate manager or a small-business owner, to discern which of those regulations are most important and could create significant liability if you violate them.

Critical Thinking

Why are owner/operators of small businesses at a disadvantage relative to those of large corporations when they attempt to decipher complex regulations that apply to their businesses?

State and Local Agencies There are administrative agencies at the state and local levels as well. Commonly, a state agency (such as a state pollution-control agency) is created as a parallel to a federal agency (such as the Environmental Protection Agency).

Just as federal statutes take precedence over conflicting state statutes, so do federal agency regulations take precedence over conflicting state regulations. Because the rules of state and local agencies vary widely, we focus here exclusively on federal administrative law.

Agency Creation Because Congress cannot possibly oversee the actual implementation of all the laws it enacts, it delegates such tasks to agencies. Congress creates an administrative agency by enacting **enabling legislation**, which specifies the name, composition, purpose, and powers of the agency being created.

Example 1.3 The Federal Trade Commission (FTC) was created in 1914 by the Federal Trade Commission Act.³ This act prohibits unfair and deceptive trade practices. It also describes the procedures the agency must follow to charge persons or organizations with violations of the act, and it provides for judicial review (review by the courts) of agency orders.

Other portions of the act grant the agency powers to “make rules and regulations for the purpose of carrying out the Act,” and to conduct investigations of business practices. In addition, the FTC can obtain reports from interstate corporations concerning their business practices, investigate possible violations of the act, publish findings of its investigations, and recommend new legislation. The act also empowers the FTC to hold trial-like hearings and to **adjudicate** (resolve judicially) certain kinds of disputes involving its regulations.

Note that the powers granted to the FTC incorporate functions associated with the legislative branch of government (rulemaking), the executive branch (investigation and enforcement), and the judicial branch (adjudication). Taken together, these functions constitute the **administrative process**, which is the administration of law by administrative agencies. The administrative process involves rulemaking, enforcement, and adjudication. ■

“Laws and institutions, like clocks, must occasionally be cleaned, wound up, and set to true time.”

Henry Ward Beecher

1813–1887

(American clergyman and abolitionist)

Enabling Legislation A statute enacted by Congress that authorizes the creation of an administrative agency and specifies the name, composition, purpose, and powers of the agency being created.

Adjudicate To render a judicial decision. Adjudication is the trial-like proceeding in which an administrative law judge hears and resolves disputes involving an administrative agency’s regulations.

Administrative Process The procedure used by administrative agencies in fulfilling their three basic functions: rulemaking, enforcement, and adjudication.

3. 15 U.S.C. Sections 45–58.

Rulemaking The process by which an administrative agency formally adopts a new regulation or amends an old one.

Legislative Rule An administrative agency rule that carries the same weight as a congressionally enacted statute.

Rulemaking A major function of an administrative agency is **rulemaking**—formulating new regulations or amending old ones. When Congress enacts an agency’s enabling legislation, it confers the power to make **legislative rules**, or substantive rules, which are legally binding on all businesses.

The Administrative Procedure Act (APA)⁴ imposes strict procedural requirements that agencies must follow in legislative rulemaking and other functions. **Example 1.4** The Occupational Safety and Health Act authorized the Occupational Safety and Health Administration (OSHA) to develop and issue rules governing safety in the workplace. When OSHA wants to formulate rules regarding safety in the steel industry, it has to follow specific procedures outlined by the APA. If an agency fails to follow the APA’s rulemaking procedures, the resulting rule may not be binding. ■

Legislative Rules. Legislative rulemaking under the APA typically involves the following three steps (referred to as *notice-and-comment rulemaking*).

1. *Notice of the proposed rulemaking.* The notice must be published in the *Federal Register*, a daily publication of the U.S. government.
2. *A comment period.* The agency must allow ample time for interested parties to comment in writing on the proposed rule. The agency takes these comments into consideration when drafting the final version of the regulation.
3. *The final rule.* Once the agency has drafted the final rule, it is published in the *Federal Register*. (See the appendix at the end of this chapter for an explanation of how to find agency regulations.)

Interpretive Rules. Administrative agencies also issue **interpretive rules** that are not legally binding but simply indicate how an agency plans to interpret and enforce its statutory authority. The APA does not apply to interpretive rulemaking. **Example 1.5** The Equal Employment Opportunity Commission periodically issues interpretive rules indicating how it plans to interpret the provisions of certain statutes, such as the Americans with Disabilities Act. These informal rules provide enforcement guidelines for agency officials. ■

Enforcement and Investigation Agencies often enforce their own rules and have both investigatory and prosecutorial powers. Agencies investigate a wide range of activities, including coal mining, automobile manufacturing, and the industrial discharge of pollutants into the environment.

In an investigation, an agency can request that individuals or organizations hand over specified books, papers, electronic records, or other documents. In addition, agencies may conduct on-site inspections, although a search warrant is normally required for such inspections.⁵ Sometimes, a search of a home, an office, or a factory is the only means of obtaining evidence needed to prove a regulatory violation.

After investigating a suspected rule violation, an agency may decide to take action against an individual or a business. Most administrative actions are resolved through



Which federal agency oversees worker safety?

Interpretive Rule A nonbinding rule or policy statement issued by an administrative agency that explains how it interprets and intends to apply the statutes it enforces.

4. 5 U.S.C. Sections 551–706.

5. In some heavily regulated industries, such as the sale of firearms or liquor, agencies can conduct searches without obtaining a warrant.

negotiated settlement at their initial stages without the need for formal adjudication. If a settlement cannot be reached, though, the agency may issue a formal complaint and proceed to adjudication.

Adjudication Agency adjudication involves a trial-like hearing before an **administrative law judge (ALJ)**. Hearing procedures vary widely from agency to agency. After the hearing, the ALJ renders a decision in the case. The ALJ can fine the charged party or prohibit the party from carrying on some specified activity.

Either the agency or the charged party may appeal the ALJ's decision to the commission or board that governs the agency. If the party fails to get relief there, appeal can be made to a federal court. Courts give significant weight (deference) to an agency's judgment and interpretation of its rules, though, and typically uphold the ALJ's decision unless it is unreasonable. If neither side appeals the case, the ALJ's decision becomes final.

Administrative Law Judge

(ALJ) One who presides over an administrative agency hearing and has the power to administer oaths, take testimony, rule on questions of evidence, and make determinations of fact.

Do administrative agencies exercise too much authority?

Administrative agencies, such as the Federal Trade Commission, combine in a single governmental entity functions normally divided among the three branches of government. They create rules, conduct investigations, and prosecute and pass judgment on violators. Yet administrative agencies' powers often go unchecked by the other branches. Some businesspersons have suggested that it is unethical for agencies—which are not even mentioned in the U.S. Constitution—to wield so many powers.

Although agency rulemaking must comply with the requirements of the Administrative Procedure Act (APA), the act applies only to legislative, not interpretive, rulemaking. In addition, the APA is largely procedural and aimed at preventing arbitrariness. It does little to ensure that the rules passed by agencies are fair or correct—or even cost-effective. On those rare occasions when an agency's ruling is challenged and later reviewed by a court, the court cannot reverse the agency's decision unless the agency exceeded its authority or acted arbitrarily. Courts typically are reluctant to second-guess an agency's rules, interpretations, and decisions. Moreover, once an agency has final regulations in place, it is difficult to revoke or alter them.

Ethical Issue



1-2d Case Law and Common Law Doctrines

The rules of law announced in court decisions constitute another basic source of American law. These rules of law include *interpretations* of constitutional provisions, of statutes enacted by legislatures, and of regulations created by administrative agencies.

Today, this body of judge-made law is referred to as **case law**. Case law—the doctrines and principles announced in cases—governs all areas not covered by statutory law or administrative law and is part of our common law tradition. We look at the origins and characteristics of the common law tradition in some detail in the pages that follow.

Case Law The rules of law announced in court decisions. Case law interprets statutes, regulations, and constitutional provisions, and governs all areas not covered by statutory or administrative law.

1-3 The Common Law

Because of our colonial heritage, much American law is based on the English legal system. Knowledge of this system is crucial to understanding our legal system today because judges in the United States still apply common law principles when deciding cases.