

9TH EDITION

STANDARD EDITION

BUSINESS LAW *AND THE LEGAL ENVIRONMENT*

BEATTY
SAMUELSON
SÁNCHEZ ABRIL



Fit your coursework into your hectic life.

Make the most of your time by learning your way. Access the resources you need to succeed wherever, whenever.



Study with digital flashcards, listen to audio textbooks, and take quizzes.



Review your current course grade and compare your progress with your peers.



Get the free MindTap Mobile App and learn wherever you are.

Break Limitations. Create your own potential, and be unstoppable with MindTap.

MINDTAP. POWERED BY YOU.

cengage.com/mindtap

Copyright 2022 Cengage Learning. All Rights Reserved. May not be copied, scanned, or duplicated, in whole or in part. WCN 02-200-322

Copyright 2022 Cengage Learning. All Rights Reserved. May not be copied, scanned, or duplicated, in whole or in part. Due to electronic rights, some third party content may be suppressed from the eBook and/or eChapter(s). Editorial review has deemed that any suppressed content does not materially affect the overall learning experience. Cengage Learning reserves the right to remove additional content at any time if subsequent rights restrictions require it.



9th EDITION

STANDARD EDITION

BUSINESS LAW

AND THE LEGAL ENVIRONMENT

Jeffrey F. Beatty

Boston University

Susan S. Samuelson

Boston University

Patricia Sánchez Abril

University of Miami



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

Copyright 2022 Cengage Learning. All Rights Reserved. May not be copied, scanned, or duplicated, in whole or in part. WCN 02-200-322

Copyright 2022 Cengage Learning. All Rights Reserved. May not be copied, scanned, or duplicated, in whole or in part. Due to electronic rights, some third party content may be suppressed from the eBook and/or eChapter(s). Editorial review has deemed that any suppressed content does not materially affect the overall learning experience. Cengage Learning reserves the right to remove additional content at any time if subsequent rights restrictions require it.

This is an electronic version of the print textbook. Due to electronic rights restrictions, some third party content may be suppressed. Editorial review has deemed that any suppressed content does not materially affect the overall learning experience. The publisher reserves the right to remove content from this title at any time if subsequent rights restrictions require it. For valuable information on pricing, previous editions, changes to current editions, and alternate formats, please visit www.cengage.com/highered to search by ISBN#, author, title, or keyword for materials in your areas of interest.

Important Notice: Media content referenced within the product description or the product text may not be available in the eBook version.

***Business Law and the Legal Environment—
Standard Edition, 9th Edition***
**Jeffery F. Beatty, Susan S. Samuelson,
and Patricia Sánchez Abril**

SVP, Higher Education & Skills Product: Erin Joyner

VP, Higher Education & Skills Product: Michael Schenk

Product Director: Joe Sabatino

Product Manager: Abbie Schultheis

Product Assistant: Nick Perez

Learning Designer: Cazzie Reyes

Content Manager: Marta Healey-Gerth

Digital Delivery Lead: Steven McMillian

Director, Marketing: Kristen Hurd

Marketing Manager: Andrew Stock

IP Analyst: Ashley Maynard

IP Project Manager: Kumaresan Chandrakumar

Production Service/Composition: SPi Global

Designer: Erin Griffin

Cover Image Source: Nagib/Shutterstock.com

© 2022, 2019, 2016 Cengage Learning, Inc.

WCN: 02-300

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: 2021902687

ISBN: 978-0-357-63336-6

Loose-leaf Edition: 978-0-357-63338-0

Cengage

200 Pier 4 Boulevard
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.**

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: OVERVIEW

Preface	xix		
UNIT 1			
The Legal Environment	1		
1 Introduction to Law	2		
2 Ethics and Corporate Social Responsibility	24		
3 International Law	59		
4 Common Law, Statutory Law, and Administrative Law	88		
5 Constitutional Law	114		
6 Dispute Resolution	143		
7 Crime	176		
UNIT 2			
Torts	207		
8 Intentional Torts and Business Torts	208		
9 Negligence, Strict Liability, and Product Liability	230		
10 Privacy and Internet Law	256		
UNIT 3			
Contracts	285		
11 Introduction to Contracts	286		
12 The Agreement: Offers and Acceptances	306		
13 Consideration	331		
14 Legality	352		
15 Voidable Contracts: Capacity and Consent	372		
16 Written Contracts	394		
17 Third Parties	415		
18 Contract Termination	435		
19 Remedies	457		
20 Practical Contracts	480		
UNIT 4			
Sales	505		
21 Introduction to Sales	506		
22 Ownership, Risk, and Warranties	533		
23 Performance and Remedies	562		
UNIT 5			
Additional CPA Topics	587		
24 Secured Transactions	588		
25 Creating a Negotiable Instrument	623		
26 Liability for Negotiable Instruments	648		
27 Accountants' Liability	673		
UNIT 6			
Agency and Employment Law	699		
28 Agency Law	700		
29 Employment and Labor Law	729		
30 Employment Discrimination	759		
UNIT 7			
Business Organizations	793		
31 Starting a Business: LLCs and Other Options	794		
32 Partnerships	818		
33 Life and Death of a Corporation	845		
34 Management Duties	870		
35 Shareholder Rights	895		
36 Bankruptcy	923		

UNIT 8**Government Regulation 951**

37	Securities Regulation	952
38	Antitrust	978
39	Consumer Protection	1002
40	Environmental Law	1031

UNIT 9**Property 1059**

41	Intellectual Property	1060
42	Real Property and Landlord–Tenant Law	1088

43	Personal Property and Bailment	1118
44	Planning For The Future: Wills, Trusts, and Insurance	1139

Appendix A

The Constitution of the United States	A1
---------------------------------------	----

Appendix B

Uniform Commercial Code (Selected Provisions)	B1
---	----

Appendix C

Answers to Selected End-of-Chapter Questions	C1
--	----

Glossary**G1****Table of Cases****T1****Index****I1**

Preface	xix		
UNIT 1			
The Legal Environment	1		
Chapter 1 Introduction to Law	2		
1-1 Exploring the Law	3		
1-1a The Role of Law in Society	3		
1-1b Origins of Our Law	4		
1-2 Sources of Contemporary Law	6		
1-2a United States Constitution	7		
1-2b Statutes	9		
1-2c Common Law	9		
1-2d Court Orders	9		
1-2e Administrative Law	10		
1-2f Treaties	10		
1-3 Classifications	10		
1-3a Criminal and Civil Law	10		
1-3b Law and Morality	11		
1-4 Jurisprudence	12		
1-4a Legal Positivism	12		
1-4b Natural Law	13		
1-4c Legal Realism	13		
1-5 Working with the Book's Features	14		
1-5a Analyzing a Case	14		
1-5b Exam Strategy	17		
1-5c You Be the Judge	17		
Chapter Conclusion	18		
Exam Review	19		
Multiple-Choice Questions	20		
Case Questions	21		
Discussion Questions	22		
Chapter 2 Ethics and Corporate Social Responsibility	24		
2-1 Why Study Ethics?	26		
2-1a Ethics in Business	27		
2-1b Why Be Ethical?	28		
2-2 Theories of Ethics	30		
2-2a Utilitarian Ethics	30		
2-2b Deontological Ethics	31		
2-2c Rawlsian Justice	31		
2-2d Front Page Test	32		
2-2e Moral Universalism and Relativism	32		
2-2f Ethics Case: Up in Smoke	33		
2-3 Ethics Traps	34		
2-3a Money	34		
2-3b Competition	35		
2-3c Rationalization	35		
2-3d We Cannot Be Objective about Ourselves	36		
2-3e Moral Licensing	37		
2-3f Conflicts of Interest	37		
2-3g Conformity	37		
2-3h Ethics Case: Diamonds in the Rough	38		
2-3i Following Orders	38		
2-3j Euphemisms and Reframing	39		
2-3k Lost in a Crowd	39		
2-3l Ethics Case: Man Down	39		
2-3m Short-Term Perspective	40		
2-3n Ethics Case: Wobbly Platform	40		
2-3o Blind Spots	41		
2-3p Avoiding Ethics Traps	41		
2-3q Lying: A Special Case	42		
2-3r Ethics Case: Truth (?) in Borrowing	43		
2-4 Reacting to Unethical Behavior	43		
2-4a Loyalty	43		
2-4b Exit	44		
2-4c Voice	44		
2-4d Ethics Case: Truth or Consequences	44		
2-5 Applying the Principles	46		
2-5a Personal Ethics in the Workplace	46		
2-5b Ethics Case: Weird Wierdsma	46		
2-5c The Organization's Responsibility to Society	47		
2-5d Ethics Case: Breathing the Fumes	47		
2-5e The Organization's Responsibility to Its Employees	48		
2-5f Ethics Case: The Storm after the Storm	48		
2-5g The Organization's Responsibility to Its Customers	49		
2-5h Ethics Case: Mickey Weighs In	49		
2-5i The Organization's Responsibility to Overseas Workers	50		
2-5j Ethics Case: A Worm in the Apple	50		
2-5k Corporate Social Responsibility	51		
2-5l Ethics Case: The Beauty of a Well-Fed Child	51		

Chapter Conclusion	52	4-2g Voters' Role	98
Exam Review	52	4-2h Congressional Override	99
Multiple-Choice Questions	54	4-3 Administrative Law	100
Case Questions	55	4-3a Creation of Agencies	100
Discussion Questions	56	4-3b Power of Agencies	101
		4-3c Limits on Agency Power	105
Chapter 3 International Law	59	Chapter Conclusion	109
3-1 Sources of International Law	60	Exam Review	109
3-1a Treaties	60	Multiple-Choice Questions	111
3-1b Custom	61	Case Questions	112
3-1c General Principles of Law	62	Discussion Questions	113
3-2 Actors in International Law	63		
3-2a States	63	Chapter 5 Constitutional Law	114
3-2b Regional Alliances	64	5-1 Who Will Have Power?	115
3-2c International Organizations and Dispute Resolution	66	5-1a Overview	115
3-2d Individuals	72	5-1b Creating the Constitution: Important Principles	115
3-3 The World's Legal Traditions	72	5-1c Powers Granted	116
3-3a Common Law	72	5-2 Protected Rights	122
3-3b Civil Law	73	5-2a First Amendment	123
3-3c Religious Legal Systems: Islamic Law	74	5-2b Fifth Amendment: Due Process and the Takings Clause	129
3-4 Extraterritoriality: Domestic Laws Applied Abroad	76	5-2c Fourteenth Amendment: Equal Protection Clause	134
3-4a Application of U.S. Law Abroad	76	Chapter Conclusion	137
3-4b Foreign Laws and Judgments in the United States	78	Exam Review	138
3-5 Contracting Internationally	80	Multiple-Choice Questions	140
3-5a The Sale of Goods Across Borders	80	Case Questions	141
3-5b Best Practices in International Contracts	81	Discussion Questions	142
Chapter Conclusion	82		
Exam Review	82	Chapter 6 Dispute Resolution	143
Multiple-Choice Questions	85	6-1 Court Systems	144
Case Questions	86	6-1a State Courts	144
Discussion Questions	87	6-1b Federal Courts	148
Chapter 4 Common Law, Statutory Law, and Administrative Law	88	6-2 Before Trial	152
4-1 Common Law	89	6-2a Pleadings	152
4-1a <i>Stare Decisis</i>	89	6-2b Discovery	157
4-1b Bystander Cases	89	6-2c Summary Judgment	160
4-2 Statutory Law	92	6-2d Final Preparation	162
4-2a Bills	92	6-3 The Anatomy of a Trial and Appeal	163
4-2b Discrimination: Congress and the Courts	93	6-3a The Trial	163
4-2c Debate	94	6-3b Appeals	167
4-2d Conference Committee	96	6-4 Alternative Dispute Resolution	168
4-2e Statutory Interpretation	97	6-4a Negotiation	169
4-2f Changing Times	98	6-4b Mediation	169
		6-4c Arbitration	169

Chapter Conclusion	171	8-1e Trespass, Conversion, and Fraud	215
Exam Review	171	8-2 Damages	216
Multiple-Choice Questions	173	8-2a Compensatory Damages	216
Case Questions	174	8-2b Punitive Damages	217
Discussion Questions	175	8-3 Business Torts	221
		8-3a Tortious Interference with Business Relations	221
		8-3b False Advertising	223
		Chapter Conclusion	225
		Exam Review	225
		Multiple-Choice Questions	227
		Case Questions	228
		Discussion Questions	229
Chapter 7 Crime	176		
7-1 Criminal Procedure	177	Chapter 9 Negligence, Strict Liability, and Product Liability	230
7-1a A Civil versus a Criminal Case	177	9-1 Negligence	231
7-1b Conduct Outlawed	178	9-1a Duty of Due Care	232
7-1c State of Mind	180	9-1b Breach of Duty	235
7-1d Gathering Evidence: The Fourth Amendment	181	9-1c Causation	236
7-1e After Arrest	187	9-1d Damages	239
7-2 Crimes That Harm Businesses (and Their Customers)	190	9-1e Defenses	240
7-2a Larceny	190	9-2 Strict Liability and Product Liability	243
7-2b Embezzlement	191	9-2a Strict Liability	243
7-2c Fraud	191	9-2b Product Liability	245
7-2d Arson	193	9-2c Contemporary Trends	247
7-2e Phishing and Hacking	193	Chapter Conclusion	249
7-3 Crimes Committed by Business	194	Exam Review	249
7-3a Making False Statements	195	Multiple-Choice Questions	252
7-3b Workplace Crimes	195	Case Questions	253
7-3c RICO	195	Discussion Questions	254
7-3d Money Laundering	196		
7-3e Hiring Unauthorized Workers	197	Chapter 10 Privacy and Internet Law	256
7-3f Foreign Corrupt Practices Act	197	10-1 Privacy in a Digital World	257
7-3g Other Crimes	199	10-1a How We Lose Our Privacy in the Digital World	257
7-3h Punishing a Corporation	199	10-2 The Law of Privacy	259
Chapter Conclusion	200	10-2a Constitutional Law: The Fourth Amendment	260
Exam Review	201	10-2b Privacy Torts	261
Multiple-Choice Questions	204	10-2c Federal Privacy Statutes	264
Case Questions	204	10-2d State Privacy Statutes	268
Discussion Questions	205	10-2e Trends in Consumer Privacy	269
		10-2f European General Data Protection Regulation	269
		10-2g Understanding Privacy Policies	270
UNIT 2			
Torts	207		
Chapter 8 Intentional Torts and Business Torts	208		
8-1 Intentional Torts	210		
8-1a Defamation	210		
8-1b False Imprisonment	212		
8-1c Intentional Infliction of Emotional Distress	213		
8-1d Battery and Assault	214		

10-3 Regulation in the Digital World	271	Chapter Conclusion	324
10-3a Regulation of Online Speech	272	Exam Review	324
10-3b Liability of ISPs	276	Multiple-Choice Questions	327
10-3c Consumer Protection Online	278	Case Questions	328
Chapter Conclusion	279	Discussion Questions	329
Exam Review	279		
Multiple-Choice Questions	281	Chapter 13 Consideration	331
Case Questions	282	13-1 What is Consideration?	332
Discussion Questions	283	13-1a What Is Value?	333
		13-1b What Is a Bargained-For Exchange?	335
		13-1c What Consideration Is Not	336
		13-2 Special Consideration Cases	342
		13-2a Settlement of Debts	342
		13-2b Agreements Not to Compete	345
		13-2c Moral Consideration	345
		Chapter Conclusion	346
		Exam Review	346
		Multiple-Choice Questions	349
		Case Questions	350
		Discussion Questions	351
		Chapter 14 Legality	352
		14-1 Contracts That Violate a Statute	353
		14-1a Criminal Statutes	353
		14-1b Gambling	354
		14-1c Insurance	354
		14-1d Licensing Statutes	355
		14-1e Usury	355
		14-2 Contracts That Violate Public Policy	357
		14-2a Restraint of Trade: Non-compete	
		Agreements	358
		14-2b Exculpatory Clauses	362
		14-2c Unconscionable Contracts	364
		Chapter Conclusion	366
		Exam Review	367
		Multiple-Choice Questions	368
		Case Questions	370
		Discussion Questions	371
		Chapter 15 Voidable Contracts: Capacity	372
		and Consent	
		15-1 Capacity	373
		15-1a Minors	373
		15-1b Mentally Impaired Persons	376
UNIT 3			
Contracts	285		
Chapter 11 Introduction to Contracts	286		
11-1 Contracts	287		
11-1a All Shapes and Sizes	288		
11-1b Contracts Defined	288		
11-1c Development of Contract Law	289		
11-1d Types of Contracts	290		
11-2 Sources of Contract Law	293		
11-2a Common Law	293		
11-2b Uniform Commercial Code	293		
11-3 Enforcing Non-Contracts	295		
11-3a Promissory Estoppel	295		
11-3b Quasi-Contract	297		
Chapter Conclusion	300		
Exam Review	300		
Multiple-Choice Questions	302		
Case Questions	303		
Discussion Questions	305		
Chapter 12 The Agreement: Offers	306		
and Acceptances			
12-1 Offer	307		
12-1a Meeting of the Minds	307		
12-1b Statements That Usually Do Not			
Amount to Offers	309		
12-1c Problems with Definiteness	313		
12-1d The UCC and Open Terms	315		
12-1e Termination of Offers	316		
12-2 Acceptance	317		
12-2a Mirror Image Rule	318		
12-2b UCC and the Battle of Forms	318		
12-2c Acceptance Online: Wrap Agreements	320		
12-2d Communication of Acceptance	323		

15-2 Reality of Consent	378	Chapter Conclusion	429
15-2a Fraud	378	Exam Review	429
15-2b Mistake	383	Multiple-Choice Questions	431
15-2c Duress	386	Case Questions	432
15-2d Undue Influence	388	Discussion Questions	433
Chapter Conclusion	388		
Exam Review	388		
Multiple-Choice Questions	391		
Case Questions	392		
Discussion Questions	393		
Chapter 16 <i>Written Contracts</i>	394	Chapter 18 <i>Contract Termination</i>	435
16-1 The Common Law Statute of Frauds:		18-1 Performance	436
Contracts That Must Be in Writing	395	18-1a Discharge	436
16-1a Agreements for an Interest in Land	396	18-1b Conditions	436
16-1b Agreements That Cannot Be		18-1c Completion	440
Performed within One Year	398	18-2 Non-Performance	445
16-1c Promise to Pay the Debt of Another	400	18-2a Breach	445
16-1d Promise Made by an Executor of		18-2b Impossibility	447
an Estate	401		
16-1e Promise Made in Consideration of Marriage	401	Chapter Conclusion	450
16-2 The Common Law Statute of Frauds:		Exam Review	450
What Is A “Writing”?	401	Multiple-Choice Questions	453
16-2a Signature	401	Case Questions	454
16-2b Reasonable Certainty	402	Discussion Questions	455
16-2c Vagueness	402		
16-2d Incompleteness	402		
16-3 The UCC’s Statute of Frauds	404		
16-3a UCC §2-201(1)—The Basic Rule	404		
16-4 Parol Evidence	407		
16-4a Exception: An Incomplete or			
Ambiguous Contract	409		
16-4b Fraud, Misrepresentation, or Duress	409		
Chapter Conclusion	409		
Exam Review	409		
Multiple-Choice Questions	411		
Case Questions	412		
Discussion Questions	413		
Chapter 17 <i>Third Parties</i>	415	Chapter 19 <i>Remedies</i>	457
17-1 Third Party Beneficiary	416	19-1 Identifying the “Interest” to be	
17-1a Intended Beneficiaries	416	Protected	458
17-1b Incidental Beneficiaries	418	19-2 Expectation Interest	459
17-2 Assignment and Delegation	419	19-2a Direct Damages	460
17-2a Assignment	419	19-2b Consequential Damages	461
17-2b Delegation of Duties	425	19-2c Incidental Damages	463
		19-2d The UCC and Damages	463
		19-3 Reliance Interest	465
		19-3a Promissory Estoppel	465
		19-4 Restitution Interest	467
		19-4a Restitution in Cases of Contract Breach	
		or Discharge	467
		19-4b Restitution in Cases of a Voidable	
		Contract	469
		19-4c Restitution in Cases of a Quasi-	
		Contract	469
		19-5 Equitable Interest and Remedies	469
		19-5a Specific Performance	470
		19-5b Injunction	471
		19-5c Reformation	472
		19-6 Special Issues	472
		19-6a Mitigation of Damages	472
		19-6b Nominal Damages	473
		19-6c Liquidated Damages	473

Chapter Conclusion	474
Exam Review	474
Multiple-Choice Questions	476
Case Questions	478
Discussion Questions	479

Chapter 20 *Practical Contracts* **480**

20-1 Creating a Contract	481
20-1a The Lawyer	481
20-1b Who Drafts the Contract?	483
20-1c How to Read a Contract	483
20-1d Mistakes	483
20-2 The Structure of a Contract	490
20-2a Terms That Vary by Contract	490
20-2b Boilerplate	494

Chapter Conclusion	500
Exam Review	500
Multiple-Choice Questions	502
Case Questions	503
Discussion Questions	504

UNIT 4

Sales **505**

Chapter 21 *Introduction to Sales* **506**

21-1 Development and Scope of the UCC	507
21-1a Noah and Nina, Revisited	509
21-1b This Unit and This Chapter	509
21-2 UCC Basics	510
21-2a Code's Purpose	510
21-2b Scope of Article 2	510
21-2c Mixed Contracts	511
21-2d Merchants	512
21-2e Good Faith and Unconscionability	512
21-3 UCC Contract Formation	513
21-3a Formation Basics: Section 2-204	513
21-3b Statute of Frauds	515
21-3c Added Terms: Section 2-207	517
21-3d Open Terms: Sections 2-305 and 2-306	521
21-3e Output and Requirements Contracts	522
21-3f Modification	523

Chapter Conclusion	526
Exam Review	526
Multiple-Choice Questions	529
Case Questions	530
Discussion Questions	531

Chapter 22 *Ownership, Risk, and Warranties* **533**

22-1 Legal Interest and Title	534
22-1a Existence and Identification	534
22-1b Passing of Title	536
22-1c Insurable Interest	536
22-1d Imperfect Title	538
22-2 Risk of Loss	541
22-2a Shipping Terms	542
22-2b When the Parties Fail to Allocate the Risk	542
22-3 Warranties	545
22-3a Express Warranties	545
22-3b Implied Warranties	549
22-3c Warranty Disclaimers	552
22-3d Remedy Limitations	553
22-3e Privity	554
22-3f Buyer's Misuse	556
22-3g Statute of Limitations and Notice of Breach	556

Chapter Conclusion	556
Exam Review	557
Multiple-Choice Questions	559
Case Questions	560
Discussion Questions	561

Chapter 23 *Performance and Remedies* **562**

23-1 Rights and Obligations of Contracting Parties	563
23-1a Obligation on All Parties: Good Faith	563
23-1b Seller's Rights and Obligations	564
23-1c Buyer's Rights and Obligations	569
23-2 Remedies of Contracting Parties	571
23-2a Seller's Remedies	571
23-2b Buyer's Remedies	574

Chapter Conclusion	579
Exam Review	580
Multiple-Choice Questions	582
Case Questions	584
Discussion Questions	585

UNIT 5			
Additional CPA Topics	587		
Chapter 24 Secured Transactions	588		
24-1 Article 9: Terms and Scope	589		
24-1a Article 9 Vocabulary	589		
24-1b Scope of Article 9	590		
24-2 Attachment of a Security Interest	593		
24-2a Agreement	593		
24-2b Control and Possession	594		
24-2c Value	595		
24-2d Debtor Rights in the Collateral	595		
24-2e Attachment to Future Property	595		
24-3 Perfection	596		
24-3a Perfection by Filing	596		
24-3b Perfection by Possession or Control	600		
24-3c Perfection of Consumer Goods	601		
24-3d Perfection of Movable Collateral and Fixtures	603		
24-4 Protection of Buyers	604		
24-4a Buyers in Ordinary Course of Business	605		
24-4b Buyers of Consumer Goods	607		
24-4c Buyers of Chattel Paper, Instruments, and Documents	607		
24-4d Liens	609		
24-5 Priorities Among Creditors	609		
24-5a Filing versus Control or Possession	610		
24-5b Priority Involving a Purchase Money Security Interest	611		
24-6 Default and Termination	612		
24-6a Default	613		
24-6b Termination	616		
Chapter Conclusion	617		
Exam Review	617		
Multiple-Choice Questions	620		
Case Questions	621		
Discussion Questions	622		
Chapter 25 Creating a Negotiable Instrument	623		
25-1 Negotiable Instruments	624		
25-1a Commercial Paper	624		
25-1b Types of Negotiable Instruments	625		
25-1c Negotiability	627		
25-1d Negotiation	631		
25-2 Holder in Due Course	632		
25-2a Requirements for Being a Holder in Due Course	633		
25-2b Shelter Rule	636		
25-2c Defenses against a Holder in Due Course	636		
25-2d Consumer Exception	640		
Chapter Conclusion	641		
Exam Review	641		
Multiple-Choice Questions	644		
Case Questions	646		
Discussion Questions	646		
Chapter 26 Liability for Negotiable Instruments	648		
26-1 Introduction	649		
26-1a The Contract versus the Instrument	649		
26-1b Enforcing an Instrument	650		
26-1c Primary versus Secondary Liability	650		
26-1d The Payment Process	651		
26-2 Signature Liability	651		
26-2a Maker	651		
26-2b Drawer	652		
26-2c Drawee	652		
26-2d Indorser	653		
26-2e Accommodation Party	654		
26-2f Agent	655		
26-3 Warranty Liability	656		
26-3a Basic Rules of Warranty Liability	656		
26-3b Transfer Warranties	657		
26-3c Comparison of Signature Liability and Transfer Warranties	659		
26-3d Presentment Warranties	659		
26-4 Other Liability Rules	661		
26-4a Conversion Liability	661		
26-4b Impostor Rule	661		
26-4c Fictitious Payee Rule	662		
26-4d Employee Indorsement Rule	662		
26-4e Negligence	662		
26-4f Crimes	664		
26-5 Discharge	665		
26-5a Discharge of the Obligor	665		
26-5b Discharge of an Indorser or Accommodation Party	666		
Chapter Conclusion	667		
Exam Review	667		
Multiple-Choice Questions	670		
Case Questions	671		
Discussion Questions	672		

Chapter 27 Accountants' Liability 673

27-1 Introduction	675
27-1a The Sarbanes-Oxley Act of 2002 (SOX)	675
27-1b Consolidation in the Accounting Profession	676
27-1c Audits	676
27-2 Liability to Clients	678
27-2a Contract	678
27-2b Negligence	678
27-2c Common Law Fraud	680
27-2d Breach of Trust	680
27-2e Fiduciary Duty	680
27-3 Liability to Third Parties	682
27-3a Negligence	682
27-3b Fraud	685
27-3c Liability for Qualified Opinions	686
27-3d Securities Act of 1933	686
27-3e Securities Exchange Act of 1934	686
27-4 Criminal Liability	690
27-5 Other Accountant–Client Issues	690
27-5a The Accountant–Client Relationship	690
27-5b Accountant–Client Privilege	691

Chapter Conclusion	692
Exam Review	692
Multiple-Choice Questions	695
Case Questions	696
Discussion Questions	697

UNIT 6**Agency and Employment Law 699****Chapter 28 Agency Law 700**

28-1 The Agency Relationship	701
28-1a Creating an Agency Relationship	701
28-1b Duties of Agents to Principals	703
28-1c Duties of Principals to Agents	707
28-1d Terminating an Agency Relationship	709
28-2 Liability to Third Parties	711
28-2a Principal's Liability for Contracts	711
28-2b Agent's Liability for Contracts	713
28-2c Principal's Liability for Negligent Physical Torts	716
28-2d Principal's Liability for Intentional Physical Torts	722
28-2e Principal's Liability for Nonphysical Torts	722
28-2f Agent's Liability for Torts	723

Chapter Conclusion	723
Exam Review	723
Multiple-Choice Questions	726
Case Questions	727
Discussion Questions	728

Chapter 29 Employment and Labor Law 729

29-1 Employment at Will	730
29-2 Employment Security	731
29-2a Common Law Protections	731
29-2b Family and Medical Leave Act	735
29-2c Fair Workweek Laws	737
29-2d Whistleblowing	737
29-3 Workplace Freedom	739
29-3a Off-Duty Activities	739
29-3b The Right to Free Speech	740
29-3c Lie Detector Tests	742
29-4 Workplace Safety	743
29-4a OSHA	743
29-4b Employee Data	743
29-4c Guns	743
29-5 Financial Protection	744
29-5a Fair Labor Standards Act	744
29-5b Workers' Compensation	744
29-5c Health Insurance	745
29-5d Social Security	745
29-5e Pension Benefits	745
29-6 Labor Unions	745
29-6a The National Labor Relations Act	746
29-6b Labor Unions Today	748
29-6c Organizing a Union	748
29-6d Collective Bargaining	750
29-6e Concerted Action	750

Chapter Conclusion	751
Exam Review	752
Multiple-Choice Questions	755
Case Questions	756
Discussion Questions	757

Chapter 30 Employment Discrimination 759

30-1 Employment Opportunity Before 1964	760
30-1a The United States Constitution	760
30-1b Civil Rights Act of 1866	761
30-1c Equal Pay Act of 1963	761
30-2 The Civil Rights Act of 1964	762
30-2a Prohibited Activities	762
30-2b Religion	767

30-2c Sex	768	31-3f Piercing the Company Veil	803
30-2d Appearance	768	31-3g Legal Uncertainty	804
30-2e Parenthood	770	31-3h Choices: LLC versus Corporation	804
30-2f Sexual Orientation and Transgender Status	772	31-4 Social Enterprises	805
30-2g Background and Credit Checks	772	31-5 General Partnerships	806
30-2h Immigration	772	31-5a Tax Status	806
30-2i Reverse Discrimination	772	31-5b Liability	806
30-2j Defenses to Charges of Discrimination	773	31-5c Formation	806
30-3 Age	775	31-5d Management	807
30-3a Disparate Treatment	775	31-5e Raising Capital	807
30-3b Disparate Impact	777	31-5f Transfer of Ownership	807
30-3c Hostile Work Environment	777	31-5g Dissociation	807
30-3d Bona Fide Occupational Qualification	777	31-6 Limited Liability Partnerships	807
30-4 Disability	778	31-7 Professional Corporations	808
30-4a The Rehabilitation Act of 1973	778	31-8 Joint Ventures	808
30-4b Americans with Disabilities Act	778	31-9 Franchises	809
30-5 Genetic Information Nondiscrimination Act	783	31-9a Advantages of a Franchise	809
30-6 Hiring Practices	783	31-9b The Drawbacks of a Franchise	809
30-6a Interviews	783	31-9c Legal Requirements	810
30-6b Social Media	784	Chapter Conclusion	812
30-7 Enforcement	784	Exam Review	812
30-7a Constitutional Claims	784	Multiple-Choice Questions	813
30-7b The Civil Rights Act of 1866	784	Case Questions	815
30-7c The Rehabilitation Act of 1973	784	Discussion Questions	816
30-7d Other Statutory Claims	785		
Chapter Conclusion	786	Chapter 32 Partnerships	818
Exam Review	787	32-1 Creating a Partnership	819
Multiple-Choice Questions	790	32-1a Is This a Partnership?	820
Case Questions	791	32-1b Partnership by Estoppel	822
Discussion Questions	792	32-2 The Partnership and Outsiders	822
		32-2a Liability of the Partnership to Outsiders	822
UNIT 7		32-2b Paying the Debts of the Partnership	824
Business Organizations	793	32-3 The Relationship Among Partners	825
		32-3a Financial Rights	825
Chapter 31 Starting a Business: LLCs and Other Options	794	32-3b Management Rights	828
31-1 Sole Proprietorships	795	32-3c Management Duties	828
31-2 Corporations	796	32-4 Terminating a Partnership	832
31-2a Corporations in General	796	32-4a Dissociation	832
31-2b Special Types of Corporations	798	32-4b Continuation of the Partnership Business	834
31-3 Limited Liability Companies	800	32-4c Termination of the Partnership Business	835
31-3a Formation	801	Chapter Conclusion	838
31-3b Flexibility	802	Exam Review	838
31-3c Transferability of Interests	802	Multiple-Choice Questions	841
31-3d Duration	802	Case Questions	842
31-3e Going Public	803	Discussion Questions	843

Chapter 33	<i>Life and Death of a Corporation</i>	845		
33-1	Before the Corporation Is Formed	846		
33-1a	Promoter's Liability	846		
33-1b	Defective Incorporation	847		
33-2	Incorporation Process	848		
33-2a	Where to Incorporate?	849		
33-2b	Charter's Required Provisions	850		
33-2c	Charter's Optional Provisions	855		
33-3	After Incorporation	858		
33-3a	Directors and Officers	858		
33-3b	Bylaws	859		
33-3c	Shareholder Agreements	861		
33-3d	Foreign Corporations	861		
33-4	Death of the Corporation	862		
33-4a	Voluntary Termination by the Shareholders	862		
33-4b	Termination by the State	862		
33-4c	Piercing the Corporate Veil	864		
	Chapter Conclusion	865		
	Exam Review	865		
	Multiple-Choice Questions	867		
	Case Questions	868		
	Discussion Questions	869		
Chapter 34	<i>Management Duties</i>	870		
34-1	Conflict	871		
34-1a	What the Parties Want	871		
34-1b	The Business Judgment Rule	874		
34-1c	Applications of the Business Judgment Rule	877		
34-2	More Conflict: Takeovers	883		
34-2a	Takeovers: The Basics	883		
34-2b	Takeover Defenses	884		
	Chapter Conclusion	889		
	Exam Review	889		
	Multiple-Choice Questions	891		
	Case Questions	893		
	Discussion Questions	894		
Chapter 35	<i>Shareholder Rights</i>	895		
35-1	Introduction	897		
35-1a	Who Are the Shareholders?	897		
35-1b	The Relationship between Shareholders and Managers	897		
35-2	Rights of Shareholders	898		
35-2a	Right to Information	898		
35-2b	Corporate Changes	900		
35-2c	Protection of Minority Shareholders	900		
35-2d	Right to Vote	903		
35-3	Enforcing Shareholder Rights	914		
35-3a	Direct Lawsuits	914		
35-3b	Derivative Lawsuits	914		
	Chapter Conclusion	917		
	Exam Review	918		
	Multiple-Choice Questions	920		
	Case Questions	921		
	Discussion Questions	922		
Chapter 36	<i>Bankruptcy</i>	923		
36-1	Overview of the Bankruptcy Code	924		
36-1a	Chapter Description	925		
36-1b	Goals	925		
36-2	Chapter 7 Liquidation	925		
36-2a	Filing a Petition	926		
36-2b	Trustee	927		
36-2c	Creditors	927		
36-2d	Automatic Stay	928		
36-2e	Bankruptcy Estate	929		
36-2f	Payment of Claims	931		
36-2g	Discharge	933		
36-3	Chapter 11 Reorganization	940		
36-3a	Debtor in Possession	941		
36-3b	Creditors' Committee	941		
36-3c	Plan of Reorganization	941		
36-3d	Confirmation of the Plan	941		
36-3e	Discharge	942		
36-3f	Subchapter 5: Small Business Reorganization Act	942		
36-4	Chapter 13 Consumer Reorganizations	943		
36-4a	Beginning a Chapter 13 Case	944		
36-4b	Plan of Payment	944		
36-4c	Discharge	945		
	Chapter Conclusion	945		
	Exam Review	945		
	Multiple-Choice Questions	947		
	Case Questions	949		
	Discussion Questions	950		

UNIT 8			
Government Regulation	951		
Chapter 37 Securities Regulation	952		
37-1 Federal Securities Laws	953		
37-2 Securities Act of 1933	953		
37-2a Exempt Securities	954		
37-2b Exempt Transactions	954		
37-2c Public Offerings	956		
37-2d Rule 144: Restrictions on the Resale of Securities	958		
37-2e Liability under the 1933 Act	958		
37-3 Securities Exchange Act of 1934	960		
37-3a Registration Requirements	961		
37-3b Disclosure Requirements	961		
37-3c Liability under the 1934 Act	961		
37-3d Insider Trading: §§16 and 10(b)	966		
37-4 Blue Sky Laws	971		
37-4a Exemption from State Regulation	971		
37-4b State Regulation	971		
Chapter Conclusion	972		
Exam Review	972		
Multiple-Choice Questions	975		
Case Questions	976		
Discussion Questions	977		
Chapter 38 Antitrust	978		
38-1 Overview of Antitrust Laws	979		
38-1a History	979		
38-1b Provisions of the Antitrust Laws	980		
38-1c Protecting Consumers	980		
38-2 Monopolization	981		
38-2a What Is an Illegal Monopoly?	981		
38-2b Acquiring or Maintaining a Monopoly	984		
38-3 Collusion	990		
38-3a Market Division	991		
38-3b Price-Fixing	992		
38-3c Refusals to Deal	995		
38-3d Reciprocal Dealing Agreements	996		
38-3e Controlling Distributors and Retailers	996		
Chapter Conclusion	997		
Exam Review	997		
Multiple-Choice Questions	999		
Case Questions	1000		
Discussion Questions	1001		
Chapter 39 Consumer Protection	1002		
39-1 Sales	1003		
39-1a Deceptive Acts or Practices	1003		
39-1b Unfair Practices	1005		
39-1c Abusive Acts	1005		
39-1d Additional Sales Rules	1006		
39-2 Consumer Credit	1008		
39-2a Payday Loans	1008		
39-2b Truth in Lending Act—General Provisions	1009		
39-2c Home Loans	1010		
39-2d Plastic: Credit, Debit, and ATM Cards	1011		
39-2e Electronic Fund Transfers	1014		
39-2f Credit Reports	1016		
39-2g Debt Collection	1018		
39-2h Equal Credit Opportunity Act	1020		
39-3 Magnuson-Moss Warranty Act	1021		
39-4 Consumer Product Safety	1022		
Chapter Conclusion	1023		
Exam Review	1023		
Multiple-Choice Questions	1028		
Case Questions	1029		
Discussion Questions	1030		
Chapter 40 Environmental Law	1031		
40-1 Introduction	1032		
40-1a Environmental Awareness	1032		
40-1b The Cost–Benefit Trade-Off	1032		
40-1c Environmental Protection Agency	1032		
40-2 Air Pollution	1033		
40-2a Clean Air Act	1034		
40-2b Climate Change	1036		
40-2c Automobile Pollution	1038		
40-3 Water Pollution	1040		
40-3a Clean Water Act	1040		
40-3b Other Water Pollution Statutes	1043		
40-4 Waste Disposal	1044		
40-4a Resource Conservation and Recovery Act	1044		
40-4b Superfund	1045		
40-5 Chemicals	1047		
40-5a Toxic Substances Control Act	1047		
40-5b Pesticides	1048		
40-6 Natural Resources	1048		
40-6a National Environmental Policy Act	1048		
40-6b Endangered Species Act	1049		

Chapter Conclusion	1051	42-3c A Claim Adverse or Hostile to the Owner	1098
Exam Review	1052	42-3d Continuous Possession for the Statutory Period	1098
Multiple-Choice Questions	1055	42-4 Land-Use Regulation	1100
Case Questions	1056	42-4a Nuisance Law	1100
Discussion Questions	1057	42-4b Zoning	1100
		42-4c Eminent Domain	1101
UNIT 9		42-5 Landlord–Tenant Law	1101
Property	1059	42-5a Types of Tenancy	1102
		42-5b Landlord’s Duties	1104
		42-5c Tenant’s Duties	1107
		42-5d Liability of Landlords and Tenants	1108
Chapter 41 Intellectual Property	1060	Chapter Conclusion	1111
41-1 Patents	1061	Exam Review	1111
41-1a Types of Patents	1061	Multiple-Choice Questions	1114
41-1b Requirements for a Utility Patent	1062	Case Questions	1115
41-1c Patent Application and Issuance	1066	Discussion Questions	1116
41-1d Patent Infringement	1067		
41-1e International Patent Treaties	1067	Chapter 43 Personal Property and Bailment	1118
41-2 Copyrights	1067	43-1 Acquiring Personal Property	1119
41-2a Copyright Term	1069	43-1a Gifts	1119
41-2b Copyright Infringement	1069	43-1b Found Property	1123
41-2c Defenses to Copyright Infringement	1070	43-1c Accession	1125
41-2d Digital Music and Movies	1072	43-2 Bailment	1125
41-2e The Digital Millennium Copyright Act	1073	43-2a Control	1126
41-2f International Copyright Treaties	1074	43-2b Rights of the Bailee	1127
41-3 Trademarks	1074	43-2c Duties of the Bailee	1128
41-3a Types of Marks	1075	43-2d Exculpatory Clauses	1129
41-3b Trademark Registration	1075	43-2e Rights and Duties of the Bailor	1130
41-3c Valid Trademarks	1076	43-2f Liability for Defects	1130
41-3d Infringement and Dilution	1078	43-2g Common Carriers and Contract Carriers	1131
41-3e International Trademark Treaties	1080	43-2h Innkeepers	1132
41-4 Trade Secrets	1081	Chapter Conclusion	1133
Chapter Conclusion	1082	Exam Review	1133
Exam Review	1083	Multiple-Choice Questions	1135
Multiple-Choice Questions	1084	Case Questions	1137
Case Questions	1085	Discussion Questions	1138
Discussion Questions	1086		
Chapter 42 Real Property and Landlord–Tenant Law	1088	Chapter 44 Planning For The Future: Wills, Trusts, and Insurance	1139
42-1 Nature of Real Property	1089	44-1 Introduction to Estate Planning	1140
42-2 Interests in Real Property	1090	44-1a Definitions	1140
42-2a Concurrent Estates	1090	44-1b Purpose	1141
42-2b Future Interests	1093	44-1c Probate Law	1141
42-2c Nonpossessory Interests	1094		
42-3 Adverse Possession	1097		
42-3a Entry and Exclusive Possession	1097		
42-3b Open and Notorious Possession	1097		

44-2 Wills	1141	44-6c Health Insurance	1161
44-2a Requirements for a Valid Will	1142	44-6d Disability Insurance	1161
44-2b Spouse's Share	1145	44-6e Liability Insurance	1161
44-2c Children's Share	1145	44-6f Automobile Insurance	1162
44-2d Digital Assets	1147		
44-2e Amending a Will	1148	Chapter Conclusion	1162
44-2f Intestacy	1148	Exam Review	1162
44-2g Power of Attorney	1148	Multiple-Choice Questions	1165
44-2h Probate	1149	Case Questions	1166
44-2i Property Not Transferred by Will	1149	Discussion Questions	1167
44-2j Anatomical Gifts	1149		
44-2k End-of-Life Health Issues	1149	Appendix A	
44-3 Trusts	1150	The Constitution of the United States	A1
44-3a Advantages and Disadvantages	1151		
44-3b Types of Trusts	1151	Appendix B	
44-3c Trust Administration	1152	Uniform Commercial Code (Selected Provisions)	B1
44-3d A Trust's Term	1152		
44-4 Introduction to Insurance	1153	Appendix C	
44-5 Insurance Contract	1154	Answers to Selected End-of-Chapter Questions	C1
44-5a Offer and Acceptance	1154		
44-5b Limiting Claims by the Insured	1155	Glossary	G1
44-5c Bad Faith by the Insurer	1157		
44-6 Types of Insurance	1159	Table of Cases	T1
44-6a Property Insurance	1159		
44-6b Life Insurance	1159	Index	I1

NOTE FROM THE AUTHORS

Enhanced Digital Content—*MindTap*[™]

Our goal—and yours—is for your students to learn the material. With that singular goal in mind, Cengage has created an extremely useful tool for both instructors and students. *MindTap*[™] is a fully online, highly personalized learning experience combining readings, multimedia, activities, and assessments into a singular Learning Path. It integrates seamlessly with Learning Management Systems. *MindTap* guides students through their course with ease and engagement. Instructors can personalize the Learning Path by customizing Cengage resources and adding their own content via apps that integrate with *MindTap*.

In our experience, students who use *MindTap* are better prepared for, and earn better grades on, our exams. Business law instructors want to help students **Prepare** for class, **Engage** with the course concepts to reinforce learning, **Apply** these concepts in real-world scenarios, use legal reasoning and critical thinking to **Analyze** business law content, and **Evaluate** real business scenarios and their legal implications.

Accordingly, our *MindTap* product provides a five-step Learning Path designed to meet these critical needs while also allowing instructors to measure skills and outcomes with ease.

- **Prepare**—Interactive worksheets are designed to prepare students for classroom discussion by ensuring that they have read and understood the reading.
- **Engage**—Real-world videos with related questions help engage students by displaying the relevance of business law in everyday life.
- **Apply**—Brief hypothetical case scenarios help students practice spotting issues and applying the law in the context of short factual scenarios.
- **Analyze**—Case-problem analysis promotes deeper critical thinking and legal reasoning by building on acquired knowledge. These exercises guide students step by step through a case problem and then add in a critical thinking section based on “What If the Facts Were Different?” In a **new third section**, a writing component requires students to demonstrate their ability to forecast the legal implications of real-world business scenarios.
- **Evaluate**—New **business case** activities develop students’ *skills* to apply critical thinking and legal reasoning through relevant real-world business scenarios. These exercises give students the opportunity to advocate, evaluate, and make a decision through a variety of flexible assessment options including Discussion Questions, Multiple-Choice Questions, Short-Answer Essays, Group Work, and Ethical Dilemmas. Whether you have a large class or a small class, teach online or in a traditional classroom setting, promote group work or individual assignments, the *MindTap* Business Cases offer a variety of activity types to complement and enhance how YOU teach.

Each and every item in the Learning Path is assignable and gradable. Thus, instructors have up-to-the-minute information on the class’ general understanding of concepts as well as data on the performance of each individual student. Students also know where they stand—both individually and compared to the highest performers in the class. Thus, both faculty and students are less likely to face unpleasant surprises on exams.

The Beatty/Samuelson/Sánchez Abril Difference

Our goal in writing this book was to capture the passion and excitement, the sheer enjoyment, of the law. Business law is notoriously complex and, as authors, we are obsessed with accuracy. Yet this intriguing subject also abounds with human conflict and hard-earned wisdom, forces that we wanted to use to make this book sparkle. Look, for example, at Chapters 33–35 on corporations. A robust discussion of corporate governance is enlivened by court cases featuring intense personal conflict.

Once we have the students' attention, our goal is to provide the information they will need as business people and as informed citizens. Of course, we present the *theory* of how laws work, but we also explain when *reality* is different. To take some examples, traditionally business law textbooks have simply taught students that shareholders elect the directors of public companies. Even Executive MBA students rarely understand the reality of corporate elections. But our book explains the complexity of corporate power. The practical contracts chapter focuses not on the theory of contract law but on the real-life issues involved in making an agreement: Do I need a lawyer? Should the contract be in writing? What happens if the contract has an unclear provision or an important typo? What does all that boilerplate mean anyway?

Nobel Laureate Paul Samuelson famously said, “Let those who will write the nation’s laws, if I can write its textbooks.” As authors, we never forget the privilege—and responsibility—of educating a generation of business law students. Our goal is to write a business law text like no other—a book that is authoritative, realistic, and yet a pleasure to read.

Strong Narrative. The law is full of great stories, and we use them. It is easier to teach students when they come to class curious and excited. Every chapter begins with a story that is based in fact, to illustrate important issues. We also include stories in the body of the chapters. Look at Chapter 3 on dispute resolution. No tedious list of next steps in litigation, this chapter teaches the subject by tracking a double-indemnity lawsuit. An executive is dead. Did he drown accidentally, obligating the insurance company to pay? Or did the businessman commit suicide, voiding the policy? Students follow the action from the discovery of the body, through each step of the lawsuit, to the final appeal. One student commented, “Chapter 3 . . . is a page-turner! Love that it is posed as a story you can really follow and think about, even after finishing the chapter.”

Context. Most of our students were not yet born when George W. Bush was elected president. They come to college with varying levels of preparation; many arrive from other countries. We have found that to teach business law most effectively we must provide its context. In the chapter on employment discrimination, we provide a historical perspective to help students understand how the laws developed. In the chapter on securities laws, we discuss the impact of the Depression on the major statutes. Only with this background do students grasp the importance and impact of our laws.

Student Reaction. Students have responded enthusiastically to our approach. One professor asked a student to compare our book with the one that the class was then using. This was the student’s reaction: “I really enjoy reading the [Beatty] textbook, and I have decided that I will give you this memo ASAP, but I am keeping the book until Wednesday so that I may continue reading. Thanks! :-)”

This text has been used in courses for undergraduates, MBAs, and Executive MBAs, with students ranging in age from 18 to 65. This book works, as some unsolicited comments indicate:

From verified purchasers on Amazon:

- “If you have this textbook for your business law class, then you are in luck! This is one of the best and most helpful textbooks that I have ever had the pleasure of using. (I mostly just use my textbooks as a pillow.) I actually did enjoy reading this and learning the material. The author breaks down the concepts so they are easy to understand. Even if you hate law, if you put forth the effort to learn this, you should have no trouble at all learning and understanding the concepts.”

- “I enjoyed this book so much that I will not be selling it back to the bookstore (or anyone) because I know that I will use the book for years.”

From undergraduates:

- “This is the best textbook I have had in college, on any subject.”
- “The textbook is awesome. A lot of the time I read more than what is assigned—I just don’t want to stop.”
- “I had no idea business law could be so interesting.”
- A student who had used this book as an undergraduate in California 11 years ago recently emailed the authors to say that she sometimes re-read the book because it is the “BEST textbook I’ve ever read.”

From MBA students:

- “Actually enjoyed reading the textbook, which is a rarity for me.”
- “The law textbook was excellent through and through.”

From a Fortune 500 vice president, enrolled in an Executive MBA program:

- “I really liked the chapters. They were crisp, organized, and current. The information was easy to understand and enjoyable.”

From business law professors:

- “The clarity of presentation is superlative. I have never seen the complexity of contract law made this readable.”
- “Until I read your book I never really understood UCC 2-207.”
- “With your book, we have great class discussions.”

From a state supreme court justice:

- “This book is a valuable blend of rich scholarship and easy readability. Students and professors should rejoice with this publication.”

Current. This 9th edition contains more than 25 new cases. Most were reported within the last two or three years, and many within the last 12 months. The law evolves continually, and our willingness to toss out old cases and add important new ones ensures that this book—and its readers—remain on the frontier of legal developments.

Authoritative. We insist, as you do, on a law book that is indisputably accurate. To highlight the most important rules, we use bold print, and then follow with vivid examples written in clear, forceful English. We cheerfully venture into contentious areas, relying on very recent decisions. Can a Delaware court order the sale of a successful business? Is discrimination based on attractiveness or sexual orientation legal? Is the list of names in a LinkedIn group a trade secret? What are the limits to free speech on social media? Is revenge porn protected by the First Amendment? Has the National Football League violated antitrust laws? Where there is doubt about the current (or future) status of a doctrine, we say so. In areas of particularly heated debate, we footnote our work. We want you to have absolute trust in this book.

Humor. Throughout the text we use humor—judiciously—to lighten and enlighten. We revere the law for its ancient traditions, its dazzling intricacy, and its relentless, though imperfect, attempt to give order and decency to our world. But because we are confident of our respect for the law, we are not afraid to employ some levity, for the simple reason that humor helps retention. Research shows that the funnier or more original the example, the

longer students will remember it. They are more likely to recall an intellectual property rule involving the copyrightability of yoga than a plain-vanilla example about a common widget.

Features

Each feature in this book is designed to meet an essential pedagogical goal. Here are some of those goals and the matching feature.

Exam Strategy

GOAL: To help students learn more effectively and to prepare for exams. In developing this feature, we asked ourselves: What do students want? The short answer is—a good grade in the course. How many times a semester does a student ask you, “What can I do to study for the exam?” We are happy to help them study and earn a good grade because that means that they will also be learning.

About six times per chapter, we stop the action and give students a two-minute quiz. In the body of the text, again in the end-of-chapter review, and also in the Instructor’s Manual, we present a typical exam question. Here lies the innovation: We guide the student in analyzing the issue. We teach the reader—over and over—how to approach a question: to start with the overarching principle, examine the fine point raised in the question, apply the analysis that courts use, and deduce the right answer. This skill is second nature to lawyers and teachers, but not to students. Without practice, too many students panic, jumping at a convenient answer and leaving aside the tools they have spent the course acquiring. Let’s change that. Students love the Exam Strategy feature.

You Be the Judge Cases

GOAL: Get them thinking independently. When reading case opinions, students tend to accept the court’s “answer.” But we strive to challenge them beyond that. We want students to think through problems and reach their own answers guided by sound logic and legal knowledge. The You Be the Judge features are cases that provide the facts of the case and conflicting appellate arguments. But the court’s decision appears only in the Instructor’s Manual. Because students do not know the result, class discussions are more complex and lively.

Ethics

GOAL: Make ethics real. We include the latest research on ethical decision making, such as ethics traps (why people make decisions they know to be wrong). We have also introduced the Giving Voice to Values curriculum, which focuses on the effective implementation of an ethics decision.

End-of-Chapter Exam Review and Questions

GOAL: Encourage students to practice! At the end of the chapters, we provide a list of review points and several additional Exam Strategy exercises. We also challenge the students with 15 or more problems—Multiple-Choice Questions, Case Questions, and Discussion Questions. The questions include the following:

- *You Be the Judge Writing Problem.* Students are given appellate arguments on both sides of the question and then must prepare a written opinion.
- *Ethics.* This question highlights the ethics issues of a dispute and calls upon the student to formulate a specific, reasoned response.
- *CPA Questions.* For topics covered by the CPA exam, administered by the American Institute of Certified Public Accountants, the Exam Review includes questions from previous CPA exams.

Answers to the odd-numbered Multiple-Choice Questions and Case Questions are available in Appendix C of the book.

Cases

GOAL: Let the judges speak. Each case begins with a summary of the facts and a statement of the issue. Next comes a tightly edited version of the decision, in the court's own language, so that students "hear" the law developing in the voices of our judges. In the principal cases in each chapter, we provide the state or federal citation, unless it is not available, in which case we use the LEXIS and Westlaw citations. We also give students a brief description of the court.

TEACHING MATERIALS

For more information about any of these ancillaries, contact your Cengage Consultant, or visit the Beatty/Samuelson/Sánchez Abril Business Law website at www.cengagebrain.com.

MindTap. *MindTap* is a fully online, highly personalized learning experience combining readings, multimedia, activities, and assessments into a singular Learning Path. Instructors can personalize the Learning Path by customizing Cengage resources and adding their own content via apps that integrate into the *MindTap* framework seamlessly with Learning Management Systems. To view a demo video and learn more about *MindTap*, please visit www.cengage.com/mindtap.

MindTap Table of Contents

Why Does [Topic] Matter to Me? Immediately engage students with new activities that connect the upcoming chapter to an authentic, real-world scenario designed to pique engagement and emphasize relevance. Use these activities to ensure students read material before class and to trigger lively in-class discussion.

Chapter-Level Ebook. Immediately engage students with a dynamic eBook that brings the value, concepts, and applications of the printed text to life. Students open an active learning experience as each chapter provides opportunities to interact with content using the approach that's best for the individual learner.

Learn It Activities. Easily add multimedia instruction to your course to supplement textbook learning. Mind Tap's Learn It activities offer small sections of instruction in the form of narrative, images, and/or Quick Lesson Videos that highlight the most important concepts in each chapter. Learn It activities reinforce the text's instruction and even approach concepts in a different way to promote student choice and autonomy with personalizing learning. You can assign Learn It activities to ensure that students have read and understand key concepts before class.

Check Your Understanding—Chapter Quizzes. Use MindTap's Check Your Understanding quizzes to assess student performance and immediately identify class-wide learning needs.

Apply It Activities. Assign any of MindTap's carefully designed, practically focused application activities to ensure your students know how to make business decisions through the lens of the law.

- Case Problem Analyses offer a multi-step activity that asks students to identify the facts in a scenario through a series of questions that promote a critical thinking process so that students can arrive at the decision of the court. In the second part, the facts are changed, and students apply the same critical thinking process on their own.
- Brief Hypotheticals help students spot the issue and apply the law in the context of a short, fictional scenario.

Additional Resources (found at the part level).

- Business Cases develop students' skills to apply critical-thinking and legal reasoning through relevant real-world business scenarios.
- Quick Lesson Videos highlight the most important concepts in each chapter.
- PowerPoint Slides edited for student use offer visual outlines of each chapter.

Cengage Testing Powered by Cognero. Cognero is a flexible online system that allows you to author, edit, and manage test bank content from multiple Cengage solutions; create multiple test versions in an instant; and deliver tests from your LMS, your classroom, or wherever you want.

Instructor Companion Website. The Instructor's Companion Website is an all-in-one resource for class preparation, presentation, and testing. Accessible through www.cengage.com/login with your faculty account, you will find available for download:

- Instructor's Manual. Includes activities and assessments for each chapter and their correlation to specific learning objectives, an outline, key terms with definitions, a chapter summary, and several ideas for engaging students with discussion questions, ice breakers, case studies, and social learning activities that may be conducted in an on-ground, hybrid, or online modality.
- Answers Manual. Provides answers to all questions presented in the text, including the Focus Questions, 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, offered in Blackboard, Moodle, Desire2Learn, and Canvas formats, contains learning objective-specific true-false, multiple-choice, and essay questions for each chapter. Import the test bank into your LMS to edit and manage questions and to create tests.
- PowerPoint Slides. Presentations are closely tied to the Instructor Manual, providing ample opportunities for generating classroom discussion and interaction. They offer ready-to-use, visual outlines of each chapter, which may be easily customized for your lectures.
- Guide to Teaching Online. Presents technological and pedagogical considerations and suggestions for teaching the Business Law course when you can't be in the same room with your students.
- Educator's Guide. Walks you through what the unique activities are in MindTap, where you'll find them, and how they're built for easier curriculum integration.
- Transition Guide. Highlights all of the changes in the text and in the digital offerings from the previous edition to this edition.

Interaction with the Authors. This is our standard: Every professor who adopts this book must have a superior experience. We are available to help in any way we can. Adopters of this text often call or email us to ask questions, offer suggestions, share pedagogical concerns, or inquire about ancillaries. One of the pleasures of writing this book has been this link to so many colleagues around the country. We value those connections, are eager to respond, and would be happy to hear from you.

Jeffrey F. Beatty

Susan S. Samuelson
Phone: (617) 353-2033
Email: ssamuels@bu.edu

Patricia Sánchez Abril
Phone: (305) 284-6999
Email: pabril@miami.edu

ACKNOWLEDGMENTS

The list of people who have contributed helpful comments and suggestions for this book is long. We are grateful to all of the reviewers and instructors from around the country who have helped us refine this book through all of its editions.

ABOUT THE AUTHORS

Jeffrey F. Beatty (1948–2009) was an Associate Professor of Business Law at the Boston University Questrom School of Business. After receiving his B.A. from Sarah Lawrence and his J.D. from Boston University, he practiced with the Greater Boston Legal Services representing indigent clients. At Boston University, he won the Metcalf Cup and Prize, the university's highest teaching award. Professor Beatty also wrote plays and television scripts that were performed in Boston, London, and Amsterdam.

Susan S. Samuelson is a Professor of Business Law Emerita at the Boston University Questrom School of Business. After earning her A.B. at Harvard University and her J.D. at Harvard Law School, Professor Samuelson practiced with the firm of Choate, Hall and Stewart. She has written many articles on legal issues for scholarly and popular journals, including the *American Business Law Journal*, *Ohio State Law Journal*, *Boston University Law Review*, *Harvard Journal on Legislation*, *National Law Journal*, *Sloan Management Review*, *Inc. Magazine*, and *Boston Magazine*. At Boston University she won the Broderick Prize for excellence in teaching.

Patricia Sánchez Abril is a Professor of Business Law at the University of Miami Herbert Business School. After graduating from Duke University and Harvard Law School, she practiced international corporate law and served in a business and legal affairs capacity at a major entertainment company. Professor Abril's research has appeared in the *American Business Law Journal*, *Harvard Journal of Law & Technology*, *Florida Law Review*, *Houston Law Review*, *Wake Forest Law Review*, and *Columbia Business Law Journal*, among other journals. Professor Abril has won multiple awards for teaching business law, including the 2018 University of Miami Faculty Senate Outstanding Teaching Award.

To w.f.s., “*the fountain from the which
my current runs*”

S.S.S.

To a.f.a., *with gratitude and love*

p.s.a.

The Legal Environment

UNIT

1

INTRODUCTION TO LAW

The Pagans were a motorcycle gang with a reputation for violence. Two of its rougher members, Rhino and Backdraft, entered a tavern called the Pub Zone, shoving their way past the bouncer. The pair wore gang insignia, in violation of the bar's rules. For a while, all was quiet, as the two sipped drinks at the bar. Then they followed an innocent patron toward the men's room, and things happened fast.

“Wait a moment,” you may be thinking. “Are we reading a chapter on business law or one about biker crimes in a roadside tavern?” Both.

Law is powerful, essential, and fascinating. We hope this book persuades you of all three ideas. Law can also be surprising. Later in the chapter, we return to the Pub Zone (with armed guards) and follow Rhino and Backdraft to the back of the pub.

Yes, the pair engaged in street crime, which is hardly a focus of this text. However, their criminal acts will enable us to explore one of the law's basic principles—negligence. Should a pub owner pay money damages to the victim of gang violence? The owner herself did nothing aggressive. Should she have prevented the harm? Does her failure to stop the assault make her liable?

We place great demands on our courts, asking them to make our large, complex, and sometimes violent society into a safer, fairer, more orderly place. The *Pub Zone* case is a good example of how judges reason their way through the convoluted issues involved. What began as a gang incident ends up as a matter of commercial liability. We traipse after Rhino and Backdraft because they have a lesson to teach anyone who enters the world of business.

Should a pub owner pay money damages to the victim of gang violence?

1-1 EXPLORING THE LAW

1-1a The Role of Law in Society

The strong reach of the law touches nearly everything we do, especially at work. Consider a mid-level manager at Sublime Corp., which manufactures and distributes video games.

During the course of a day's work, she might negotiate a deal with a game developer (contract law). Before signing any deals, she might research whether similar games already exist, which might diminish her ability to market the proposed new game (intellectual property law). One of her subordinates might complain about being harassed by a coworker (employment law). Another worker may complain about being required to work long hours (administrative law). And she may consider investing her own money in her company's stock, but she may wonder whether she will get into trouble if she invests based on inside information (securities law).

It is not only as a corporate manager that you will confront the law. As a voter, investor, juror, entrepreneur, and community member, you will influence and be affected by the law. Whenever you take a stance about a legal issue, whether in the corporate office, in the voting booth, or as part of local community groups, you help to create the fabric of our nation. Your views are vital. This book offers you knowledge and ideas from which to form and continually reassess your legal opinions and values.

Law is also essential. *Every* society of which we have any historical record has had some system of laws. For example, consider the Visigoths, a nomadic European people who overran much of present-day France and Spain during the fifth and sixth centuries A.D. Their code admirably required judges to be “quick of perception, clear in judgment, and lenient in the infliction of penalties.” It detailed dozens of crimes.

Our legal system is largely based on the English model, but many societies contributed ideas. The Iroquois Native Americans, for example, played a role in the creation of our own government. Five major nations made up the Iroquois group: the Mohawk, Cayuga, Oneida, Onondaga, and Seneca. Each nation governed its own domestic issues. But each nation also elected “sachems” to a League of the Iroquois. The league had authority over any matters that were common to all, such as relations with outsiders. Thus, by the fifteenth century, the Iroquois had solved the problem of *federalism*: how to have two levels of government, each with specified powers. Their system impressed Benjamin Franklin and others and influenced the drafting of our Constitution, with its powers divided between state and federal governments.¹

In 1835, the young French aristocrat Alexis de Tocqueville traveled through the United States, observing the newly democratic people and the qualities that made them unique. One of the things that struck de Tocqueville most forcefully was the American tendency to file suit: “Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question.”² De Tocqueville got it right: For better or worse, we do expect courts to resolve many problems.

Not only do Americans litigate—they watch each other do it. Every television season offers at least one new courtroom drama to a national audience breathless for more cross-examination. Almost all of the states permit live television coverage of real trials. The most

¹Jack Weatherford, *Indian Givers* (New York: Fawcett Columbine, 1988), pp. 133–150.

²Alexis de Tocqueville, *Democracy in America* (1835), Vol. 1, Ch. 16.

heavily viewed event in the history of television was the O. J. Simpson murder trial, in which a famous football star was accused of killing his wife and her friend. In most nations, coverage of judicial proceedings is not allowed.³

The law is a big part of our lives, and it is wise to know something about it. Within a few weeks, you will probably find yourself following legal events in the news with keener interest and deeper understanding. In this chapter, we develop the background for our study. We look at where law comes from: its history and its present-day institutions. In the section on jurisprudence, we examine different theories about what “law” really means. And finally we see how courts—and students—analyze a case.

1-1b Origins of Our Law

It would be nice if we could look up “the law” in one book, memorize it, and then apply it. But the law is not that simple, and *cannot* be that simple, because it reflects the complexity of contemporary life. In truth, there is no such thing as “the law.” Principles and rules of law actually come from *many different* sources. This is so, in part, because we inherited a complex structure of laws from England.

Additionally, ours is a nation born in revolution, and created, in large part, to protect the rights of its people from the government. The Founding Fathers created a national government but insisted that the individual states maintain control in many areas. As a result, each state has its own government with exclusive power over many important areas of our lives. To top it off, the Founders guaranteed many rights to the people alone, ordering national *and* state governments to keep clear. This has worked, but it has caused a multi-layered system, with 50 state governments and one federal government all creating and enforcing law.

English Roots

England in the tenth century was a rustic agricultural community with a tiny population and very little law or order. Vikings invaded repeatedly, terrorizing the Anglo-Saxon peoples. Criminals were hard to catch in the heavily forested, sparsely settled nation. The king used a primitive legal system to maintain a tenuous control over his people.

England was divided into shires, and daily administration was carried out by a “shire reeve,” later called a sheriff. The shire reeve collected taxes and did what he could to keep peace, apprehending criminals and acting as mediator between feuding families. Two or three times a year, a shire court met; lower courts met more frequently. Today, this method of resolving disputes lives on as mediation, which we discuss in Chapter 3.

Because there were so few officers to keep the peace, Anglo-Saxon society created an interesting method of ensuring public order. Every freeman belonged to a group of ten freemen known as a “tithing,” headed by a “tithingman.” If anyone injured a person outside his tithing or interfered with the king’s property, all ten men of the tithing could be forced to pay. Today, we still use this idea of collective responsibility in business partnerships. All partners are personally responsible for the debts of the partnership. They could potentially lose their homes and all assets because of the irresponsible conduct of one partner. That liability has helped create new forms of business organization, including limited liability companies.

³Regardless of whether we allow cameras, it is an undeniable benefit of the electronic age that we can obtain information quickly. From time to time, we mention websites of interest. Some of these are for nonprofit groups, while others are commercial sites. We do not endorse or advocate on behalf of any group or company; we simply wish to alert you to what is available.

When cases did come before an Anglo-Saxon court, the parties would often be represented by a clergyman, by a nobleman, or by themselves. There were few professional lawyers. Each party produced “oath helpers,” usually 12 men, who would swear that one version of events was correct. The Anglo-Saxon oath helpers were forerunners of our modern jury of 12 persons.

In 1066, the Normans conquered England. William the Conqueror made a claim never before made in England: that he owned all of the land. The king then granted sections of his lands to his favorite noblemen, as his tenants in chief, creating the system of feudalism. These tenants in chief then granted parts of their land to *tenants in demesne*, who actually occupied a particular estate. Each tenant in demesne owed fidelity to his lord (hence, “landlord”). So what? Just this: Land became the most valuable commodity in all of England, and our law still reflects that. One thousand years later, American law still regards land as special. The Statute of Frauds, which we study in the section on contracts, demands that contracts for the sale or lease of property be in writing. And landlord–tenant law, vital to students and many others, still reflects its ancient roots. Some of a landlord’s rights are based on the 1,000-year-old tradition that land is uniquely valuable.

In 1250, Henry de Bracton (d. 1268) wrote a legal treatise that still influences us. *De Legibus et Consuetudinibus Angliae* (*On the Laws and Customs of England*), written in Latin, summarized many of the legal rulings in cases since the Norman Conquest. De Bracton was teaching judges to rule based on previous cases. He was helping to establish the idea of **precedent**. **The doctrine of precedent, which developed gradually over centuries, requires that judges decide current cases based on previous rulings.** This vital principle is the heart of American common law. Precedent ensures predictability. Suppose a 17-year-old student promises to lease an apartment from a landlord, but then changes her mind. The landlord sues to enforce the lease. The student claims that she cannot be held to the agreement because she is a minor. The judge will look for precedent, that is, older cases dealing with the same issue, and he will find many holding that a contract generally may not be enforced against a minor. That precedent is binding on this case, and the student wins. **The accumulation of precedent, based on case after case, makes up the common law.**

Today’s society is dramatically different from that of medieval English society. But interestingly, legal disputes from hundreds of years ago are often quite recognizable today. Some things have changed but others never do.

Here is an actual case from more than six centuries ago, in the court’s own language. The plaintiff claims that he asked the defendant to heal his eye with “herbs and other medicines.” He says the defendant did it so badly that he blinded the plaintiff in that eye.

This case from 1329 is an ancient medical malpractice action. Attorney Launde does not deny that his client blinded the plaintiff. He claims that the plaintiff has brought the wrong kind of lawsuit. Launde argues that the plaintiff should have brought a case of “covenant”; that is, a lawsuit about a contract.

Judge Denum decides the case on a different principle. He gives judgment to the defendant because the plaintiff voluntarily sought medical care. He implies that the defendant would lose only if he had attacked the plaintiff. As we will see when we study negligence law, this case might have a different outcome today. Note also the informality of the judge’s ruling. He rather casually mentions that he came across a related case once before and that he would stand by that outcome. The idea of precedent is just beginning to take hold.

Precedent

The tendency to decide current cases based on previous rulings

Common law

Judge-made law



Medieval tenants in demesne harrowing, plowing, and seeding a field.

North Wind Picture Archives/Alamy Stock Photo

The Oculist's Case (1329)

LI MS. Hale 137 (1), fo. 150, Nottingham⁴

Attorney Launde [for defendant]: Sir, you plainly see how [the plaintiff claims] that he had submitted himself to [the defendant's] medicines and his care; and after that he can assign no trespass in his person, inasmuch as he submitted himself to his care: But this action, if he has any, sounds naturally in breach of covenant. We demand [that the case be dismissed].

Excerpts from Judge Denum's Decision: I saw a Newcastle man arraigned before my fellow justice and me for

the death of a man. I asked the reason for the indictment, and it was said that he had slain a man under his care, who died within four days afterwards. And because I saw that he was a [doctor] and that he had not done the thing feloniously but [accidentally] I ordered him to be discharged. And suppose a blacksmith, who is a man of skill, injures your horse with a nail, whereby you lose your horse: You shall never have recovery against him. No more shall you here.

Afterwards the plaintiff did not wish to pursue his case any more.

Law in the United States

The colonists brought with them a basic knowledge of English law, some of which they were content to adopt as their own. Other parts, such as religious restrictions, were abhorrent to them. Many had made the dangerous trip to America precisely to escape persecution, and they were not interested in recreating their difficulties in a new land. Finally, some laws were simply irrelevant or unworkable in a world that was socially and geographically so different. American law ever since has been a blend of the ancient principles of English common law and a zeal and determination for change.

During the nineteenth century, the United States changed from a weak, rural nation into one of vast size and potential power. Cities grew, factories appeared, and sweeping movements of social migration changed the population. Changing conditions raised new legal questions. Did workers have a right to form industrial unions? To what extent should a manufacturer be liable if its product injured someone? Could a state government invalidate an employment contract that required 16-hour workdays? Should one company be permitted to dominate an entire industry?

In the twentieth century, the rate of social and technological change increased, creating new legal puzzles. Were some products, such as automobiles, so inherently dangerous that the seller should be responsible for injuries even if no mistakes were made in manufacturing? Who should clean up toxic waste if the company that had caused the pollution no longer existed? If a consumer signed a contract with a billion-dollar corporation, should the agreement be enforced even if the consumer never understood it? New and startling questions arise with great regularity. Before we can begin to examine the answers, we need to understand the sources of contemporary law.

1-2 SOURCES OF CONTEMPORARY LAW

Throughout the text, we examine countless legal ideas. But binding rules come from many different places. This section describes the significant categories of laws in the United States.

⁴J. Baker and S. Milsom, *Sources of English Legal History* (London: Butterworth & Co., 1986).

1-2a United States Constitution

America's greatest legal achievement was the writing of the United States Constitution in 1787. It is the supreme law of the land.⁵ Any law that conflicts with it is void. This federal Constitution does three basic things. First, it establishes the national government of the United States, with its three branches. Second, it creates a system of checks and balances among the branches. And third, the Constitution guarantees many basic rights to the American people.

Branches of Government

The Founding Fathers sought a division of government power. They did not want all power centralized in a king or in anyone else. And so, the Constitution divides legal authority into three pieces: legislative, executive, and judicial power.

Legislative power gives the ability to create new laws. In Article I, the Constitution gives this power to the Congress, which is comprised of two chambers—a Senate and a House of Representatives. Voters in all 50 states elect representatives who go to Washington, D.C., to serve in the Congress and debate new legal ideas.

The House of Representatives has 435 voting members. A state's voting power is based on its population. States with large populations (Texas, California, Florida) send dozens of representatives to the House, while sparsely populated states (Wyoming, North Dakota, Delaware) send only one. The Senate has 100 voting members—two from each state.

Executive power is the authority to enforce laws. Article II of the Constitution establishes the president as commander in chief of the armed forces and the head of the executive branch of the federal government.

Judicial power gives the right to interpret laws and determine their validity. Article III places the Supreme Court at the head of the judicial branch of the federal government. Interpretive power is often underrated, but it is often every bit as important as the ability to create laws in the first place. For instance, in *Roe v. Wade*, the Supreme Court ruled that privacy provisions of the Constitution protect a woman's right to abortion, although neither the word *privacy* nor *abortion* appears in the text of the Constitution.⁶

At times, courts void laws altogether. For example, in 2016, the Supreme Court struck down a Texas law regulating abortion clinics and the doctors who worked in them. The Court found that those rules created an undue burden for Texas women by causing many clinics to close and making abortions unreasonably difficult to obtain.⁷

Checks and Balances

The authors of the Constitution were not content merely to divide government power three ways. They also wanted to give each part of the government some power over the other two branches. Many people complain about “gridlock” in Washington, but the government is slow and sluggish by design. The Founding Fathers wanted to create a system that, without broad agreement, would tend toward inaction.

The president can veto Congressional legislation. Congress can impeach the president. The Supreme Court can void laws passed by Congress. The president appoints judges to the federal courts, including the Supreme Court, but these nominees do not serve unless approved by the Senate. Congress (with help from the 50 states) can override the

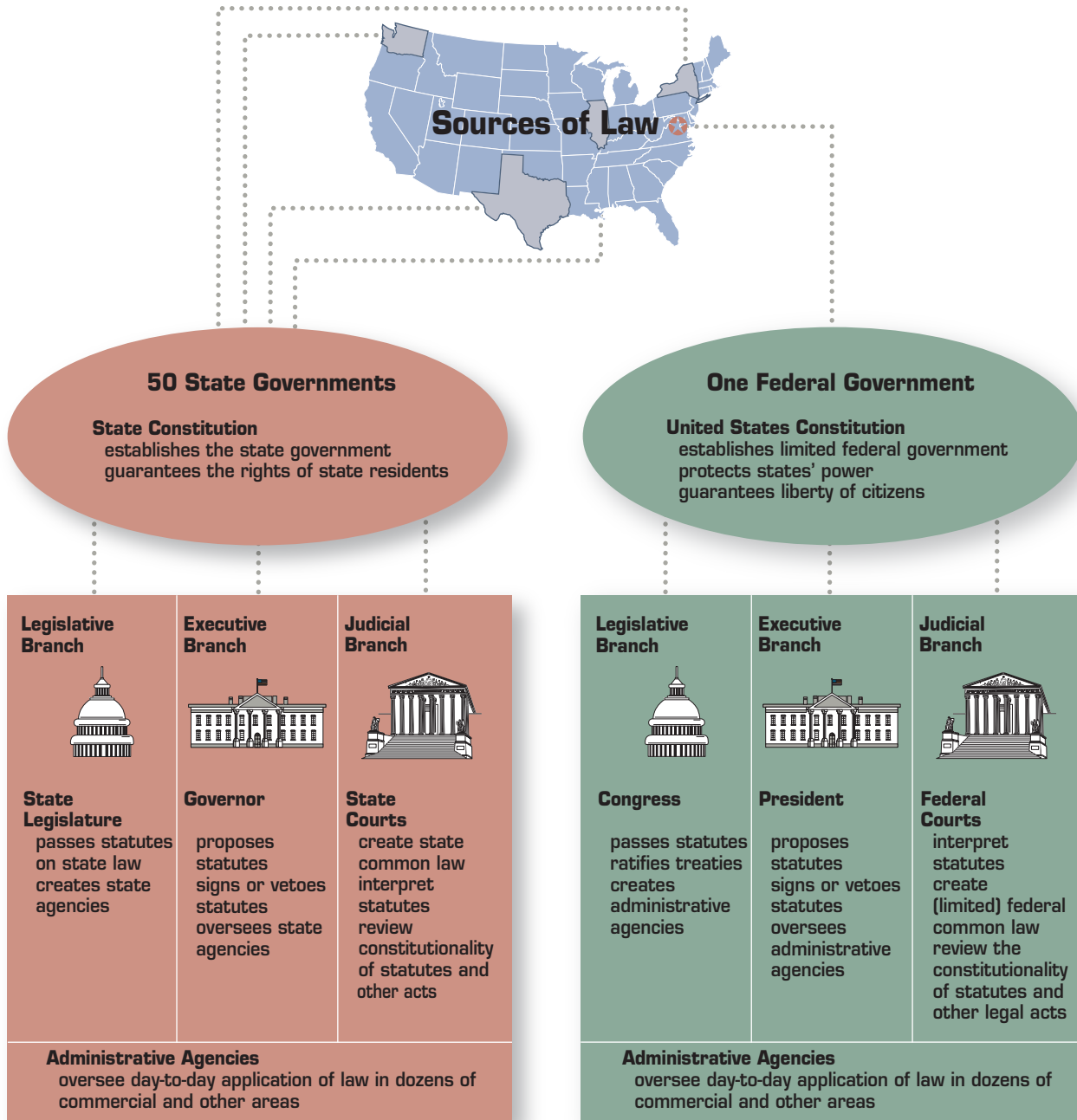
⁵The Constitution took effect in 1788, when 9 of 13 colonies ratified it. Two more colonies ratified it that year, and the last of the 13 did so in 1789, after the government was already in operation. The complete text of the Constitution appears in Appendix A.

⁶*Roe v. Wade*, 410 U.S. 113 (1973).

⁷*Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016).

Supreme Court by amending the Constitution. The president and the Congress influence the Supreme Court by controlling who is placed on the court in the first place.

Many of these checks and balances are examined in more detail later in this book, starting in Chapter 4.



Federal Form of Government. Principles and rules of law come from many sources. The government in Washington creates and enforces law throughout the nation. But 50 state governments exercise great power in local affairs. And citizens enjoy constitutional protection from both state and federal governments. The Founding Fathers wanted this balance of power and rights, but the overlapping authority creates legal complexity.

Fundamental Rights

The Constitution also grants many of our most basic liberties. For the most part, those liberties are found in the amendments to the Constitution. The First Amendment guarantees the rights of free speech, free press, and the free exercise of religion. The Fourth, Fifth, and Sixth Amendments protect the rights of any person accused of a crime. Other amendments ensure that the government treats all people equally and that it pays for any property it takes from a citizen.

By creating a limited government of three branches, and guaranteeing basic liberties to all citizens, the Constitution became one of the most important documents ever written.

1-2b Statutes

The second important source of law is statutory law. The Constitution gave to the U.S. Congress the power to pass laws on various subjects. These laws are called **statutes**, and they can cover absolutely any topic, so long as they do not violate the Constitution.

Almost all statutes are created by the same method. An idea for a new law—on taxes, health care, texting while driving, or any other topic, big or small—is first proposed in the Congress. This idea is called a *bill*. The House and Senate then independently vote on the bill. To pass Congress, the bill must win a simple majority vote in each of these chambers.

If Congress passes a bill, it goes to the White House for the president's approval. If the president signs it, a new statute is created. It is no longer a mere idea; it is the law of the land. If the president refuses to approve, or *veto*s, a bill, it does not become a statute unless Congress overrides the veto. To do that, both the House and the Senate must approve the bill by a two-thirds majority. If this happens, it becomes a statute without the president's signature.

Statute

A law created by a legislature

1-2c Common Law

Binding legal ideas often come from the courts. Judges generally follow *precedent*. When courts decide a case, they tend to apply the legal rules that other courts have used in similar cases.

The principle that precedent is binding on later cases is called *stare decisis*, which means “let the decision stand.” *Stare decisis* makes the law predictable and this, in turn, enables businesses and private citizens to plan intelligently.

It is important to note that precedent is binding only on *lower* courts. For example, if the Supreme Court decided a case in one way in 1965, it is under no obligation to follow precedent if the same issue arises in 2020.

Sometimes, this is quite beneficial. In 1896, the Supreme Court decided (unbelievably) that segregation—separating people by race in schools, hotels, public transportation, and other public services—was legal under certain conditions.⁸ In 1954, on the exact same issue, the court changed its mind.⁹

In other circumstances, it is more difficult to see the value in breaking with an established rule.

1-2d Court Orders

Judges have the authority to issue court orders that place binding obligations on specific people or businesses. A court can both compel a party to and prohibit it from doing something. An injunction is an example of a court order. Injunctions can require people to do things, like

⁸Plessy v. Ferguson, 163 U.S. 537 (1896).

⁹Brown v. Board of Education of Topeka, 347 U.S. 483 (1954).