

BUSINESS LAW

TENTH EDITION



BUSINESS LAW

TENTH EDITION

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BRIEF CONTENTS

| | |
|---|------------|
| PREFACE..... | xxi |
| Part I LEGAL ENVIRONMENT OF BUSINESS | 1 |
| 1 Legal Heritage and the Digital Age | 2 |
| 2 Courts and Jurisdiction..... | 21 |
| 3 Judicial, Alternative, and E-Dispute Resolution..... | 44 |
| 4 Constitutional Law for Business and E-Commerce..... | 67 |
| Part II TORTS, CRIMES, AND INTELLECTUAL PROPERTY..... | 91 |
| 5 Intentional Torts and Negligence | 92 |
| 6 Product and Strict Liability..... | 113 |
| 7 Intellectual Property and Information Technology | 129 |
| 8 Criminal Law and Cybercrime..... | 156 |
| Part III CONTRACTS AND E-COMMERCE | 185 |
| 9 Nature of Traditional and E-Contracts..... | 186 |
| 10 Agreement | 200 |
| 11 Consideration and Promissory Estoppel..... | 215 |
| 12 Capacity and Legality..... | 225 |
| 13 Genuineness of Assent and Undue Influence..... | 242 |
| 14 Statute of Frauds and Equitable Exceptions | 252 |
| 15 Third-Party Rights and Discharge | 265 |
| 16 Breach of Contract and Remedies..... | 283 |
| 17 Digital Law and E-Commerce..... | 300 |
| Part IV SALES AND LEASE CONTRACTS AND WARRANTIES | 315 |
| 18 Formation of Sales and Lease Contracts..... | 316 |
| 19 Title to Goods and Risk of Loss..... | 331 |
| 20 Remedies for Breach of Sales and Lease Contracts..... | 343 |
| 21 Warranties | 358 |
| Part V NEGOTIABLE INSTRUMENTS, BANKING, AND ELECTRONIC FINANCIAL TRANSACTIONS | 371 |
| 22 Creation of Negotiable Instruments | 372 |
| 23 Holder in Due Course and Transferability | 387 |
| 24 Liability, Defenses, and Discharge | 401 |
| 25 Banking System and Electronic Financial Transactions | 415 |
| Part VI CREDIT, SECURED TRANSACTIONS, AND BANKRUPTCY | 431 |
| 26 Credit, Real Property Financing, and Debtor's Rights..... | 432 |
| 27 Secured Transactions | 449 |
| 28 Bankruptcy and Reorganization..... | 464 |
| Part VII AGENCY, EMPLOYMENT, AND LABOR LAW | 487 |
| 29 Agency Formation and Termination | 488 |
| 30 Liability of Principals, Agents, and Independent Contractors | 502 |
| 31 Employment, Worker Protection, and Immigration Law | 516 |
| 32 Labor Law | 534 |
| 33 Equal Opportunity in Employment..... | 546 |
| Part VIII BUSINESS ORGANIZATIONS, CORPORATE GOVERNANCE, INVESTOR PROTECTION, AND BUSINESS ETHICS | 571 |
| 34 Small Business, Entrepreneurship, and General Partnerships..... | 572 |
| 35 Limited Partnerships and Special Partnerships | 589 |
| 36 Corporate Formation and Financing..... | 600 |
| 37 Corporate Governance and Sarbanes-Oxley Act..... | 622 |
| 38 Corporate Acquisitions and Multinational Corporations..... | 642 |
| 39 Limited Liability Companies and Limited Liability Partnerships | 659 |
| 40 Franchise and Special Forms of Business | 676 |
| 41 Investor Protection and E-Securities Transactions | 692 |
| 42 Ethics and Social Responsibility of Business | 719 |
| Part IX GOVERNMENT REGULATION | 733 |
| 43 Administrative Law and Regulatory Agencies..... | 734 |
| 44 Consumer Protection and Product Safety..... | 746 |
| 45 Environmental Protection | 756 |
| 46 Antitrust Law and Unfair Trade Practices..... | 770 |
| Part X PERSONAL PROPERTY, REAL PROPERTY, AND INSURANCE | 791 |
| 47 Personal Property and Bailment | 792 |
| 48 Real Property..... | 809 |

vi **Brief Contents**

49 Landlord–Tenant Law and Land
 Use Regulation..... 827
50 Insurance 842

Part XI ACCOUNTING PROFESSION859

51 Accountants’ Duties and Liability 860

Part XII PERSONAL LAW879

52 Wills, Trusts, and Estates 880
53 Family Law 898

Part XIII GLOBAL ENVIRONMENT..... 913

54 International and World Trade Law 914

Appendix A THE CONSTITUTION
 OF THE UNITED STATES
 OF AMERICA 935

GLOSSARY..... 945

CASE INDEX..... 1001

SUBJECT INDEX 1005

CONTENTS

| | |
|---------------|-----|
| PREFACE | xxi |
|---------------|-----|

Part I LEGAL ENVIRONMENT OF BUSINESS 1

| | |
|---|-----------|
| 1 LEGAL HERITAGE AND THE DIGITAL AGE | 2 |
| Introduction to Legal Heritage and the Digital Age | 3 |
| What is Law? | 3 |
| Critical Legal Thinking · <i>Brown v. Board of Education</i> | 5 |
| Schools of Jurisprudential Thought | 6 |
| Global Law · <i>Command School of Jurisprudence of Cuba</i> | 8 |
| History of American Law | 9 |
| Landmark Law · <i>Adoption of English Common Law in America</i> | 9 |
| Global Law · <i>Civil Law System of France and Germany</i> | 10 |
| Sources of Law in the United States | 11 |
| Contemporary Environment · <i>How a Bill Becomes Law</i> | 12 |
| Information Technology · <i>Law in the Digital Age</i> | 15 |
| Critical Legal Thinking | 15 |
| Case 1.1 · U.S. Supreme Court Case · <i>Affirmative Action in University Admissions · Fisher v. University of Texas at Austin</i> | 17 |
| Developing Skills for Your Career | 18 |
| Key Terms and Concepts | 18 |
| Critical Legal Thinking Case | 19 |
| Ethics Cases | 19 |
| Notes | 20 |
| 2 COURTS AND JURISDICTION | 21 |
| Introduction to Courts and Jurisdiction | 22 |
| State Court Systems | 22 |
| Business Environment · <i>Delaware Courts Specialize in Business Disputes</i> | 24 |
| Federal Court System | 26 |
| Contemporary Environment · <i>Foreign Intelligence Surveillance Court</i> | 26 |
| Supreme Court of the United States | 28 |
| Contemporary Environment · <i>Process of Choosing a U.S. Supreme Court Justice</i> | 29 |
| Contemporary Environment · <i>"I'll Take You to the U.S. Supreme Court!"</i> | 31 |
| Jurisdiction of Federal and State Courts | 32 |
| Case 2.1 · U.S. Supreme Court Case · <i>Full Faith and Credit Clause · V.L. v. E.L.</i> | 34 |
| Standing to Sue, Jurisdiction, and Venue | 34 |
| Critical Legal Thinking · <i>International Shoe Company v. State of Washington</i> | 35 |
| Case 2.2 · Federal Court Case · <i>Forum-Selection Clause · Carter's of New Bedford, Inc. v. Nike, Inc.</i> | 37 |
| Jurisdiction in Digital Commerce | 38 |
| Information Technology · <i>Jurisdiction Over an Internet eBay Seller</i> | 39 |
| Global Law · <i>Judicial System of Japan</i> | 39 |
| Key Terms and Concepts | 40 |
| Critical Legal Thinking Cases | 41 |
| Ethics Cases | 42 |
| Notes | 43 |

3 JUDICIAL, ALTERNATIVE, AND E-DISPUTE RESOLUTION 44

| | |
|--|-----------|
| Introduction to Judicial, Alternative, and E-Dispute Resolution | 45 |
| Attorney Representation | 45 |
| Case 3.1 · Federal Court Case · <i>Contingency-Fee Agreement · Goesel v. Boley International (H.K.) Ltd.</i> | 46 |
| Pretrial Litigation Process | 47 |
| Pleadings | 47 |
| Class Action | 49 |
| Case 3.2 · U.S. Supreme Court Case · <i>Class Action · Tyson Foods, Inc. v. Bouaphakeo</i> | 50 |
| Discovery | 51 |
| Information Technology · <i>Cellphone Texting Data Discoverable in an Automobile Accident Case</i> | 52 |
| Information Technology · <i>Social Media Postings and Photographs are Discoverable Evidence</i> | 52 |
| Pretrial Motions | 53 |
| Case 3.3 · State Court Case · <i>Summary Judgment · Wade v. Wal-Mart Stores, Inc.</i> | 54 |
| Settlement Conference | 55 |
| Contemporary Environment · <i>Cost-Benefit Analysis of a Lawsuit</i> | 55 |
| Trial | 55 |
| Ethics · <i>Nondisclosure of Evidence by Wal-Mart</i> | 57 |
| E-Courts | 57 |
| Appeal | 58 |
| Global Law · <i>British Legal System</i> | 59 |
| Alternative Dispute Resolution | 59 |
| Landmark Law · <i>Federal Arbitration Act</i> | 60 |
| Case 3.4 · U.S. Supreme Court Case · <i>Arbitration Agreement · Kindred Nursing Centers Limited Partnership v. Clark</i> | 61 |
| E-Dispute Resolution | 62 |
| Key Terms and Concepts | 63 |
| Critical Legal Thinking Cases | 64 |
| Ethics Cases | 65 |
| Notes | 66 |

4 CONSTITUTIONAL LAW FOR BUSINESS AND E-COMMERCE 67

| | |
|---|-----------|
| Introduction to Constitutional Law for Business and E-Commerce | 68 |
| Constitution of the United States of America | 68 |
| Supremacy Clause | 71 |
| Case 4.1 · U.S. Supreme Court Case · <i>Supremacy Clause · Mutual Pharmaceutical Company, Inc. v. Bartlett</i> | 71 |
| Commerce Clause | 72 |
| Critical Legal Thinking · <i>Heart of Atlanta Motel v. United States</i> | 74 |
| E-Commerce and the Constitution | 75 |
| Information Technology · <i>E-Commerce and the Commerce Clause</i> | 75 |
| Bill of Rights and Other Amendments to the U.S. Constitution | 76 |
| Freedom of Speech | 77 |
| Information Technology · Case 4.2 · U.S. Supreme Court Case · <i>Free Speech Rights and the Internet · Packingham v. North Carolina</i> | 77 |
| Information Technology · <i>Free Speech and Video Games</i> | 80 |
| Freedom of Religion | 80 |
| Equal Protection | 81 |
| Due Process | 82 |

viii Contents

Case 4.3 · U.S. Supreme Court Case · Due Process and Equal Protection Clauses · *Obergefell v. Hodges*..... 83

Government Taking of Property.....**84**

Case 4.4 · U.S. Supreme Court Case · Takings Clause and Just Compensation · *Horne v. Department of Agriculture* 85

Privileges and Immunities.....**86**

Global Law · *Human Rights Violations in Myanmar*..... 86

Key Terms and Concepts.....**87**

Critical Legal Thinking Cases**87**

Ethics Cases.....**89**

Notes**90**

Part II TORTS, CRIMES, AND INTELLECTUAL PROPERTY 91

5 INTENTIONAL TORTS AND NEGLIGENCE 92

Introduction to Intentional Torts and Negligence**93**

Intentional Torts**93**

Case 5.1 · State Court Case · False Imprisonment · *Wal-Mart Stores, Inc. v. Cockrell* 94

Critical Legal Thinking · *The Rosa Parks Story is Not Protected by the Right to Publicity*..... 96

Unintentional Torts (Negligence)**99**

Ethics · *Ouch! McDonald's Coffee Is Too Hot!*.....100

Case 5.2 · State Court Case · Negligence · *Jones v. City of Seattle, Washington*.....101

Critical Legal Thinking · *Palsgraf v. The Long Island Railroad Company*103

Information Technology · *Proximate Cause and Violent Video Games*103

Special Negligence Doctrines**104**

Case 5.3 · State Court Case · Gross Negligence · *Aleo v. SLB Toys USA, Inc.*.....106

Defenses Against Negligence**108**

Case 5.4 · State Court Case · Assumption of the Risk · *Grady v. Green Acres, Inc.*108

Strict Liability**109**

Key Terms and Concepts.....**110**

Critical Legal Thinking Cases**110**

Ethics Cases.....**112**

Notes**112**

6 PRODUCT AND STRICT LIABILITY 113

Introduction to Product and Strict Liability.....**114**

Product Liability: Negligence**114**

Case 6.1 · Federal Court Case · Product Liability · *Bilenky v. Ryobi Technologies, Inc.* 115

Product Liability: Misrepresentation.....**115**

Product Liability: Strict Liability.....**115**

Product Defects.....**118**

Defect in Manufacture.....**118**

Case 6.2 · State Court Case · Defect in Manufacture · *Shoshone Coca-Cola Bottling Company v. Dolinski* 118

Defect in Design**119**

Case 6.3 · State Court Case · Design Defect · *Genie Industries, Inc. v. Matak*.....120

Failure to Warn**121**

Case 6.4 · Federal Court Case · Warning · *Braswell v. Cincinnati Incorporated*.....121

Defect in Packaging.....**122**

Other Defects**122**

Defenses to Product Liability**123**

Case 6.5 · Federal Court Case · Supervening Event · *Cummins v. BIC USA, Inc.*124

Key Terms and Concepts.....**126**

Critical Legal Thinking Cases**126**

Ethics Cases.....**128**

Note**128**

7 INTELLECTUAL PROPERTY AND INFORMATION TECHNOLOGY 129

Introduction to Intellectual Property and Information Technology.....**130**

Intellectual Property.....**130**

Trade Secret.....**131**

Information Technology · *Defend Trade Secrets Act*.....132

Ethics · *Coca-Cola Employee Tries to Sell Trade Secrets to Pepsi-Cola* 133

Patent**133**

Information Technology · Case 7.1 · U.S. Supreme Court Case · Patent · *Association for Molecular Pathology v. Myriad Genetics, Inc.* 136

Information Technology · Case 7.2 · U.S. Supreme Court Case · Design Patent · *Samsung Electronics Co., Ltd. v. Apple Inc.* 138

Copyright.....**139**

Case 7.3 · U.S. Supreme Court Case · Copyright · *Star Athletica, L.L.C. v. Varsity Brands, Inc.*.....140

Information Technology · Case 7.4 · Federal Court Case · Copyright Infringement · *Broadcast Music, Inc. v. McDade & Sons, Inc.* 141

Information Technology · *Digital Millennium Copyright Act*.....143

Trademark**144**

Information Technology · *Google Inc. Obtains Abandoned "Android" Trademark*.....147

Information Technology · *"Google" Trademark is Not a Generic Name*.....149

Dilution.....**150**

Information Technology · Case 7.5 · Federal Court Case · Dilution of a Trademark · *V Secret Catalogue, Inc. and Victoria's Secret Stores, Inc. v. Moseley* 151

Global Law · *International Protection of Intellectual Property* 152

Key Terms and Concepts.....**152**

Critical Legal Thinking Cases**153**

Ethics Cases.....**154**

Notes**155**

8 CRIMINAL LAW AND CYBERCRIME 156

Introduction to Criminal Law and Cybercrime**157**

Definition of a Crime**157**

Contemporary Environment · *Criminal Acts as the Basis for Tort Actions* 161

Criminal Procedure.....**161**

Criminal Trial**164**

Case 8.1 · U.S. Supreme Court Case · Assistance of Counsel · *Maryland v. Kulbicki*.....164

Common Crimes.....**165**

Critical Legal Thinking · *Court Acts as a "Thirteenth Juror"*.....166

Business and White-Collar Crimes.....**168**

Ethics · *Ponzi Scheme Defrauds \$200 Million from Investors*.....170

Business Environment · *Corporate Criminal Liability* 172

Cybercrimes.....**172**

Information Technology · *The Internet and Identity Theft*.....172

Information Technology · Case 8.2 · Federal Court Case · Computer Crime · *United States v. Barrington* 173

Fourth Amendment Protection from Unreasonable Search and Seizure.....**174**

Case 8.3 · U.S. Supreme Court Case · Fourth Amendment · *Birchfield v. North Dakota* 175

Information Technology · Case 8.4 · U.S. Supreme Court Case ·
 Search of Cell Phones · *Riley v. California*176
Fifth Amendment Privilege Against Self-Incrimination177
Other Constitutional Protections.....180
 Global Law · *France Does Not Impose the Death Penalty*.....181
Key Terms and Concepts181
Critical Legal Thinking Cases182
Ethics Cases.....184
Notes184

Part III CONTRACTS AND E-COMMERCE 185

9 NATURE OF TRADITIONAL AND E-CONTRACTS 186

Introduction to Nature of Traditional And E-Contracts187
Definition of a Contract187
Sources of Contract Law188
Objective Theory of Contracts.....189
 Case 9.1 · Federal Court Case · Objective Theory of Contract ·
Kolodziej v. Mason.....190
Classifications of Contracts.....191
 Case 9.2 · Federal Court Case · Type of Contract · *Lagen v.*
United Continental Holdings, Inc.192
Express and Implied Contracts194
 Information Technology · Case 9.3 · Federal Court Case ·
 Express Contract · *Facebook, Inc. v. Winklevoss*194
 Ethics · *Was an Implied-in-Fact Contract Created?*195
Equity.....197
E-Commerce197
 Information Technology · *Electronic Contracts and Licenses*.....197
Key Terms and Concepts198
Critical Legal Thinking Cases198
Ethics Cases.....199
Notes199

10 AGREEMENT 200

Introduction to Agreement.....201
Agreement.....201
 Ethics · *A Contract Is a Contract Is a Contract*201
Offer.....202
 Case 10.1 · State Court Case · Express Contract · *McKee v.*
Isle of Capri Casinos, Inc.203
Special Offers204
Termination of an Offer by Act of the Parties205
 Case 10.2 · State Court Case · Counteroffer · *Ehlen v. Melvin*206
 Business Environment · *Option Contract*.....207
Termination of an Offer by Operation of Law207
Acceptance209
 Information Technology · *Email Acceptance Creates*
an Enforceable Contract210
Key Terms and Concepts212
Critical Legal Thinking Cases212
Ethics Case213
Notes214

11 CONSIDERATION AND PROMISSORY ESTOPPEL 215

Introduction to Consideration and Promissory Estoppel216
Consideration216
 Case 11.1 · State Court Case · Consideration ·
Ferguson v. Carnes217

Gift Promise.....217
 Case 11.2 · State Court Case · Gifts and Gift Promises ·
Cooper v. Smith218
Promises That Lack Consideration219
 Case 11.3 · State Court Case · Consideration · *Clemmons v.*
Kansas City Chiefs Football Club, Inc.220
Special Business Contracts221
Settlement of Claims.....222
Equity: Promissory Estoppel222
Key Terms and Concepts223
Critical Legal Thinking Cases223
Ethics Case224
Note224

12 CAPACITY AND LEGALITY 225

Introduction to Capacity and Legality.....226
Minors226
 Contemporary Environment · *Special Types of Minors*
Contracts.....229
Mentally Incompetent Persons229
 Case 12.1 · State Court Case · Mental Capacity · *Ivie v. Smith*.....229
Intoxicated Persons231
Legality231
 Case 12.2 · Federal Court Case · Illegal Contract · *Ford Motor*
Company v. Ghreiwati Auto232
 Ethics · *Gambling Contract*.....234
Special Business Contracts and Licensing Statutes.....235
 Case 12.3 · State Court Case · Exculpatory Agreement ·
DeCormier v. Harley-Davidson Motor Company Group, Inc.236
 Business Environment · *Covenants Not to Compete*.....237
Unconscionable Contracts238
 Critical Legal Thinking · *Interest Rates of Over 1,000% Per*
Year on Consumer Loans Found Unconscionable239
Key Terms and Concepts239
Critical Legal Thinking Cases240
Ethics Cases.....241
Note241

13 GENUINENESS OF ASSENT AND UNDUE INFLUENCE 242

Introduction to Genuineness of Assent and Undue Influence.....243
Mistake243
Fraud.....244
Types of Fraud245
 Case 13.1 · Federal Court Case · Fraud in the Inducement ·
Portugués-Santana v. Rekomdiv International, Inc......246
 Case 13.2 · State Court Case · Fraud · *Krysa v. Payne*248
Duress.....248
Equitable Doctrine: Undue Influence249
Key Terms and Concepts249
Critical Legal Thinking Cases250
Ethics Case251
Notes251

14 STATUTE OF FRAUDS AND EQUITABLE EXCEPTIONS 252

Introduction to Statute of Frauds and Equitable Exceptions.....253
Statute of Frauds for Common Contracts253
 Ethics · *Bonus Lost Because of the Statute of Frauds*255
UCC Statutes of Fraud257
Equitable Exception: Part Performance257
 Critical Legal Thinking · *Doctrine of Part Performance Used*
to Enforce Oral Promise to Transfer Real Estate258

x Contents

Formality of the Writing.....258
Parol Evidence Rule259
 Case 14.1 · Federal Court Case · Parol Evidence Rule
 and Merger Clause · *In The Matter of Pilgrim's
 Pride Corporation*.....260
 Case 14.2 · State Court Case · Parol Evidence Rule ·
 *Yarde Metals, Inc. v. New England Patriots Limited
 Partnership*.....261
Equitable Doctrine: Promissory Estoppel262
 Critical Legal Thinking · *Doctrine of Promissory Estoppel Used
 Against a Subcontractor That Did Not Honor Its Bid*262
Key Terms and Concepts.....263
Critical Legal Thinking Cases263
Ethics Case264
Notes264

**15 THIRD-PARTY RIGHTS
AND DISCHARGE**.....265
Introduction to Third-Party Rights and Discharge.....266
Assignment of a Right.....266
Delegation of a Duty.....270
Third-Party Beneficiary272
 Case 15.1 · State Court Case · Third-Party Beneficiary ·
 Cline v. Hornuth272
 Case 15.2 · Federal Court Case · Third-Party Beneficiary ·
 *Does I-XI, Workers in China, Bangladesh, Indonesia,
 Swaziland, and Nicaragua v. Wal-Mart Stores, Inc.*.....275
Covenants276
Conditions276
 Business Environment · *"Time Is of the Essence" Contract*.....278
Discharge of Performance279
Statute of Limitations280
Key Terms and Concepts.....281
Critical Legal Thinking Cases281
Ethics Case282
Notes282

**16 BREACH OF CONTRACT
AND REMEDIES**.....283
Introduction to Breach of Contract and Remedies284
Performance and Breach284
Monetary Damages286
Compensatory Damages.....287
Consequential Damages288
Nominal Damages289
Mitigation of Damages289
Liquidated Damages.....290
 Business Environment · *Liquidated Damage Clause
 Limits Recovery of Damages*290
 Case 16.1 · Federal Court Case · Liquidated Damages ·
 Burke v. 401 N. Wabash Venture, LLC.....291
Rescission and Restitution.....292
Equitable Remedies292
 Case 16.2 · State Court Case · Specific Performance ·
 Alba v. Kaufmann.....293
Arbitration of Contract Disputes294
 Case 16.3 · Federal Court Case · Arbitration of a Contract
 Dispute · *Mance v. Mercedes-Benz USA*295
Torts Associated with Contracts.....295
 Critical Legal Thinking · *Implied Covenant of Good Faith
 and Fair Dealing*296
Key Terms and Concepts.....297
Critical Legal Thinking Cases297
Ethics Cases.....298
Notes299

17 DIGITAL LAW AND E-COMMERCE 300
Introduction to Digital Law and E-Commerce301
The Internet.....301
Email and Text Contracts302
 Information Technology · *Regulation of Email Spam*302
 Information Technology · Case 17.1 · Federal Court Case ·
 Email Spam · *Facebook, Inc. v. Porembski*303
E-Commerce and Web Contracts.....304
 Information Technology · Case 17.2 · State Court Case ·
 Web Contract · *Hubbert v. Dell Corporation*304
 Information Technology · *E-SIGN Act: Statute of Frauds
 and Electronic Contracts*.....305
 Information Technology · *E-SIGN Act: E-Signatures
 and Electronic Contracts*.....305
E-Licensing of Software and Information Rights306
Privacy in Cyberspace307
Domain Names.....308
 Information Technology · *Specific Top-Level Domain
 (TLD) Names*.....310
 Information Technology · *Anticybersquatting Consumer
 Protection Act*.....311
 Information Technology · Case 17.3 · National Arbitration
 Forum · Domain Name · *New York Yankees Partnership
 d/b/a The New York Yankees Baseball Club*311
 Global Law · *The Internet in Foreign Countries*312
Key Terms and Concepts.....313
Critical Legal Thinking Cases313
Ethics Cases.....314
Notes314

**PART IV SALES AND LEASE CONTRACTS
AND WARRANTIES** 315

**18 FORMATION OF SALES AND LEASE
CONTRACTS**..... 316
**Introduction to Formation of Sales
and Lease Contracts**317
Uniform Commercial Code317
 Landmark Law · *Uniform Commercial Code*317
Article 2 (Sales).....318
 Case 18.1 · State Court Case · Good or Service · *Brandt v.
 Boston Scientific Corporation and Sarah Bush
 Lincoln Health Center*319
Article 2a (Leases)320
Formation of Sales and Lease Contracts: Offer321
 Business Environment · *UCC Firm Offer Rule*.....323
Formation of Sales and Lease Contracts:
Acceptance323
 Business Environment · *UCC Permits Additional Terms*324
 Business Environment · *UCC Battle of the Forms*324
UCC Statute of Frauds325
 Business Environment · *UCC Written Confirmation Rule*.....326
Electronic Sales and Lease Contracts327
 Global Law · *Letters of Credit and International Trade*328
Key Terms and Concepts.....329
Critical Legal Thinking Cases329
Ethics Cases.....330

19 TITLE TO GOODS AND RISK OF LOSS 331
Introduction to Title to Goods and Risk of Loss332
Identification of Goods and Passage of Title.....332
 Business Environment · *Commonly Used Shipping Terms*333
**Risk of Loss Where There is No Breach of the
Sales Contract**.....335

Risk of Loss Where There is a Breach of the Sales Contract336
 Global Law · *United Nations Convention on Contracts for the International Sale of Goods (CISG)*.....336
Risk of Loss in Conditional Sales337
Risk of Loss in Lease Contracts.....338
 Business Environment · *Insuring Goods Against Risk of Loss*338
Sale of Goods by Nonowners.....338
Stolen Goods338
 Case 19.1 · State Court Case · *Entrustment Rule · Lindholm v. Brant*.....339
Key Terms and Concepts341
Critical Legal Thinking Cases341
Ethics Cases.....342

20 REMEDIES FOR BREACH OF SALES AND LEASE CONTRACTS 343

Introduction to Remedies for Breach of Sales and Lease Contracts344
Seller and Lessor Performance.....344
 Contemporary Environment · *Seller's and Lessor's Right to Cure*345
 Critical Legal Thinking · *UCC Imposes Duties of Good Faith and Reasonableness*.....346
Buyer and Lessee Performance.....346
 Case 20.1 · State Court Case · *Acceptance of Goods · Accent Commercial Furniture, Inc. v. P. Schneider & Associates, PLLC*.....348
Seller and Lessor Remedies.....349
 Business Environment · *Lost Volume Seller*351
Buyer and Lessee Remedies351
 Contemporary Environment · *Buyer's and Lessee's Right to Cover*.....352
Additional Performance Issues.....354
 Ethics · *UCC Doctrine of Unconscionability*355
Key Terms and Concepts355
Critical Legal Thinking Cases356
Ethics Cases.....357

21 WARRANTIES..... 358

Introduction to Warranties.....359
Express Warranty.....359
Implied Warranties360
Implied Warranty of Merchantability361
 Case 21.1 · Federal Court Case · *Implied Warranty of Merchantability · Osorio v. One World Technologies, Inc.*.....361
 Case 21.2 · Federal Court Case · *Implied Warranty of Merchantability · Geshke v. Crocs, Inc.*.....362
Implied Warranty of Fitness for Human Consumption363
 Case 21.3 · Federal Court Case · *Implied Warranty of Merchantability · Manley v. Doe*364
Implied Warranty of Fitness for a Particular Purpose.....364
Warranty Disclaimers365
 Case 21.4 · State Court Case · *Warranty Disclaimer · Roberts v. Lanigan Auto Sales*366
Magnuson-Moss Warranty Act.....367
 Information Technology · *Warranty Disclaimers in Software Licenses*.....367
Warranties of Title and Possession368
Key Terms and Concepts.....369
Critical Legal Thinking Cases369
Ethics Case370
Note.....370

Part V NEGOTIABLE INSTRUMENTS, BANKING, AND ELECTRONIC FINANCIAL TRANSACTIONS 371

22 CREATION OF NEGOTIABLE INSTRUMENTS..... 372

Introduction to Creation of Negotiable Instruments373
Negotiable Instruments373
Types of Negotiable Instruments.....374
Requirements for Creating a Negotiable Instrument.....378
 Case 22.1 · State Court Case · *Negotiable Instrument · Tips Family Trust v. PB Commercial LLC*381
 Case 22.2 · Federal Court Case · *Negotiable Instrument · Las Vegas Sands, LLC, dba Venetian Resort Hotel Casino v. Nehme*.....383
Prepayment, Acceleration, and Extension Clauses384
Nonnegotiable Contract.....384
 Global Law · *Negotiable Instruments Payable in Foreign Currency*385
Key Terms and Concepts.....385
Critical Legal Thinking Cases386
Ethics Case386

23 HOLDER IN DUE COURSE AND TRANSFERABILITY..... 387

Introduction to Holder in Due Course and Transferability388
Transfer of a Nonnegotiable Contract by Assignment388
Transfer of a Negotiable Instrument by Negotiation388
 Contemporary Environment · *Converting Order and Bearer Paper*.....389
 Case 23.1 · State Court Case · *Bearer Paper · Gerber & Gerber, P.C. v. Regions Bank*.....390
Transfer of a Negotiable Instrument by Indorsement391
Types of Indorsements392
Holder in Due Course (HDC)396
Requirements for Holder in Due Course (HDC) Status397
 Contemporary Environment · *Shelter Principle*399
Key Terms and Concepts.....399
Critical Legal Thinking Cases399
Ethics Case400

24 LIABILITY, DEFENSES, AND DISCHARGE 401

Introduction to Liability, Defenses, and Discharge402
Signature Liability for Negotiable Instruments402
Primary Liability for Negotiable Instruments403
Secondary Liability for Negotiable Instruments403
Forged Indorsements.....407
 Ethics · *Imposter Rule*407
 Ethics · *Fictitious Payee Rule*.....407
Warranty Liability for Negotiable Instruments407
Transfer Warranties.....408
Presentment Warranties.....408
Defenses to Payment of Negotiable Instruments409
Universal (Real) Defenses409
Personal Defenses410
 Case 24.1 · Federal Court Case · *Holder in Due Course · Bank of Colorado v. Berwick*.....411

xii Contents

Contemporary Environment · *FTC Rule Limits HDC Status in Consumer Transactions*412

Discharge of Liability412

Key Terms and Concepts413

Critical Legal Thinking Cases414

Ethics Case414

Note414

25 BANKING SYSTEM AND ELECTRONIC FINANCIAL TRANSACTIONS 415

Introduction to the Banking System and Electronic Financial Transactions416

The Bank–Customer Relationship416

Ordinary Checks.....417

Special Types of Checks.....418

Honoring Checks.....419

Ethics · *Federal Currency Reporting Law*420

Forged Signatures and Altered Checks.....420

Case 25.1 · State Court Case · Series of Forgeries of Checks · *Spacemakers of America, Inc. v. SunTrust Bank*422

The Collection Process.....423

Bank Payment Rules424

Contemporary Environment · *FDIC Insurance of Bank Deposits*425

Electronic Banking and E-Money.....425

Information Technology · *Consumer Electronic Funds Transfers*426

Information Technology · *Commercial Electronic Wire Transfers*.....427

Information Technology · *Cryptocurrency*.....427

Bank Reform.....428

Global Law · *Hiding Money in Offshore Banks*428

Key Terms and Concepts429

Critical Legal Thinking Cases429

Ethics Case430

Notes430

Part VI CREDIT, SECURED TRANSACTIONS, AND BANKRUPTCY 431

26 CREDIT, REAL PROPERTY FINANCING, AND DEBTOR'S RIGHTS 432

Introduction to Credit, Real Property Financing, and Debtor's Rights433

Credit433

Unsecured Credit433

Secured Credit.....434

Real Property Financing434

Case 26.1 · State Court Case · Mortgages and Liens · *Old Republic National Title Insurance Company v. Fifth Third Bank*.....436

Business Environment · *Construction Liens on Real Property*.....438

Surety and Guaranty Arrangements.....439

Case 26.2 · Federal Court Case · Personal Guaranty · *Avnet, Inc. v. Catalyst Resource Group, LLC*.....440

Collection Remedies441

Consumer Financial Protection442

Contemporary Environment · *Consumer Financial Protection Bureau*442

Ethics · *Credit CARD Act*444

Business Environment · *Dodd-Frank Wall Street Reform and Consumer Protection Act*.....446

Key Terms and Concepts446

Critical Legal Thinking Cases447

Ethics Cases.....448

Notes448

27 SECURED TRANSACTIONS 449

Introduction to Secured Transactions.....450

Secured Transactions in Personal Property.....450

Creating a Security Interest.....452

Perfecting a Security Interest454

Case 27.1 · State Court Case · Filing a Financing Statement · *Pankratz Implement Company v. Citizens National Bank*455

Priority of Claims457

Information Technology · *Electronic Financing Statements and Records*458

Default and Remedies458

Case 27.2 · State Court Case · Deficiency Judgment · *John Deere Construction & Forestry Co. v. Parham*460

Business Environment · *Artisan's Liens on Personal Property*.....461

Key Terms and Concepts461

Critical Legal Thinking Cases462

Ethics Cases.....463

28 BANKRUPTCY AND REORGANIZATION 464

Introduction to Bankruptcy and Reorganization465

Bankruptcy Law465

Landmark Law · *Bankruptcy Code*466

Bankruptcy Procedure.....466

Case 28.1 · Federal Court Case · Bankruptcy Discharge · *Speedsportz v. Lieben*469

Bankruptcy Estate470

Ethics · *Fraudulent Transfer of Diamonds Prior to Bankruptcy*471

Exempt Property471

Ethics · *Abusive Homestead Exemptions*.....472

Chapter 7—Liquidation.....473

Case 28.2 · U.S. Supreme Court Case · Bankruptcy Fraud · *Husky International Electronics, Inc. v. Ritz*476

Critical Legal Thinking · *Discharge of Student Loans in Bankruptcy*477

Chapter 13—Adjustment of Debts of an Individual with Regular Income478

Chapter 11—Reorganization.....480

Business Environment · *General Motors Bankruptcy*483

Key Terms and Concepts484

Critical Legal Thinking Cases485

Ethics Cases.....486

Notes486

Part VII AGENCY, EMPLOYMENT, AND LABOR LAW 487

29 AGENCY FORMATION AND TERMINATION 488

Introduction to Agency Formation and Termination.....489

Employment and Agency489

Independent Contractor.....490

Formation of an Agency.....491

Contemporary Environment · *Power of Attorney*491

Case 29.1 · State Court Case · Independent Contractor · *Smith v. Delta Tau Delta, Inc.*492

Case 29.2 · State Court Case · Agency · *Eco-Clean, Inc. v. Brown*493

Apparent Agency.....494

Case 29.3 · State Court Case · Agency Relationship · *Bosse v. Brinker Restaurant Corporation, d.b.a. Chili's Grill and Bar*494

Principal's Duties.....495

Agent's Duties.....496

Termination of an Agency.....497

Key Terms and Concepts.....500

Critical Legal Thinking Cases500

Ethics Case501

30 LIABILITY OF PRINCIPALS, AGENTS, AND INDEPENDENT CONTRACTORS..... 502

Introduction to Liability of Principals, Agents, and Independent Contractors.....503

Agent's Duty of Loyalty503

Tort Liability of Principals and Agents to Third Parties504

Case 30.1 · State Court Case · Scope of Employment · *Matthews v. Food Lion, LLC*.....505

Liability for Intentional Torts.....507

Case 30.2 · State Court Case · Employee's Intentional Tort · *Burlarley v. Wal-Mart Stores, Inc.*508

Contract Liability of Principals and Agents to Third Parties.....509

Independent Contractor.....511

Critical Legal Thinking · *Are FedEx Drivers Independent Contractors?*.....512

Key Terms and Concepts.....514

Critical Legal Thinking Cases514

Ethics Case515

31 EMPLOYMENT, WORKER PROTECTION, AND IMMIGRATION LAW 516

Introduction to Employment, Worker Protection, and Immigration Law.....517

Term Employment and Employment at Will.....517

Workers' Compensation518

Case 31.1 · State Court Case · Workers' Compensation · *Wal-Mart Stores v. Henle*520

Occupational Safety.....520

Case 31.2 · Federal Court Case · Specific Duty Standard · *R. Williams Construction Company v. Occupational Safety and Health Review Commission*521

Case 31.3 · Federal Court Case · General Duty Standard · *SeaWorld of Florida, LLC v. Perez, Secretary, United States Department of Labor*.....522

Fair Labor Standards Act.....523

Critical Legal Thinking · *Payment of Overtime Pay to Workers*.....524

Family and Medical Leave Act526

Consolidated Omnibus Budget Reconciliation Act526

Employee Retirement Income Security Act.....526

Unemployment Compensation.....527

Social Security.....527

Immigration Law528

Key Terms and Concepts.....531

Critical Legal Thinking Cases531

Ethics Cases.....532

Notes533

32 LABOR LAW 534

Introduction to Labor Law and Collective Bargaining535

Labor Law535

Landmark Law · *Federal Labor Law Statutes*.....535

Organizing a Union536

Case 32.1 · Federal Court Case · Unfair Labor Practice · *National Labor Relations Board v. Starbucks Corporation*537

Collective Bargaining538

Business Environment · *State Right-to-Work Laws*539

Strikes539

Picketing.....541

Case 32.2 · Federal Court Case · Union Picketing · *Ahern, National Labor Relations Board v. International Longshore and Warehouse Union*.....541

Business Environment · *Labor Union Picketing and the First Amendment*542

Internal Union Affairs.....543

Business Environment · *Worker Adjustment and Retraining Notification Act*543

Key Terms and Concepts.....544

Critical Legal Thinking Cases544

Ethics Case545

Notes545

33 EQUAL OPPORTUNITY IN EMPLOYMENT 546

Introduction to Equal Opportunity in Employment547

Equal Employment Opportunity Commission547

Title VII of the Civil Rights Act of 1964.....548

Landmark Law · *Title VII of the Civil Rights Act of 1964*.....549

Race and Color Discrimination.....550

Case 33.1 · Federal Court Case · Race Discrimination · *Bennett v. Nucor Corporation*551

Landmark Law · *Civil Rights Act of 1866*552

National Origin Discrimination552

Contemporary Environment · *English-Only Rules in the Workplace*.....553

Gender Discrimination553

Sexual Orientation and Gender Identity Discrimination.....554

Critical Legal Thinking · *Sexual Orientation Protected by Title VII*555

Harassment556

Case 33.2 · Federal Court Case · Sexual Harassment · *Waldo v. Consumers Energy Company*558

Information Technology · *Offensive Electronic Communications Constitute Sexual and Racial Harassment*.....559

Religious Discrimination.....559

Case 33.3 · U.S. Supreme Court Case · Religious Accommodation · *Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.*560

Defenses to a Title VII Action561

Equal Pay Act562

Age Discrimination.....563

Discrimination Against Individuals with Disabilities564

Landmark Law · *Americans with Disabilities Act*564

Genetic Information Discrimination566

Protection from Retaliation567

Affirmative Action567

Contemporary Environment · *Employment Protections for Veterans and Military Personnel*.....568

Key Terms and Concepts.....568

Critical Legal Thinking Cases569

Ethics Cases.....570

Notes570

Part VIII BUSINESS ORGANIZATIONS, CORPORATE GOVERNANCE, INVESTOR PROTECTION, AND BUSINESS ETHICS 571

34 SMALL BUSINESS, ENTREPRENEURSHIP, AND GENERAL PARTNERSHIPS 572

Introduction to Small Business, Entrepreneurship, and General Partnerships573

Entrepreneurship.....573

Sole Proprietorship.....574

Business Environment · Using a d.b.a. Trade Name574

Case 34.1 · State Court Case · Sole Proprietorship · Bank of America, N.A. v. Barr575

General Partnership.....576

Landmark Law · Uniform Partnership Act577

Case 34.2 · State Court Case · General Partnership · Pegg v. Kohn578

Rights of General Partners.....579

Duties of General Partners.....581

Liability of General Partners.....583

Business Environment · Liability of Incoming Partners584

Business Environment · Liability of Outgoing Partners.....584

Dissolution of a General Partnership584

Business Environment · Right of Survivorship of General Partners586

Key Terms and Concepts.....587

Critical Legal Thinking Cases587

Ethics Case588

35 LIMITED PARTNERSHIPS AND SPECIAL PARTNERSHIPS 589

Introduction to Limited Partnerships and Special Partnerships590

Limited Partnership.....590

Landmark Law · Revised Uniform Limited Partnership Act591

Business Environment · Master Limited Partnership593

Liability of General and Limited Partners594

Management of a Limited Partnership.....595

Business Environment · Modern Rule Permits Limited Partners to Participate in Management.....596

Limited Liability Limited Partnership596

Dissolution of a Limited Partnership.....597

Key Terms and Concepts.....598

Critical Legal Thinking Cases599

Ethics Case599

36 CORPORATE FORMATION AND FINANCING 600

Introduction to Corporate Formation and Financing601

Nature of the Corporation601

Landmark Law · Revised Model Business Corporation Act601

Case 36.1 · State Court Case · Shareholder's Limited Liability · Menendez v. O'Niell603

Classifications of Corporations604

Incorporation Procedure605

Information Technology · Choosing a Domain Name for a Corporation606

Ethics · Public Benefit Corporations.....609

Business Environment · Close Corporation Election610

Business Environment · S Corporation Election for Federal Tax Purposes613

Corporate Powers613

Financing the Corporation: Equity Securities614

Financing the Corporation: Debt Securities616

Business Environment · Delaware Corporation Law.....617

Dissolution and Termination of Corporations.....618

Key Terms and Concepts619

Critical Legal Thinking Cases620

Ethics Case621

Note621

37 CORPORATE GOVERNANCE AND SARBANES-OXLEY ACT 622

Introduction to Corporate Governance and Sarbanes-Oxley Act.....623

Shareholders.....623

Ethics · Piercing the Corporate Veil628

Case 37.1 · Federal Court Case · Piercing the Corporate Veil · Northeast Iowa Ethanol, LLC v. Drizin.....628

Board of Directors629

Information Technology · Corporate E-Communications630

Corporate Officers632

Ethics · Volkswagen Emissions Scandal.....633

Duty of Obedience.....633

Duty of Care634

Business Environment · The Business Judgment Rule634

Duty of Loyalty.....634

Case 37.2 · State Court Case · Fiduciary Duties of Corporate Directors and Officers · McPadden v. Sidhu.....636

Sarbanes-Oxley Act638

Ethics · The Sarbanes-Oxley Act Improves Corporate Governance638

Global Law · Bribes Paid by U.S. Companies in Foreign Countries.....639

Key Terms and Concepts640

Critical Legal Thinking Cases640

Ethics Cases.....641

Notes641

38 CORPORATE ACQUISITIONS AND MULTINATIONAL CORPORATIONS 642

Introduction to Corporate Acquisitions and Multinational Corporations643

Proxy Solicitation and Proxy Contests643

Shareholder Resolution644

Ethics · Shareholder Resolution for Net-Zero GHG Emissions.....645

Mergers and Acquisitions646

Case 38.1 · State Court Case · Dissenting Shareholder Appraisal Rights · Global GT LP v. Golden Telecom, Inc.648

Tender Offer649

Global Law · Foreign Acquisitions of U.S. Companies652

State Antitakeover Statutes653

Business Environment · Delaware Antitakeover Statute.....653

Multinational Corporations653

Ethics · Are U.S. Companies Accountable for Activities of International Suppliers?.....654

Global Law · India's Multinational Corporations.....656

Key Terms and Concepts656

Critical Legal Thinking Cases657

Ethics Case658

Notes658

39 LIMITED LIABILITY COMPANIES AND LIMITED LIABILITY PARTNERSHIPS 659

Introduction to Limited Liability Companies and Limited Liability Partnerships660
Limited Liability Company660
 Landmark Law · *Uniform Limited Liability Company Act*660
Formation of an LLC661
Limited Liability of Members of an LLC664
 Case 39.1 · State Court Case · Limited Liability Company · *Siva v. 1138 LLC*665
Management of an LLC667
Fiduciary Duties of Members of an LLC669
 Business Environment · *Advantages of Operating a Business as an LLC*670
Dissolution of an LLC670
Limited Liability Partnership (LLP)672
 Business Environment · *Accounting Firms Operate as LLPs*673
Key Terms and Concepts673
Critical Legal Thinking Cases674
Ethics Cases675

40 FRANCHISE AND SPECIAL FORMS OF BUSINESS 676

Introduction to Franchise and Special Forms of Business677
Franchise677
Franchise Disclosure Laws679
Franchise Agreement680
 Business Environment · *McDonald's Franchise*681
Liability of Franchisor and Franchisee682
 Case 40.1 · State Court Case · Franchise Liability · *Rainey v. Domino's Pizza LLC*683
 Case 40.2 · State Court Case · Franchise Liability · *Espinosa v. Accor North America, Inc.*684
Apparent Agency684
 Critical Legal Thinking · *Apparent Agency*685
Termination of a Franchise685
Licensing686
 Global Law · *Starbucks' Joint Venture in South Korea*687
Joint Venture687
Strategic Alliance689
Key Terms and Concepts689
Critical Legal Thinking Cases689
Ethics Case691
Note691

41 INVESTOR PROTECTION AND E-SECURITIES TRANSACTIONS 692

Introduction to Investor Protection and E-Securities Transactions693
Securities Law694
 Landmark Law · *Federal Securities Laws*694
Jumpstart Our Business Startups Act694
Securities and Exchange Commission694
E-Securities Transactions695
Definition of Security696
Initial Public Offering697
 Business Environment · *Facebook's Initial Public Offering*698
Emerging Growth Company700
Regulation A+ Securities Offering701
Small Company Offering Registration701
Well-Known Seasoned Issuer702

Crowdfunding702
 Information Technology · *Regulation Crowdfunding*702
Liability for Violations of the Securities Act of 1933703
Exempt Securities704
Exempt Transactions705
 Business Environment · *Private Placement Exemptions*707
Trading in Securities708
Insider Trading710
 Case 41.1 · Federal Court Case · Insider Trading · *United States v. Bhagat*710
Tipper-Tippee Liability711
 Case 41.2 · U.S. Supreme Court Case · Tippee Trading · *Salman v. United States*712
 Ethics · *Stop Trading on Congressional Knowledge Act*713
Short-Swing Profits714
State "Blue-Sky" Laws715
Key Terms and Concepts715
Critical Legal Thinking Cases716
Ethics Cases717
Notes718

42 ETHICS AND SOCIAL RESPONSIBILITY OF BUSINESS 719

Introduction to Ethics and Social Responsibility of Business720
Ethics and the Law720
 Case 42.1 · U.S. Supreme Court Case · Business Ethics · *Wal-Mart Stores, Inc. v. Samara Brothers, Inc.*721
Business Ethics721
 Ethics · *Whistle-blower Statute*722
 Case 42.2 · U.S. Supreme Court Case · Moral Theory of Law and Ethics · *POM Wonderful, LLC v. Coca-Cola Company*723
 Case 42.3 · U.S. Supreme Court Case · Nondisclosure of Evidence · *Goodyear Tire & Rubber Company v. Haeger*725
Social Responsibility of Business726
 Global Law · *Is the Outsourcing of U.S. Jobs to Foreign Countries Ethical?*727
 Ethics · *Sarbanes-Oxley Act Requires Public Companies to Adopt Codes of Ethics*728
 Global Law · *Conducting Business in Russia*730
Key Terms and Concepts730
Critical Legal Thinking Cases731
Ethics Cases731
Notes732

Part IX GOVERNMENT REGULATION 733

43 ADMINISTRATIVE LAW AND REGULATORY AGENCIES 734

Introduction to Administrative Law and Regulatory Agencies735
Administrative Law735
Cabinet-Level Departments736
 Landmark Law · *U.S. Department of Homeland Security*737
Federal Administrative Agencies737
State and Local Administrative Agencies737
Administrative Procedure738
 Landmark Law · *Administrative Procedure Act*738
Powers of Administrative Agencies738
Judicial Review of Administrative Agency Actions741

xvi Contents

Case 43.1 · U.S. Supreme Court Case · Administrative Agency Rule · *Environmental Protection Agency v. EME Homer City Generation, L.P.*741

Individual Rights and Disclosures of Agency Actions.....743

Key Terms and Concepts.....744

Critical Legal Thinking Cases744

Ethics Cases.....745

Notes745

44 CONSUMER PROTECTION AND PRODUCT SAFETY746

Introduction to Consumer Protection and Product Safety.....747

Food Safety747

Case 44.1 · Federal Court Case · Adulterated Food · *United States v. LaGrou Distribution Systems, Incorporated*.....747

Food, Drugs, and Cosmetics Safety.....748

Landmark Law · *Food, Drug, and Cosmetic Act*.....748

Ethics · *Restaurants Required to Disclose Calories of Food Items*749

Global Law · *United Nations Biosafety Protocol for Genetically Altered Foods*750

Product and Automobile Safety.....751

Unfair and Deceptive Practices.....751

Case 44.2 · Federal Court Case · Deceptive Advertising · *Federal Trade Commission v. Bronson Partners, LLC*752

Ethics · *False Advertising by Juice Producer*.....752

Case 44.3 · Federal Court Case · Deceptive Internet Advertising · *Federal Trade Commission v. Ross*753

Contemporary Environment · *Do-Not-Call Registry*754

Key Terms and Concepts.....754

Critical Legal Thinking Cases755

Ethics Case755

Notes755

45 ENVIRONMENTAL PROTECTION756

Introduction to Environmental Protection.....757

Environmental Protection757

Air Pollution.....758

Case 45.1 · U.S. Supreme Court Case · Air Pollution · *Michigan v. Environmental Protection Agency*759

Contemporary Environment · *Indoor Air Pollution*760

Water Pollution.....760

Case 45.2 · Federal Court Case · Environmental Pollution · *United States v. Maury*.....761

Ethics · *BP Oil Spill in the Gulf of Mexico*763

Toxic Substances and Hazardous Wastes.....764

Landmark Law · *Superfund*.....765

Endangered Species.....765

Critical Legal Thinking · *Should Endangered Species Be Saved?*766

State Environmental Protection Laws.....766

Global Law · *International Environmental Protection*767

Key Terms and Concepts.....767

Critical Legal Thinking Cases768

Ethics Case769

Notes769

46 ANTITRUST LAW AND UNFAIR TRADE PRACTICES.....770

Introduction to Antitrust Law and Unfair Trade Practices.....771

Federal Antitrust Law771

Landmark Law · *Federal Antitrust Statutes*771

Restraints of Trade: Section 1 of the Sherman Act773

Business Environment · *Rule of Reason and Per Se Rule*.....773

Case 46.1 · Federal Court Case · Price Fixing · *United States v. Apple, Inc.*.....774

Monopolization: Section 2 of the Sherman Act778

Mergers: Section 7 of the Clayton Act780

Business Environment · *Premerger Notification*.....783

Tying Arrangements: Section 3 of the Clayton Act.....783

Price Discrimination: Section 2 of the Clayton Act784

Federal Trade Commission Act785

Exemptions from Antitrust Law.....786

State Antitrust Laws787

Global Law · *European Union Antitrust Law*787

Key Terms and Concepts.....788

Critical Legal Thinking Cases788

Ethics Case789

Notes790

Part X PERSONAL PROPERTY, REAL PROPERTY, AND INSURANCE..... 791

47 PERSONAL PROPERTY AND BAILMENT792

Introduction to Personal Property and Bailment793

Personal Property.....793

Ownership of Personal Property793

Mislaidd, Lost, and Abandoned Personal Property796

Case 47.1 · State Court Case · Mislaidd or Abandoned Property · *Grande v. Jennings*797

Ethics · *Estray Statutes Promote Honesty in Finders*.....798

Bailment.....799

Case 47.2 · State Court Case · Bailment · *Ziva Jewelry, Inc. v. Car Wash Headquarters, Inc.*800

Ordinary Bailments.....800

Special Bailments802

Business Environment · *Warehouse Receipt*.....803

Business Environment · *Bill of Lading*804

Case 47.3 · Federal Court Case · Common Carrier Shipment · *Rykard v. FedEx Ground Package System, Inc.*804

Key Terms and Concepts.....806

Critical Legal Thinking Cases806

Ethics Cases.....808

Notes808

48 REAL PROPERTY 809

Introduction to Real Property.....810

Real Property.....810

Contemporary Environment · *Air Rights*811

Estates in Land811

Concurrent Ownership812

Contemporary Environment · *Community Property*814

Future Interests815

Transfer of Ownership of Real Property.....816

Case 48.1 · State Court Case · Reformation of a Deed · *Robenolt v. Zyznar*817

Adverse Possession819

Case 48.2 · State Court Case · Adverse Possession · *Paine v. Sexton*820

Easements.....821

Case 48.3 · State Court Case · Easement · *The Willows, LLC v. Bogy*822

Zoning.....**824**

Key Terms and Concepts.....**824**

Critical Legal Thinking Cases**825**

Ethics Case**826**

49 LANDLORD–TENANT LAW AND LAND USE REGULATION 827

Introduction to Landlord–Tenant Law and Land Use Regulation**828**

Landlord–Tenant Relationship.....**828**

Landlord’s Duties to a Tenant.....**830**

Implied Warranty of Habitability.....**831**

Case 49.1 · State Court Case · Landlord’s Liability · *New Haverford Partnership v. Stroot*.....832

Tenant’s Duties to a Landlord.....**833**

Transfer of Leased Property by Landlords**834**

Assignment and Sublease of a Lease by Tenants.....**834**

Government Regulation of Real Property.....**836**

Contemporary Environment · *Rent Control*836

Antidiscrimination Laws and Real Property.....**836**

Government Taking of Real Property.....**838**

Critical Legal Thinking · *Eminent Domain and the Taking of Real Property*839

Key Terms and Concepts.....**839**

Critical Legal Thinking Cases**840**

Ethics Cases.....**841**

Notes**841**

50 INSURANCE 842

Introduction to Insurance**843**

Principles of Insurance.....**843**

Contemporary Environment · *Insurable Interest*843

Common Clauses in Insurance Policies**844**

Case 50.1 · Federal Court Case · Exclusion from Coverage · *Green v. Life Insurance Company of North America*845

Life Insurance**846**

Health and Disability Insurance.....**848**

Fire and Homeowners’ Insurance**849**

Case 50.2 · State Court Case · Insurance Fraud · *People v. Abraham*.....850

Automobile, Vehicle, and Vessel Insurance**851**

Contemporary Environment · *No-Fault Automobile Liability Insurance*853

Business Insurance**853**

Cyber Insurance.....**856**

Umbrella Insurance**856**

Key Terms and Concepts.....**856**

Critical Legal Thinking Cases**857**

Ethics Case**858**

Part XI ACCOUNTING PROFESSION 859

51 ACCOUNTANTS’ DUTIES AND LIABILITY..... 860

Introduction to Accountants’ Duties and Liability**861**

Public Accounting.....**861**

Accounting Standards and Principles.....**862**

Accountants’ Liability to Their Clients.....**863**

Accountants’ Liability to Third Parties**864**

Case 51.1 · State Court Case · Ultramares Doctrine · *Credit Alliance Corporation v. Arthur Andersen & Company*.....865

Case 51.2 · State Court Case · Accountants’ Liability to a Third Party · *Cast Art Industries, LLC v. KPMG LLP*.....867

Securities Law Violations**869**

Ethics · *Accountants’ Duty to Report a Client’s Illegal Activity*871

Criminal Liability of Accountants**871**

Sarbanes-Oxley Act.....**873**

Business Environment · *Audit Committee*874

Accountants’ Privilege and Work Papers.....**874**

Key Terms and Concepts.....**875**

Critical Legal Thinking Cases**876**

Ethics Cases.....**877**

Notes**878**

Part XII PERSONAL LAW 879

52 WILLS, TRUSTS, AND ESTATES 880

Introduction to Wills, Trusts, and Estates**881**

Will**881**

Probate**884**

Case 52.1 · State Court Case · Slayer’s Statute · *Swain v. Estate of Tyre Ex Rel. Reilly*885

Testamentary Gifts.....**885**

Intestate Succession**888**

Case 52.2 · State Court Case · Intestacy Statute · *Banner v. Vandeford*889

Irrevocable Trusts**889**

Special Types of Trust.....**891**

Living Trust.....**892**

Undue Influence**893**

Case 52.3 · State Court Case · Undue Influence · *In re Estate of Haviland*.....894

Living Will and Health Care Directive**895**

Contemporary Environment · *Right to Die*895

Key Terms and Concepts.....**896**

Critical Legal Thinking Cases**896**

Ethics Case**897**

Notes**897**

53 FAMILY LAW 898

Introduction to Family Law**899**

Premarriage Issues**899**

Marriage.....**900**

Same-Gender Marriage**901**

Contemporary Environment · *Same-Sex Marriage*901

Parents and Children.....**902**

Marriage Termination**902**

Prenuptial Agreement.....**904**

Contemporary Environment · *Prenuptial Agreement*904

Case 53.1 · State Court Case · Prenuptial Agreement · *Beyor v. Beyor*.....905

Case 53.2 · State Court Case · Prenuptial Agreement · *Dodson v. Dodson*906

Division of Assets**907**

Spousal and Child Support.....**909**

Landmark Law · *Family Support Act*910

Child Custody**910**

Key Terms and Concepts.....**911**

Critical Legal Thinking Cases**911**

Ethics Case**912**

Notes**912**

Part XIII GLOBAL ENVIRONMENT 913

54 INTERNATIONAL AND WORLD TRADE LAW 914

Introduction to International and World Trade Law.....915
The United States and Foreign Affairs915
United Nations916
 Global Law · *United Nations Children's Fund*919
European Union.....919
North American Free Trade Agreement.....921
Association of Southeast Asian Nations921
Other Regional Organizations.....923
 Global Law · *Union of South American Nations*.....924
World Trade Organization.....924
National Courts and International Dispute Resolution.....925
 Case 54.1 · Federal Court Case · Act of State Doctrine ·
 Glen v. Club Mediterranee, S.A......926
 Case 54.2 · U.S. Supreme Court Case · Sovereign Immunity ·
 OBG Personenverkehr AG v. Sachs928

International Religious Laws.....929
 Global Law · *Jewish Law and the Torah*.....929
 Global Law · *Islamic Law and the Qur'an*930
 Global Law · *Christian and Canon Law*.....930
 Global Law · *Hindu Law—Dharmasastra*.....931
Key Terms and Concepts931
Critical Legal Thinking Cases932
Ethics Case933
Notes933

Appendix A THE CONSTITUTION
 OF THE UNITED STATES
 OF AMERICA 935
GLOSSARY..... 945
CASE INDEX..... 1001
SUBJECT INDEX 1005

Dedication



*To my wife, Jin Du,
and to our new twins: Ziva and Xavier*



PREFACE

New to the Tenth Edition

This tenth edition of *Business Law* is a significant revision of Professor Cheeseman's business law and legal environment textbook that includes many new cases and features.

New U.S. Supreme Court Cases

More than 15 new U.S. Supreme Court cases, including:

- *Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.* (Title VII applies to prevent religious employment discrimination against a Muslim female job applicant who was not hired because she wore a head scarf, which would have violated the clothing store's policy against sales personnel wearing head caps.)
- *Fisher v. University of Texas at Austin* (Race-conscious university admissions policy does not violate the Equal Protection Clause.)
- *Maryland v. Kulbicki* (Criminal defense attorneys are required to provide reasonable competent representation to criminal defendants and not perfect advocacy as asserted by a defendant convicted of murder.)
- *Michigan v. Environmental Protection Agency* (The EPA acted unreasonably when it did not consider cost when it ordered power plants to spend \$9 billion per year to reduce hazardous air pollutants that would yield benefits of reduced air pollution by only \$6 million per year.)
- *Obergefell v. Hodges* (The U.S. Supreme Court held that same-sex couples may exercise the fundamental right to marry and held that state laws that did not permit or recognize same-sex marriages violated the Due Process and Equal Protection clauses to the U.S. Constitution.)
- *Samsung Electronics Co., Ltd. v. Apple Inc.* (Samsung's smartphones infringed Apple's design patents, and the damages could be either the entire profits made from the sale of the product or the profits attributable to the infringing components.)



CASE 33.3 U.S. SUPREME COURT CASE *Religious Accommodation*

Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.

135 S.Ct. 2028, 2015 U.S. Lexis 3718 (2015)
Supreme Court of the United States

"Title VII requires otherwise-neutral policies to give way to the need for an accommodation."
—Scalia, Justice

Facts

Abercrombie & Fitch Stores, Inc., operates clothing stores. Consistent with the image Abercrombie seeks to project, the company imposes a Look Policy that governs its employees' dress. The Look Policy prohib-

the issue of liability and awarded \$20,000 in damages. The U.S. court of appeals reversed and awarded Abercrombie summary judgment. The EEOC appealed to the U.S. Supreme Court.

Issue

Does Title VII apply only when an applicant has informed an employer of the need for an accommodation?



Information Technology

CASE 7.2 U.S. SUPREME COURT CASE *Design Patent*

Samsung Electronics Co., Ltd. v. Apple Inc.

137 S.Ct. 429, 2016 U.S. Lexis 7419 (2016)
Supreme Court of the United States

"The Patent Act provides a damage remedy specific to design patent infringement."
—Sotomayor, Justice

Facts

Apple Inc. released its first-generation iPhone in 2007. The iPhone is a smartphone, a cell phone with a broad range of other functions based on advanced computing capability, large storage capacity, and internet connectivity. Apple secured the following design patents for the iPhone: (1) D618,677 patent,

Issue

When determining damages for the infringement of design patents of products comprised of many components, must the court award as damages the entire profits made from the sale of the product or partial damages relating to only the infringing components?

Language of the U.S. Supreme Court

The Patent Act provides a damage remedy specific to design patent infringement. The only question we resolve today is whether, in

New State and Federal Court Cases

More than 35 new state and federal court cases including:

- *United States v. Apple, Inc.* (Apple, who orchestrated a conspiracy among five major publishing companies to enter a price-fixing agreement to raise the retail price of digital books sold on Apple’s iBookstore engaged in a *per se* price-fixing in violation of antitrust law.)

CASE 46.1 FEDERAL COURT CASE *Price Fixing*

United States v. Apple, Inc.
791 F.3d 290, 2015 U.S. App. Lexis 11271 (2015)
United States Court of Appeals for the Second Circuit

“A coordinated effort to raise prices across the relevant market was present in every chapter of this story.”
—Livingston, Circuit Judge

Facts
In 2007, Amazon.com, Inc. (Amazon), introduced the Kindle, a portable device that can hold digital copies of books, known as e-books. This innovation had the potential to change the centuries-old process for producing books by eliminating the need to print, bind, ship, and store them. Amazon began to popularize this new way to read books and offered desirable e-books, including new releases and best-selling books, for \$9.99. The multibillion-dollar book-publishing industry saw Amazon’s e-books, and particularly its \$9.99 pricing strategy, as a threat to their way of doing business. The publishers even feared that they might be driven out of the marketplace if authors decided to contract directly with Amazon to publish and sell e-books.

CASE 29.1 STATE COURT CASE *Independent Contractor*

Smith v. Delta Tau Delta, Inc.
9 N.E.3d 154, 2014 Ind. Lexis 450 (2014)
Supreme Court of Indiana

“For liability of an agent to be imputed to a principal, an agency relationship must exist.”
—Dickson, Chief Justice

Facts
Delta Tau Delta, Inc. is national fraternity that grants charters to local fraternities at colleges and and Robert Smith, the parents of Johnny, brought a wrongful death action against the local fraternity Beta Psi, the national fraternity Delta Tau Delta, and Wabash College to recover damages for the death of their son. The plaintiffs reached a settlement with Wabash College. The plaintiffs alleged that the local fraternity chapter was negligent, that it and its mem-

- *Grady v. Green Acres, Inc.* (Assumption of the risk applies to snow tubing and precludes plaintiff from recovering damages for injuries he suffered while snow tubing.)
- *Kolodziej v. Mason* (A lawyer who, during an NBC interview, stated a \$1 million challenge to anyone who could prove his theory of a case he was involved in was wrong, made the challenge in jest and it did not constitute an offer.)
- *Smith v. Delta Tau Delta, Inc.* (No agency existed between a national fraternity and one of its local college chapters, so the national fraternity was not liable for death of a pledge of the local chapter that occurred during a hazing incident.)
- *Wade v. Wal-Mart Stores, Inc.* (The court granted summary judgment to Wal-Mart where the

plaintiff tripped and sustained injuries from an open and obvious hazard in the store’s parking lot.)

- *Wal-Mart Stores v. Henle* (A worker was awarded permanent total disability workers’ compensation benefits after she was severely injured on the job when a 60-pound stack of plastic totes fell 15 feet, striking her on the head.)

New Special Features on Critical Legal Thinking, Ethics, and Information Technology

More than 20 new special features, including:

- Critical Legal Thinking: *Are FedEx Drivers Independent Contractors?*

Ethical

Ethics

Volkswagen Emissions Scandal

“Americans expect corporations to operate honestly and provide accurate information”
—U.S. Government

The Volkswagen Group is a German company that manufactures and sells automobiles worldwide. Some of its brand-name automobiles include Audi, Porsche, Jetta, Passat, Beetle, and Golf.

Volkswagen marketed its diesel cars as “clean diesels” and won awards and received U.S. tax breaks. During 2009 to 2015, Volkswagen sold more than 500,000 diesel vehicles containing the trick software in the United States. Several scientists at West Virginia University discovered the deception, and the Volkswagen emission scandal was made public. When confronted with the truth, Volkswagen executives lied and destroyed relevant evidence.

- Critical Legal Thinking: *Payment of Overtime Pay to Workers*
- Ethics: *Ponzi Scheme Defrauds \$200 Million From Investors*
- Ethics: *Volkswagen Emissions Scandal*
- Global Law: *Union of South American Nations*

- Information Technology: *“Google” Trademark Is Not a Generic Name*
- Information Technology: *Social Media Posting and Photographs are Discoverable Evidence*

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Each student learns at a different pace. Personalized learning pinpoints the precise areas where each student needs practice, giving all students the support they need—when and where they need it—to be successful.

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- **Dynamic Study Modules** help students study effectively on their own by continuously assessing their activity and performance in real time. Here’s how it works: students complete a set of questions with a unique answer



Information Technology

Social Media Postings and Photographs are Discoverable Evidence

“The information sought, photographs of Nucci posted on Nucci’s social media sites, is highly relevant.”
—Gross, Judge

Maria Nucci claimed that when she was in a store owned by Target Corporation she slipped and fell on a foreign substance on the floor of the store. Nucci sued Target

to recover damages for her alleged injuries. Nucci claimed that she was seriously injured, experiences pain from the injury, suffers emotional pain and suffering, and suffers permanent and continuing injuries. After the incident, Target obtained surveillance videos that showed Nucci carrying heavy bags, jugs of water, and doing other physical acts that refute her claim of serious personal injury.

☰

Frosty Frozen Foods Warehouse




MY PROGRESS - 30%


Decision Point: Monetary Damages

The seller confirms that he wants to go through with the sale even though it is impossible for him to make the repairs in time for you to move in next week. You tell the seller you will call him back shortly after you’ve thought about it further.

If you agree to the delay, what kind of compensatory (monetary) damages should you demand under the “repair and deduct” remedy?

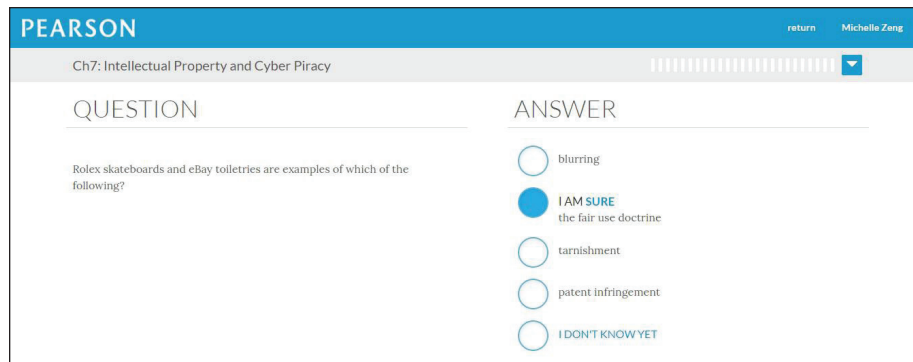
Select an option from the choices below and click **Submit**.

-  The cost of transporting the product to a temporary storage facility.
-  The cost of packaging your product for transport.
-  The cost of storing your product during the delay time.



Submit

< Previous
Next >



format that also asks them to indicate their confidence level. Questions repeat until the student can answer them all correctly and confidently.

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When you teach with MyLab, student performance improves. That's why instructors have chosen MyLab for over 15 years, touching the lives of over 50 million students.

Developing Skills for Your Career

If you haven't yet decided on a major, you may be thinking that this section isn't relevant to you. Let me assure you it is. Whether or not you plan on a career in busi-

ness, the lessons you learn in this course will help you (in business and/or in your life in many ways). Moreover, it is only through the aggregate of your educational experience that you will have the opportunity to develop many of the skills that employers have identified as critical to success in the workplace. In this course, and specifically in this text you'll have the opportunity to develop and practice these skills through features such as **Critical Thinking Legal Questions** and **Information Technology Law** cases.

Critical Legal Thinking

Palsgraf v. The Long Island Railroad Company

"Proof of negligence in the air, so to speak, will not do."
—Cardozo, Justice

The landmark case establishing the doctrine of proximate cause is *Palsgraf v. The Long Island Railroad Company*, a New York case decided in 1928. Helen Palsgraf was standing on a platform waiting for a passenger train. The Long Island Railroad Company owned and operated the trains and employed the station guards. As a man carrying a package wrapped in a newspaper tried to board the moving train, railroad guards tried to help him. In doing so, the package was dislodged from the man's arm, fell to the railroad tracks, and exploded. The package contained hidden fireworks. The explosion shook the railroad platform, causing a scale located on the platform to fall on Helen Palsgraf, injuring her. Palsgraf sued the railroad for negligence. Justice Benjamin Cardozo denied Palsgraf's recovery, finding that the railroad was not the proximate cause of her injuries and was therefore not liable to Palsgraf for negligence. In his decision, Justice Cardozo eloquently addressed the issue of proximate cause:

The conduct of the defendant's guard, if a wrong in its relation to the holder of the package, was not a wrong in its relation to the plaintiff, standing far away. Relatively to her it was not negligence at all. Nothing in the situation gave notice that the falling package had in it the potency of peril to persons thus removed. Negligence is not actionable unless it involves the invasion of a legally protected interest, the violation of a right. Proof of negligence in the air, so to speak, will not do.

Palsgraf v. The Long Island Railroad Company, 248 N.Y. 339, 162 N.E. 99, 1928 N.Y. Lexis 1269 (Court of Appeals of New York, 1928).

Critical Legal Thinking Questions
How does actual cause differ from proximate cause? Why does the law recognize the doctrine of proximate cause?

Instructor Resources

Business Law comes with the following teaching resources.

| Supplements available to instructors at www.pearsonhighered.com | Features of the Supplement |
|--|---|
| Instructor's Manual authored by Carolyn Mendelson from University of Pittsburgh | <ul style="list-style-type: none"> • Chapter-by-chapter summaries • Examples and activities not in the main book • Teaching outlines • Teaching tips • Solutions to all questions and problems in the book |
| Case Solutions authored by Henry Cheeseman from University of Southern California | Solutions to the end-of-chapter content. |
| Test Bank authored by David Dieteman from Pennsylvania State University and Leila Lawlor from Georgia State University | 4,000 multiple-choice, true/false, short-answer, and graphing questions with these annotations: <ul style="list-style-type: none"> • Difficulty level (1 for straight recall, 2 for some analysis, 3 for complex analysis) • Type (Multiple-choice, true/false, short-answer, essay) • Topic (The term or concept the question supports) • Learning outcome • AACSB learning standard (Written and Oral Communication; Ethical Understanding and Reasoning; Analytical Thinking; Information Technology; Interpersonal Relations and Teamwork; Diverse and Multicultural Work; Reflective Thinking; Application of Knowledge) • Page number in the text |
| Computerized TestGen | TestGen allows instructors to: <ul style="list-style-type: none"> • Customize, save, and generate classroom tests • Edit, add, or delete questions from the Test Item Files • Analyze test results • Organize a database of tests and student results. |
| PowerPoints authored by Abbey Stemler from Indiana University | Slides include the graphs, tables, and equations in the textbook. PowerPoints meet accessibility standards for students with disabilities. Features include, but not limited to: <ul style="list-style-type: none"> • Keyboard and Screen Reader access • Alternative text for images • High color contrast between background and foreground colors |

Business Law, 10th edition, is available as an eBook and can be purchased at most eBook retailers.





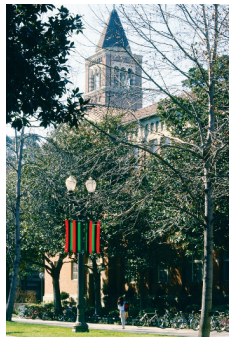
To the Students

Contemporary students have different needs than previous generations. Having been exposed to the electronic world for your entire lives, you think, learn, and process information in different ways than prior generations. This new tenth edition of *Business Law* and its electronic supplements have been designed especially for your needs.

Many of you may be apprehensive about taking a law course because it may seem daunting or different from studying many of your other courses. But it is not. As you embark on your study of the law, you will learn that this course presents the “real world,” that is, real legal disputes involving real people like yourselves. The course also offers you an opportunity to develop your critical thinking skills that will serve you in addressing legal and other issues that you may encounter. And lastly, learning the subject matter of this course will help you make more informed and confident decisions in your business and personal life.

Each semester, as I stand in front of a new group of students in my business law and legal environment classes, I am struck by the thought that I draw as much from them as they do from me. Their youth, enthusiasm, and questions—and even the doubts a few of them hold about the relevance of law to their futures—fuel my teaching. They don’t know that every time they open their minds to look at an issue from a new perspective or critically question something, I have received a wonderful reward for the work I do.

I remind myself of this every time I sit down to work on writing and revising *Business Law*, as well. My goal is to present business law, the legal environment, business ethics, and digital law in a way that will spur students to ask questions, to go beyond rote memorization.



Business law is an evolving outgrowth of its environment, and the legal environment keeps changing. This new tenth edition of *Business Law* emphasizes coverage of online law, e-commerce, and information technology as key parts of the legal environment. In addition, this book covers social, ethical, and global issues that are important to the study of business law.

It is my wish that my commitment to these goals shines through in this labor of love, and I hope you have as much pleasure in using it as I have had in creating it for you.

Henry Cheeseman



ABOUT THE AUTHOR

Henry R. Cheeseman is professor emeritus of the Marshall School of Business of the University of Southern California (USC), Los Angeles, California.

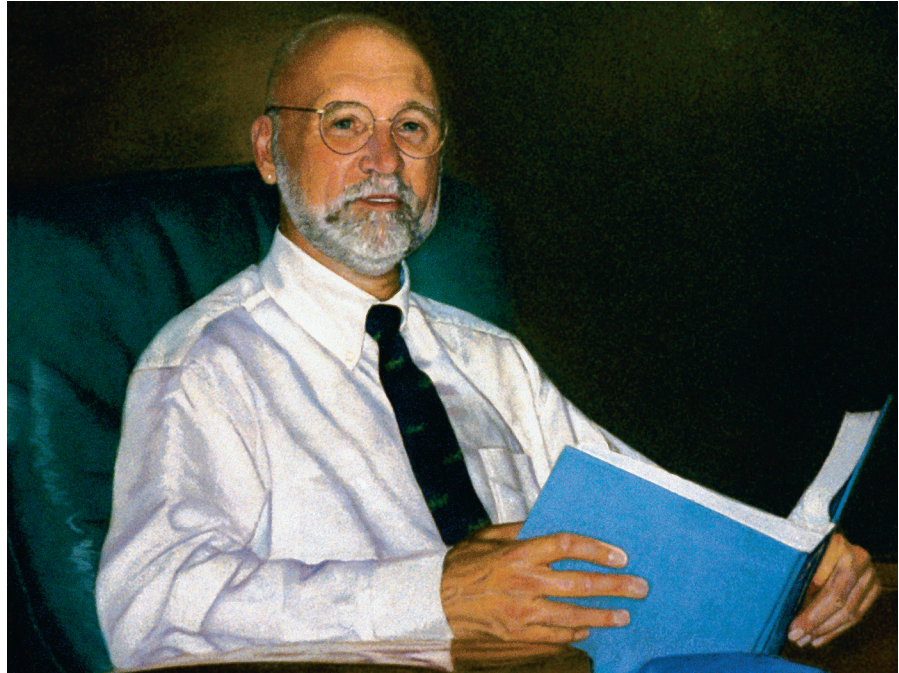
Professor Cheeseman earned a bachelor's degree in finance from Marquette University, both a master's in business administration (MBA) and a master's in business taxation (MBT) from the University of Southern California, a juris doctor (JD) degree from the University of California at Los Angeles (UCLA) School of Law, a master's degree with an emphasis on law and economics from the University of Chicago, and a master's in law (LLM) degree in financial institutions law from Boston University.

Professor Cheeseman was director of the Legal Studies in Business Program at the University of Southern California. He taught business law, legal environment, and ethics courses in both the Master of Business Administration (MBA) and undergraduate programs of the Marshall School of Business of the University of Southern California. At the MBA level, he developed and taught courses on corporate governance, securities regulation, mergers and acquisitions, and bankruptcy law. At the undergraduate level, he taught courses on business law, the legal environment of business, ethics, business organizations, cyberlaw, and intellectual property.

Professor Cheeseman received the Golden Apple Teaching Award on many occasions by being voted by the students as the best professor at the Marshall School of Business of the University of Southern California. He was named a fellow of the Center for Excellence in Teaching at the University of Southern California by the dean of the Marshall School of Business. The USC's Torch and Tassel Chapter of the Mortar Board, a national senior honor society, tapped Professor Cheeseman for recognition of his leadership, commitment, and excellence in teaching.

Professor Cheeseman writes leading business law and legal environment textbooks that are published by Pearson Education, Inc. These textbooks include *Business Law*; *Contemporary Business Law*; and *Legal Environment of Business*.

Professor Cheeseman is an avid traveler and amateur photographer. All of the photographs that appear in this textbook (except the book cover photo) were taken by Professor Cheeseman.





ACKNOWLEDGMENTS

When I first began writing this book, I was a solitary figure, researching cases online and in the law library and writing text on the computer and by hand at my desk. As time passed, others entered upon the scene—copyeditors, developmental editors, reviewers, and production personnel—and touched the project and made it better. Although my name appears on the cover of this book, it is no longer mine alone. I humbly thank the following persons for their contributions to this project.

The Exceptional Pearson Professionals

I appreciate the ideas, encouragement, effort, and decisions of the management team at Pearson: Donna Battista, Vice President Business Publishing; Stephanie Wall, Director of Portfolio Management; Nicole Sam, Portfolio Manager Business Law; Melissa Feimer, Managing Producer; and Jeff Holcomb, Director of Production; for their support in the publication of this book.

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I would especially like to thank the professionals of the sales staff of Pearson Education, Inc., particularly all the knowledgeable sales representatives, without whom the success of this textbook would be impossible.

Personal Acknowledgments

My Family

I would like to dedicate this book to my wife, Jin Du, and my twins, Ziva and Xavier.

My Relatives

I thank my parents—Henry B. and Florence, deceased—who had a profound effect on me and my ability to be a professor and writer.

I also thank other members of my family, particularly my brother Gregory—with whom a special bond exists as twins—and the rest of my family, including my sister Marcia, deceased; Gregory's wife Lana; my nephew Gregory and his wife Karen; my niece Nicky and her husband Jerry; and my great nieces Lauren, Addison, and Shelby.

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I'd like to acknowledge the students at the University of Southern California (USC) and the students at other colleges and universities in the United States and around the world. Their spirit, energy, and joy are contagious. I love teaching my students (and, as important, my students teaching me). At the end of each semester, I am sad that the students I have come to know are moving on. But each new semester brings another group of students who will be a joy to teach. And thus, the cycle continues.

Colleagues

Certain people and colleagues are enjoyable to work with and have made my life easier as I have endeavored to write this new tenth edition of *Business Law*.

I would like to thank Kerry Fields, my colleague who teaches business, international, real estate, and employment law courses at the University of Southern California, who is a superb professor and a wonderful friend.

I also thank Kevin Fields, my colleague who teaches business, corporation, and real estate law courses at the University of Southern California, who is an excellent professor and a close friend.

And I give special thanks to Helen Pitts, Debra Jacobs, Terry Lichvar, and Jean Collins, at the Marshall School of Business, who are always a joy to work with.

Business Law Professors

I would also like to thank the professors who teach business law, legal environment of business, and other law-related courses at undergraduate and MBA programs at colleges and universities in the United States and around the world for their dedication to the discipline. Their experience in the law and teaching ability make them some of the greatest professors on any college or university campus.

Author's Personal Statement

While writing the preface and acknowledgments, I have thought about the thousands of hours I have spent researching, writing, and preparing this manuscript. I've loved every minute, and the knowledge gained has been sufficient reward for the endeavor.

I hope this book and its supplementary materials will serve you as well as they have served me.

*With joy and sadness,
emptiness and fullness,
honor and humility,
I surrender the fruits of this labor*

Henry R. Cheeseman

BUSINESS LAW

TENTH EDITION

