



MARIANNE M. JENNINGS

Business

ITS LEGAL, ETHICAL, AND GLOBAL ENVIRONMENT



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Business

ITS LEGAL, ETHICAL, AND GLOBAL ENVIRONMENT

Marianne Moody Jennings

Arizona State University



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**Business: Its Legal, Ethical, and
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A Different World, but the Same Issues

The seventh edition of this book was published amidst the fallout from the legal, ethical, and, too often, financial collapses of Enron, WorldCom, Adelphia, Health-South, Parmalat, Arthur Andersen, Kmart, and others. With Sarbanes–Oxley on the books and new regulatory demands on corporations, we thought perhaps we had turned the corner. But the eighth edition was published as Wall Street and the economy were reeling from the fallout of a subprime mortgage market operating under regulatory radar without a great deal of disclosure on portfolio risk. When the ninth edition was published, the SEC had just settled a civil suit it brought against Goldman Sachs for allegedly selling securities to clients it was betting against as a short-seller in a scheme that saw its profits reach double-digit billions. Goldman paid a fine of \$550 million. In late 2009, Goldman’s CEO, Lloyd Blankfein, uttered the same words that Jeffrey Skilling did in 2000: “We are doing God’s work.” At press time of the tenth edition, there were questions about the fairness of the scrutiny of taxpayers by an administrative agency, the Internal Revenue Service, and the Justice Department’s tapping of phones of news corporations. Book publishers signed antitrust consent decrees for agreeing to fix prices in order to compete with Amazon. A factory in Bangladesh, that produced clothing for U.S. retailers, collapsed, killing over 600 employees, a collapse that was caused by noncompliance with safety and code standards. Now, as this 11th edition is published the EPA has tightened regulations so much that two major coal companies have gone out of business. The Veterans Administration is trying to recover from a program that was designed to reduce queue times for patients but resulted in patients dying. A pharmaceutical company raised its prices on one prescription drug by 5,000%, and Apple has a monitor because it was found guilty of being the master mind behind publishers fixing prices on their electronic books. The raisin farmers had a major victory in the U.S. Supreme Court that will change forever government price and supplies controls on raisin. And insider trading remains in the news, for both convictions and the reversals of those convictions as courts sort through the question, “When exactly does insider trading occur?”

The patterns of business behavior that push the envelope of law and ethics continue. Two of the leaders in the New York legislature were convicted on corruption charges, companies from Embraer to GlaxoSmithKline, and even FIFA faced charges and investigations under the Foreign Corrupt Practices Act. Charges against FedEx for alleged shipping of controlled substances were dismissed because there was no proof that anyone knew what was in the packages. Blue Bell ice cream was shut down for four months because of the presence of listeria in its plants. The FCC was deluged with comments on a proposed rule that would have allowed cell phone use on airplanes. In response to the outcry from flight attendants, passengers, and pilots, the FCC did not promulgate the rule. The issues of law and ethics are still at the forefront of business, sports, and government. It has become a tall order just to keep up with all the events!

These companies and organizations and their employees and executives certainly could have benefited from understanding and keeping at the forefront of their decision processes the basics of law and ethics! The legal and ethical environments of business are center stage. Several editions ago, Congress made massive regulatory reform a reality with the passage of the Sarbanes–Oxley legislation on corporate governance, accounting regulation, and criminal penalties. But the SEC missed some large market schemes, so Congress passed Dodd-Frank with new directives to the SEC on financial reports, disclosures, and primary offerings. The continuing reliance on new credit mechanisms resulted in a central agency, the Consumer Protection Bureau, handling all forms of consumer credit. Business is even more international, and changes, such as Brexit (Great Britain’s decision to withdraw from the EU), mean more changes in trade, regulation, and tariffs. FCPA cases have expanded and there is increasing cooperation among countries to address money-laundering schemes and the problems of world leaders hiding funds in accounts around the world.

The world and business continue to change and grow, but law and ethics have retained their role and importance. In fact, now more than ever, we need to understand the legal and ethical issues that affect our businesses and our lives. The knowledge base and even the questions in law and ethics remain the same, but the underlying facts have changed. For example, we still debate the social responsibility role of business. Now we raise that issue in the context of whether companies should use inversions, or reverse acquisitions, by foreign companies to reduce their effective tax rates. We continue to delve into the pros and cons of sending production to other countries. We still have the question of when a contract is formed, but now we face that question with “point and click” technology rather than faxes and letters. We continue to be concerned about our privacy as consumers, but now we wonder who really has access to our Facebook page. We still wonder about the extent of copyright law. The file-sharing programs have never quite gone away and the film industry now litigates the downloading of copyrighted films. The world is different, but law and ethics form the constant framework into which we fit the issues of the day. In the materials that follow, you have the chance to understand the marvelous stability of this framework and the ease with which you can apply it to this very different world. Be sure to look for descriptions of the new structure as well as the continuing features in the book, such as the “Consider” tutorials, the ethics issues, and the Business Strategy application exercises.

Building the Bridge: Applying Legal and Ethical Reasoning to Business Analysis

I gave my students a midterm exam—a review of Netflix and its various business issues, including the cost of rights, issues in film production, and problems with obtaining subscriptions. These students are in the second year of their master’s degree studies. They have been trained in economics, marketing, management, and finance. But as they completed their analysis of this fast-growing darling of the stock market, they had an epiphany. A company can get the finance issues right, have the right brand appeal and great offerings, and even yield terrific subscription sales. However, it can all fall apart over the legal issues. What if the estimates on subscriptions released with earnings reports are overly optimistic?

What if something goes wrong in shooting one of their original production films? Does insurance cover them? Who pays the costs of a late finish on those promised films? What about international copyrights? What happens when copyright holders do not want their films licensed internationally? They are very capable *business* students. However, they did not realize until this midterm exam how much of business turns on anticipating the legal issues and getting them resolved correctly. And they also realized that all of our discussions of ethics and social responsibility had a role in doing business. TANSTAAFL—“there ain’t no such thing as a free lunch” when it comes to international business. There are costs associated with tapping into a seemingly boundless market of subscribers. And those costs come from legal issues, which, if handled poorly, can affect a company’s value and tarnish its brand name.

Why couldn’t these students see the interconnection and critical roles of law and ethics in business until this case for their midterm? It was not for lack of exposure to the law. I taught my course “by the book,” so to speak. Students could recite the components of a valid contract, rattle off the requirements for bankruptcy, and recall from memory the antitrust statutes. Yet, I was coming to realize, this rote knowledge was not enough. One of my best former students, who had gone on to medical school, came to me perplexed about her office lease. She said that the complex in which she wanted to open her practice had a “no advertising” policy. In fact, she said that when she toured the premises with a leasing agent, the leasing agent turned to her and said, “You’re not one of those doctors who advertises, are you? Because if you are, we can’t lease to you. We have a policy against it.” One of my best students, who knew the antitrust statutes well, could not apply them to her everyday business. Worse, perhaps, she could not *recognize* when to apply these statutes: She did not see the antitrust implications of the agent’s statements nor the problems with the physicians in the complex taking such an approach to screening tenants.

I have reached the conclusion that there have always been shortcomings in the standard approach to teaching business students law and ethics. Students were not ignorant of the law; rather, they simply lacked the necessary skills to recognize legal and ethical issues and to apply their knowledge of law and ethics to business decision making. As instructors, we were not integrating legal and ethical reasoning with business analysis. My conclusion led me to develop my own materials for classroom use and eventually led to the publication of the first edition of this book. Now in its eleventh edition, *Business: Its Legal, Ethical, and Global Environment* brings to the classroom the most integrated approach to learning law and ethics available in the market today. Throughout every chapter and in every feature, students and instructors are continually reminded of how various legal and ethical principles apply in business contexts. For all areas of law and ethics, this book answers the question: How does this concept affect a business? This book builds a bridge for the student between knowledge of law and ethics and application of both in business. My 39 years of teaching law and ethics finally brought this realization: Business ethics is not easily grasped nor practiced in business because we depersonalize ethical issues. If we just allow the company or organization to make the decision, our ethics are not in question; the companies’ are. The ethical issues in the book require students to bring ethical issues into their lives, their circumstances, their world. This feature also forces them to answer this question in a wide variety of contexts: “If it were you, and you were faced with the dilemma and required to make a decision, what would you do?”

Strengthening the Bridge: New Content, Business Applications, and Learning Aids

For the eleventh edition, *Business: Its Legal, Ethical, and Global Environment* has undergone further refinement. New content has been added, outdated content has been removed, new business applications have been integrated into every chapter, and the learning aids have been modified and refocused to help students understand and apply legal and ethical concepts.

New Content

The eleventh edition of *Business: Its Legal, Ethical, and Global Environment* continues to meet its goal of helping students with their understanding of how law and ethics apply to the business world. The organizational structure, based on feedback from those who use the text, has been changed. The four parts remain, but there is a new mix of topics and chapters in those four parts. Part 1 offers the student an overview of the legal, ethical, and judicial environments of business. Part 2 covers the regulatory environments of business, including environmental regulation and sustainability. Part 3 covers all aspects of sales, contracts, and competition. Part 4 covers business management and corporate governance, and this newly restructured section covers all issues related to employees, boards, agents, and how to keep all of these groups coordinated while taking legal and ethical actions. Cyber law is now integrated into every chapter so that it can be covered in contracts (formation), employment (right of employee privacy in e-mails), and criminal law (everything from industrial espionage to spamming).

Ethics

Business Ethics and Social Responsibility (Chapter 2) offers new examples and insights on the application of ethics to business decision making. Chapter 2 is chock full of the examples the last two years have netted—including GM's engine switch guilty plea and VW's use of emissions defeating software. A new biography focuses on Captain Sullenberger who landed an airplane safely in a river and offers his perspectives on how we know the right thing to do in moments of pressure. Ethics coverage is also integrated throughout all chapters.

Business Applications

Biography

Each chapter contains a biography. Biographies provide students with business history through the study of individuals and companies involved with the area of law and ethics covered in the chapter. For example, Chapter 1 has a biography on Uber, the company that shook up the world of cab transportation. Chapter 4 has a new biography on a legal battle between a small business and its production of parts for another company's tabletop game including the tools used in that litigation, and the *pro bono* work of lawyers in helping a small business in *Games Workshop v. Chapterhouse*. Chapter 19 provides the story of the death of an orca whale trainer at Sea World and the resulting investigations and backlash that Sea World experienced. Chapter 15 gives a biography of Mattel and its Bratz dolls and its long intellectual property battle over who had the idea for the dolls.

For the Manager's Desk

Each chapter also contains at least one “For the Manager’s Desk” feature. These readings provide students the opportunity to see how business interrelates with ethics and law. The readings feature topics tackled by publications such as *Wall Street Journal*, *Harvard Business Review*, *Corporate Finance Review*, and the *American Business Law Journal*. This feature offers the latest best practices as well as data from academic studies and insights from that research. For example, the Chapter 8 “For the Manager’s Desk” discusses who ends up going to prison for business crimes and how long their sentences last. Chapter 19’s feature deals with the recent series of cases brought by interns for lack of pay and excessive hours as well as the Department of Labor’s proposed responses. Chapter 13 discusses how to manage celebrity tweets when they are your spokesperson, i.e., what can Kim Kardashian tweet about an anti-nausea drug she was using during her pregnancy that will not run afoul of FDA restrictions? Chapter 15’s Manager’s Desk discusses the problems with a trademark or trade name that is offensive.

Learning Aids

. . . and the Law

Each chapter contains a popular feature to further integrate law and ethics with the other “silos” of business. The “. . . and the Law” feature puts law and ethics in the context of economics, human resources, public policy, strategy, finance, and other areas to illustrate the ways knowledge of the where and how for the fit of law and ethics can help make better managers and better decisions. For example, Chapter 20’s “HR and the Law” discusses the dangers and conflicts office romances produce and how managers can deal with those issues. Chapter 1 includes a discussion of the FIFA corruption scandal how the issues were investigated and the problems involved in an NGO. Chapter 8’s “Strategy and the Law” takes a look at what corporations charged with a crime should do and the options for pleas available with the Justice Department. Chapter 14’s “Social Responsibility and the Law” discusses the possible anticompetitive effects of organizations such as Common Code for the Coffee Community and the Bioplastic Feedstock Alliance. These features apply the principles from business disciplines to understand more fully the depth and breadth of management issues.

Case Headlines

Every court case has a case headline that summarizes what issues are involved in the case. Chapter 7 has a new case on the actions of the Russian tax authorities involving Yukos, an international oil company, and the resulting impact in the market and has this title, “When Putin Affects the Value of Oil Stock.” In Chapter 8, a new case on criminal intent, whether the owner of a salvage yard was aware of his contamination of water, has this intriguing case title, “Mordechay’s Sump Pump and *Mens Rea*.” In Chapter 6, the case *Hornbeck Offshore Services, L.L.C. et al. v Salazar* deals with an issue of whether agency action was arbitrary and capricious in issuing a moratorium on offshore drilling, and the case title is “Drilling Down to the Facts Supporting a Rule.” The vivid one-line description and colorful facts of the case, a common thread throughout the case choices in the text, help students internalize the rules and lessons about not destroying evidence for a potential lawsuit.

Chapter Openings and the “Consider. . .” Feature

Chapters begin with an opening problem, titled “Consider. . .”, which presents a legal dilemma relevant to the chapter’s discussion and similar to those business managers need to handle. These are revisited and answered in the body of the chapter. For example, Chapter 6 has a new chapter opening “Consider. . .” on a proposed regulation on the use of cell phones on airplanes and then walks that issue through the full regulatory process. In addition to this Consider problem opening, each chapter also has quotes, data, humor, or insights to pique reader interest about the chapter topics.

Chapter Summary

Each chapter concludes with a summary that reinforces the major concepts of the chapter. Each summary is constructed around the key questions introduced at the start of the chapter and key terms presented throughout the chapter.

Business Strategy Applications

Each chapter has a business strategy connection designed to help students understand where law and ethics fit in developing effective business strategies. For example, in Chapter 13 there is a new business strategy on the problems with highway guard rails and the litigation brought about by a competitor who reported changes in the guard rail design that had not been cleared with the federal government. Chapter 5 has a strategy feature that discusses who gives money in politics, how much, and why. Chapter 8’s strategy feature discusses the components of an effective compliance program. The Chapter 12 strategy deals with how restaurants are coping with no-shows in their reservations and their contract rights when someone makes a reservation but never shows up.

Organization and Features: A Structure to Guide Students to Reasoning and Analysis

The classic features have been updated and strengthened. The organization has been retained to continue to meet student needs in the classroom.

Organization

The four parts in the book serve to organize the materials around four basic areas: (1) understanding the legal environment, (2) understanding the regulatory environment, (3) dealing with sales, contracts and competition, and (4) management and governance. Every chapter integrates international and ethical topics.

Part 1

In four chapters, Part 1 offers an introduction to law, an introduction to business ethics and the judicial system, and a discussion of litigation and alternative dispute resolution. Part 1 provides students with a foundation in law and ethics as well as legal and ethical reasoning, necessary for the areas of law in the chapters that follow. By being brief (four chapters), Part 1 offers instructors an early and logical break for exams.

Part 2

In six chapters, Part 2 covers the regulatory environment of business, including the following topics: constitutional law, administrative and international law, business crimes and business torts, and environmental regulation. At the completion of Parts 1 and 2, students have a grasp of the legal system, ethical boundaries, and the laws that affect business operational decisions.

Part 3

The five chapters in Part 3 present students with the legal and ethical issues surrounding contracts, sales, and competition. Part 3 includes the following topics: contract formation and performance (including coverage of consumer issues); product liability; intellectual property; trade restraints; and business competition and antitrust. From the negotiation of price to the collection of accounts, this segment of the book covers all aspects of selling business products and services. This section is structured so that the contracts discussion precedes the complexities of property and competition.

Part 4

The five chapters in Part 4 discuss business management and governance. Topics include the management of employees, from agency law to employment regulation to employee rights to issues in discrimination. Part 4 also includes the governance issues of business structure and management, including financing and securities law issues. This section covers the issues of running, managing, and financing a business.

Woven throughout all the chapters are cyber law issues, as marked by margin icons, and featuring discussions of everything from e-mail privacy to the problems of hacking.

Features**Court Cases**

Edited court language cases provide in-depth points of law, and many cases include dissenting and concurring opinions. Case questions follow to help students understand the points of law in the case and think critically about the decision. The courts have been active since the last edition, and many 2015–2016 case decisions are presented throughout the book. Students will be able to study Donald Trump’s claim for defamation when a writer misstated his net worth. Can a company avoid Foreign Corrupt Practices Act violations when it has its agent appointed a government official in another country? What happens when a young man saves his Pepsi points to claim a Harrier Jet that he sees in a Pepsi spoof ad for “Pepsi stuff”? Does he get his jet?

Consider . . .

“Consider . . .” problems, along with “Ethical Issues” and “Business Planning Tips,” have been a part of every chapter since the first edition. The “Consider . . .” features, often based on real court cases, ask students to evaluate and analyze the legal and ethical issues discussed in the preceding text. Because these issues are integrated into the text, students must address and think critically about these issues as they encounter them. Through interactive problems, students learn to judge case facts and determine the consequences. Moreover, answers to all of these opening “Consider . . .” features are referenced in the text and clearly marked. There are more “Consider . . .” features throughout each chapter. Chapter 3 has a new “Consider . . .”

on whether Katy Perry could be sued in Missouri for her alleged infringement of a Missouri songwriter's song. Chapter 12 has a new consider on whether a mistake on the total square footage in a property is grounds for setting aside a contract for purchase of that property.

"Consider . . ." brings the most current topics into the book and the classroom.

Thinking, Applying, and Answering: "Consider . . ." Tutorials—A Guide for Reasoning

One "Consider . . ." per chapter is solved for the students in a methodical walk-through that helps them understand how to apply the legal principles or case precedent that they have just studied. The facts of the case or hypothetical are presented and the students are asked to recall what they have just learned. Next, students are walked through applying those principles to the current facts. Finally, they are given the answer and the reason that answer is consistent with their thinking and applying.

Ethical Issues

The "Ethical Issues" feature appears in every chapter and presents real-world ethical problems for students to grapple with. "Ethical Issues" help integrate coverage of ethics into every chapter. The ethical issues also include personal and real-life examples that help students relate to the pervasive nature of ethical dilemmas that they do and will continue to face. Chapter 6 includes the U.S. Supreme Court case reversing the bribery conviction of former Virginia governor Bob McDonnell and his wife, followed by an ethics issue that asks students to review whether their taking of vacations, a Rolex, clothing, and help with a wedding from a donor crossed ethical lines. Chapter 12 includes an ethical issue that asks students to evaluate students who accept an employment offer and then renege because a better one came along.

Business Planning Tips

Students are given sound business and legal advice through "Business Planning Tips." With these tips, students not only know the law but also know how to anticipate issues and ensure compliance. How to make your property safer, how to conduct an interview without violating the Americans with Disabilities Act, and how to train employees to preserve documents and potential evidence if customers make claims.

Cyberlaw

Cyberlaw has been integrated throughout the book. Most chapters also include a segment on cyberlaw. These chapter-by-chapter materials, marked by an icon, give students the chance to see how new technology fits into the existing legal framework.

Exhibits

Exhibits include charts, figures, and business and legal documents that help highlight or summarize legal and ethical issues from the chapter. With the credit and financial market reforms, securities law reforms on stock offerings, and the changes in criminal penalties, many of the charts are either new or updated.

End-of-Chapter Problems

Many end-of-chapter problems have been updated and now focus more on actual cases. There are new chapter problems throughout the book of varied lengths for different instructor needs.

The Informed Manager: Who Should Use This Book?

With its comprehensive treatment of the law, integrated business applications, and full-color design, *Business: Its Legal, Ethical, and Global Environment* is well suited for both undergraduate and MBA students. The book is used extensively in undergraduate education programs around the country. In addition, this edition has been class-tested with MBA students, and it is appropriate for MBA and executive education programs.

A Note on AACSB Standards

The strong presence of ethics, social responsibility, international law and issues, and the integration of other business disciplines make the book an ideal fit for meeting AACSB standards and curriculum requirements. The AACSB standards emphasize the need for students to have an understanding of ethical and global issues. The eleventh edition continues with its separate chapter on ethics as well as ethical issues and dilemmas for student discussion and resolution in every chapter. The separate chapter on international law continues its expanded coverage from the last edition, and each chapter has a segment devoted to international law issues. The eleventh edition includes readings on expanded international law enforcement cooperation, the challenges of ethics and law in international business, the role of lawyers in other countries, and attitudes outside the United States on insider trading and antitrust laws.

This edition presents students with the legal foundation necessary for business operations and sales but also affords the students the opportunities to analyze critically the social and political environments in which the laws are made and in which businesses must operate. An examination of the lists of companies and individuals covered in the biographies, and of the publications from which the “For the Manager’s Desk” readings are based on, demonstrates the depth of background the eleventh edition offers in those areas noted as critical by the AACSB. The materials provide a balanced look at regulation, free enterprise, and the new global economy.

Supplements

Business: Its Legal, Ethical, and Global Environment offers a comprehensive and well-crafted supplements package for both students and instructors.

MindTap

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About the Author

Professor Marianne Jennings is an emeritus professor of legal and ethical studies in business from the W.P. Carey School of Business at Arizona State University. She was named professor of the year in the College of Business in 1981, 1987, 2000, and 2010 and was the recipient of a Burlington Northern teaching excellence award in 1985. She served as director of the Joan and David Lincoln Center for Applied Ethics at ASU from 1995–1999. From 2006–2007, she served as the faculty director for the MBA Executive Program. She continues to teach graduate courses in business ethics and ethical culture at ASU and other colleges around the country.

Professor Jennings has authored hundreds of articles in academic, professional and trade journals. She was given best article awards by the Institute of Internal Auditors and the Association of Government Accountants in 2001 and 2004. In 2006, her article, “Ethics and Investment Management: True Reform,” was selected by the United Kingdom’s *Emerald Management Review* from 15,000 articles in 400 journals as one of the top 50 articles in 2005. She was named one of the Top 100 Thought Leaders by Trust Across America in 2010. In 2012 she was named one of the 100 Most Influential People in Business Ethics by Ethisphere magazine. She served on the board of directors for Arizona Public Service (now Pinnacle West Capital Corporation), the owner of the Palo Verde Nuclear Station, from 1987 through 2000. She served on the boards of Zealous Capital Corporation from 1996–1998 and the Center for Children with Chronic Illness and Disability at the University of Minnesota. She served as chair of the Bonneville International Advisory Board for KHTC/KIDR from 1994–1999. She was appointed to the board of advisors for the Institute of Nuclear Power Operators in 2004. In 2015 she was named an affiliated scholar with the Center for the Study of Economic Liberty at Arizona State University.

Currently she has six textbooks and monographs in circulation. The ninth edition of her textbook, *Case Studies in Business Ethics*, and the eleventh edition of her textbook, *Business: Its Legal, Ethical and Global Environment* will be published in January 2017. Her first textbook, *Real Estate Law*, had its 11th edition published in January 2016. Her text, *Anderson’s Business and the Legal Environment* had its 23rd edition published in January 2016.

Her book, *Business Strategy for the Political Arena*, was selected in 1985 by Library Journal as one of its recommended books in business/government relations. *A Business Tale: A Story of Ethics, Choices, Success, and a Very Large Rabbit*, a fable about business ethics, was chosen by Library Journal in 2004 as its business book of the year. *A Business Tale* was also a finalist for two other literary awards for 2004. In 2000, her book on corporate governance was published by the New York Times MBA Pocket Series. Professor Jennings’ book on long-term success, *Building a Business Through Good Times and Bad: Lessons from Fifteen Companies, Each With a Century of Dividends*, was published in October 2002 and has been used by Booz, Allen, Hamilton for its work on business longevity. Her book, *The Seven Signs of Ethical Collapse is used by auditors in advance detection of fraud and is a primer on corporate culture, including analysis of board efficacy*. Her books have been translated into five languages.

She is a contributing editor for the *Real Estate Law Journal* and *New Perspectives*. She served on the Board of Editors for the *Financial Analysts Journal* from 2007–2012. She served as editor-in-chief of the *Journal of Legal Studies Education* during 2003–2004. During 1984–85, she served as then-Governor Bruce Babbitt’s appointee to the Arizona Corporation Commission. In 1999 she was appointed by then-Governor Jane Dee Hull to the Arizona Commission on Character.

Her columns have been syndicated around the country, and her work has appeared in the *Wall Street Journal*, the *Chicago Tribune*, the *New York Times*, *Washington Post*, and the *Reader’s Digest*. A collection of her essays, *Nobody Fixes Real Carrot Sticks Anymore*, first published in 1994 is still being published. She was given an Arizona Press Club award in 1994 for her work as a feature columnist. She has been a commentator on business issues on *All Things Considered* for National Public Radio. She served as chair of the Bonneville International Advisory Board for KHTC/KIDR from 1994–1997 and was a weekly commentator on KGLE during 1998. She has appeared on CNBC, CBS This Morning, the Today Show, and CBS Evening News.

Professor Jennings earned her undergraduate degree in finance and her J. D. from Brigham Young University. She has done consulting work for law firms, government agencies, businesses and professional groups including AES, AICPA, Allstate, Amgen, AstraZeneca, Bell Helicopter, Blue Cross Blue Shield, Boeing, Bristol-Myers Squibb, Certified Financial Analysts Institute, CoBank, Coca-Cola, Department of Energy, Department of Interior, Dial Corporation, DuPont, Hy-Vee Foods, IBM, Institute of Internal Auditors, Mattel, Motorola, Southern California Edison, Pfizer, Raytheon, Tenet, Toyota, U.S. Navy, Veterans Administration, and VIAD.

Personal: Married since 1976 to Terry H. Jennings, Maricopa County Attorney’s Office Deputy County Attorney; five children: Sarah, Sam, and John, and the late Claire and Hannah Jennings.

Acknowledgments

By its eleventh edition, a book has evolved to a point of trademark characteristics. This book is known for its hands-on examples and readings for business managers. That trademark evolves because of the efforts of many. They are the reviewers and adopters of the text who provide ideas, cases, and suggestions for improvement and inclusion, and I thank them all.

Any edition of a book bears the mark of the editors who work to design, refine, market, and produce it. Seven editions ago, Rob Dewey saw potential for the book and applied his enthusiasm and market insights to mold a somewhat ugly duckling into a four-color swan. The book also carries the imprimatur of Steve Silverstein, who confronted me with a profound question, “Why can’t those in business see these ethical dilemmas when they are in the midst of them?” His question forced me back to the drawing board and resulted in the more personal ethical dilemmas. Vicky True, now in Rob’s role, understands the needs of instructors because of her intense road schedule, holds a keen sense of market direction, and offers the insights of both to help to shape this new edition. Kristen Meere, new as the editor for this edition, came into the work with little lead time and picked up the baton and ran with me as we worked through a tight schedule. Kris Tabor has been with me since the first edition, helping with word processing, IMs, study guides, test banks, and venting. We mark 30 years of a terrific partnership with this edition.

This book also carries the unmistakable liveliness of an author who shares her life with helpful and delightful children and one tolerant husband. Since the first edition of this book, I have added four children to our first, witnessed two graduate from college, one from law school, grieved over the loss of two, and seen the others grow up all too quickly in a household in which these words, “Mom, the UPS guy is here with page proofs,” made up their first sentences. They now simply witness me hovering over my computer from dawn’s light until I fall asleep on the keyboard. My children and my husband, collectively my family, are the most charming people I know. They have brought me stories, pop culture, and good sense with their, “Uh-oh, here we go!” when their mother finds outrage in yet another ethical lapse in business. Even from their now—globally dispersed positions, they call and ask, “How’s the writing going?” Their vibrancy is found in the color and charm of these pages. I am grateful for their unanimous and unwavering support for my work. Finally, I am grateful to my parents who taught me through their words and examples of the importance and rewards of ethics and hard work.

Marianne Moody Jennings



Part 1

Business: Its Legal, Ethical, and Judicial Environment

Simply stated, you cannot run a successful business without knowing the law. What is legal? Where can I find the laws I need to know? How do I make decisions about legal conduct that is ethically troublesome to me? What if I have a disagreement with a customer, employee, or shareholder? How and where can I resolve our differences?

This portion of the book explains what law is, where it can be found, how it is applied, and how legal disputes are resolved. But beyond the legal environment of a business, there are the ethical issues. Just because what you are doing is legal does not mean it is ethical. And why should a manager make ethical choices and behave honorably in business? Law and ethics are inextricably intertwined. A commitment to both is part of a sustainable business model.

Introduction to Law

Most people understand the law through personal experiences. Some are exposed to law through traffic tickets. Others encounter the law when a problem arises with a landlord or lease. Many wonder about their rights when search engines and other Internet companies gather information about them without their realizing such efforts were ongoing. Facing income reductions in tough economic times, many wonder what their rights are when collectors call or file suit. Their understanding of the law may be limited by the anger they feel about an annoying collection agent, their e-mail being scanned or a traffic ticket. However, without traffic laws, the roads would be a study in survival of the fittest. The law is your source of assurance that you have rights when it comes to collection agency actions. Each day businesses find and face legal and ethical issues in everything from privacy rights on Facebook to proper documentation of employees' citizenship.

The types of laws and the penalties for violating them vary from state to state and from city to city, but, however much they vary, laws exist everywhere and at every level of government. Indeed, law is a universal, necessary foundation of an orderly society. Law helps maintain order, imposing on us certain minimum standards of conduct. When we fall short of those standards, we risk penalties. Law is made up of rules that control people's conduct and their interrelationships. Traffic laws control not only our conduct when we are driving but also our relationships with other drivers using the roads. In some instances, traffic laws give other drivers a right-of-way, and we are liable to them for any injuries we cause by not following those laws.

This chapter offers an introduction to law. How is law defined? What types of laws are there? What are the purposes and characteristics of law? Where are laws found, and who enacts them?

UPDATE 

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*This country's planted thick with
laws from coast to coast . . .
and if you cut them down . . .
d'you really think you could
stand upright in the winds that
would blow then?*

A MAN FOR ALL SEASONS, ACT I

Consider . . .

1.1

John Yates, a commercial fisherman, caught undersized red grouper in federal waters in the Gulf of Mexico. To prevent federal authorities from confirming that he had harvested undersized fish, Yates ordered a crew member to toss the suspect fish into the sea. Yates was charged with, and convicted of, violating 18 U.S.C. § 1519,

"Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation . . . or

any case filed . . . or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both."

Mr. Yates says that the statute applies to financial records and not fish. The statute was passed after Enron collapsed and its financial records and audit papers had been shredded to deter such actions by businesses. Who decides whether the law applies to hurling fish overboard? What should the court decide?

1-1 Definition of Law

Philosophers and scholars throughout history have offered definitions of law. Aristotle, the early Greek philosopher, wrote that "the law is reason unaffected by desire" and "law is a form of order, and good law must necessarily mean good order." Oliver Wendell Holmes Jr., a U.S. Supreme Court justice of the early twentieth century, said, "[L]aw embodies the story of a nation's development through many centuries." Sir William Blackstone, the English philosopher and legal scholar, observed that law was "that rule of action which is prescribed by some superior and which the inferior is bound to obey." *Black's Law Dictionary* defines law as "a body of rules of action or conduct prescribed by the controlling authority, and having legal binding force."¹ Law has been defined at least once by every philosopher, statesman, and police officer.

Law is simply the body of rules governing individuals and their relationships. Most of these rules become law through a recognized governmental authority. Laws give us basic freedoms, rights, and protections. Law also offers a model of conduct for members of society in their business and personal lives and gives them certainty of expectation. Plans, businesses, contracts, and property ownership are based on the expectation that the law will provide consistent protection of rights. Without such constancy in legal boundaries, society would be a mass of chaos and confusion.

1-2 Classifications of Law

1-2a Public versus Private Law

Public law includes those laws enacted by some authorized governmental body. State and federal constitutions and statutes are all examples of public laws, as are the state incorporation and partnership procedures, county taxation statutes, and local zoning laws.

Private law, on the other hand, is developed between two individuals. For example, landlords usually have regulations for their tenants, and these regulations are private laws. Homeowners' associations have developed an important body of private law that regulates everything from the type of landscaping for homes in a subdivision to whether homeowners can erect basketball hoops in their driveways. The terms of a contract are a form of private law for the contracting parties. Although the requirements for forming and the means for enforcing that contract may be a matter of public law, the terms for performance are the private law the parties agree to as the rules for governing their relationships. Employer rules in a corporation are also examples of private law; as long as those rules do not infringe any public rights or violate any statutory or constitutional protections, those rules define a private law relationship between employer and employee. For example, most companies now have Twitter and Facebook policies that limit the type of information and comments employees can post about their employers in social media outlets. Interestingly, both state legislatures and the U.S. Congress have proposed legislation that would control employer restrictions on employees' posts. Public law is being changed to reflect technological areas that are not yet addressed in employment law.

1-2b Criminal versus Civil Law

A violation of a **criminal law** is a wrong against society. A violation of a **civil law** is a wrong against another person or persons. Criminal violations have penalties such as fines and imprisonment. When you run a red light, you have committed a criminal violation and owe society a penalty, such as a fine or imprisonment. Violations of civil laws, on the other hand, require restitution: someone who violates a civil law must compensate the harmed party. If you do run a red light and strike and injure a pedestrian, your criminal case is society's remedy. The civil wrong in the same action requires you to pay damages to that pedestrian.

If you drive while intoxicated, you are breaking a criminal law and are subject to a fine, jail term, or license suspension. If you have an accident while driving intoxicated, you commit a civil wrong against anyone you injure. People who are injured as a result of your driving while intoxicated can file a civil suit against you to recover for injuries to their persons and property (cars).

Other differences also distinguish civil laws from criminal laws and their enforcement. For example, different rights and procedures are used in the trials of criminal cases (see Chapter 8 for more details).

1-2c Substantive versus Procedural Law

Substantive laws are those that give rights and responsibilities. **Procedural laws** provide the means for enforcing substantive rights. For example, if Zeta Corporation has breached its contract to buy 3,000 microchips from Yerba Corporation, Yerba has the substantive right to expect performance and may be able to collect damages for breach of contract by bringing suit. The laws governing how Yerba's suit is brought and the trial process are procedural laws. Procedural laws are also used in criminal cases, such as grand jury proceedings or arraignments and pleas (see Chapter 8 for more information).

1-2d Common versus Statutory Law

The term **common law** has been in existence since 1066, when the Normans conquered England and William the Conqueror sought one common set of laws for

governing a then-divided England. The various customs of each locality were conglomered so that all fiefdoms could operate under a “common” system of law. The common law came about as judges in different areas settled disputes in similar ways by consulting their fellow judges on their previous decisions before making decisions. This principle of following other decisions is referred to as *stare decisis*, meaning “let the decision stand.” This process of legal reasoning is still followed today. The courts use the judicial decisions of the past in making their judgments in order to provide the consistency and constancy of the law.

As much of an improvement as it was, the common law was still just uncodified law. Because of increased trade, population, and complexities, the common law needed to be supplemented. As a result, **statutory law**, which is passed by some governmental body and written in some form, was created.

Today, in the United States, we have common law and statutory law. Some of our common law still consists of principles from the original English common law. For example, how we own and pass title to real property are areas largely developed from English common law. The body of common law continues to grow, however: the judicial system’s decisions constitute a form of common law that is used in the process of *stare decisis*. Courts throughout the country look to other courts’ decisions when confronted with similar cases.

Statutory law exists at all levels of government—federal, state, county, city, borough, and town. Our statutory law varies throughout our nation because of the cultural heritages of various regions. For example, the southwestern states have marital property rights statutes—often referred to as community property laws—that were influenced by the Spanish legal system implemented in Mexico. The northeastern states have different marital property laws that were influenced by English laws on property ownership. Louisiana’s contract laws are based on French principles because of the early French settlements there.

1-2e Law versus Equity

Equity is a body of law that attempts to do justice when the law does not provide a remedy, when the remedy is inadequate, or when the application of the law is terribly unfair. Equity, which originated in England, came into being because the technicalities of the common law often resulted in unresolved disputes or unfair resolutions. The monarchy allowed its chancellor to hear those cases that could not be resolved in the common law courts; eventually, a separate set of equity courts developed that were not bound by rigid common law rules. These courts could get more easily to the heart of a dispute. Over time, they developed remedies not available under common law. Common law, for example, usually permitted only the recovery of monetary damages. Courts of equity, on the other hand, could issue orders, known as **injunctions**, prohibiting certain conduct or ordering certain acts. The equitable remedies available in the **courts of chancery** were gradually combined with the legal remedies of the common law courts so that now parties can have their legal and equitable remedies determined by the same court.

Today’s courts award equitable remedies when the legal remedy of money damages would be inadequate. For example, the copyright infringement cases brought by the recording and motion picture industries sought injunctions against the individuals and companies that provided the technological means for making unauthorized individual copies of movies and songs. The record companies, the movie producers, and the artists could never be adequately compensated with

money for these forms of infringement because the continued activity caused the loss of their exclusive copyrights. The remedy that they sought and were given were injunctions that, within certain parameters, ordered a halt to the sites and programs that facilitated the unauthorized downloading of copyrighted materials.

1-3 Purposes of Law

1-3a Keeping Order

Laws carry some form of penalty for their violation. Violations of securities laws carry a fine or imprisonment or both. Violations of civil laws also carry sanctions. If an employer discriminates against you by refusing to give you a raise or promotion because of your age, gender, or race, you can seek money damages. A driver who injures another while driving intoxicated can be prosecuted but must also pay for the damages and the costs of the injuries the other person experiences. These civil and criminal penalties for violations of laws prevent feuds and the use of primitive methods for settling disputes, such as force.

During the summer of 2016, a number of U.S. cities experienced protests and riots because of concerns about particular police officers' conduct. These cities imposed curfews in order to bring quiet to the city streets as well as preventing damages to and looting of businesses. A simple curfew law helped to bring order to those cities.

1-3b Influencing Conduct

Laws also influence conduct in a society. For example, securities laws require companies to make certain disclosures about those securities before they can be sold to the public. The antitrust laws passed in the early twentieth century prohibited some methods of competition, such as price fixing, and limited others, such as mergers (see Chapter 14). These types of laws continue to change the way businesses operate. For example, Google recently agreed to stop restricting its advertisers from working with other search engines.

1-3c Honoring Expectations

Businesses commit resources, people, and time to ventures, expansion, and product development with the expectation that the contracts for those commitments will be honored and enforced according to existing law. Investors buy stock with the knowledge that they will enjoy some protection of that investment through the laws that regulate both the securities themselves and the companies in which they have invested. Laws allow prior planning based on the protections inherent in the law.

1-3d Promoting Equality

Laws have been used to achieve equality in those aspects of life in which equality is not a reality. For example, the equal-right-to-employment acts (see Chapter 20) were passed to bring greater equality to the job market. The social welfare programs of state and federal governments were created to further the cause of economic justice. The antitrust laws attempt to level the playing field for the free enterprise system to operate efficiently.

1-3e Law as the Great Compromiser

A final and important purpose of law is to act as the great compromiser. Few people, groups, or businesses agree philosophically on how society, business, or government should be run. Law serves to mesh different views into one united view so that all parties are at least partially satisfied. When disputes occur, the courts apply the law to the parties' situation in an attempt to strike a compromise between two opposing views. The U.S. Supreme Court has provided compromises for the rights of businesses to be involved in the political process and make donations to candidates (see Chapter 5). In the relationship between freedom of speech and advertising regulation, the law serves as the mediator.

1-4 Characteristics of Law

1-4a Flexibility

As society changes, the law must change with it. When the United States was an agricultural nation, the issues of antitrust, employment discrimination, and securities fraud rarely arose. However, as the United States became an industrialized nation, those areas of law expanded, and they continue to expand today. As the United States further evolves into a technological and information-based society, still more areas of law will be created and developed. Computer fraud and identity theft, for example, were unknown issues 35 years ago; today, both state and federal laws address these issues through criminal statutes (see Chapter 8). The introduction of document attachments and electronic signature programs required the courts to re-examine how offers and acceptances of contracts are made, with electronic signatures now legislatively sanctioned as having the same force and effect as signatures on paper (see Chapter 11).

Circumstances change through technology, sociology, and even biology. The law must address those changes. What are the rights of copyright holders when an Internet company creates a system that allows users to post videos that are copyrighted? With billions of users and millions of videos, how do we protect copyrighted materials?

1-4b Consistency

Although the law must be flexible, it still must be predictable. Law cannot change so suddenly that parties cannot rely on its existence or protection. Being able to predict the outcome of a course of conduct allows a party to rely on a contract or dissuades a party from the commission of a crime. For a contract, a judicial remedy can be ordered for breach or non-performance; for a crime, a prescribed punishment is the result.

1-4c Pervasiveness

The law must be pervasive and cover all necessary areas, but at the same time, it cannot infringe on individual freedoms or become so complex that it is difficult to enforce. For example, laws cover the formation, operation, and dissolution of corporations. Laws govern corporate management decisions on expanding, developing, and changing the nature of the corporation. Laws also ensure that shareholders' rights are protected. The corporation has great flexibility in management, as long as it stays within these legal boundaries.



In the following case, the U.S. Supreme Court was a deeply divided court on a statutory interpretation question, a question that touched on many of the purposes of law. The majority and dissenting opinions show the struggle courts face as they try to honor the law's dual purposes of keeping order while preserving rights. Case 1.1 is briefed in Exhibit 1.1. A **brief** is a tool used by lawyers, law students, and judges to help them summarize a case and focus on its facts and the key points of the decision by the court. The *Yates* case answers the questions posed in the "Consider . . ." problem at the beginning of the chapter.

CASE 1.1

Yates v. U.S.
135 S.Ct. 1074 (2015)

Hurling Fish Overboard the *Miss Katie*: Obstruction of Justice?

FACTS

On August 23, 2007, the *Miss Katie*, a commercial fishing boat, was six days into an expedition in the Gulf of Mexico. Her crew numbered three, including Yates, the captain. Engaged in a routine offshore patrol to inspect both recreational and commercial vessels, Officer John Jones of the Florida Fish and Wildlife Conservation Commission decided to board the *Miss Katie* to check on the vessel's compliance with fishing rules. Because he had been deputized as a federal agent by the National Marine Fisheries Service, Officer Jones had authority to enforce federal, as well as state, fishing laws.

Upon boarding the *Miss Katie*, Officer Jones noticed three red grouper that appeared to be undersized hanging from a hook on the deck. At the time, federal conservation regulations required immediate release of red grouper less than 20 inches long. Officer Jones instructed Yates to keep the undersized fish segregated from the rest of the catch until the ship returned to port. After Jones departed, Yates instead told a crew member to throw the undersized fish overboard. For this offense, Yates was charged with destroying, concealing, and covering up undersized fish to impede a federal investigation, in violation of 18 U.S.C. § 1519:

"Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter

or case, shall be fined under this title, imprisoned not more than 20 years, or both."

Yates was convicted but moved to dismiss the charges, arguing that §1519's reference to "tangible object" means objects used to store information, such as computer hard drives, not fish. The District Court denied Yates's motion, and a jury found him guilty. The Eleventh Circuit affirmed the conviction, concluding that §1519 applies to the destruction or concealment of fish because, as objects having physical form, fish fall within the dictionary definition of "tangible object." Yates, who was sentenced to 30 days in jail and three years of supervised probation as well as carrying a felony conviction for life, appealed.

JUDICIAL OPINION

GINSBURG, Justice

Although dictionary definitions of the words "tangible" and "object" bear consideration in determining the meaning of "tangible object" in §1519, they are not dispositive. Whether a statutory term is unambiguous "is determined [not only] by reference to the language itself, [but also by] the specific context in which that language is used, and the broader context of the statute as a whole."

Section 1519's position within Title 18, Chapter 73, further signals that §1519 was not intended to serve as a cross-the-board ban on the destruction of physical evidence. Congress placed §1519 at the end of Chapter 73 following immediately after pre-existing specialized provisions expressly aimed at corporate fraud and financial audits.

CONTINUED

The contemporaneous passage of §1512(c)(1), which prohibits a person from “alter[ing], destroy[ing], mutilat[ing], or conceal[ing] a record, document, or other object . . . with the intent to impair the object’s integrity or availability for use in an official proceeding,” is also instructive.

Use of traditional tools of statutory interpretation to examine markers of congressional intent within the Sarbanes–Oxley Act and §1519 itself thus call for rejection of an aggressive interpretation of “tangible object.”

Having used traditional tools of statutory interpretation to examine markers of congressional intent within the Sarbanes–Oxley Act and §1519 itself, we are persuaded that an aggressive interpretation of “tangible object” must be rejected. It is highly improbable that Congress would have buried a general spoliation statute covering objects of any and every kind in a provision targeting fraud in financial record-keeping.

Reversed.

ALITO, Justice, Concurring

[T]hough the question is close, traditional tools of statutory construction confirm that John Yates has the better of the argument. Three features of 18 U.S.C. § 1519 stand out to me: the statute’s list of nouns, its list of verbs, and its title. Although perhaps none of these features by itself would tip the case in favor of Yates, the three combined do so. Start with the nouns. Section 1519 refers to “any record, document, or tangible object.”

[T]he term “tangible object” should refer to something similar to records or documents. A fish does not spring to mind—nor does an antelope, a colonial farmhouse, a hydrofoil, or an oil derrick. All are “objects” that are “tangible.” But who wouldn’t raise an eyebrow if a neighbor, when asked to identify something similar to a “record” or “document,” said “crocodile”?

[My] analysis is influenced by §1519’s title: “Destruction, alteration, or falsification of records in Federal investigations and bankruptcy.” (Emphasis added.) This too points toward filekeeping, not fish. Titles can be useful devices to resolve “doubt about the meaning of a statute.” The title is especially valuable here because it reinforces what the text’s nouns and verbs independently suggest—that no matter how other statutes might be read, this particular one does not cover every noun in the universe with tangible form.

KAGAN, Justice Dissenting with Justices SCALIA, KENNEDY, AND THOMAS

If none of the traditional tools of statutory interpretation can produce today’s result, then what accounts

for it? The plurality offers a clue when it emphasizes the disproportionate penalties §1519 imposes if the law is read broadly. Section 1519, the plurality objects, would then “expose[] individuals to 20-year prison sentences for tampering with *any* physical object that *might* have evidentiary value in *any* federal investigation into *any* offense.” That brings to the surface the real issue: overcriminalization and excessive punishment in the U.S. Code.

Now as to this statute, I think the plurality somewhat—though only somewhat—exaggerates the matter. The plurality omits from its description of §1519 the requirement that a person act “knowingly” and with “the intent to impede, obstruct, or influence” federal law enforcement. And in highlighting §1519’s maximum penalty, the plurality glosses over the absence of any prescribed minimum. (Let’s not forget that Yates’s sentence was not 20 years, but 30 days.) Congress presumably enacts laws with high maximums and no minimums when it thinks the prohibited conduct may run the gamut from major to minor. That is assuredly true of acts obstructing justice. Most district judges, as Congress knows, will recognize differences between such cases and prosecutions like this one, and will try to make the punishment fit the crime. Still and all, I tend to think, for the reasons the plurality gives, that §1519 is a bad law—too broad and undifferentiated, with too-high maximum penalties, which give prosecutors too much leverage and sentencers too much discretion. And I’d go further: In those ways, §1519 is unfortunately not an outlier, but an emblem of a deeper pathology in the federal criminal code.

But whatever the wisdom or folly of §1519, this Court does not get to rewrite the law. “Resolution of the pros and cons of whether a statute should sweep broadly or narrowly is for Congress.” If judges disagree with Congress’s choice, we are perfectly entitled to say so—in lectures, in law review articles, and even in *dicta*. But we are not entitled to replace the statute Congress enacted with an alternative of our own design.

I respectfully dissent.

CASE QUESTIONS

1. Explain what Mr. Yates did and why.
2. Describe the terms used in the statute at issue and the history of the statute.
3. Why does the dissent think the majority made the decision it did?