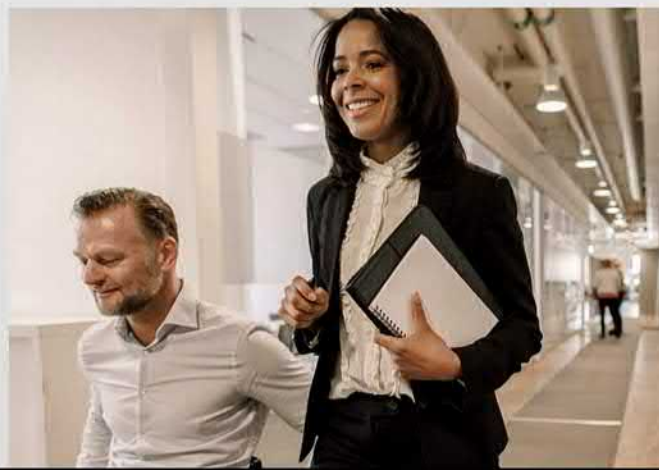


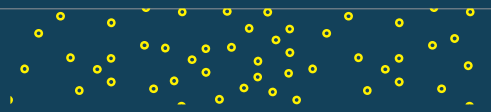
Pagnattaro • Cahoy • Magid • Shedd



# The Legal and Regulatory Environment of Business

NINETEENTH EDITION





# The Legal and Regulatory Environment of **BUSINESS**

Nineteenth Edition

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*Josiah Meigs Distinguished Teaching Professor of Legal Studies,  
University of Georgia*

Daniel R. **CAHOY**

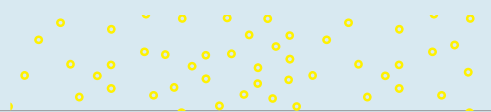
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## THE LEGAL AND REGULATORY ENVIRONMENT OF BUSINESS, NINETEENTH EDITION

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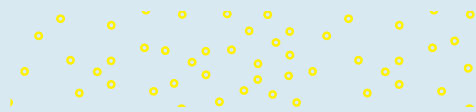
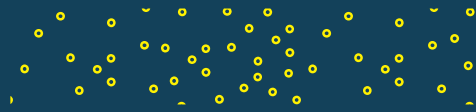
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Marisa Anne Pagnattaro is a Josiah Meigs Distinguished Teaching Professor of Legal Studies in the Terry College of Business at the University of Georgia. She received her Ph.D. in English at the University of Georgia, her J.D. from New York Law School, and her B.A. from Colgate University. Prior to joining the Georgia faculty, Dr. Pagnattaro was a litigation attorney with Kilpatrick & Cody (now known as Kilpatrick Townsend) in Atlanta. Dr. Pagnattaro is the recipient of numerous teaching awards, and she also won the Academy of Legal Studies in Business Charles M. Hewett Master Teacher Competition. She is the author of many scholarly articles on national and international employment law issues, as well as labor issues related to international trade and the protection of trade secrets in China. She is an active member of the Academy of Legal Studies in Business and is a former Editor in Chief of the *American Business Law Journal*.

## Daniel R. **CAHOY**

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## Julie Manning **MAGID**

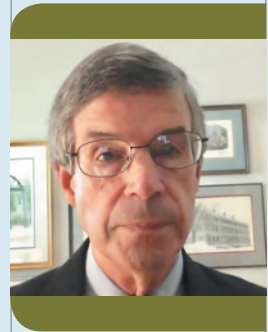
Julie Manning Magid is a Professor of Business Law and Kelley Venture Fellow in the Kelley School of Business at Indiana University. She also is the Director of the Randall L. Tobias Center for Leadership Excellence at Indiana University. She received her J.D. from the University of Michigan Law School and her A.B. from Georgetown University. Prior to joining the Kelley School faculty, Professor Magid was a litigation attorney specializing in employment and business litigation. Professor Magid is recognized for her teaching in the undergraduate, graduate, specialized graduate, and online teaching environments, with numerous teaching awards, including the Kelley School of Business MBA Teaching Excellence Award and the Schuyler F. Otteson Undergraduate Teaching Excellence Award. Her teaching received international recognition from the Academy of Legal Studies in Business as the overall winner of the Charles M. Hewitt Master Teacher Award. Professor Magid is the author of numerous scholarly articles and book chapters focused on public policy related to health care, diversity and inclusion, innovation, and privacy. She is a Life Sciences Research Fellow with the Center for the Business of Life Science and former Editor in Chief of the *American Business Law Journal*.



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## Peter J. **SHEDD**

Peter Shedd is the University Professor Emeritus of Legal Studies in the Terry College of Business at the University of Georgia where he received his B.B.A. and J.D. degrees. He also has been a Visiting Professor in the Ross School of Business at the University of Michigan and the Warrington College of Business at the University of Florida. Professor Shedd has extensive experience as a teacher, researcher, administrator, and author of business-related texts. His teaching of undergraduate and MBA courses has earned Professor Shedd numerous teaching awards including being named a Josiah Meigs Distinguished Teaching Professor. Professor Shedd is a member of the Academy of Legal Studies in Business and its Southeastern Regional. He served as national president during 1999–2000. Professor Shedd is a member of the State Bar of Georgia and is an experienced arbitrator and mediator. In 2020, Professor Shedd was honored by the University of Georgia Alumni Association with their Faculty Service Award.



Peter Shedd



This nineteenth edition continues the long, rich tradition of our commitment to presenting timely examples and cases that underscore the relevance of the law for business. We are passionate about helping students understand the importance of the legal and regulatory environment of business. Our goal is to make this text accessible, and we hope that they will embrace the study of the law with enthusiasm. In this preface, we strive to highlight themes, additions, and pedagogical devices—including important electronic features—that are key to this edition.

## **The Nineteenth Edition: Themes and New Additions**

With each new edition, we endeavor to maintain the reputation of this text as being the most up-to-date on the latest important developments in the law for business. As we prepare each new edition, we consider the events that affect the business environment and discuss how to incorporate them into the text. The nineteenth edition includes a new focus on sustainability and innovation, including the ethical issues. Because we were in the midst of revising the text during COVID-19, issues related to the pandemic are also incorporated throughout this edition. We also continue to highlight ongoing legal fallout from the 2008 financial crisis. In this edition, we spotlight the U.S. Supreme Court case *Iancu v. Brunetti*, which addresses issues at the intersection of business and the law related to the protection (trademarks) and the First Amendment. We also added a number of recent federal cases and Supreme Court decisions.

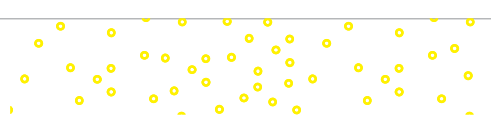
Each chapter includes a range of relevant examples and case opinions, with key points noted for each case. Sidebars within each chapter provide students and instructors with opportunities to learn about topics that illustrate the principles discussed within the text. Margin comments also reinforce key themes and points of emphasis. We hope that that this layering of the law with examples reinforces each student's understanding of the law for business.

We believe that this text is well suited for both legal environment and business law classes. The fundamental message we wish our readers to grasp is that the law is at the core of private enterprise. The law determines ownership and protects business and individual ownership interests, which is why property law is at the heart of this text. Law defines property, enforces property rights, resolves disputes about where the boundaries of property lie, and recognizes that compensation is appropriate when one person infringes across the boundary of what is owned by another. Nations enforcing property rights under the rule of law establish conditions for creating prosperous, diversified economies, which are crucial for businesses to thrive.

All of the current examples and sidebars are designed to teach business students the relevance of the law for business and to prepare them to make informed decisions about how the law can be used strategically to protect their rights and business interests.

## **Organization of the Nineteenth Edition**

This edition consists of 22 chapters, divided into four parts. Part One introduces students to the legal foundations for business. The first chapter in this section underscores the importance of the legal environment of business to appreciate the role of law as the foundation for business in the private market system. This section also includes a chapter on ethics, as well as three chapters pertaining to dispute



resolution: courts, litigation, and alternative dispute resolution. Lastly, this first part includes a chapter on the U.S. Constitution (including the Commerce Clause) and its fundamental role in the legal system for business.

Part Two consists of basic legal principles, incorporating eight chapters: property, contract formation, contractual performance, torts, intellectual property, international law, criminal law, and business organizations. These chapters are designed to help students learn basic legal principles, as well as how to identify them in business contexts.

Part Three details the regulatory landscape for business. Five chapters cover essential regulatory aspects of business: the regulatory process, antitrust, financial and securities regulation, privacy and consumer protection, and environmental regulation.

The final section, Part Four, contains three chapters pertaining to the employer-employee relationship: discrimination, employment laws (including agency), and the labor-management relationship.

Taken together, these chapters should provide students with a comprehensive, yet accessible, sense of the laws and regulations crucial for companies doing business in the United States.

## **WHAT'S NEW**

### **PART ONE**

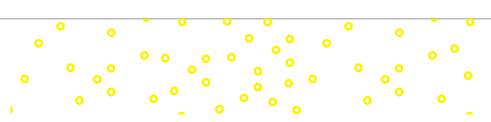
#### **Chapter 1 Law as Foundation for Business**

- Edited the Introduction to incorporate new themes for the text, including sustainability, integrity, and corporate social responsibility.
- Updated Sidebar 1.1, adding information about Wells Fargo to underscore the kind of liability that can result from a lack of integrity.
- Added new Sidebar 1.2 about the importance of lawyers in the boardroom.
- Updated Sidebar 1.3 with information from the AmCham China 2019 Climate Survey.
- Updated Sidebar 1.4 with a new example involving a \$1 billion scandal at Goldman Sachs.
- Replaced Sidebar 1.5 with a new topic about the enforceability of corporate social responsibility.

#### **Chapter 2 Ethics in Decision Making**

- Added discussion in introduction about the Business Roundtable Statement calling for fair and ethical treatment of suppliers.
- Added new Learning Objective 2-1 about ethical challenges facing business in the 21st century.
- Added new subsection “Modern Ethical Challenges in Innovation and Technology” addressing artificial intelligence.
- Added information about FTC fine for violations of user privacy against Facebook.
- Added 2018 National Business Ethics Survey results.
- Added new Sidebar 2.3 “Facebook Tackles Fake News.”
- Updated Hertz standards of business conduct.
- Updated Sidebar 2.7 with Boeing Code of Conduct.





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### **Chapter 3 Courts**

- Updated the federal caseload statistics in Sidebar 3.1.
- Updated Sidebar 3.3 with new examples.
- Sidebar 3.4 updated with the 2018 term stats.
- Updated the statistics in Sidebar 3.5 and added information about 5-4 Supreme Court decisions.
- Revised Sidebar 3.6, adding information about the role of the chief justice.
- Updated Sidebar 3.7 with information about the process of selection of a Supreme Court justice.
- Updated Sidebar 3.8 with new information about how business fares in the Roberts Court.
- Updated Sidebar 3.9.
- Updated Sidebar 3.11 with new information about the Supreme Court justices.
- Added new Case 3.1 *Iancu v. Brunetti* and commentary in the text, replacing *Spokeo, Inc. v. Robins*. The corresponding Case Briefing in Appendix I has been updated as well.

### **Chapter 4 Litigation**

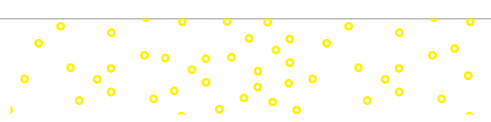
- Added a new Case 4.1 *Juliana v. United States* regarding standing to sue related to climate change.
- Updated Sidebar 4.3 adding information about Paul Ceglia.
- Added a new example to Sidebar 4.4 about allegations regarding Apple and throttling.
- Updated Sidebar 4.5 with new cases including major securities-related class action cases, Facebook litigation, and a class action related to a data breach.
- Revised Sidebar 4.7 with a new example related to discovery abuse.
- Updated Sidebar 4.8 adding commentary about big data being used to predict lawsuits.
- New Sidebar 4.10 with examples of frivolous lawsuits.
- Added new examples to Sidebar 4.11 about social media and jurors.
- Updated Sidebar 4.15 with new information about cameras in the courtroom, including Congressional testimony by Justices Kagen and Alito.

### **Chapter 5 Alternative Dispute Resolution**

- Updated conflict example to reflect modern global office culture.
- Updated marginalia concerning number of tort cases settled out of court.
- Replaced Sidebar 5.4 referencing trends in arbitration including #MeToo and Uber agreement examples.
- Replaced Sidebar 5.11 with a summary of four recent Supreme Court rulings developing arbitration law.

### **Chapter 6 The Constitution**

- Added a new Sidebar 6.3 with the case involving the sale of wine and spirits in Tennessee as an example of litigation related to the Commerce Clause.

- 
- Updated Sidebar 6.4 with information about the kinds of acts that can jeopardize tax-exempt status.
  - Updated Sidebar 6.7 with an example from the 2020 Superbowl and a FCC fine involving Jimmy Kimmel.
  - Updated Sidebar 6.9 with a new case involving the First Amendment and a rap artist.
  - Updated Sidebar 6.10 with new 2020 label on cigarette packaging and issues related to vaping.
  - Updated Sidebar 6.12 regarding the Second Amendment.
  - Updated information about the Oberfeld case.
  - Clarified information about the levels of scrutiny.

## **PART TWO**

### **Chapter 7 Property**

- Updated Sidebar 7.4 to address recent Supreme Court case on intangible property.
- Updated Sidebar 7.5 to address current drone use and include current references.
- Added new Case 7.1 Briggs v. Southwestern Energy Prod. Co. and commentary in the text, replacing Coastal Oil v. Garza.
- Added Sidebar 7.9 on property rights impact of light, odor and noise.
- Added Sidebar 7.10 discussing how property restrictions contribute to sustainability.

### **Chapter 8 Contract Formation**

- Added Sidebar 8.7, Overcharging into Invalidity to address contractual issues related to price gouging.
- Updated Sidebar 8.8 to reflect new legislation regarding non-compete covenants.
- Added Sidebar 8.9 to address truth in sustainability advertising and greenwashing.

### **Chapter 9 Contract Performance and Breach**

- Replaced Sidebar 9.1 to more broadly address the judge's role in interpreting contracts and highlight recent case.
- Added section on Force Majeure clauses as excuses for non-performance.
- Added Sidebar 9.4 to address when a global pandemic will be considered a Force Majeure.

### **Chapter 10 Torts**

- Added a definition for business invitee.
- Revised Trespass section to distinguish trespass from business invitee.
- Added new marginalia about defamation on web pages that allow comments.
- Added new marginalia describing 2019 defamation claim filed against Amazon's Jeff Bezos.
- New Sidebar 10.2 addressing Section 230 of the Communications Decency Act and Trump Administration Executive Order.

- Included discussion about manipulation of audio or visual files as potential misappropriation concern.
- Revised Sidebar 10.6 updating medical malpractice claims.
- Condensed Case 10.4 for readability.
- Replaced Sidebar 10.11 describing the increase in billion dollar jury verdicts.

### **Chapter 11 Intellectual Property**

- Revised Sidebar 11.1 to include discussion of 2018 Nobel Prize winner Paul Romer's work.
- Added Sidebar 11.3 on the role of trade secrets in international trade relations, particularly with China.
- Updated text on trade secrets to include current UTSA adoptions.
- Added Sidebar 11.6 to address whether artificial intelligence (AI) can be an inventor on a patent.
- Added Sidebar 11.8 to discuss sharing intellectual property related to the COVID-19 pandemic as an emergency response.
- Revised Sidebar 11.10 to address *Matal v. Tam* and *Iancu v. Brunetti* cases and cross reference Case 3.1.
- Added Sidebar 11.13 to discuss Public Domain Day and the expiration of copyright on a new set of works.
- Added new Case 11.4 *Skidmore v. Led Zeppelin* and commentary in the text, replacing *Campbell v. Acuff Rose*.
- Added Sidebar 11.14 concerning two recent Supreme Court cases that address state copyright ownership and infringement.

### **Chapter 12 International Law**

- Updated Figure 12.1, Top Ten Trading Partners, with 2019 year-end data.
- Updated Sidebar 12.1 with current information from Transparency International, including new commentary about corruption and inequality.
- Updated Sidebar 12.3 with new FCPA prosecutions.
- Updated marginalia with new information about export controls.
- Added a new example of a \$1 billion fraud scheme involving fraudulently obtained funds and money laundering.
- Updated the text and Table 12.2 to reflect the withdrawal of the United Kingdom from the EU (Brexit).
- Updated Sidebar 12.4 to focus on export violations.
- Updated Sidebar 12.5 with new information about pirate attacks.
- Updated all information about NAFTA, now known as USMCA.
- Updated Sidebar 12.9 about the top international franchises.
- Updated Sidebar 12.10 regarding Chiquita's liability for alleged acts in Colombia.
- Updated Sidebar 12.12 regarding Chevron and Texaco's liability for alleged acts in Ecuador.



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## **Chapter 13 Criminal Law**

- Made general chapter updates, including the chapter introduction. Updates include the Wells Fargo \$3 billion criminal fine and marginalia regarding incarceration in the United States.
- Revised Sidebar 13.1 to add potential fraud related to COVID-19.
- Updated information about the grand jury process.
- Updated Sidebar 13.2 with additional information regarding the death of Bernard Ebbers who was incarcerated for fraud at WorldCom.
- Added new material to Sidebar 13.5 about checking identification and the case *Kansas v. Glover*.
- Updated Sidebar 13.6 with additional information about Bernie Madoff.
- Updated Sidebar 13.7 and added more examples of fraud schemes.
- Case 13.1 added a note about *Carpenter v. U.S.* involving searches and cell phones.
- Case 13.2 added updated information about Jeffrey Skilling.
- Updated Sidebar 13.8 with new information about preventing identity theft.
- Updated Sidebar 13.9 with new information about the Department of Justice priorities related to false claims act cases
- Updated Sidebar 13.12 with new information about the post-prison life of Don Blankenship.
- Replaced Sidebar 13.13 with a new example involving the prosecution of executives at the New England Compounding Center.

## **Chapter 14 Business Organizations**

- Revised Taxation overview to include information about the 2017 Tax Cuts and Jobs Act.
- Added Sidebar 14.2 to provide detail of changes that Tax Cuts and Jobs Act made to corporate tax rates.
- Revised Trends in Managing the Organization to describe increasing emphasis on sustainability.
- Added new Case 14.2 *Marchand v. Barnhill* and commentary in text, replacing *FCC v. AT&T*.
- Revised Trends in Managing the Organization to discuss how businesses are dealing with remote workspaces.

## **PART THREE**

### **Chapter 15 Regulatory Process**

- Updated Sidebar 15.2 examining the unique structure of the Consumer Financial Protection Bureau to include 2018 D.C. Circuit Court opinion.
- Added marginalia concerning FTC request for information from big tech companies.
- Replaced Case 15.1 with *Free Lucia v. SEC* highlighting the authority of administrative law judges in federal agencies.
- Added Key Points for Case 15.1.



## **Chapter 16 Antitrust Regulation**

- Added new Case 16.1 Prosterman v. American Airlines and commentary in text, replacing U.S. v. Apple.
- Added Sidebar 16.2, addressing debate regarding whether Big Tech firms are monopolists.
- Added new Case 16.3, Apple v. Pepper, and commentary in text, replacing Kolon Industries v. E.I. Dupont De Nemours.
- Updated Figure 16.3 on criminal antitrust fines (2008-2019).

## **Chapter 17 Financial and Securities Regulation**

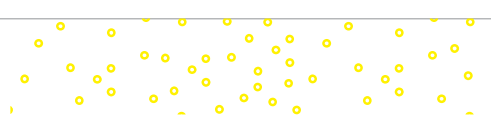
- Updated marginalia with quote concerning capital formation trends.
- Replaced Case 17.1 with Lorenzo v. SEC in which the Supreme Court addressed Rule 10b-5 liability.
- Added Key Points for Lorenzo v. SEC.
- Added reference to Case 17.1 in discussion of PSLRA.
- Updated number of filings of securities claims against foreign companies with 2019 data.
- Update Table 17.2 with data from 2010-2019.
- Added new marginalia providing link to the 2019 PCAOB five-year strategic plan.
- Updated Dodd-Frank whistleblower discussion with Supreme Court's 2018 decision in Digital Realty Trust, Inc. v. Somers.
- Added findings from 2019 SEC crowdfunding study under the JOBS Act.
- Added Figure 17.1 demonstrating the geographical distribution of crowdfunding offerings.

## **Chapter 18 Privacy and Consumer Protection**

- Added new Case 18.1 Carpenter v. United States and commentary in text, replacing In re Zynka.
- Added Sidebar 18.2 discussing the possible exchange of privacy rights for increased protection and security during a crisis.
- Updated Sidebar 18.3 discussing the development and impact of the GDPR.
- Added discussion of 2018 Economic Growth, Regulatory Relief and Consumer Protection Act that revised system for credit freezes and fraud alerts.

## **Chapter 19 Environmental Regulation and Resource Sustainability**

- Updated Learning Objective 19-4 to reflect 21st century sustainability issues.
- Updated NEPA discussion to include 2020 proposed rule limiting its impact.
- Updated data regarding international air quality rankings.
- Changed the title of Table 19.1 to better reflect its contents.
- Replaced marginalia with Supreme Court's 2020 Clean Water Act decision in County of Maui v. Hawaii Wildlife Fund.
- Updated Superfund cleanup discussion with Supreme Court's 2019 case Atlantic Richfield v. Christian.

- 
- Changed the final section title to Sustainability Approaches to better reflect updated contents.
  - Reorganized discussion of the Kyoto Protocol as a precursor to the Paris Agreement and updated the Paris Agreement discussion.
  - Added discussion about government and business leaders around the world engaging in new actions to preserve the environment and promote jobs, such as education and ecotourism.

## **PART FOUR**

### **Chapter 20 Employment Discrimination**

- Updated marginalia and added additional information to the text, including the McDonald's sexual harassment class action.
- Updated Figure 20.1 EEOC data.
- Updated Sidebar 20.3 with new material about concerns related to COVID-19.
- Updated Sidebar 20.4 with additional examples about religious accommodation claims related to Muslims.
- Updated Sidebar 20.5 with additional information about the many forms of sexual harassment for women in the workplace.
- Updated Sidebar 20.6 with information about #MeToo and the unintended consequences and backlash in the workplace.
- Updated Sidebar 20.7 information about pregnancy discrimination claims and added more information about the Young v. UPS case.
- Updated Sidebar 20.9 with information about cases brought in the U.S. Supreme Court involving LGBT discrimination.
- Updated Sidebar 20.10 with a case involving age discrimination at PwC.
- Updated Sidebar 20.11 with additional examples.

### **Chapter 21 Employment Laws**

- Updated minimum wage information and added statistics on COVID-19 unemployment.
- Updated Sidebar 21.1 with the FLSA overtime rules and new examples.
- Updated Sidebar 21.2 with information about the department of Labor's new primary beneficiaries test for internships.
- Updated Sidebar 21.4 FMLA statistics information.
- Added an example to Sidebar 21.9 about OSHA's severe violator program.
- Updated Sidebar 21.10 with information about Families First Coronavirus Response legislation.

### **Chapter 22 Labor-Management Relationship**

- Updated Table 22.1 with statistics on union membership.
- Updated Sidebar 22.1 with information on union membership.
- Replaced Sidebar 22.2 with details of three Trump Administration Executive Orders.



- Replaced Sidebar 22.5 with information about Kickstarter, the first technology company to unionize.
- Update statistics regarding state right-to-work laws.

## Authorship Team

One of the strengths of this text is its continuity of authorship and the coordination among the authorship team. Marisa Pagnattaro, who joined the team on the fourteenth edition, continues to lead the authorship team. Dan Cahoy (who began on the sixteenth edition) and Julie Manning Magid (who joined on the seventeenth edition) have played a significant role in shaping this edition. Peter Shedd, who has long been a steward of the text, joined the book as a co-author on the eighth edition in 1990. Although he is no longer part of the authorship team, we want to recognize Lee Reed who joined the team in 1977 on the fourth edition.

## Acknowledgments

We want to thank a number of people who contributed to the nineteenth edition. We greatly appreciate the efforts of our team at McGraw-Hill, especially Tim Vertovec and Kathleen Klehr. We greatly appreciate their support of the authorship team and the continued development of new electronic features of the text. We are also grateful to all of the regional sales team representatives for their enthusiastic marketing support.

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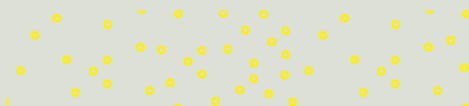
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Finally, we thank all of the professors and students who have used or are using our text. Your feedback continues to be important. Please feel free to share your thoughts with us. Your feedback also may be sent to The McGraw-Hill Companies.

Marisa Anne Pagnattaro  
Daniel R. Cahoy  
Julie Manning Magid



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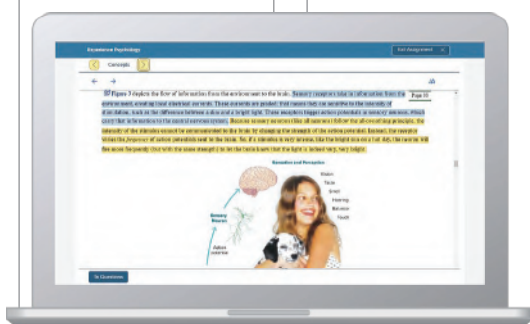
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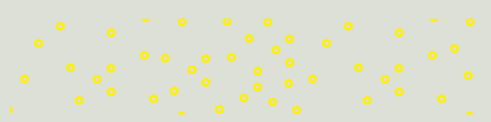
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- Jordan Cunningham,  
Eastern Washington University



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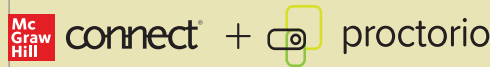
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This nineteenth edition continues the reputation of our prior editions for having many valuable teaching elements. The following list highlights the various pedagogical tools in this edition:

### Remote Proctoring & Browser-Locking Capabilities



New remote proctoring and browser-locking capabilities, hosted by Proctorio within Connect, provide control of the assessment environment by enabling security options and

verifying the identity of the student.

Seamlessly integrated within Connect, these services allow instructors to control students' assessment experience by restricting browser activity, recording students' activity, and verifying students are doing their own work.

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### SmartBook®

SmartBook® makes study time as productive and efficient as possible. SmartBook identifies and closes knowledge gaps through a continually adapting reading experience that highlights portions of the content based on comprehension. Students have a visual representation of the areas in which they have demonstrated understanding, as well as areas in which they need to focus. The result? More confidence, better grades, and greater success.

The end result of ethical examination is what philosophers call **the good**. The concept of the good is central to the study of morality. *The good* may be defined as those moral goals and objectives we choose to pursue. It serves to define who we are. Thus, *leading a good life* means more than *having the good life*. It means more than material possessions and luxury. It means pursuing intangibles, being concerned, as Adam Smith put it, about the fortunes of others. That many in contemporary society do not achieve the good is evident. Too often, we confuse a good time with a good life.

In summary, morality involves what we mean by our values of right and wrong. Ethics is a formal system for deciding what is right and wrong, and for justifying moral decisions. In everyday language, the terms *morality* and *ethics* are often used interchangeably. This chapter will also sometimes use the two words to mean the same thing.

**ETHICS AND LAW**

Chief Justice Earl Warren once remarked: "In civilized life, law floats in a sea of ethics." Ethics and law have similar or complementary purposes. Both consist of rules to guide conduct and foster social cooperation. Both deal with what is right and wrong. Society's ethical values may become law through legislation or court decisions, and obedience to law is often viewed as being ethically correct. That society's ethical values often become law is the subject of Sidebar 2.2.

However, there are also differences between ethics and law. Unlike ethical systems, the legal system is an institution of the state. The state enforces legal rules through civil and criminal sanctions, like monetary damage awards, fines, and imprisonment. Many ethical values (regarding the treatment of animals, for example) are not enforced by the state, and many laws (regarding traffic violations, for example) do not address ethical concerns.

LO 2-1

Read the statements. Drag and drop each item into the most specifically correct spot on the chart. Each category should contain only two statements.

The Lost Wallet.	Purpose of the Equal Pay Act.	The Dylabis Drinking Sicle.	Zero Tolerance Policies.	Wrong Change.	President Truman's Decision.	The Golden Rule.	Disease X Drug.	Equal Opportunity Employment	A Little White Lie.	
Formalism					Kan't Duty Ethics		Social Contract Theory		Utilitarianism	

### Interactive Applications

Interactive Applications like "drag and drop" and "comprehension case" help students apply important concepts they learned in each chapter. These engaging materials are assignable and auto-gradable, so students receive feedback on their work immediately.

## Business Law Case Repository

The Case Repository is a collection of cases from previous editions and the current edition, accessible and assignable in Connect. Cases can be selected based on Topic, Type, or State.

filter results

- question type
- Author
- Subtopic
- Topic
  - select all
  - Administrative Law
  - Alternative Dispute Resolution
  - Antitrust Laws and Competition
  - Business Organizations

results: 51

questions

- 14 PENN PLAZA LLC v PYETT
- AL MINOR & ASSOCIATES, INC V MARTIN
- ALLI v U.S.
- AMERICAN NEEDLE, INC v NATIONAL FOOTBALL LEAGUE
- ASSOCIATION FOR MOLECULAR PATHOLOGY V MYRIAD G

## CASE BRIEF

*Spokeo, Inc. v. Robins*, 578 U.S. \_\_ (2016).  
How do I read this citation?

- “Spokeo, Inc.” refers to the petitioner.
- “v” means versus or against.
- “Robins” refers to the respondent.
- 578 is the volume number of the official U.S. Supreme Court Reporter, and \_\_ refers to the page number where the case begins (once it is assigned a page number). The date, 2016, is the year the case was decided.

## Case Brief

Case Briefs, found in the Instructor Resources, contain a brief of each edited case found in the text. For ease of use, the briefs are numbered by chapter in the order they appear in the text. Case Briefs offer additional information like the Facts, the Issue, the Decision, and the Reasoning, for each case.

## Quizzes

Quizzes are available for each chapter and test students’ overall comprehension of the concepts presented in the chapter.

Which of the following is an ethical value sourced from law and legal regulations?

- Attention to detail
- Confidentiality
- Sense of discipline
- High-handedness
- Sense of transcendency

Honoring confidentiality is the fourth major ethical value emerging from the law and legal regulation. The legal requirement of honoring confidentiality appears in agency law generally and in the professional-client relationship in particular.

References eBook & Resources

Multiple Choice Difficulty: 1 Easy Learning Objective: 02-02 To analyze why ethical consequentialism and not ethical formalism has been the chief source of values for business ethics.

## Test Bank

Instructors can test students’ mastery of concepts as the instructors create exams with the use of this Test Bank. Organized by chapter, the Test Bank contains multiple-choice, true/false, and essay questions. Many of the questions have been modified to correspond with the text’s revision. Answers immediately follow each question, along with corresponding Learning Objectives.



## Learning Objectives

Learning Objectives are included at the beginning of each chapter. These objectives will act as a helpful road map of each chapter, narrowing the focus of each topic for both instructor and students. You will also find these Learning Objectives tagged for every test bank question to ensure that key points from each chapter are covered in every quiz and exam.

## Marginalia

In the margins, each chapter includes notes, points of emphasis, definitions, quotes, and recommendations about what to do and what to avoid.



Michael Hitoshi/

# 2

## The Role of Ethics in Decision Making

### Learning Objectives

In this chapter you will learn:

- 2-1 To consider ethical challenges facing business in the 21st century.
- 2-2 To compare the connection between law and ethical principles.
- 2-3 To analyze why ethical consequentialism and not ethical formalism has been the chief source of values for business ethics.
- 2-4 To generate an individual framework for ethical values in business.
- 2-5 To evaluate the obstacles and rewards of ethical business practice in a property-based legal system.

Does the emphasis on profit in a property-based private market mean that *only* profit must be considered in business decision making? For an example of a nation in which not only profit is important in business, see Sidebar 2.8.

**Effect of the Group** The social critic Ambrose Bierce once remarked that the corporation is “an ingenious device for obtaining individual profit without individual responsibility.” He was referring to the fact that individuals in large groups do not feel less responsibility for what happens in the group than they do for what happens in their individual lives. They may also act differently, and often less ethically, in a group.

Ambrose Gwinnett Bierce (1842 – 1914)

When individuals do unethical things as part of a group which they would do alone is widely recognized, and the same pattern can be observed in corporate behavior. Within corporations, it becomes easy for a researcher not to pass up discovered concerns about the possible (yet not certain) side effects of a notion that upper management is so enthusiastic about. In corporate life, it is difficult to overlook the unethical behavior of a superior when many fellow employees are also overlooking it. And of course, “I did it because everyone else did it” is a common rationalization in groups of all kinds. “Just following orders” is a rationalization.

When individuals in groups may feel a diminished sense of responsibility for decisions and actions taken invites ethical compromise. Coupled with an over-emphasis on profit, the group effect increases the difficulty of achieving an ethical corporate culture.

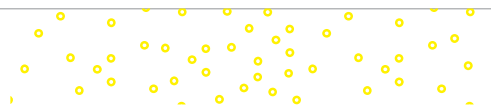
**Control of Resources by Nonowners** In the modern corporation, managers (or *shareholders*) are often not in possession and control of corporate resources. Top management of many corporations effectively possess and control resources that they do not own. This produces the problems of corporate governance mentioned in Chapter 1. Managerial agents like the president and vice

**Don't** forget that a nation is just a large group. This means that “culture matters” in the implementation (or not) of moral values.

“Study after study confirms it: the vast majority of people act based on the circumstances in their environment and the standards set by their leaders and peers, even if it means compromising their personal moral ideals. ‘Good’ people do bad things if they are put in an environment that doesn’t value values, if pressured to believe that they don’t have any choice but to get the job done—whatever it takes.”

—Ethics Resource Center (2008)

Do understand that an amendment must be ratified by 38 states through legislative action or by a constitutional convention. The United States has never held a convention for the purposes of amending the Constitution.



sidebar 2.5

American Marketing Association Statement of Ethics

PREAMBLE

The American Marketing Association commits itself to promoting the highest standard of professional ethical norms and values for its members (practitioners, academics and students). Norms are established standards of conduct that are expected and maintained by society and/or professional organizations. Values represent the collective conception of what communities find desirable, important and morally proper. Values also serve as the criteria for evaluating our own personal actions and the actions of others. . . .

ETHICAL VALUES

**Honesty**—to be forthright in dealings with customers and stakeholders. To this end, we will:

- Strive to be truthful in all situations and at all times.
- Offer products of value that do what we claim in our communications.
- Stand behind our products if they fail to deliver their claimed benefits.
- Honor our explicit and implicit commitments and promises.

**Responsibility**—to accept the consequences of our marketing decisions and strategies. To this end, we will:

- Strive to serve the needs of customers.
- Avoid using coercion with all stakeholders.
- Acknowledge the social obligations to stakeholders that come with increased marketing and economic power.
- Recognize our special commitments to vulnerable market segments such as children, seniors, the economically impoverished, market illiterates and others who may be substantially disadvantaged.
- Consider environmental stewardship in our decision-making.

**Fairness**—to balance justly the needs of the buyer with the interests of the seller. To this end, we will:

- Represent products in a clear way in selling, advertising and other forms of communication; this includes the avoidance of false, misleading and deceptive promotion.
- Reject manipulations and sales tactics that harm customer trust.
- Refuse to engage in price fixing, predatory pricing, price gouging or “bait-and-switch” tactics.
- Avoid knowing participation in conflicts of interest.

- Seek to protect the private information of customers, employees and partners.

**Respect**—to acknowledge the basic human dignity of all stakeholders. To this end, we will:

- Value individual differences and avoid stereotyping customers or depicting demographic groups (e.g., gender, race, sexual orientation) in a negative or dehumanizing way.
- Listen to the needs of customers and make all reasonable efforts to monitor and improve their satisfaction on an ongoing basis.
- Make every effort to understand and respectfully treat buyers, suppliers, intermediaries and distributors from all cultures.
- Acknowledge the contributions of others, such as consultants, employees and coworkers, to marketing endeavors.
- Treat everyone, including our competitors, as we would wish to be treated.

**Transparency**—to create a spirit of openness in marketing operations. To this end, we will:

- Strive to communicate clearly with all constituencies.
- Accept constructive criticism from customers and other stakeholders.
- Explain and take appropriate action regarding significant product or service risks, component substitutions or other foreseeable eventualities that could affect customers or their perception of the purchase decision.
- Disclose list prices and terms of financing as well as available price deals and adjustments.

**Citizenship**—to fulfill the economic, legal, philanthropic and societal responsibilities that serve stakeholders. To this end, we will:

- Strive to protect the ecological environment in the execution of marketing campaigns.
- Give back to the community through volunteerism and charitable donations.
- Contribute to the overall betterment of marketing and its reputation.
- Urge supply chain members to ensure that trade is fair for all participants, including producers in developing countries.

Source: AMA Statement of Ethics, published at <https://www.ama.org/>. Reproduced with the permission of the American Marketing Association.

Sidebar

Examples or further descriptions are separated from the text into boxes labeled Sidebars. As in the courtroom setting, when a judge calls for a conversation with the lawyers away from the jury, these boxes are sidebars to the overall discussion. Through these sidebars, the text is explained in more detail or is brought to life with a business-related example.

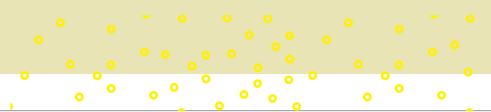
Concept Summary

At appropriate points in each chapter, a summary of the preceding material appears. Through these summaries, complex and lengthy presentations are easily reviewable by the reader.

concept summary

Self-Examination for Self-Regulation

- Have I thought about whether the action I may take is right or wrong?
- Will I be proud to tell of my action to my family? To my employer? To the news media?
- Am I willing for everyone to act as I am thinking of acting?
- Will my decision cause harm to others or to the environment?
- Will my actions violate the law?



## Cases

Except for the first two chapters, chapters include edited portions of actual court decisions. These cases illustrate the parties' arguments and the judge's decision of the issues. We have deleted most of the procedural aspects, citations, and footnotes. An alternative to these edited cases appears in some sidebars; there a case may be explained in our own language.

**case 4.1**

**JULIANA v. UNITED STATES**  
\_\_\_ F.3d \_\_\_ (9th Cir. 2020)

*The panel reversed the district court's interlocutory orders in this action which was brought by 21 individual plaintiffs (all young citizens) and environmental organizations against the federal government alleging climate-change related injuries caused by the federal government continuing to "permit, authorize, and subsidize" fossil fuel.*

**COWEN, Circuit Judge**  
In the mid-1960s, a popular song warned that we were "on the eve of destruction." (Barry McGuire, "Eve of Destruction," on *Eve of Destruction*, Dunhill Records, 1965.) The plaintiffs in this case have presented compelling evidence that climate change has brought that eve nearer. A substantial evidentiary record documents that the federal government has long promoted fossil fuel use despite knowledge that it can cause catastrophic climate change, and that failure to change existing policy may hasten an environmental apocalypse.

The plaintiffs claim that the government has violated their constitutional rights, including a claimed right under the Due Process Clause of the Fifth Amendment to a "climate system capable of sustaining human life." The central issue before us is whether, even assuming such a broad constitutional claim exists, an Article III court can provide plaintiffs with the redress they seek—an order requiring the government to develop a plan to "phase out fossil fuel emissions and draw down excess atmospheric CO<sub>2</sub>." Reluctantly, we conclude that such relief is beyond our constitutional power. Rather, the plaintiffs' impressive case for redress must be presented to the political branches of government.

The district court denied the government's motion to dismiss, concluding that the plaintiffs had standing to sue, raised justiciable questions, and stated a claim for infringement of a Fifth Amendment due process right to a "climate system capable of sustaining human life." The court defined that right as one to be free from catastrophic climate change that "will cause human deaths, shorten lifespans, result in widespread damage to property, threaten food sources, and dramatically alter the planet's ecosystem." The court also concluded that the plaintiffs

had stated a viable "danger-creation due process claim" arising from the government's failure to regulate third-party emissions. Finally, the court held that the plaintiffs had stated a public trust claim grounded in the Fifth and Ninth Amendments. . . .

The government . . . argues that the plaintiffs lack Article III standing to pursue their constitutional claims. To have standing under Article III, a plaintiff must have: (1) a concrete and particularized injury that (2) is caused by the challenged conduct and (3) is likely redressable by a favorable judicial decision. . . .

[After expressing skepticism that the first redressability prong is satisfied, the court stated] even assuming that it is, the plaintiffs do not surmount the remaining hurdle—establishing that the specific relief they seek is within the power of an Article III court. There is much to recommend the adoption of a comprehensive scheme to decrease fossil fuel emissions and combat climate change, both as a policy matter and in general and a matter of national survival in particular. But it is beyond the power of an Article III court to order, design, supervise, or implement the plaintiffs' requested remedial plan. . . .

The plaintiffs have made a compelling case that action is needed; it will be increasingly difficult in light of that record for the political branches to deny that climate change is occurring, that the government had a role in causing it, and that our elected officials have a moral responsibility to seek solutions. We do not dispute that the broad judicial relief that plaintiffs seek could well goad the political branches to action. . . . We reluctantly conclude, however, that the plaintiffs' case must be made to the political branches or to the electorate at large, the latter of which can change the composition of the political branches through the ballot box. That the other branches may have abdicated their responsibility to remediate the problem does not confer on Article III courts, no matter how well-intentioned, the ability to step into their shoes. . . .

\*Note: On March 3, 2020, the plaintiffs filed a petition for rehearing, asking the Ninth Circuit to hear the matter en banc.

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\*Note: On March 3, 2020, the plaintiffs filed a petition for rehearing, asking the Ninth Circuit to hear the matter en banc.

### KEY POINTS

- To maintain a lawsuit, a plaintiff must have standing or a legally cognizable claim and the court must have the authority to hear the matter.
- The Ninth Circuit found that the court lacked Article III standing.
- Accordingly, the case was remanded with instructions to dismiss the case for lack of Article III standing.

Case Icon: McGraw-Hill Education.

## Key Points

At the end of each edited case, key points can be found. These key points help students grasp the essential elements and relevance of each case.

## Review Questions and Problems

### Litigation—An Overview

#### 1. Parties

A building contractor is sued by homeowners alleging that their homes were poorly constructed resulting in several defects. The contractor adds to the lawsuit a building supplier that it claims provided faulty support beams. How can the contractor add the building supplier as a party to the lawsuit? What is this procedure called and how does it work?

#### 2. Standing to Sue

A group of environmentalists filed a lawsuit challenging commercial fishing in Glacier Bay National Park and sued the secretary of the interior and the National Park Service in order to prevent more commercial fishing.

(a) What must the environmentalists show in order to satisfy the requirement of standing to sue in this case?

(b) At what point should the issue of standing be decided by the court during the course of litigation?

#### 3. Personal Jurisdiction

Smith, a resident of Michigan, was in Florida for a business meeting where he was served with a divorce petition filed by his wife, who had moved to Florida recently. Smith objected to the Florida court's exercise of personal jurisdiction. What is the basis of Smith's objection? Should he prevail? Why or why not?

#### 4. Class-Action Suits

How have the federal courts discouraged class-action lawsuits? What are the key requirements for federal courts to permit class-action suits?

### Pretrial Procedures

#### 5. Pleadings

Describe the purpose of a complaint and an answer in civil litigation. What is the function of the pleading stage in a lawsuit?

#### 6. Steps in Discovery

(a) Why do surprises rarely occur at trial?

(b) What are some of the key devices a litigant can use in discovery?

#### 7. Scope of Discovery

How do abusive discovery practices raise the cost of litigation?

#### 8. Motions

Under what circumstances may a court grant a motion for summary judgment?

#### 9. Frivolous Cases

## Review *Questions and Problems*

Following the text of each chapter is a series of questions and problems. These are tied to the sections of each chapter and serve as an overview of the material covered.

## Expanded *Business Discussions*

The last item in each chapter is a scenario designed to stimulate conversation among students, allowing them to review and apply the material within the chapter.

#### 15. Enforcement of Judgments and Decrees

How does the court enforce judgments?

#### 16. Res Judicata

Why is the notion of *res judicata* critical in civil litigation?

### business *discussions*

**1.** You are the manager of a used car firm known as Reliant Motor Company. Your lawyer has called to tell you that John Doe, a customer you have been dealing with for several months, has filed a lawsuit against the firm. The customer claims the vehicle he purchased is a lemon and no longer even operates. You knew the vehicle was not in the best of condition at the time of sale, but you believe the buyer caused most of the problems by taking the vehicle "off road" several times. You are not looking forward to discovery or trial in this case. You have several questions.

- How does discovery work?
- Can you be required to testify twice in a deposition and at trial?
- Should you shred all documents you have about this case? You know that some of the documents will not put the firm in the best light.

You wonder what will happen at trial. Will it be like what you have seen on TV or in the movies?

**2.** You are the owner of a small firm that manufactures lawn mowers. While using one of your products, a person suffers severe injury and now is suing, claiming that your product was negligently designed because it did not adequately protect the user. You have no experience with the legal system. You learn that lawyers charge as much as \$250 per hour and must be paid whether they win or lose their cases. You are surprised at what must happen before a trial can occur to determine who is at fault. First, your lawyer may move to dismiss the case on jurisdictional grounds. If that fails, both sides will take costly depositions of likely witnesses. You will have to turn over reams of internal documents related to the design of your mower. Each side also will have to pay several hundred dollars per hour for experts as the lawyers prepare the case. These experts will have to be paid again when they testify at trial. As the time for the trial approaches, each side will spend money trying to discern the most sympathetic type of jury. Years after the lawsuit was first filed, the parties will be sitting in the courtroom waiting for jury selection to begin. More money will have been spent defending this case than the plaintiff was seeking when the lawsuit was first filed. Many questions come to mind:

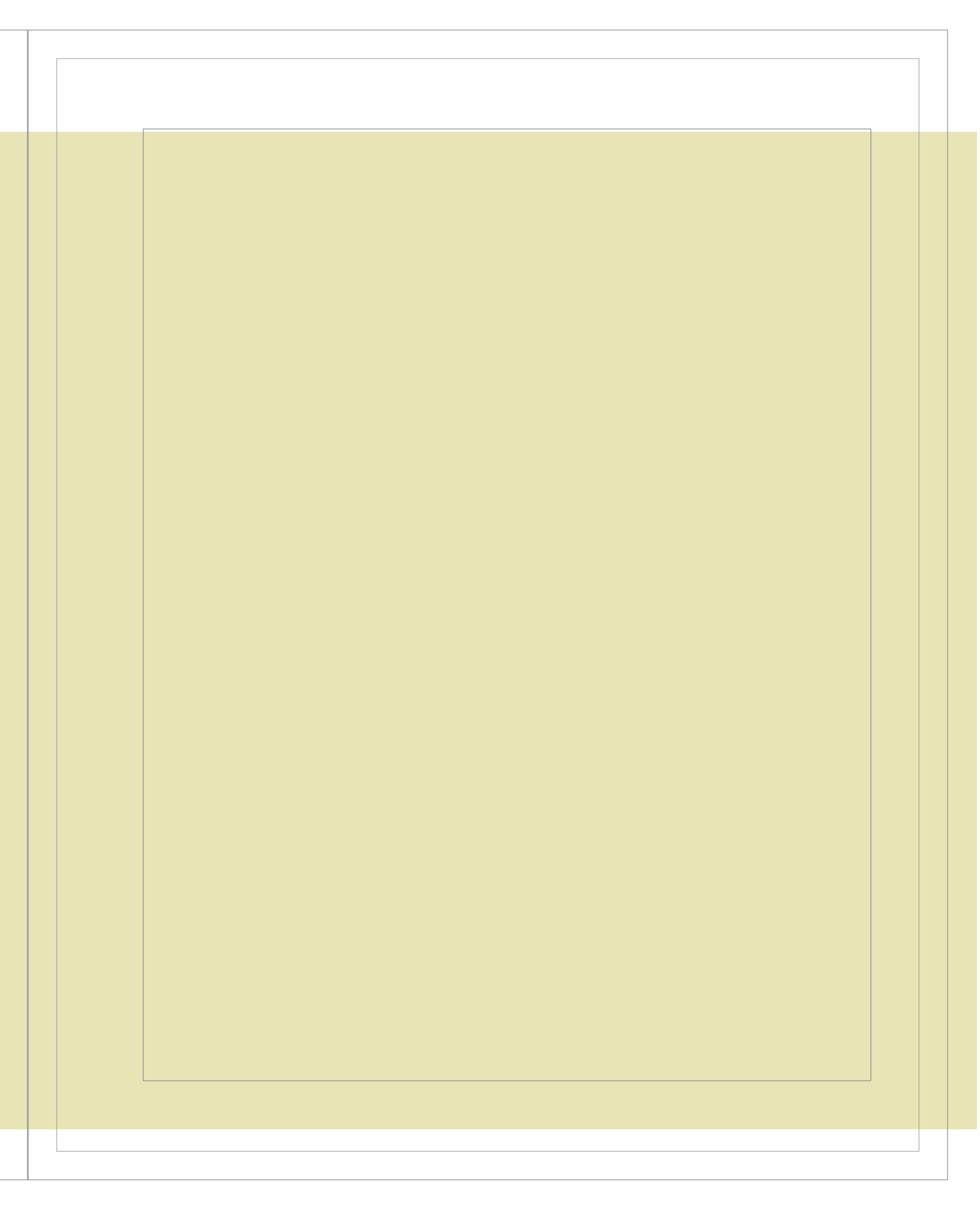
- Should you have settled the case at the beginning?
- Has your attorney been getting rich at your expense?
- Is discovery more of a burden than a help?

## Key Terms

A list of critical words or phrases is found at the end of each chapter. These terms are boldfaced in the text, and definitions are repeated in the glossary.

### Key Terms

Affidavits 100	Directed verdict 106	Petitioner 110
Answer 96	Discovery 97	Plaintiff 88
Appellant 110	Execution 113	Pleadings 95
Appellee 110	Extradition 92	Preponderance of evidence 108
Beyond a reasonable doubt 107	Garnishment 113	Request for an admission 98
Brief 111	Interrogatories 97	Request for production of documents 97
Burden of proof 107	Judgment 109	<i>Res judicata</i> 114
Class-action suit 92	Judgment notwithstanding the verdict 109	Respondent 110
Clear and convincing proof 108	Judgment on the pleadings 100	Standing to sue 89
Complaint 95	Jury instructions 107	Statute of limitations 100
Counterclaim 88	Long-arm statutes 91	Summary judgment 100
Counterdefendant 89	Motion 100	Summons 91
Counterplaintiff 89	Oral argument 111	Third-party defendants 89
Default 96	Peremptory challenges 103	Verdict 109
Defendant 88	Personal jurisdiction 91	<i>Voir dire</i> 102
Depositions 98		





### Instructor's Resources Manual

This manual consists of the teaching outline. The teaching outline section makes up the bulk of this Instructor's Manual, which is organized by text chapter. This section corresponds with the headings in the text and typically includes suggestions on points of emphasis, answers to the case questions that appear within each chapter of the text, cases for discussion, and additional matters for discussion. Each chapter of this manual also includes a list of references that might be useful secondary sources of information and suggested answers to all case questions and responses to the end-of-chapter review questions.

### Test Bank

Instructors can test students' mastery of concepts as the instructors create exams with the use of this Test Bank. Organized by chapter, the Test Bank contains multiple-choice, true/false, and essay questions. Many of the questions have been modified to correspond with the text's revision. Answers immediately follow each question, along with corresponding Learning Objectives.

### PowerPoint Presentation

The PowerPoint Presentation provides detailed lecture outlines for discussing key points and figures from the book.

### Business Law Newsletter

McGraw-Hill Education's monthly Business Law newsletter, *Proceedings*, is designed specifically with the Business Law educator in mind. Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing newsletter topics with the various McGraw-Hill Education business law textbooks. Proceedings is delivered via e-mail to business law instructors each month.

### Assurance of Learning Ready

Many educational institutions today are focused on the notion of assurance of learning, an important element of some accreditation standards. The Legal and Regulatory Environment of Business, 19e, is designed specifically to support your assurance of learning initiatives with a simple, yet powerful solution.

Each test bank question for The Legal and Regulatory Environment of Business, 19e, maps to a specific chapter learning outcome/objective listed in the text. You can use our test bank software to easily query for learning outcomes/objectives that directly relate to the learning objectives for your course.

### AACSB Statement

The McGraw-Hill Companies is a proud corporate member of AACSB International. Understanding the importance and value of AACSB accreditation, *The Legal and Regulatory Environment of Business, 18e*, recognizes the curricula guidelines detailed in the AACSB standards for business accreditation by connecting selected questions in the text and the test bank to the six general knowledge and skill guidelines in the AACSB standards.

The statements contained in *The Legal and Regulatory Environment of Business, 19e*, are provided only as a guide for the users of this textbook. The AACSB leaves content coverage and assessment within the purview of individual schools, the mission of the school, and the faculty. While *The Legal and Regulatory Environment of Business, 19e*, and the teaching package make no claim of any specific AACSB qualification or evaluation, we have within *The Legal and Regulatory Environment of Business, 19e*, labeled selected questions according to the six general knowledge and skills areas.

## **PartONE** Introduction: Legal Foundations for Business

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- 2 The Role of Ethics in Decision Making 26
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- 5 Alternative Dispute Resolution 118
- 6 The Constitution 150

## **PartTWO** Basic Legal Principles

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