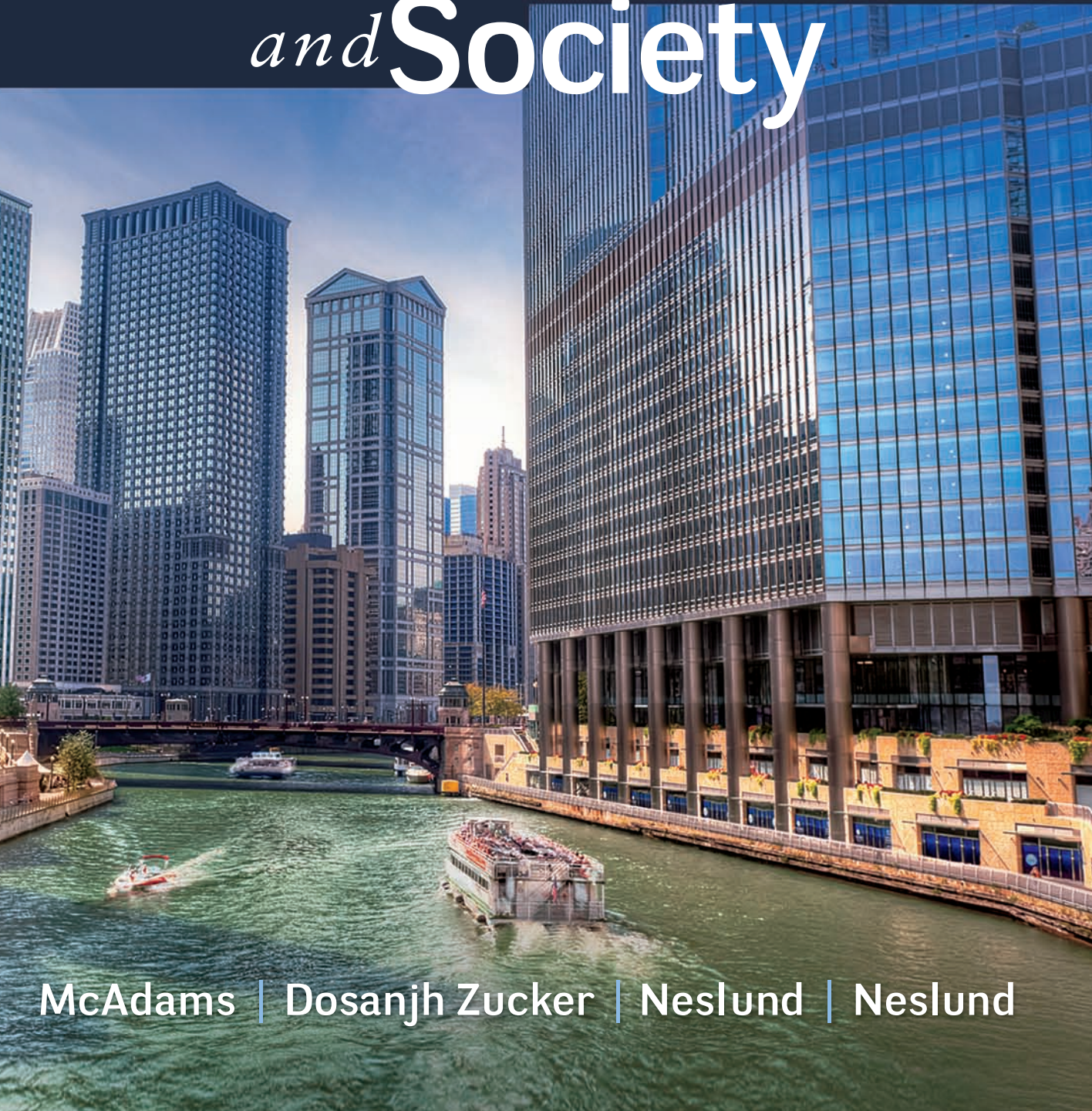


Eleventh Edition

# Law, Business, *and* Society



McAdams | Dosanjh Zucker | Neslund | Neslund

# Law, Business, and Society

*Eleventh Edition*

**Tony McAdams**

*University of Northern Iowa*

**Kiren Dosanjh Zucker**

*California State University,  
Northridge*

**Nancy Neslund**

*University of New Hampshire  
School of Law*

**Kristofer Neslund**

*Ashland University*

**Mc  
Graw  
Hill**  
Education



LAW, BUSINESS, AND SOCIETY, ELEVENTH EDITION

Published by McGraw-Hill Education, 2 Penn Plaza, New York, NY 10121. Copyright © 2015 by McGraw-Hill Education. All rights reserved. Printed in the United States of America. Previous editions © 2012, 2009, and 2007. No part of this publication may be reproduced or distributed in any form or by any means, or stored in a database or retrieval system, without the prior written consent of McGraw-Hill Education, including, but not limited to, in any network or other electronic storage or transmission, or broadcast for distance learning.

Some ancillaries, including electronic and print components, may not be available to customers outside the United States.

This book is printed on acid-free paper.

1 2 3 4 5 6 7 8 9 0 DOC/DOC 1 0 9 8 7 6 5 4

ISBN 978-0-07-802386-6

MHID 0-07-802386-6

Senior Vice President, Products & Markets: *Kurt L. Strand*  
Vice President, General Manager, Products & Markets: *Marty Lange*  
Vice President, Content Production & Technology Services: *Kimberly Meriwether David*  
Brand Manager: *Kathleen Klehr*  
Managing Director: *Tim Vertovec*  
Director of Development: *Ann Torbert*  
Development Editor: *Gail Korosa*  
Product Developer: *Jaroslav Szymanski*  
Marketing Manager: *Michelle Nolte*  
Director, Content Design & Delivery: *Terri Schiesl*  
Content Project Manager: *Lisa Brufodt*  
Buyer: *Michael McCormick*  
Cover Image: *Pawel Gaul/Getty Images*  
Composer: *MPS Limited*  
Typeface: *10/12 Times LT Std*  
Printer: *R. R. Donnelley*

All credits appearing on page or at the end of the book are considered to be an extension of the copyright page.

**Library of Congress Cataloging-in-Publication Data**

Law, business, and society / Tony McAdams, University of Northern Iowa, Nancy Neslund, University of New Hampshire School of Law, Kiren Dosanjh Zucker, California State University, Northridge, Kristofer Neslund, Ashland University. — Eleventh edition.

p. cm.

Includes index.

ISBN 978-0-07-802386-6 (alk. paper)

1. Business enterprises—Law and legislation—United States. 2. Trade regulation—United States.  
3. Business ethics—United States. 4. Industries—Social aspects—United States. I. McAdams, Tony, author. II. Neslund, Nancy, author. III. Zucker, Kiren Dosanjh, author. IV. Neslund, Kristofer, author.

KF1355.M28 2014

346.73'065—dc23

2014022614

The Internet addresses listed in the text were accurate at the time of publication. The inclusion of a website does not indicate an endorsement by the authors or McGraw-Hill Education, and McGraw-Hill Education does not guarantee the accuracy of the information presented at these sites.

# About the Authors

## **Tony McAdams**

Tony McAdams is a Professor of Management at the University of Northern Iowa. He earned a BA in History from the University of Northern Iowa, a JD from the University of Iowa, and an MBA from Columbia University. Professor McAdams's primary teaching interests include government regulation of business, business and society, and employment law. Professor McAdams's research interests include managerial accountability, business ethics, and employment law. His scholarly articles have appeared in such journals as *The Harvard Business Review*, *The Academy of Management Review*, *The Journal of Business Ethics*, and *The American Business Law Journal*. Professor McAdams has received the Iowa Board of Regents Award for Faculty Excellence, the Distinguished Teacher of the Year Award from the student government at the University of Kentucky, and the University of Northern Iowa College of Business Administration Excellence in Teaching Award.

## **Kiren Dosanjh Zucker**

Kiren Dosanjh Zucker, author of Chapters 4, 6, 7, 12, 13, and 14, is a Professor of Accounting and Information Systems at California State University, Northridge (CSUN). She earned a BA in Political Science from Syracuse University and a JD from the University of Michigan. A member of the State Bar of California, she has served on its Committee of Bar Examiners and Committee on Professional Responsibility and Conduct. Her teaching and research interests focus primarily on employment law, pedagogy, and accounting ethics. In 2001, she was selected as a Master Teacher by the Academy of Legal Studies in Business, and in 2004 she received the Outstanding Faculty Award from CSUN's Students with Disabilities Resources. In 2004 and 2006, she also received a CSUN University Ambassadors' Polished Apple Award. In 2014, CSUN Accounting students named her the Harvey A. Bookstein Accounting Professor of the Year.

## **Nancy Neslund**

During the preparation of this edition, Nancy Neslund, author of Chapters 16, 17, and 18, was a visiting professor at the Ohio Northern University Pettit College of Law in Ada, Ohio. She earned a BA in Economics from Willamette University, a JD from Columbia University, and an LLM from New York University. Prior to entering academia, she was a lawyer in private practice for 14 years. During the academic year 2004 to 2005, she was a visiting professor on the law faculty of Europa Universität Viadrina, in Germany on its border with Poland. She teaches business organizations, business planning, financial literacy, and tax law. Her research interests include the social benefit business entities, transnational tax issues, and digital currencies.

## **Kristofer Neslund**

Kristofer Neslund, author of Chapter 9, is Associate Professor of Accounting at Ashland University. He holds a DBA from Kent State University, a JD from Lewis and Clark College, and an LLM in taxation from New York University. He is a CPA and a member of the Oregon bar. Prior to entering academia, he was a tax partner in two law firms, as well as the CFO of a telecommunications company operating in three western states. During the academic year 2004 to 2005, he was a visiting professor in the Master of Professional Accountancy program at UNITEC in New Zealand, and a visiting professor of law at the Europa Universität Viadrina in Germany and La Trobe University in Australia. Dr. Neslund has more recently been a visiting professor of law at the University of New Hampshire and Roger Williams University. He has been selected for a Fulbright Scholarship in Accounting at the University of Iceland for 2015. His research interests are corporate governance, the regulation of the accounting profession, securities regulation, and taxation. He is presently the President of the Tri-State Academy of Legal Studies in Business and President-Elect of Region 4 of the Accreditation Council for Business Schools and Programs.

# Preface

Broadly, our adjustments for this eleventh edition were designed to refresh the book and achieve increased reader interest, but more specifically this edition is directed to the nation's ongoing debate about how much government we need in our lives, particularly in our business lives. Although the general structure and philosophy of the book are unchanged, we have made significant revisions.

## WHAT'S NEW

Chapter 1, a survey of the economic continuum from capitalism to collectivism and their various mutations, has been thoroughly rewritten and updated to reflect the striking economic developments of recent years in the United States and around the world.

Chapter 1 includes discussions of the subprime mortgage fallout and the law's response, as well as the critics' views of big banks and their treatment as being "too big to fail." Recent Wall Street alleged abuses are also discussed, and new data on the wealth gap, poverty, and overall quality of life in the United States are offered. China's ongoing balance between the free market and state oversight is also explored.

Chapter 2 explores the recent financial crisis as an ethics scandal and legal challenge. Various new vignettes, anecdotes, questions, and other features aid this exploration.

Chapter 3 offers a critical view of expanding corporate power addressing tax avoidance, state incentives, and politics. Corporate social responsibility issues such as guns and gun sales are explored, along with the Toyota sudden acceleration case, and fast-food labor issues, which are explored from a legal perspective in subsequent chapters as well.

Chapter 4 includes a discussion of the Rutgers University cyberbullying case and questions that will elicit student discussion on the controversial sentence, as well as antibullying legislation. "Stand your ground," the George Zimmerman trial for the killing of Trayvon Martin, and the "Castle Doctrine" are the subject of a Practicing Ethics box. Critics' views of the Roberts Court are updated, along with discussion of the Walmart class action aftermath, firms' billing practices, and access to justice. Service of process through social media and the use of small claims to sue big corporations is also explored, along with an updated look at the Japanese practice of law.

Chapter 5's discussion of the ongoing Federalism debate is updated, and its analysis of free speech has been simplified and clarified, and the takings debate is revisited. Along with a new search and seizure case discussion, changes in the law governing gay and lesbian rights, including marriage, are discussed.

Chapter 6 offers updates on the Facebook ownership and Huffington Post blogger pay disputes, a clarified example of unjust enrichment, and questions on recent cases such as the *Modern Family* cast's contract dispute. Also covered are the recent claims against Lance Armstrong by his former sponsors following his television admissions of wrongdoing. Further, the Uniform Electronic Transactions Act (UETA) and websites' terms of sale are added subjects.

Chapter 7 includes updates and an accompanying question regarding the Walmart trampling death for the opening Practicing Ethics section, as well as an update on the battery charge against a Valdosta State University professor for shutting a laptop on a student's fingers. A discussion of the 2014 jury verdict in a defamation lawsuit stemming from Yelp postings, and a 2013 negligence case involving an assault in a bowling alley parking lot have also been added. The closure of Blitz, the red gasoline can maker, is discussed to raise the larger question of whether litigation or corporate greed are to blame for the pressures facing high-risk businesses. The recent legal issues raised by video game makers' use of college football players' images are discussed in light of recent developments. The Toyota saga as it extends to electric throttle systems is also discussed.

Chapter 8 explores the 2012 U.S. Supreme Court decision in *National Federation of Independent Business v. Sebelius*, and its view of the commerce clause versus taxation power of the U.S. Congress. A new case on indecency is included. TARP and Dodd–Frank developments are reviewed.

Chapter 9 includes discussion of “distorporations,” as well as discussions of the SEC's recent social media guidance on Regulation FD, its approach to settlements, its lift on the ban to advertise for unregistered securities, and new approach to settlements. Recent white-collar criminal cases against SAC and Goldman Sachs' Rajat Gupta are also discussed, as is Delaware's attempt to gain exclusive jurisdiction over incorporation.

Chapter 10 includes a recent Robinson–Patman case: The intersection between antitrust and intellectual property is further explored and clarified.

Chapter 11 updates antitrust developments with Apple, Google, and Microsoft and provides an overview of recent legal scrutiny applied to mergers.

Chapter 12's drug testing sections are reorganized for clarity and flow, and a new “privacy at work” case highlights personal privacy in the small, private-sector workplace. Recent legal developments are highlighted, such as updated discussions on the 2010 Patient Protection and Affordable Care Act, the EEOC 2012 criminal background check guidelines, and a recent case raising questions on the utility of such pre-employment measures in preventing workplace violence, a 2012 U.S. Supreme Court decision impacting the FMLA rights of state workers, updated examples including a new example of constructive discharge, as well as more recent surveys and statistics.

Chapter 13 includes the U.S. Supreme Court's recent decisions impacting retaliation and employers' affirmative defense for sexual harassment, which is, in turn, highlighted by a 2014 federal case. An updated discussion on sexual-orientation discrimination protections that includes the Spring 2014 social-media-fueled, successful campaign to oust a CEO who had contributed to an anti-gay marriage political group, as well as the EEOC's GINA Enforcement Guidance, is offered. Updates on the cases against A&F found in the opening Practicing Ethics discussion, as well as updated survey results and statistics, are offered. The discussion of the EEOC's “right to sue” letters is clarified as well.

Chapter 14's discussion of unfair labor practices in management is reorganized to include a fuller discussion of recent applications of the NLRA, to, for example, at-will employment clauses, dress codes, and social media postings. The good-faith bargaining explanation has been clarified and updated, as well as the Boeing dispute.

Chapter 15 offers a discussion of the consumer protection issues associated with for-profit schools. Legal and ethical issues raised by payday loans operations are also explored.

The ongoing struggles at the governing agencies such as FDA, CFPB, and CPSC are also discussed.

Chapter 16 offers an updated discussion of free speech, encompassing social media and Internet service providers. Emerging issues of effective regulation of multinational enterprises are discussed, as well as the SEC's extraterritorial powers under the Dodd–Frank Act. Updates on accounting standards, including the status of the convergence project between IFRS and GAAP and the PCAOB on the global stage, are also included.

Chapter 17 sheds light on the complexity of environmental issues through current examples, such as the impact of burning of forests in Indonesia to accommodate palm oil plantations on air pollution levels in Singapore and southern Malaysia. Cap-and-trade programs, tax incentives, “green growth” examples, and updated statistics and enforcement settlements are also discussed.

Chapter 18 updates include cybersecurity, the digital divide, the FCC's recent rules on net neutrality, legal issues stemming from “revenge porn” websites, price discrimination, cross-device tracking, market response to the use of copyrighted material, top-level domain name sales (TLDS) as an ethical issue, and the effort to make state sales tax uniform to support interstate, online sales transactions.

## OVERVIEW

This text is directed to courses at both the upper-division undergraduate and masters levels in the legal environment of business, government and business, and business and society. Authors of textbooks in these areas often rely on a single discipline (for example, law, economics, or management) as the foundation for their efforts. In this text we take an interdisciplinary approach, using elements of law, political economy, international business, ethics, social responsibility, and management. This large task necessarily requires certain trade-offs, but we hope the product will more accurately capture the fullness of the business environment.

Our primary goal is to produce an interesting, provocative reading experience. Naturally, accuracy and reasonable comprehensiveness cannot be sacrificed. Our feeling, however, is that a law text can be both intellectually and emotionally engaging without sacrificing substantive ends. To meet our objective we have presented the bulk of the book in the form of contemporary legal and ethical conflicts emerging from today's news. We have provided scholarly results, surveys, polls, data, anecdotes, and other specific details that lend credibility, immediacy, and interest to the reading experience.

The book is divided into five units, as follows:

*Unit I—Business and Society.* We do not begin with the law. Rather, in Chapter 1 (Capitalism and the Role of Government), Chapter 2 (Business Ethics), and Chapter 3 (The Corporation and Public Policy: Expanding Responsibilities), we describe some of the economic and social forces that shape our legal system.

The goals of Unit I are to (a) enhance student awareness of the many societal influences on business, (b) establish the business context from which government regulation arose, and (c) explore the roles of the free market, government intervention, and individual and corporate ethics in shaping business behavior.



The student must understand not merely the law but the law in context. What forces have provoked government intervention in business? What alternatives to our current “mixed economy” might prove healthy? These considerations help the students respond to one of the critical questions of the day: To what extent, if any, should we regulate business?

*Unit II—Introduction to Law.* Chapter 4 (The American Legal System) and Chapter 5 (Constitutional Law and the Bill of Rights) survey the foundations of our legal system. Here we set out the “nuts and bolts” of law, combining cases and narrative. Then with Chapter 6 (Contracts) and Chapter 7 (Business Torts and Product Liability), we examine the foundations of business law.

*Unit III—Trade Regulation and Antitrust.* Chapter 8 (Government Regulation of Business) raises the book’s central policy inquiry: When should the government intervene in business practice? Chapter 9 (Business Organizations and Securities Regulation), Chapter 10 (Antitrust Law—Restraints of Trade), and Chapter 11 (Antitrust Law— Monopolies and Mergers) survey the core of government oversight of business.

*Unit IV—Employer–Employee Relations.* Chapter 12 (Employment Law I: Employee Rights), Chapter 13 (Employment Law II: Discrimination), and Chapter 14 (Employment Law III: Labor–Management Relations) are intended not only to survey the law in those areas, but also to introduce some of the sensitive and provocative social issues that have led to today’s extensive government intervention in the employment relationship.

*Unit V—Selected Topics in Government–Business Relations.* Two of the closing chapters of this book—Chapter 15 (Consumer Protection) and Chapter 17 (Environmental Protection)—emphasize the dramatic expansion of the public’s demands for socially responsible conduct in business. Chapter 16 (International Ethics and Law) provides an overview of the legal and ethical issues emerging from global business practice, and Chapter 18 (Internet Law and Ethics) surveys some cyberlaw and ethics problems.

## ACCREDITATION

Our text conforms to Association to Advance Collegiate Schools of Business (AACSB) International accreditation standards.

Two chapters are devoted exclusively to ethics, and ethics themes emerge throughout the book. The chapter on employment discrimination should be quite helpful in aiding students’ understanding of diversity issues.

Furthermore, as required by the rapidly changing nature of commerce and as recommended by the AACSB, the text devotes extensive attention to legal and ethical issues arising from international business. Various topics throughout the text (for example, comparative economic systems, the Foreign Corrupt Practices Act, and global pollution) afford the student a sense of the worldwide implications of American business practice, and Chapter 16 is entirely devoted to international themes.

## PHILOSOPHY

As noted, our primary goal is to provoke student thought. To that end, we place heavy emphasis on analysis. We consider the questions we ask more important than the answers to those questions. We introduce the student to existing policy in the various substantive

areas, to encourage understanding and retention, as well as careful thought about the desirability of those policies.

Our book takes a strong public policy orientation. Attention in Unit I to political economy and ethics is a necessary foundation on which the student can build a logical understanding of the regulatory process. Thereafter, those business and society themes persist throughout the book. In virtually every chapter, we look beyond the law itself to other social and environmental forces. For example, in the antitrust chapters economic philosophy is of great importance. Antitrust is explored as a matter of national social policy. We argue that antitrust has a good deal to do with the direction of American life generally. Law is at the heart of the fair employment practices section, but we also present material from management, sociology, history, and popular culture to treat fair employment as an issue of public policy rather than as a series of narrower technical legal disputes. These multidimensional approaches characterize most chapters as we attempt to examine the various topics as a whole and in context. At the same time, the law remains the core of the book.

## KEY FEATURES/DEPARTURES

Approximately 150 “boxes” and ethics vignettes place the law in a practical context and offer many provocative opportunities for discussion.

Ethics and social responsibility are at the heart of the text rather than an afterthought to meet accreditation standards.

International issues receive extensive attention.

Law cases are long enough to clearly express the essence of the decision while challenging the reader’s intellect.

The law is studied in the economic, social, and political context from which it springs.

Critics of business values and the American legal system receive attention.

Approximately 200 selected websites, including suggested online videos, appear in this edition, and each chapter includes at least one Internet Exercise.

Perhaps the key pedagogical tactic in the book is the emphasis on questions rather than on answers.

## INSTRUCTOR’S MANUAL

A package of supplementary materials is included in the instructor’s manual. Those materials include (1) chapter outlines, (2) general advice regarding the goals and purposes of the chapters, (3) summaries of the law cases, (4) answers for the questions raised in the text, and (5) a test bank.

## TEST BANK

Instructors can test students using a vast bank of test questions divided by chapter.

## **POWERPOINTS**

This edition's revised PowerPoints contain an easy-to-follow lecture outline summarizing key points for every chapter.

## **ACKNOWLEDGMENTS**

Completion of the eleventh edition of this book depended, in significant part, on the hard work of others.

The authors are pleased to acknowledge the contributions of these good people: Tim Vertovec, Managing Director; Lisa A. Bruflo, Content Project Manager; Gail Korosa, Senior Product Developer; Jaroslaw (Jarek) Szymanski, Product Developer; and Dheeraj Chahal, Full Service Project Manager.

The authors also thank the reviewers from past editions.

## **SUGGESTIONS**

The authors welcome comments and feedback from all readers.

*Kiren Dosanjh Zucker*

# Brief Contents

**Preface** v

## **UNIT ONE**

**Business and Society** 1

- 1 Capitalism and the Role of Government 2
- 2 Business Ethics 50
- 3 The Corporation and Public Policy: Expanding Responsibilities 90

## **UNIT TWO**

**Introduction to Law** 139

- 4 The American Legal System 140
- 5 Constitutional Law and the Bill of Rights 188
- 6 Contracts 231
- 7 Business Torts and Product Liability 277

## **UNIT THREE**

**Trade Regulation and Antitrust** 329

- 8 Government Regulation of Business 330
- 9 Business Organizations and Securities Regulation 382
- 10 Antitrust Law—Restraints of Trade 434
- 11 Antitrust Law—Monopolies and Mergers 467

## **UNIT FOUR**

**Employer–Employee Relations** 501

- 12 Employment Law I: Employee Rights 502
- 13 Employment Law II: Discrimination 554
- 14 Employment Law III: Labor–Management Relations 605

## **UNIT FIVE**

**Selected Topics in Government–Business Relations** 645

- 15 Consumer Protection 646
- 16 International Ethics and Law 685
- 17 Environmental Protection 736
- 18 Internet Law and Ethics 779

## **APPENDIX A**

**The Constitution of the United States of America** 822

## **APPENDIX B**

**Uniform Commercial Code 2000 Official Text, Article 2** 838

**GLOSSARY OF LEGAL TERMS** 878

**CASE INDEX** 900

**SUBJECT INDEX** 906

# Contents

**About the Authors** iii

**Preface** v

## **UNIT ONE**

### **BUSINESS AND SOCIETY 1**

#### **Chapter 1**

#### **Capitalism and the Role of Government 2**

- Part One—Introduction 2
  - Capitalism Challenged: Economics 3
    - The Great Recession 3
    - Subprime Mortgages 3
    - Big Banks 3
    - Globalization 4
  - Capitalism Challenged: Morality 4
    - Wall Street Abuses 4
    - Greed 4
  - Capitalism Challenged: America in Decline? 5
    - Vast Resources 6
  - Purpose: What Do We Hope to Accomplish? 7
    - Markets and Governments 7
    - Law 7
- Part Two—Capitalism: Reduce Government? 8
  - Capitalism in Practice—“Privatization” in America and Abroad 12
    - Space Travel 13
    - Toll Roads, Parking Meters, and Congestion Pricing 13
    - Schools 14
    - Privatization a Success? 15
- Part Three—Collectivism: Increase Government? 18
  - Communism 18
    - Communist Principles 18

- Socialism 19
  - Socialist Goals 19
- Coping with Capitalism—China and Russia 21
  - China—Economics 21
    - Problems* 21
    - Changing Labor Markets* 22
  - China—Politics 22
    - Freedom* 22
    - Reforms* 22
  - Russia—Economics 23
  - Russia—Politics 24
- Part Four—Middle Ground? A Mixed Economy (The Third Way) 25
  - Sweden 25
    - Taxes* 26
  - American Capitalism in Europe? 27
    - Welfare Reform* 27
    - EU Failure?* 27
  - Contrasting Values 28
- Part Five—America’s Economic Future: Where Are We Going? 30
  - How Much Government?* 30
  - Good News* 31
- The American Dream at Risk? 31
  - Overall Quality of Life 31
  - Poverty 32
  - The Gaps 33
  - Community 34
  - Declining Social Capital? 35
    - An Opportunity Gap and Declining Community?* 35
  - Too Much Capitalism? Or Too Little? 36
    - A “Remix” Needed? 37
    - A New World Consensus? 37
- Internet Exercise 39
- Chapter Questions 39
- Notes 42

**Chapter 2****Business Ethics 50**

- Part One—Introduction to Ethics 50
  - The Financial Crisis: A Corporate Scandal? 51
  - Too Big to Jail? 51
  - A Pattern of Abuse 53
  - America’s Moral Climate 54
    - College Students 55
    - Changing Values? 56
- Part Two—Analyzing Ethical Dilemmas 58
  - Ethics Theories 58
    - Universal Truths? 59
    - Teleology or Deontology—An Overview 60
    - Teleology 60
      - Utilitarianism* 60
    - Deontology 61
      - Formalism* 61
  - Using Ethical Reasoning: Two Cases 62
    - Are Layoffs Unethical? Case One—Toyota 62
    - Are Layoffs Unethical? Case Two (Part I)—Aaron Feuerstein and Malden Mills 63
    - Are Layoffs Unethical? Case Two (Part 2)—Aaron Feuerstein, Malden Mills, and Bankruptcy 64
- Part Three—Managerial Misconduct? 65
  - Corporate Ethical Climate 65
  - Why Do Some Managers Cheat? 66
    - Moral Development 66
      - Feminine Voice* 67
    - Reason or Emotion? 67
    - Moral Identity? 68
    - Organizational Forces 68
    - The Boss 69
- Part Four—Business Ethics in Practice 73
  - Introduction: Corporate/White-Collar Crime 73
    - Prevention or Enhanced Punishment 74
    - Sentencing 75
  - Global Bribery 76
    - Controversy 76
      - United States Corruption* 77
    - Bribery in Daily Life 77

- Whistle Blowing 79
  - Retaliation 79
  - Ethics Codes 80
- Internet Exercise 81
- Chapter Questions 81
- Notes 85

**Chapter 3****The Corporation and Public Policy: Expanding Responsibilities 90**

- Introduction 91
- Part One—Corporate Power and Corporate Critics 92
  - The Corporate State—Economics 93
    - Taxes 93
    - Misconduct/Incompetence? 94
    - Monopoly and More 94
    - Globalization 95
      - Globalization Fears* 96
  - The Corporate State—Politics 97
    - Corporate Influence 98
      - Change the Law?* 99
      - Lobbying* 100
      - Lobbying by the Numbers* 100
      - Buy Votes?* 101
  - The Corporate State—Social Issues and Institutions 101
    - Schools* 102
      - Advertising and Promotion* 102
      - Manage Public Schools* 102
      - Higher Education* 102
    - Religion* 103
    - Culture* 104
    - Sports* 105
      - What Have We Lost?* 106
      - Marketing* 106
      - High School Next?* 106
      - America’s Soul?* 107
- Part Two—Corporate Social Responsibility 109
  - Introduction 109
    - Social Enterprise/Social Entrepreneurship 110
    - A New Ideology 111

What Is Social Responsibility? 111  
    *Profit Maximization* 112  
    *Long-Term Company Interest* 112  
    *Triple Bottom Line/Sustainability* 113  
Social Responsibility Pyramid 114  
Corporations Practicing Social  
    Responsibility 116  
Google’s Multiple CSR Strategies 116  
CSR: Two Big Questions 118  
    I. *Is CSR Good Business?* 118  
    II. *Do We Have a Better Alternative?*  
        *Creating Shared Value* 118  
Part Three—Managing Social  
    Responsibility 119  
Stakeholder Approach 119  
    *Manage or Collaborate?* 119  
    *Stakeholder Results* 120  
Shareholder Approach 121  
    Critics 122  
Part Four—Social Responsibility Cases  
Case One: Guns 123  
    Social Responsibility Cases Two to Four:  
        Wages 125  
        Case Two: Fast-Food Pay Unfair/  
            Unconscionable? 125  
        Case Three: Pay More Than the Law  
            Requires? 126  
        Case Four: Making a Profit—Reduce  
            Wages? 126  
Internet Exercise 127  
Chapter Questions 127  
Notes 131

## UNIT TWO

### INTRODUCTION TO LAW 139

#### Chapter 4

#### The American Legal System 140

Introduction 140  
    *Law and the Market* 141  
Part One—Legal Foundations 142  
    Objectives of the Law 142  
    Justice 142

Primary Sources of Law 143  
    Constitutions 144  
    Statutes 144  
    Regulations 144  
    Common Law (Also Called Case Law or Judge-  
        Made Law) 144  
    The Case Law: Locating and Analyzing 144  
    Briefing the Case 145  
Classifications of Law 148  
    *Substantive and Procedural Law* 148  
    *Law and Equity* 149  
    *Public Law and Private Law* 149  
    *Civil Law and Criminal Law* 149  
        *Crimes* 149  
        *Elements of a Crime* 150  
        *Criminal Procedure* 150  
Part Two—The Judicial Process 153  
    State Court Systems 153  
    Federal Court System 154  
        District Courts 154  
        Courts of Appeals 155  
        Supreme Court 155  
        Critics 155  
        Ideological Rulings? 155  
    Jurisdiction 156  
        Subject-Matter Jurisdiction 156  
        Personal Jurisdiction 157  
    Venue 160  
    Standing to Sue 161  
    Class Actions 163  
    The Civil Trial Process 163  
        Pleadings 163  
        Motions 165  
        Discovery 165  
        Pretrial Conference 165  
        The Judge and Jury 166  
            *Misleading the Jury?* 166  
        The Trial 168  
            *Experts* 168  
        Post-Trial Motions 170  
        Appeals 170  
Part Three—Criticism and Alternatives 171  
    Criticism 171  
        Too Many Lawyers and Lawsuits? 172  
    The Corporate Perspective 172

Criticized in America; Embraced Abroad	173
<i>Japan</i>	173
On the Other Hand—Litigation as a Last Resort	174
<i>Fewer Trials</i>	175
Reform: Judicial Efficiency	175
<i>Small Claims Courts</i>	176
Alternative Dispute Resolution	176
What Is Alternative Dispute Resolution?	177
Mediation	177
Arbitration	177
Private Trials	177
Mini-trials	178
ADR Assessed	178
Internet Exercise	181
Chapter Questions	181
Notes	185

## Chapter 5 Constitutional Law and the Bill of Rights 188

Creating a Constitution—The United States	189
Structure and Purpose	190
Government Power and Constitutional Restraints	192
Too Much Government?	192
Separation of Powers	192
Federalism	193
The Constitution and the New Federalism	193
The Constitution, the Bill of Rights, and Business	194
The First Amendment	195
1. Freedom of Religion	195
<i>God, the Pledge, and Currency</i>	196
<i>God and Student Organizations</i>	196
2. Freedom of Speech	197
<i>What Is Expression?</i>	197
<i>Free Speech Analysis</i>	197
<i>Content: Vile Words</i>	198
<i>Context: Panhandling</i>	198
<i>Balancing Interests: Speech at School</i>	198
<i>Public Sector Workers Off the Job? On the Job?</i>	198

<i>Politically Correct Speech</i>	199
<i>Yale</i>	200
<i>Maricopa CCC</i>	200
<i>Ole Miss</i>	201
<i>George Mason</i>	201
Commercial Speech	204
<i>Corporate/Commercial Speech</i>	204
<i>Animal Cruelty</i>	205
The Fourth Amendment	208
Business Searches	212
The Fifth Amendment	213
Takings—Eminent Domain	213
Takings—Regulatory	216
The 14th Amendment	217
Due Process	217
<i>Substantive Due Process</i>	217
<i>Procedural Due Process</i>	218
<i>Due Process: Void for Vagueness</i>	218
Equal Protection	220
<i>Same-Sex Marriage: Equal Rights?</i>	221
Internet Exercise	224
Chapter Questions	224
Notes	227

## Chapter 6 Contracts 231

Preface: The Role of Contracts in a Complex Society	231
Part One—Building a Binding Contract	232
Introduction	232
<i>The Uniform Commercial Code</i>	233
What Is a Contract?	234
Classification of Contracts	234
Contract Formation	234
Contract Performance	235
Contract Enforceability	235
The Agreement: Offer	236
<i>Intent</i>	236
<i>Advertisements</i>	237
<i>Definiteness</i>	238
<i>Communication</i>	239
<i>Duration of an Offer</i>	239
<i>Irrevocable Offers</i>	240



The Agreement: Acceptance	240	<i>Unacceptable Performance—Material</i>	
<i>Communication of Acceptance</i>	241	<i>Breach of Contract</i>	266
<i>Mailbox</i>	241	<i>Advance Refusal to Perform—Anticipatory</i>	
<i>Authorization</i>	241	<i>Breach of Contract</i>	267
<i>Modern View</i>	241	When Has a Breach of Contract Occurred?	
Consideration	241	When Should the Law Intervene in a	
<i>Adequacy of Consideration</i>	243	Contract? 267	
<i>Appearance of Consideration</i>	243	<i>Discharge by Lawful Excuses (for</i>	
<i>Substitutes for Consideration</i>	244	<i>Nonperformance)</i>	269
Capacity	245	<i>Impossibility</i>	269
<i>Intoxication</i>	245	<i>Commercial Impracticability</i>	269
<i>Mental Incompetence</i>	245	<i>Discharge by Agreement</i>	269
<i>Minority</i>	246	<i>Discharge by Operation of Law</i>	269
Genuineness of Assent	248	Remedies	270
<i>Misrepresentation and Fraud</i>	248	Remedies in Law	270
<i>Duress</i>	251	<i>Compensatory Damages</i>	270
<i>Undue Influence</i>	251	<i>Consequential Damages</i>	270
<i>Mistake</i>	252	<i>Incidental Damages</i>	271
Legality of Purpose	252	<i>Nominal Damages</i>	271
Part Two—Interpreting and Enforcing		<i>Punitive Damages</i>	271
Contracts	257	<i>Rescission and Restitution</i>	271
In Writing?	257	<i>Mitigation</i>	271
<i>Failure to Comply</i>	259	<i>Liquidated Damages</i>	272
<i>The Parol Evidence Rule</i>	259	Remedies in Equity	272
<i>Exceptions</i>	259	<i>Specific Performance</i>	272
Third Parties	260	<i>Injunction</i>	272
<i>Assignment of Rights</i>	260	<i>Reformation</i>	272
<i>Delegation of Duties</i>	261	<i>Quasi-Contract</i>	272
<i>Third-Party Beneficiary</i>		Internet Exercise	273
Contracts	261	Chapter Questions	273
Creditor Beneficiary	261		
Donee Beneficiary	262		
Incidental Beneficiary	262		
Discharge	264		
<i>Discharge by Conditions</i>	265		
<i>Conditions Precedent</i>	265		
<i>Conditions Subsequent</i>	265		
<i>Conditions Concurrent</i>	265		
<i>Express or Implied Conditions</i>	265		
<i>Discharge by Performance or by Breach of</i>			
Contract	266		
<i>Complete Performance—No Breach of</i>			
Contract	266		
<i>Substantial Performance—Nonmaterial</i>			
Breach of Contract	266		

## Chapter 7 Business Torts and Product Liability 277

Part One—Torts: An Introduction	278
Tort Categories	279
Tort Law	280
Selected Intentional Torts against	
Persons	280
Battery	280
Assault	280
False Imprisonment	280
Fraud	281
Defamation	282

<i>Invasion of Privacy</i>	283
<i>Intentional Infliction of Emotional Distress</i>	284
Selected Intentional Torts Against Property	284
Selected Intentional Tort Defenses	287
<i>Consent</i>	287
<i>Mistake</i>	287
<i>Necessity</i>	287
<i>Self-Defense</i>	288
Part Two—Product Liability	289
Introduction	289
<i>Product Liability and Business Practice</i>	290
Negligence	291
Negligence Test	292
Classes of Negligence Claims	296
<i>Manufacturing Defects</i>	296
<i>Res Ipsa</i>	298
<i>Design Defects</i>	298
<i>Warnings</i>	302
Negligence Defenses: Introduction	305
Negligence Defenses: Rules	306
<i>Comparative Negligence</i>	306
<i>Contributory Negligence</i>	306
<i>Assumption of Risk</i>	306
Warranties	307
Express Warranties	307
<i>Puffing</i>	308
Implied Warranties	308
Disclaimers	309
Magnuson–Moss Warranty Act	309
Strict Liability	313
Strict Liability: Overview	313
Strict Liability: Coverage	316
Strict Liability: Defenses	317
Part Three—Product Liability and Public Policy	317
<i>For Tort Reform</i>	318
<i>Against Tort Reform</i>	318
Big Case: Lead Paint?	319
Too Much Law?	321
Internet Exercise	321
Chapter Questions	321
Notes	325

## UNIT THREE TRADE REGULATION AND ANTITRUST 329

### Chapter 8 Government Regulation of Business 330

Part One—An Introduction	331
How Much Government?	332
Why Regulation?	332
Market Failure	332
<i>Imperfect Information</i>	332
<i>Monopoly</i>	333
<i>Externalities</i>	333
<i>Public Goods</i>	333
Regulatory Life Cycle?	334
Philosophy and Politics	335
The Constitutional Foundation of Business Regulation	336
Commerce Clause Examined	336
Too Much Federal Power?	337
<i>Obamacare</i>	338
Supremacy Clause	341
Part Two—State and Local Regulation of Interstate Commerce	342
Summary of State and Local Regulation	346
<i>Licensure</i>	347
<i>Rules and Community Welfare</i>	348
Part Three—Administrative Agencies and the Regulatory Process	352
Introduction to Administrative Agencies	352
The Federal Agencies	352
History	352
Creating the Agencies	353
Agency Duties	354
Operating the Agencies	354
Executive Functions	354
Legislative Functions	355
<i>Rules</i>	355
<i>The Rule-Making Process</i>	355
<i>Hybrid Rule-Making</i>	356
<i>Challenging an Agency Rule</i>	356

- Judicial Functions 356
  - Rule-Making or Adjudication?* 356
  - Administrative Hearing* 357
  - Administrative Law Judge* 357
- Controlling the Agencies 358
  - Executive Constraints 358
  - Congressional Constraints 358
  - Judicial Review 359
- The FCC and Indecency Today 361
- Part Four—The Federal Regulatory Process
  - Evaluated 363
    - TARP* 364
    - Financial Reform* 364
  - Bigger Government? 365
    - I. Excessive Regulation 366
    - II. Insufficient Regulation 367
    - III. Ineffective Regulation 367
  - Further Deregulation or Reregulation? 369
    - Financial Services* 369
    - Regulatory Virtue* 369
  - The Winner: The Mixed Economy? 370
    - Young People?* 370
  - Global Regulation 371
  - Two Concluding Cases 371
    - Case I. FDA Ban on Menthol Cigarettes? 371
    - Case II. Cell Phones: A Deadly Distraction? 372
- Internet Exercise 373
- Chapter Questions 373
- Notes 377

## **Chapter 9**

### **Business Organizations and Securities Regulation 382**

- Introduction 382
- Part One—Business Entities and Their Defining Characteristics 384
- Corporations 385
  - Formation and Nontax Costs 386
  - Management Structure 387
    - Business Judgment Rule* 388
    - Director, Officer, Employee Liability* 389
  - Limited Liability 390
  - Transferability of Ownership Interests 391
  - Duration of Existence 391
  - Taxes 391

- Capital Structure 393
- Partnerships 394
  - Formation and Nontax Costs 395
  - Management Structure 396
  - Limited Liability 397
  - Transferability of Ownership Interests 397
  - Duration of Existence 397
  - Taxes 398
  - Capital Structure 398
  - Limited Liability Companies 398
- Other Hybrid Forms 400
  - Limited Liability Partnerships* 400
  - Professional Limited Liability Companies (PLLCs) and Professional Limited Liability Partnerships (PLLPs)* 400
  - Limited Partnerships* 401
  - Limited Liability Limited Partnerships* 401
  - Series Limited Liability Companies* 401
- International Hybrids 401
- Circumstances Favoring a Specific Business Form 402
- Part Two—Corporate Governance in Public Corporations 403
- The Management Pyramid 404
- The Shareholder Rights Movement 405
  - Majority Rules 406
  - Broker Voting 406
  - Proxy Access 407
- Executive Compensation 407
- Part Three—Regulation of the Securities Markets 409
- Introduction 409
- Initial Public Offerings 409
  - 1933 Act* 410
  - Exemptions 413
- The Secondary Securities Markets 414
  - Brokers and Online Trading 415
- Violating Federal Securities Laws 416
  - False or Misleading Statements in Required Filings—1933 Act 416
  - False or Misleading Statements in Required Filings—1934 Act 419
  - Fraud 419
  - Insider Trading 421
    - Tippees* 423
  - Short-Swing Profits 425

Securities Law Enforcement Actions	425
Private Enforcement	425
Government Enforcement	426
Other Regulatory Oversight	427
Tender Offers	427
State Securities Regulation	428
International Securities Regulation	428
Internet Exercise	429
Chapter Questions	429
Notes	431

## Chapter 10

### Antitrust Law—Restraints of Trade 434

Part One—The Foundations of Antitrust Law	435
Antitrust—Early Goals	435
Antitrust: Balanced Enforcement?	436
Antitrust Enforcement and Statutes	436
Sherman Antitrust Act, 1890	437
Clayton Act, 1914	437
Federal Trade Commission Act	437
Federal Antitrust Law and Other Regulatory Systems	437
State Law	437
Patents, Copyrights, and Trademarks	437
Law of Other Nations	438
Part Two—Horizontal Restraints	438
Horizontal Territorial and Customer Restraints	439
Horizontal Price Fixing	439
Proof	439
<i>Parallel Conduct</i>	440
<i>Aggressive Enforcement</i>	440
<i>Cigarette Pricing</i>	443
Refusal to Deal/Group Boycotts	445
Part Three—Vertical Restraints	447
Resale Price Maintenance	448
<i>Leegin in Practice (the Law)</i>	452
<i>Leegin in Practice (the Business Response)</i>	452
Vertical Territorial and Customer Restraints	452
Tying Arrangements	453
<i>The Law</i>	453
<i>Franchise Tying?</i>	454

Exclusive Dealing and Requirements	
Contracts	456
<i>Gore-Tex</i>	457
<i>American Needle</i>	457
Price Discrimination	458
Predatory Pricing	461
Antitrust Confronts Intellectual Property	461
Internet Exercise	463
Chapter Questions	463
Notes	466

## Chapter 11

### Antitrust Law— Monopolies and Mergers 467

Introduction—Google, Microsoft, and Monopoly	467
<i>Microsoft a Monopolist?</i>	468
<i>Settlements</i>	469
Part One—Monopoly	470
<i>Principal Monopoly Legislation: Sherman Act, Section 2</i>	470
<i>Monopoly Defined</i>	470
<i>Oligopoly</i>	470
Monopolization Analysis	472
1. Product Market	472
2. Geographic Market	472
3. Market Power (Market Share)	473
4. Intent (Predatory or Coercive Conduct)	473
5. Defenses	474
Attempted Monopolization	474
Monopoly Case I	474
Monopoly Case II	477
Part Two—Mergers	482
<i>Why?</i>	483
Merger Virtues	483
Merger Problems	484
<i>When Should the Government Intervene?</i>	484
Merger Law: Overview	485
<i>Premerger Notification</i>	486
<i>Remedies</i>	486
Horizontal Analysis	486
Market Power	487
<i>Market</i>	487
<i>Market Concentration</i>	487

*Adverse Effects* 488  
*Ease of Entry* 488  
*Defenses* 488  
Guideline Changes 488  
Vertical Analysis 489  
    *Vertical Merger Challenge* 489  
Horizontal Merger Case 490  
Part Three—American Antitrust Laws and the  
    International Market 494  
    Sherman Act 494  
    Clayton Act 494  
    Federal Trade Commission Act 494  
    Extraterritoriality 494  
International Antitrust Enforcement 494  
    *European Union Antitrust*  
        *Enforcement* 495  
    *Other Nations* 495  
Internet Exercise 495  
Chapter Questions 495  
Notes 498

**UNIT FOUR**  
**EMPLOYER–EMPLOYEE**  
**RELATIONS 501**

**Chapter 12**  
**Employment Law I: Employee**  
**Rights 502**

Introduction 502  
    *Managing Lawsuits* 503  
Part One—The Employment Relationship 503  
    *Job Classification* 503  
    *Employee or Independent*  
        *Contractor?* 504  
    *Classification Problems* 504  
    *Selection and Hiring* 505  
Part Two—Liability 507  
    *Scope of Employment* 508  
    Hiring/Retention/Training/Supervision 509  
    Negligence 509  
Part Three—Fair Labor Standards Act 512  
    *Minimum Wage* 513  
    *Overtime* 513  
    *Student Interns* 514

Part Four—Health and Safety at Work 514  
    *Gordon Jones* 514  
    *Fifteen Die in 2005 Refinery Blast* 515  
    *Deaths, Illnesses, and Injuries* 515  
OSHA 515  
    Standards 515  
    More New Standards? 516  
        *Ergonomics* 516  
        *Violence* 516  
    Variances 516  
OSHA Information Requirements 517  
    Right to Know 517  
    Records 517  
    Enforcement 517  
        *Citations* 518  
        *Firmer Enforcement?* 518  
Workers' Compensation 518  
    Benefits 519  
    Coverage 520  
    Legal Requirements 520  
    Litigation 520  
Part Five—Employee Privacy 524  
    *Privacy on the Job?* 524  
    *Privacy off the Job?* 524  
Monitoring 525  
    The Law 526  
Drug Testing 529  
    Drug-Free Workplace 530  
    Drug Testing in Law and Practice 530  
Part Six—Employee Benefits and Income  
    Maintenance 531  
    Family Leave 532  
    Unemployment Compensation 533  
    WARN 534  
    Pensions 534  
        *Pension Law* 535  
        *The Future?* 536  
Part Seven—Termination: Protection from  
    Wrongful Discharge 536  
    Judicial Limitations on At-Will  
    Principles 536  
        *Additional Torts* 538  
Part Eight—Immigration 541  
    *American Immigration Law* 542  
    *Enforcement* 542

Internet Exercise 543  
 Chapter Questions 543  
 Notes 547

## **Chapter 13**

### **Employment Law II: Discrimination 554**

Introduction 555  
     *Continuing Discrimination* 556  
 Part One—Employment Discrimination: The Foundation in Law 556  
     History 556  
     Civil Rights Act of 1964 557  
     Other Legislation and Orders 557  
     The Constitution 557  
     Employment Discrimination Enforcement 558  
         *EEOC and State Fair Employment Practice Agencies* 558  
         *Litigation* 558  
     Remedies 559  
 Part Two—“Types of Discrimination” 560  
     Disparate Treatment and Disparate Impact 560  
         Disparate Treatment 561  
         Disparate Impact 562  
             *The Test* 562  
         Statutory Defenses 565  
             *Seniority* 565  
             *Job-Related Employee Testing* 566  
             *The Four-Fifths Rule and Disparate Impact* 566  
     National Origin 567  
         *Speak English Only?* 567  
     Racial Harassment 568  
 Part Three—Sex Discrimination 569  
     Gender Equality 569  
         *Glass Ceiling?* 570  
     Analysis of Sex Discrimination: Current Issues 570  
     Sex Discrimination and Disparate Impact 570  
     Bona Fide Occupational Qualification 572  
         *Essence* 573  
     Work-Life Balance and Sex Discrimination 574  
         *FRD* 574

Equal Pay 575  
 Sexual Harassment 576  
 The Law of Sexual Harassment 577  
     *The Test* 577  
     *Same Sex?* 581  
     Sexual Harassment in Other Nations 582  
     Retaliation 582  
 Part Four—Affirmative Action 584  
     Early Affirmative Action Law 584  
     Rethinking Affirmative Action 585  
     Affirmative Action: Where Are We? 588  
 Part Five—Additional Discrimination Topics 589  
     Religious Discrimination 589  
         *The Law* 589  
     The Americans with Disabilities Act (ADA) 590  
         Defining Disabilities 591  
         “Regarded as Having” a Disability 591  
         Accommodating Individuals with Disabilities 592  
         The ADA in Practice 592  
     Genetic Testing 594  
     Age Discrimination 594  
         *ADEA Claims* 594  
         *Defenses* 595  
     Sexual Orientation Discrimination 596  
     Gender Identity Discrimination 597  
 Internet Exercise 597  
 Chapter Questions 597  
 Notes 600

## **Chapter 14**

### **Employment Law III: Labor–Management Relations 605**

Introduction 605  
     *Auto Industry and Unions* 606  
     *Union Support* 606  
 Part One—History 607  
     A Grim Picture 608  
     Organizing Labor 608  
     Skilled Workers 609  
     Laborers 609

Unions and the Developing Law 609  
 Labor Protection 609  
 Management Protection 609  
 Corrupt Union Leaders 610  
 Members' Rights 610

Part Two—Labor Legislation Today 610  
 Right to Organize 611  
 Unfair Labor Practices by Management 612  
     *At-Will Disclaimers* 612  
     *Dress Codes* 612  
     *Social Media Policies* 613  
 Unfair Labor Practices by Unions 614  
     *Representation Procedures* 614

National Labor Relations Board  
 (NLRB) 614

Part Three—Elections 615  
 Choosing a Bargaining Representative 615  
     Election Petition 615  
     Procedure 616  
     Appropriate Bargaining Unit 616  
         *Solicitation* 616  
     The Election for Union Representation 619  
     Threats of Reprisal or Force 619  
     Promise of Benefit 620  
     Union Persuasion 624  
     Remedies for Election Misconduct 624  
     Decertification 624  
     Withdrawal of Recognition 624  
     Escape the Union? 625  
     The Union as Exclusive Bargaining  
     Agent 625

Part Four—Collective Bargaining 625  
 Bargaining in Good Faith 626  
     *Mandatory Bargaining Subjects* 626  
     *Permissive and Prohibited Bargaining  
     Subjects* 626  
 Administering the Agreement 629  
     Arbitration 629  
     Fair Representation 629

Part Five—Labor Conflict 629  
 Strikes 630  
 Picketing and Boycotts 634  
     *Primary Picketing* 634  
     *Secondary Picketing/Boycotts* 634  
 Lockouts 635

Part Six—Employees' Rights within or Against  
 the Union 636  
     The Union's Duty of Fair Representation 636  
     The Bill of Rights of Labor Organization  
     Members 636  
     Union Security Agreements and Right-to-  
     Work Laws 636  
         *Right to Work* 637  
         *Closed Shop* 637

Part Seven—Other Unions 638  
     Public-Sector Unions 638  
 Internet Exercise 639  
 Chapter Questions 639  
 Notes 642

**UNIT FIVE  
 SELECTED TOPICS IN  
 GOVERNMENT-BUSINESS  
 RELATIONS 645**

**Chapter 15  
 Consumer Protection 646**

Introduction 646  
 Part One—Common-Law Consumer  
 Protection 647  
     Fraud and Innocent Misrepresentation 647  
     Unconscionable Contracts 651

Part Two—The Consumer and Government  
 Regulation of Business 651  
     State Laws 651  
         *Lemon Laws* 652  
     Federal Laws and Consumer Protection  
     Agencies 654  
     Consumer Financial Protection Bureau 654  
     The Federal Trade Commission 655  
         *Rule Making* 655  
         *Adjudication* 656  
     Federal Trade Commission—Fraud and  
     Deception 656  
         *Quality Claims* 656  
     Federal Trade Commission—Consumer  
     Privacy 657  
         *Privacy Law* 657

The Consumer Product Safety Commission	658	The Intercultural Environment: Ethics Across International Borders	690
<i>Cribs</i>	658	Laws and Social Norms Regarding Free Speech	691
<i>Reducing Risk</i>	658	Social Responsibility to Host Country	692
The Food and Drug Administration	659	Social Responsibility to Home Country?	694
<i>Tobacco</i>	659	<i>The Foreign Corrupt Practices Act (FCPA)</i>	694
<i>Drug Safety</i>	659	Social Responsibility to Humanity?	695
<i>Food Safety</i>	660	Laws Governing Cross-Border Business	697
<i>Trust the Market or Strengthen the FDA?</i>	660	Forms of Global Business Expansion	697
Part Three—Debtor/Creditor Law	661	<i>Multinational Enterprise (MNE)</i>	697
Credit Regulations	661	<i>Direct Contract</i>	697
Dodd–Frank Wall Street Reform and Consumer Protection Act	662	<i>Foreign Representation</i>	698
Truth in Lending Act (TILA)	662	<i>Joint Venture</i>	698
Credit and Charge Cards	665	<i>Branch Office or Subsidiary</i>	698
<i>TILA Protections</i>	665	<i>Licensing</i>	699
<i>CARD</i>	665	<i>Franchising</i>	699
<i>Success?</i>	666	Foundations of International Law	699
Consumer Credit Reports	667	The Development of Customs	701
Fair Credit Billing Act	668	Comity	703
Electronic Fund Transfers	668	Regulation of International Trade	703
Equal Credit Opportunity	669	U.N. Convention on Contracts for the International Sale of Goods (CISG)	704
Debtor Protection	671	International Trade in Services	704
<i>Debt Collection Law</i>	671	Employment-Related Regulations	705
Part Four—Bankruptcy	675	Intellectual Property Regulations	707
<i>Fresh Start?</i>	675	<i>Trademarks</i>	707
Bankruptcy Rules	675	<i>Patents</i>	708
<i>Liquidation</i>	675	<i>Copyrights</i>	709
<i>Reorganization</i>	676	<i>Agreement on Trade-Related Aspects of Intellectual Property</i>	712
<i>Adjustment of Debts</i>	677	Regulation of Multinational Enterprises (MNEs)	712
<i>Bankruptcy Critique</i>	677	<i>Securities Regulation</i>	713
Internet Exercise	678	<i>Accounting Standards</i>	713
Chapter Questions	678	<i>Anticompetitive Restraints</i>	715
Notes	682	<i>Mergers</i>	716
<b>Chapter 16</b>		Regulation of Trade	716
<b>International Ethics and Law</b>	<b>685</b>	<i>Import Tariffs</i>	716
Introduction	686	<i>Export Restrictions</i>	717
The International Environment	686	<i>Fair Trade Regulations: Dumping and Subsidies</i>	717
Trade Agreements	687	Trade Restrictions—A Tangled Web	718
European Union	688		
Globalization and Countervailing Forces	689		



International Dispute Resolution	719
<i>International Court of Justice</i>	720
<i>European Court of Justice</i>	720
<i>WTO Dispute Settlement Body</i>	721
<i>Other International Fora</i>	721
Arbitration	722
Government Defenses	722
Act of State Doctrine	723
Doctrine of Sovereign Immunity	723
Enforcement of Decisions	726
<i>Enforcing Foreign Judgments</i>	726
<i>Enforcing U.S. Judgments</i>	727
Internet Exercise	727
Chapter Questions	727
Notes	731

## Chapter 17

### Environmental Protection 736

Introduction	736
A Global View	737
Part One—A Return to Fundamentals: The Market, Government Regulation, and Self-Regulation	739
Market Failure?	739
Market Incentives	740
<i>Cap-and-Trade Programs</i>	740
<i>Tax Laws</i>	741
<i>Other Incentives</i>	742
Ethical Business Decision Making	742
Part Two—Laws and Regulations	743
The Federal Role	745
National Environmental Policy Act	745
Environmental Protection Agency	745
Regulation of Air Pollution	747
Clean Air Act of 1990	747
<i>Greenhouse Gas Regulations</i>	750
<i>Non-GHG Air-Quality Regulations</i>	750
<i>Motor Vehicle Emission Standards</i>	751
Regulation of Water Pollution	751
Federal Policy	752
Covered Waters	753
Regulation of Land Pollution	755

Toxic Substances Control Act	756
Resource Conservation and Recovery Act	757
Household Recycling	757
Superfund—Comprehensive Environmental Response, Compensation, and Liability Act of 1980	758
Small Business Liability Relief and Brownfields Revitalization Act	759
Part Three—Penalties and Enforcement under Federal Law	760
Citizen Suits	762
Endangered Species Act	766
Part Four—Common Law Remedies	766
<i>Nuisance</i>	766
<i>Trespass</i>	767
<i>Negligence</i>	767
<i>Strict Liability</i>	768
Part Five—Global Climate Change	768
The Kyoto Protocol	769
Internet Exercise	771
Chapter Questions	771
Notes	773

## Chapter 18

### Internet Law and Ethics 779

Introduction: The Internet and Globalization	779
Part One—The Market, Law, and Ethics	780
Market Forces and Government Regulation	781
Internet Access	781
<i>The Digital Divide</i>	782
<i>Net Neutrality</i>	782
Part Two—Jurisdiction to Adjudicate	784
Jurisdiction in International Suits	785
Part Three—Constitutional Law: Speech and Privacy	788
Speech	788
Anonymous Speech	789
Commercial Speech	791
Privacy	792

Data Mining	793	Taxes	811
Cross-Device Tracking	794	Reprise: Who Governs Cyberspace?	812
Aggregators	795	Internet Exercise	813
Privacy of Employees	796	Chapter Questions	814
Regulation	797	Notes	815
<i>Child Privacy Online</i>	798		
Part Four—Crime	799	<b>Appendix A</b>	
Cybersecurity	800	<b>The Constitution of the United States of America</b>	<b>822</b>
International Computer-Facilitated Crime	801		
Part Five—Commercial Law	802	<b>Appendix B</b>	
Contracts and Uniform Laws	802	<b>Uniform Commercial Code 2000 Official Text, Article 2</b>	<b>838</b>
<i>E-Signature</i>	802		
<i>UCITA</i>	802		
<i>Click-Wrap Agreements</i>	803		
Intellectual Property	803		
<i>Patents</i>	803		
<i>The Patent Wars</i>	804		
<i>Copyrights</i>	805		
<i>Market Response</i>	808		
<i>Grokster Redux?</i>	809		
Trademarks and Domain Names	810	<b>Glossary of Legal Terms</b>	<b>878</b>
<i>Trademarks</i>	810	<b>Case Index</b>	<b>900</b>
<i>Domain Names</i>	810	<b>Subject Index</b>	<b>906</b>

# Links to Brief Videos for Classroom Use

The following video links appear in the body of the text in conjunction with the subject matter of the videos.

## Chapter 1

Trailer *Atlas Shrugged* documentary movie [<http://www.youtube.com/watch?v=Tv29SXnd2dk&feature=related>].

Trailer *Inside Job* documentary movie. Oscar winner 2011 [<http://www.youtube.com/watch?v=FzrBurlJUNk>].

Steve Croft, “The Case Against Lehman Brothers,” 60 Minutes, CBS News, April 22, 2012, at [www.cbsnews.com/video/watch/?id=7406224n](http://www.cbsnews.com/video/watch/?id=7406224n)

Martin Smith, “The Untouchables,” Frontline, PBS, January 22, 2013, at [[www.pbs.org/wgbh/pages/frontline/untouchables/](http://www.pbs.org/wgbh/pages/frontline/untouchables/)]

## Chapter 2

2009 Harvard MBA Ethics Oath, *The Daily Show with John Stewart* [<http://www.thedailyshow.com/watch/wed-august-12-2009/mba-ethics-oath>].

Trailer, “The Company Men” <http://www.youtube.com/watch?v=xa5qg7cB1ZQ>

Trailer, Wall Street: Money Never Sleeps, at [<http://www.youtube.com/watch?v=HcMFA2SHES4>]

## Chapter 3

Vermont Senator Bernie Sanders, “A scandal” (a Senate speech criticizing corporate tax loopholes) [<http://www.youtube.com/watch?v=Sknt-UBRhx0>].

Trailer *Wal-Mart: The Corporation* [[http://www.thecorporation.com/index.cfm?page\\_id=46](http://www.thecorporation.com/index.cfm?page_id=46)] *The High Cost of Low Price* documentary movie [<http://www.walmartmovie.com>].

## Chapter 4

“What Is Mediation?” (a brief overview of mediation and arbitration) [<https://www.youtube.com/watch?v=KLdia39awI0>]. (The final two characters in this URL are a lower case l, as in law, and a zero.)

## Chapter 5

“1967 ABC News Report on Loving Case” (application of due process and equal protection principles to Virginia anti-miscegenation statute) [<http://abcnews.go.com/video/playerIndex?id=3278653>](upper case I in Index).

## Chapter 6

A video of the Pepsi ad that was the basis of the *Leonard v. Pepsico* lawsuit [<http://www.youtube.com/watch?v=ZdackF2H7Qc>].

## Chapter 7

Susan Saladoff, “Hot Coffee” documentary movie trailer [<http://hotcoffeethemovie.com/>].  
InjuryBoard, “Mr. Fancy Pants” (a video defense of the tort system) [<http://www.youtube.com/watch?v=h85j1vNxd8A>].

## Chapter 8

Cato Institute, “There Are Too Many Bureaucrats and They Are Paid Too Much” [<http://www.youtube.com/watch?v=5xzd3puYmiM>].  
Video, “IJ’s Jeanette Petersen Explains Three Reasons You Can’t Get a Cab” [[www.youtube.com/watch?v=0q-hPuESJng](http://www.youtube.com/watch?v=0q-hPuESJng)].

## Chapter 9

ChinaForbiddenNews, NTDTV.COM, “Insider Trading ‘Rats’” [<http://www.youtube.com/watch?v=IT3FAr0elEo>] (capital I as in Iowa, T3FAr, zero, e, capital I as in Iowa, Eo).  
“Billionaire Convicted of Insider Trading,” *Boston.com*, May 11, 2011 (Raj Rajaratnam) [<http://www.clicker.com/web/bostoncom-featured-necn-video/billionaire-convicted-of-insider-trading-1768946/>].

## Chapter 10

*The Informant!* movie trailer [<http://www.traileraddict.com/trailer/the-informant/trailer>].

## Chapter 11

Stephen Colbert, “Mega-Mergers,” 2007 [<http://www.businessinsider.com/stephen-colbert-att-2011-3>].

## Chapter 12

*Inland Valley Daily Bulletin and The San Bernardino Sun*, “A Special Report on Immigration” (“Smuggler’s Gulch”) 2005 [[http://lang.dailybulletin.com/social/beyondborders/video/121805\\_smugglers\\_gulch\\_video.asp](http://lang.dailybulletin.com/social/beyondborders/video/121805_smugglers_gulch_video.asp)].

## Chapter 13

Sheryl Sandberg, “In her own words,” discussing her 2013 book: “Lean In: Women, Work, and the Will to Lead” [<http://leanin.org/book/>]

American Civil Liberties Union, “New Video Shows the Need for a Transgender-Inclusive ENDA”

[[http://www.aclu.org/lgbt-rights\\_hiv-aids/new-aclu-video-shows-need-transgender-inclusive-enda](http://www.aclu.org/lgbt-rights_hiv-aids/new-aclu-video-shows-need-transgender-inclusive-enda)].

## **Chapter 14**

Fox News discussion of NLRB—Boeing Conflict [[http://www.youtube.com/watch?v=j\\_JvA6yKB\\_M](http://www.youtube.com/watch?v=j_JvA6yKB_M)].

## **Chapter 15**

A Consumer Financial Protection Bureau video explaining the Bureau’s mission [<http://www.consumerfinance.gov/the-bureau/>].

2011 ABC News Visit to Consumer Product Safety Commission Testing Lab [<http://abcnews.go.com/GMA/video/consumer-product-safety-commission-test-lab-13827984>].

## **Chapter 16**

2004 John Stossel “20/20” overview of sweatshop protests followed by Stossel’s defense of low-wage jobs [<http://www.youtube.com/watch?v=0VaHmgoB10E>]. (Both large 0 symbols are zeros.)

## **Chapter 17**

2011 Bill McKibben/Stephen Thompson video editorial about the alleged causal relationship between climate change and recent “extreme weather events” in America and around the world [<http://www.grist.org/climate-change/2011-06-11-the-most-powerful-climate-video-youll-see-all-week>].

## **Chapter 18**

Video Essay: “What Is the ‘Digital Divide?’” [[http://www.youtube.com/watch?v=fCIB\\_vXUptY](http://www.youtube.com/watch?v=fCIB_vXUptY)]. (In CIB, the middle letter is a capital I, as in Iowa.)

UNIT ONE

# Business and Society

- 1 CAPITALISM AND THE ROLE OF GOVERNMENT
- 2 BUSINESS ETHICS
- 3 THE CORPORATION AND PUBLIC POLICY: EXPANDING RESPONSIBILITIES

# Capitalism and the Role of Government

**After completing this chapter, students will be able to:**

1. Describe capitalism and its relationship to individual rights.
2. Compare and contrast capitalism and collectivism.
3. Differentiate between communism and socialism as collectivist philosophies.
4. Evaluate arguments regarding government's proper role in the global, technology-based economy.
5. Describe the primary characteristics of a "mixed economy."
6. Analyze the impact of capitalism on equality, fairness, and community in American and global society.
7. Discuss the theory and practice of privatization.
8. Discuss the current state of capitalism in China and Russia.
9. Describe the income and wealth gaps in America.

## Part One—Introduction

### Are you a capitalist?

Are you a capitalist? If so, what role, if any, should the law play in your business life? How much government does America need?

These themes, examining the relationship between government and business in America, are the core of this text. Since the fall of the Soviet Union and the general decline of communist influence, free market reasoning has dominated worldwide economic discourse. Indeed, noted theorist Francis Fukuyama argued that capitalism and Western democracy had so thoroughly proven their worth that the capitalism/collectivism debate was over.<sup>1</sup> Democracy and markets, Fukuyama claimed, were so clearly triumphant that no new forms of civilization are likely to emerge. Thus, he said, we are at the end of history. Events, however, have challenged Fukuyama's bold thesis. The Great Recession, including the subprime mortgage crisis, the stunning power of the Wall Street banks, and the continuing turmoil of globalization have raised grave doubts about the economic

reliability of capitalism. Likewise, government's failure to send corrupt bankers off to jail, rampant greed, and the Occupy Wall Street movement have magnified longstanding doubts about the morality of capitalism.

## Capitalism Challenged: Economics

We will briefly examine the economic and moral turmoil of contemporary American capitalism, but more detail on most of these topics will be provided in subsequent chapters.

### The Great Recession

In late 2008, America's financial markets seemed near collapse. Lending had essentially frozen. A powerful Wall Street bank, Lehman Brothers, went broke while Bear Stearns and Merrill Lynch, also Wall Street titans, faced failure and were sold. American and global financial markets panicked and appeared unable to correct themselves. Fearing a Great Depression as occurred in the 1930s, the federal government had, during both the George W. Bush and Barack Obama administrations, essentially flooded the market with cash, took on much of the debt held by endangered banks, and, through its Troubled Asset Relief Program (TARP), bailed out failing giants such as Goldman Sachs, General Motors, and Chrysler: companies that were deemed "too big to fail." Additional stimulus measures included tax reductions, bond sales, infrastructure and "green" projects, and enhanced unemployment benefits. Depending on how the word *stimulus* is defined, government expenditures to prop up the endangered economy ranged from perhaps \$1.7 trillion<sup>2</sup> to \$4.7 trillion<sup>3</sup> or more. Most of the TARP money has been repaid, but economists differ both on the need for the stimulus efforts and on their success.

### Subprime Mortgages

The nation's housing bubble burst.

The financial community's near collapse had been most directly ignited by the subprime mortgage crisis; a situation in which the nation's housing bubble burst and millions of Americans were no longer able to pay their home mortgages. Instead of continuing their sometimes meteoric rise in value, those homes had plunged in price and much of the total real estate market had essentially imploded. The resulting mountain of bad debt could not be managed by the American financial institutions that were holding it; fear paralyzed the lending markets, and the government felt obliged to step in to prevent a greater financial tragedy. Whereas greed and inept management were instrumental in the subprime debacle, the role of financial fraud remains unclear. Some big civil penalties have been imposed, and criminal investigations undertaken.



[For a critical examination of the 2008 financial meltdown, see the trailer for the 2011 Oscar-winning best documentary, *Inside Job*, at <http://www.youtube.com/watch?v=FzrBurlJUNk>]

### Big Banks

America's biggest banks were deemed "too big to fail."

America's biggest banks, including the five largest—JPMorgan Chase, Bank of America, Citigroup, Wells Fargo, and Goldman Sachs—were deemed "too big to fail" during the subprime mortgage crisis, and they remain a grave threat should the economy falter again. In 2001,



the assets of the five biggest American banks totaled about 25 percent of all U.S. bank assets whereas today that number exceeds 50 percent.<sup>4</sup> The Dodd–Frank Wall Street Reform and Consumer Protection Act (see Chapter 8) includes provisions designed to reduce the likelihood of big bank failures, but implementation of the new law has been troubled. Federal regulators in 2013 proposed requiring the biggest banks to increase their capital on hand substantially to guard against unexpected losses and reduce the risk to the American economy.

## Globalization

Globalization represents the international flowering of capitalism; the power of free markets has been embraced, enthusiastically or reluctantly, almost everywhere on Earth. That power raised new threats, of course, including the spread of America’s corporate influence and values around the globe (see Chapter 3). Now, however, globalization seems to be entering a new phase. In a “hyper-connected,” “flat” world, we are all linked together in an economic and cultural intimacy scarcely imaginable a few decades back, but new evidence suggests that a period of “de-globalization” may be emerging. International trade and money flows are slowing or actually declining.<sup>5</sup> Globalization has succeeded in raising wages significantly in emerging powers such as China and India. As a result, manufacturing jobs are returning to America in surprising numbers. Of course, globalization is not vanishing, but its economic advantages are shifting and new nationalistic urges threaten to slow the pace of global linkages.

## Capitalism Challenged: Morality

Beyond fears about capitalism’s economic performance, particularly its instability and harshness, critics point to capitalism’s indecencies.

### Wall Street Abuses

Many Americans are angered by the government’s inability to criminally punish the big banks and bankers.

Certainly many Americans are puzzled, if not angered, by the government’s inability to criminally punish the big banks and bankers who profited so handsomely in the events that led to the nation’s economic collapse and who, in several cases, had to be bailed out with public money following the collapse. (For more, see Chapter 2.) Those same bankers have not only escaped jail, but they continue to earn stunning sums of money. Responding, however, to harsh publicity, among other factors, some of the big banks have either cut or curbed executive pay. In 2013, at Goldman Sachs and JPMorgan Chase, compensation costs were falling and Morgan’s high-profile CEO, Jamie Dimon, took a 2012 pay cut of 50 percent, down to \$11.5 million. The cut, at least in part, served as a signal to regulators and investors that the board of directors was in charge following a troubled year that included a \$6 billion trading loss.<sup>6</sup>

### Greed

CEO salaries for the top 200 U.S. corporations (not limited to bankers) rose 16 percent in 2012. Among those top 200 CEOs, the average income was 273 times the income of the average worker—up from a 20 to 1 ratio in 1965.<sup>7</sup> The average CEO’s *daily* salary at those 200 biggest

firms now exceeds the average *annual* salary of their workers.<sup>8</sup> Actual salaries have often remained limited or flat in recent years, but stock-based pay has fueled an overall rise.

Congress showed its concern about CEO pay in a Dodd-Frank provision requiring the Securities and Exchange Commission to give shareholders a “say on pay” by writing new rules requiring periodic shareholder voting on executive compensation. At this writing, “say on pay” seems to have encouraged attention to CEO pay, but a shareholder backlash has not yet materialized.<sup>9</sup>

### Occupy Wall Street

Anger with corporate greed and perceived abuse of power led to a grassroots global protest movement labeled Occupy Wall Street. Hundreds of peaceful protesters (mostly young, often college-educated and jobless) camped in New York’s financial district in late 2011 to “restore democracy” while denouncing the “greed” and “corruption” of the “upper 1 percent.” The movement then spread to many other American cities and around the globe. Occupy Wall Street gained enormous publicity as a leftist assault on corporate America and the wealthy, but the movement sputtered—perhaps for want of a clear, coherent message. Occupy Wall Street continues its efforts, but at least for the present, the attention of the broader American public has been lost. (See [occupy.org](http://occupy.org).)



[For an overview of the Lehman Brothers banking collapse and a critique of the government’s regulatory oversight, see Steve Croft, “The Case Against Lehman Brothers,” *60 Minutes*, CBS News, April 22, 2012, at [www.cbsnews.com/video/watch/?id=7406224n](http://www.cbsnews.com/video/watch/?id=7406224n)]. [For an investigation of “why no Wall Street execs have been prosecuted for the financial crisis,” see Martin Smith, “The Untouchables,” *Frontline*, PBS, January 22, 2013, at [www.pbs.org/wgbh/pages/frontline/untouchables/](http://www.pbs.org/wgbh/pages/frontline/untouchables/)].

### Questions

1. Thomas Hoenig, a member of the board of directors of the Federal Deposit Insurance Corporation, observed: “[Americans] realize that more must be done to address a threat that remains increasingly a part of our economy: financial institutions that are ‘too big to fail.’”<sup>10</sup> Do you agree that our concentrated financial sector is a threat that must be addressed? Explain.
2. Journalist/lecturer Richard Doak laments what he believes to be unfair and excessive pay to executives: “Executive greed has perverted risks, rewards. . . . The American system has been rigged to over-enrich those at the top.”<sup>11</sup> What do you think? Is greed the culprit? Has the system been “rigged,” or can we continue to count on the market to properly distribute pay? Explain.

## Capitalism Challenged: America in Decline?

The economic and moral challenges to our capitalist system, the rise of China, and the ongoing political dysfunction in Washington, DC, have combined to shake our faith in America’s future. When asked in a 2013 Gallup Poll if the nation’s best days are ahead of us or behind, Americans were split with 47 percent seeing the best as yet to come whereas 50 percent said we have already witnessed our peak.<sup>12</sup> Some critics attribute the nation’s problems to fundamental flaws in capitalism and in the American character. Michael

Moore's 2009 documentary movie, *Capitalism: A Love Story*, assails capitalism as "evil."<sup>13</sup> Moore was questioned about his movie:

*Wall Street Journal*: Why call the movie "Capitalism: A Love Story?" You don't seem to love very much about capitalism. Mr. Moore: It is a love story about the well-to-do. They happen to love their money very much. Now they love our money and they want all our money and our homes. It's about their love.<sup>14</sup>

Capitalism drags us into decadence.

Political scientist Benjamin Barber believes that capitalism drags us into decadence by encouraging us to buy as many unnecessary products as we can manage, thus replacing historical principles of hard work and deferred gratification with infantile hungers for anything that might promise comfort. In America's version of capitalism, as Barber sees it, we find liberty in commerce. We can buy whatever we want; therefore, we are free.<sup>15</sup> But that undemanding vision of liberty means we have no sense of obligation for social and political ideals greater than self-satisfaction.<sup>16</sup> Asking no more of us than unbridled consumption may undermine democracy itself, as columnist Rod Dreher argues:

Democracy requires virtue. So does a healthy capitalism. A nation that cannot govern its own appetites will, in time, be unable to govern itself. An economy that divorces economic activity from the restraining virtues that make for good stewardship will implode.<sup>17</sup>

## Vast Resources

Although America has been grievously shaken by the terrorist attacks of 9/11 and the Great Recession, shouldn't we find encouragement in the nation's extraordinary strengths and resources? We remain dominant in economic, military, and international affairs, and, as Goldman Sachs recently told its clients, we should recognize "the key economic institutional, human capital and geopolitical advantages the U.S. enjoys over other economies."<sup>18</sup> In particular, Goldman pointed to America's attractiveness as a location for investment, the nation's vast natural resources (especially arable land, oil, and gas), a workforce that is younger and more energetic than those of our chief rivals, and our continuing leadership in innovation.<sup>19</sup> Commentator David Brooks says that America is merely in one of its periodic economic pauses, but he is sure that: "The gospel of success will recapture the imagination."<sup>20</sup> Brooks summarized our fundamentally commercial nature:

Walt Whitman got America right in his essay, "Democratic Vistas." He acknowledged the vulgarity of the American success drive. He toted up its moral failings. But in the end he accepted his country's "extreme business energy," its "almost maniacal appetite for wealth." He knew that the country's dreams were all built upon that energy and drive, and eventually the spirit of commercial optimism would always prevail.<sup>21</sup>

## Questions

British Labour Party leader Ed Miliband asked in 2012 if 20th century capitalism is failing 21st century society.

1. What did he mean?
2. Answer his question. See Ed Miliband, "At Davos, Debating Capitalism's Future," *New York Times*, January 26, 2012 [<http://www.nytimes.com/>].

## Purpose: What Do We Hope to Accomplish?

Until this point, we have provided a brief reminder of some of the big challenges facing America's capitalist system. The balance of this chapter more carefully examines the philosophical nature of free market capitalism, introduces some alternatives to the free market, and asks where America's political economy is headed. Chapter 1 thereby serves as a foundation for the book's detailed investigation of the following questions:

1. What is the proper ethical/social role of business in American life?
2. How much, if any, government regulation of business is necessary to secure that role?

### **Markets and Governments**

We certainly cannot understand America's system of laws without a firm appreciation for the principles of capitalism from which those laws spring. We have embraced an evolving capitalist, democratic approach to life. Other cultures have placed less faith in the market and more in government planning.

In this chapter we will explore the full economic spectrum, moving from a *laissez-faire*, free market approach on the extreme right to a brief reminder of command economy principles on the far left. The bulk of our attention, however, will rest where the world is at this moment. Most nations are practicing varying combinations of markets and rules that we can label *mixed economies*.

The pure free market approach assumes that we can operate our business system and our society at large free of all but foundational legal mechanisms such as contract and criminal law. The wisdom of the market—our individual judgments, in combination with our individual consciences—would “regulate” American life. Most forms of government including regulatory agencies, consumer protection, environmental rules, occupational licensure, zoning restrictions, antitrust law, and all but the most basic government services would be eliminated.

Of course, today's global debate is not so much about capitalism versus communism as about the mixed economy—that is, about what combination of capitalism and government best serves the needs of America and the world. Substantially open markets have shown themselves to be the stronger vehicle for productivity, efficiency, and personal freedom. Are open markets also the stronger vehicle for improving living conditions for all citizens, for maximizing democracy, for discouraging crime and corruption, and for building strong communities? Are America and the world best served by the speed and efficiency of largely unrestrained markets, or do we still need the “civilizing” influence of government rules?

### **Law**

Finally, this chapter should be read as a platform for the study of law that commences in Chapter 4. Once a society settles on some broad political and economic principles, it employs the law as a primary method of social control. So to understand the law, we need to understand its roots in the economic, political, and social preferences of America and the world.

## Questions—Part One

1. The John Templeton Foundation recently asked a number of prominent thinkers the following question: “Does the free market corrode moral character?” Answer that question. [See [www.templeton.org/market](http://www.templeton.org/market)]
2. Former Iranian President Mahmoud Ahmadinejad in 2009 said a “new era is starting” after the “definite defeat of capitalism.”<sup>22</sup> Is capitalism dead (or dying)? Explain.
3. Scholar Robert Skidelsky applauds capitalism for overcoming scarcity, organizing production, and lifting many out of poverty, but he thinks capitalism, at least in rich countries like the United States, has also produced a culture where our main occupation has become the production and consumption of unnecessary goods. He asks whether capitalism can succeed if it continues to produce “more of the same, stimulating jaded appetites with new gadgets, thrills, and excitements? . . . Do we spend the next century wallowing in triviality?”<sup>23</sup> What do you think?

## Part Two—Capitalism: Reduce Government?

Capitalism in America was built on the strong philosophical foundation of personal freedom and private property rights. Our great natural resources and personal ambition led to extraordinary prosperity. Monopolistic abuse followed, however, and government grew to curb the power of big business. Thus, America’s substantially free market was gradually constrained by government regulation. The proper balance between open markets and government intervention remains perhaps the central public policy debate in American life.

Should we consider a return to a purer form of capitalism; largely free of government oversight? Can we, in large measure, do without government regulation of business? The controversial philosopher and novelist Ayn Rand was an uncompromising advocate of free market principles. She believed the necessary categories of government were only three in number: the police, the armed services, and the law courts. Rand’s philosophy of Objectivism contends that the practice of free market principles is necessary for a rational, moral life. Rand’s views and the quality of her writing are heavily criticized, but she has been cited as a powerful influence by some of America’s leading corporate and political figures. Her books, including *Atlas Shrugged* and *The Fountainhead*, are among the best-selling novels of all time. Indeed, *Atlas Shrugged* is one of the most influential business books in history, and according to a national survey, has been read by over 8 percent of American adults.<sup>24</sup>



[For the trailer of a 2011 documentary treatment of *Atlas Shrugged*, see <http://www.youtube.com/watch?v=Tv29SXnd2dk&feature=related>]

Big business leaders are the great heroes of Rand’s writing.

Big business leaders, who so often are the villains of contemporary American life, are the great heroes of Rand’s writing, in which she championed “the virtue of selfishness” and rejected self-sacrifice. Commentator Stephen Moore explained Rand’s core theme in *Atlas Shrugged*:

Politicians invariably respond to crises—that in most cases they themselves created—by spawning new government programs, laws and regulations. These, in turn, generate more havoc and poverty, which inspires the politicians to create more programs . . . and the downward spiral

repeats itself until the productive sectors of the economy collapse under the collective weight of taxes and other burdens imposed in the name of fairness, equality and do-goodism.<sup>25</sup>

[See the Center for the Moral Defense of Capitalism at <http://www.moraldefense.com>]  
[For a brief look at major league baseball player Orlando Cabrera’s devotion to *Atlas Shrugged* and a journalist’s criticism of Rand’s admirers, see <http://hardballtalk.nbcsports.com/2011/06/23/orlando-cabrera-is-john-galt/>]

## READING

# Man’s Rights

### Ayn Rand

If one wishes to advocate a free society—that is, capitalism—one must realize that its indispensable foundation is the principle of individual rights. If one wishes to uphold individual rights, one must realize that capitalism is the only system that can uphold and protect them.

\* \* \* \* \*

Every political system is based on some code of ethics. The dominant ethics of mankind’s history were variants of the altruist-collectivist doctrine which subordinated the individual to some higher authority.

\* \* \* \* \*

Under all such systems, morality was a code applicable to the individual, but not to society. Society was placed *outside* the moral law, and the inculcation of self-sacrificial devotion to social duty was regarded as the main purpose of ethics in man’s earthly existence.

Since there is no such entity as “society,” since society is only a number of individual men, this meant, in practice, that the rulers of society were exempt from moral law; subject only to traditional rituals, they held total power and exacted blind obedience—on the implicit principle of “The good is that which is good for society . . .”

This was true of all statist systems, under all variants of the altruist-collectivist ethics. . . . As witness: the theocracy of Egypt, with the Pharaoh as an embodied god—the unlimited majority rule or *democracy* of Athens—the welfare state run by the Emperors of Rome—the Inquisition of the late Middle Ages—the absolute monarchy of France—the welfare state of Bismarck’s Prussia—the gas chambers of Nazi Germany—the slaughterhouse of the Soviet Union.

All these political systems were expressions of the altruist-collectivist ethics—and their common characteristic is the

fact that society stood above the moral law. . . . Thus, politically, all these systems were variants of an *amoral* society.

The most profoundly revolutionary achievement of the United States of America was *the subordination of society to moral law*.

The principle of man’s individual rights represented the extension of morality into the social system—as a limitation on the power of the state . . . The United States was the first *moral* society in history.

All previous systems had regarded man as a sacrificial means to the ends of others, and society as an end in itself. The United States regarded man as an end in himself, and society as a means to the peaceful, orderly, *voluntary* coexistence of individuals. All previous systems had held that man’s life belongs to society, that society can dispose of him in any way it pleases, and that any freedom he enjoys is his only by favor, by the *permission* of society, which may be revoked at any time. The United States held that man’s life is his by *right*, that a right is the property of an individual, that society as such has no rights, and that the only moral purpose of a government is the protection of individual rights.

A “right” is a moral principle defining and sanctioning a man’s freedom of action in a social context. There is *only one* fundamental right (all the others are its consequences or corollaries): a man’s right to his own life . . .

America’s inner contradiction was the altruist-collectivist ethics. Altruism is incompatible with freedom, with capitalism, and with individual rights . . .

It was the concept of individual rights that had given birth to a free society. It was with the destruction of individual rights that the destruction of freedom had to begin.

A collectivist tyranny dare not enslave a country by an outright confiscation of its values, material or moral. It has to be done by a process of internal corruption. . . . The process entails such a growth of newly promulgated “rights” that people do not notice the fact that the meaning of the concept is being reversed . . .